

**Republic of the Philippines**  
**Department of Labor and Employment**  
**National Wages and Productivity Commission**

**NWPC GUIDELINES NO. \_02 Series of 2007**

**AMENDED RULES ON EXEMPTION FROM COMPLIANCE WITH THE PRESCRIBED  
WAGE INCREASES/ COST OF LIVING ALLOWANCES GRANTED BY THE REGIONAL  
TRIPARTITE WAGES AND PRODUCTIVITY BOARDS**

Pursuant to Section 3, Article 121 b of RA 6727 and Section 1, Rule VIII of the amended Rules of Procedure on Minimum Wage Fixing, the following rules on exemption are hereby issued for strict compliance by all concerned:

**SECTION 1. DEFINITION OF TERMS**

- A. Commission - refers to the National Wages and Productivity Commission.
- B. Board - refers to the Regional Tripartite Wages and Productivity Board.
- C. Wage Order - refers to the Wage Order promulgated by the Board pursuant to its wage-fixing authority.
- D. Establishment - refers to an economic unit which engages in one or predominantly one kind of economic activity at a single fixed location. For purposes of determining eligibility for exemption, establishments under the same owner/s but separately registered with the Securities and Exchange Commission (SEC), Department of Trade and Industry (DTI) or Cooperative Development Authority (CDA) as the case may be, irrespective of their location, shall be treated as individual and distinct establishments.
- E. 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. For purposes of this Guidelines, retail establishments must be regularly employing not more than 10 workers.

- F. Service Establishment– refers to an entity principally engaged in the sale of services to individuals for their own or household use and is generally recognized as such. For purposes of this Guidelines, service establishments must be regularly employing not more than 10 workers.
- G. Distressed Establishment - refers to an establishment which meets the criteria enumerated in Section 3 A of this Guidelines.
- H. Paid-up capital - refers to the total amount of shareholder capital that has been paid by shareholders.
- I. 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.
- J. Capital Impairment – refers to the diminution of capital due to accumulated losses.
- K. 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.
- L. Full Accounting Period - refers to a period of twelve (12) months or one year of business operations.
- M. Interim Period - refers to a financial reporting period shorter than a full financial year (most typically a quarter or half-year).
- N. 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.
- O. 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.
- P. Net loss – refers to actual loss suffered by a company including overhead and interest charges deducted.
- Q. 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.

- R. Stock Corporation - refers to one organized for profit and issues shares of stock to its members
- S. 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.
- T. 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.
- U. Single Proprietorship - refers to a business unit owned and controlled by only one person.
- V. Cooperative - refers to a duly registered association pursuant to R.A. 6938 (Cooperative Code of the Philippines) and other laws.
- W. New Business Enterprises - 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.
- X. Quasi-banks - refers to institutions such as investment houses and financing companies performing quasi-banking functions as defined by the Bangko Sentral ng Pilipinas.
- Y. 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.
- Z. 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.

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

## **SECTION 2. CATEGORIES OF EXEMPTIBLE ESTABLISHMENTS**

Exemption of establishments from compliance with wage increases and cost of living allowances prescribed by the Boards may be granted in order to (1) assist establishments experiencing temporary difficulties due to losses maintain the financial viability of their businesses and continued employment of their workers; (2) encourage the establishment of new businesses and the creation of more jobs, particularly in areas outside the National Capital Region and Export Processing Zones, in line with the policy on industry dispersal and (3) ease the burden of micro establishments, particularly in the retail and service sector, that have a limited capacity to pay. Pursuant to the above, the following categories of establishments may be exempted upon application with and as determined by the Board, in accordance with applicable criteria on exemption as provided in this Guidelines; provided further that such categories are expressly specified in the Order.

1. Distressed establishments
2. New business enterprises (NBEs)
3. Retail/Service establishments employing not more than ten (10) workers
4. Establishments adversely affected by natural calamities

Any Board may seek the inclusion of other exemptible categories outside of the abovementioned list, subject to the (a) submission of a strong justification for the proposed category; and (b) prior review and approval of the Commission.

## **SECTION 3. CRITERIA FOR EXEMPTION**

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

### **A. Distressed Establishments**

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

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

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

c. Conditional Exemption

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

2. For Single Proprietorships/Partnerships

a. Full Exemption:

- a.1. When the accumulated net losses for the last two (2) full accounting periods immediately preceding the effectivity of the Order amounts to 20% or more of the total invested capital at the beginning of the period under review; or
- a.2. When an establishment registers capital deficiency i.e., negative net worth as of the last full accounting period immediately preceding the effectivity of the Order.

b. Partial Exemption:

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

c. Conditional Exemption

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

### 3. For Non-stock, Non-profit Organizations

#### a. Full Exemption:

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

#### b. Partial Exemption:

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

#### c. Conditional Exemption:

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

### 4. For Banks and Quasi-banks

#### a. Under receivership/liquidation

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

#### b. Under controllership/conservatorship

A bank or quasi-bank under controllership/ conservatorship may apply for exemption as a distressed establishment under Section 3 A of this Guidelines.

### 5. Establishments Under Corporate Rehabilitation

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

#### B. New Business Enterprises

Exemption may be granted to New Business Enterprises located outside the National Capital Region (NCR) and Export Processing Zones and established within two (2) years from effectivity of the Order, classified under any of the following:

1. Agricultural establishments whether plantation or non-plantation.

2. Establishments with total assets after financing of five million pesos (P5,000,000.00) and below.

#### 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 4. 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 (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 New Business Enterprises

### 1. Affidavit from employer regarding the following:

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

### 2. Certificate of registration from the appropriate government agency.

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

1. Affidavit from employer stating the following:
  - a. It is a retail/service establishment.
  - b. It is regularly employing not more than ten (10) workers for at least six months in any calendar year.
2. Business Permit for the current year from the appropriate government agency.

## D. For Establishments Adversely Affected by Natural Calamities

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

#### **SECTION 5. 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 3 A of this Guidelines.
- 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 3 A of this Guidelines.
- C. Conditional exemption of one (1) year from effectivity of the Order shall be granted only in the case of distressed establishments under Section 3 A of this Guidelines. The conditional exemption shall be confirmed, as follows:
  - c.1. For Corporations  
  
When deficit as defined in Section I (N), 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 6. ADOPTION OF PRODUCTIVITY IMPROVEMENT PROGRAMS**

Establishments granted exemption are required to adopt productivity improvement initiatives or schemes to improve business viability. The Commission and the Boards shall provide technical assistance in the development of a productivity improvement program in the company.

## **SECTION 7. 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 8. 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 9. 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 10. 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.

In the case of NBEs, applications shall be filed not later than sixty (60) days after date of registration.

3. The application shall be under oath and accompanied by complete supporting documents as enumerated under Section 4 of this Guidelines.

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

#### **SECTION 11. QUORUM AND VOTES REQUIRED**

Four (4) members of the Commission or Board shall constitute a quorum to decide on the applications for or on appeals on exemption, provided each sector is represented. The Commission or Board may dispense with the latter proviso if the two (2) representatives of any sector fail to attend two (2) consecutive scheduled meetings with proper notice. The affirmative vote of the majority of the members constituting a quorum shall be necessary to carry a decision.

#### **SECTION 12. 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 13. NON-DIMINUTION OF BENEFITS**

Exemption granted under this Guidelines shall not be construed to reduce existing wages and other benefits enjoyed by the workers under existing laws, decrees, issuances or under any contract of agreement between the workers and employees.

#### **SECTION 14. SUPPLEMENTARY GUIDELINES ON EXEMPTION**

The Board may issue supplementary guidelines for exemption in accordance with this Guidelines, subject to review/approval by the Commission.

#### **SECTION 15. EFFECTIVITY**

This amended Guidelines shall take effect fifteen (15) days after publication in a newspaper of general circulation.

#### **SECTION 16. REPEAL**

All Commission Guidelines previously adopted and inconsistent herewith are hereby repealed.

Manila, Philippines. June 25, 2007.

**(Sgd)SEC. ARTURO D. BRION**  
**Chairman**

**(Sgd)DIR. GEN. ROMULO L. NERI**  
**Vice-Chairman**

**(Sgd)CEDRIC R. BAGTAS FRANCISCO R. FLORO**  
**Member Member**

**(Sgd)DAVID L. DIWA, JR. EDUARDO T. RONDAIN**  
**Member Member**

**(Sgd)ESTHER F. GUIRAO**  
**Member**