



**REGIONAL
TRIPARTITE WAGES and
PRODUCTIVITY BOARD**

NATIONAL CAPITAL REGION

Republic of the Philippines
Department of Labor and Employment
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Ermita, Manila
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WAGE ORDER No. NCR-10

**PROVIDING A DAILY EMERGENCY COST OF LIVING
ALLOWANCE**

WHEREAS, the Regional Tripartite Wages and Productivity Board – National Capital Region, has its mandate to periodically assess the wage levels, conduct studies and determine and fix minimum wage rates applicable in the region or industry;

WHEREAS, acting upon the petitions filed by organized labor and as a result of its studies, consultations and deliberations, this Board finds a need to provide a daily emergency cost of living allowance (ECOLA) to alleviate the plight of the workers and employees in the private sector without impairing the viability and competitiveness of business and industry;

NOW THEREFORE, by virtue of the power and authority vested under Republic Act No. 6727, otherwise known as the Wage Rationalization Act, the Regional Tripartite Wages and Productivity Board – National Capital Region hereby issues this Wage Order:

Section 1. Upon the effectivity of this Wage Order, all private sector workers and employees in the National Capital Region receiving daily wage rates of TWO HUNDRED FIFTY PESOS (P 250.00) up to TWO HUNDRED NINETY PESOS (P 290.00) shall receive an **Emergency Cost of Living Allowance (ECOLA)** in the amount of **TWENTY PESOS (P 20.00) per day**.

Section 2. The total compensation of workers earning the prevailing minimum wage rates in the National Capital Region shall be as follows:

INDUSTRY/SECTOR	BASIC WAGE	ECOLA under WO NCR-09	ECOLA under WO NCR-10	TOTAL
Non-Agriculture	P 250	P 30	P 20	P 300
Agriculture				
Plantation	P 213	P 30	P 20	P 263
Non-Plantation	P 213	P30	P 20	P 263

Section 3. The provisions of this Order shall not cover household or domestic helpers and persons in the personal service of another, including family drivers and workers of registered Barangay Micro Business Enterprises (BMBEs) who will be hired after the effectivity of this Wage Order.

Section 4. In the case of private educational institutions, the share of covered workers and employees in the increase in tuition fees for School Year 2003-2004 shall be considered as compliance with the emergency cost of living allowance prescribed herein. However, payment of any shortfall in the allowance set forth herein shall be covered starting School Year 2004-2005.

Private educational institutions, which did not increase their tuition fees for the School Year 2003-2004, may defer compliance with the provisions of this Wage Order until School Year 2004-2005.

In any case, all private educational institutions shall implement the allowance prescribed herein starting School Year 2004-2005.

Section 5. In the case of workers covered by contracts for works and services, the prescribed allowance set forth herein shall be borne by the principal and the contract previously forged between the principal and the contractor is deemed amended accordingly. In the event that the principal fails to pay the prescribed allowance, the contractor shall be jointly and severally liable with the principal.

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

Section 7. Wages of apprentices and learners shall in no case be less than seventy-five (75%) of the allowance as prescribed in this Order. All handicapped employees shall receive the full amount of emergency cost of living allowance prescribed in this Order.

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

1. Distressed establishments;
2. Establishments facing potential losses;
3. Retail/Service establishments employing not more than ten (10) workers; and
4. 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 P 3 million.

Section 9. All applications for exemption from compliance with this Order shall be filed within seventy-five (75) days from the date of publication of the Rules Implementing this Order, with complete supporting documents as specified in the Rules. Failure to submit the required supporting documents within the prescribed period will be tantamount to dismissal of the application for exemption. The Board has the discretion to grant full or partial exemption but in no case shall it exceed one (1) year from the effectivity of this Order.

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

Section 11. In the event that the application for exemption is not granted, the employees of the applicant firm shall receive the appropriate compensation due them as provided for in this Order, together with the payment of interest amounting to one percent (1%) per month retroactive to the effectivity of this Order.

Section 12. Wage increases/allowances 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 allowance set forth herein, provided 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 increase prescribed in this Order.

In unorganized establishments, wage increases/allowances granted by the employer within three (3) months prior to the effectivity of this Order shall be credited as compliance therewith.

In case the increases given are less than the prescribed adjustment, 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.

Section 13. Where the application of the emergency cost of living allowance prescribed in this Order results in distortions in the wage structure within the establishment, the distortion as corrected shall be paid as ECOLA in accordance with the procedure provided for under Article 124 of the Labor Code of the Philippines, as amended.

Section 14. Any employer who refuses or fails to pay the prescribed minimum wage rate and emergency cost of living allowance provided under this Wage Order shall be subject to the penalties specified under R.A. 6727, as amended by R.A. 8188.

Section 15. The Regional Tripartite Wages and Productivity Board – National Capital Region shall prepare the necessary rules and regulations to implement this Order.

Section 16. If any provision or part of this Wage Order is declared unconstitutional, or illegal, the other provisions or parts thereof shall remain valid. Nothing in this Order shall be construed to reduce any existing wage rate, allowance or other benefit under existing laws, decrees, issuance, and executive orders or under any contract or agreement between workers and employers.

Section 17. This Order shall take effect fifteen (15) days after its publication in a newspaper of general circulation.

Approved.

Manila, Philippines, 23 June 2004.

Dissenting

(SGD.) DANIEL R. ANG
Labor Representative

(SGD.) VICENTE LEOGARDO, JR.
Employer Representative

Dissenting

(SGD.) GERMAN N. PASCUA, JR.
Labor Representative

(SGD.) CLETO T. VILLATUYA
Employer Representative

(SGD.) LUWINA S. ENECIO
Vice-Chairman

(SGD.) SCHOLASTICA D. CORORATON
Vice-Chairman

(SGD.) CIRIACO A. LAGUNZAD III
Board Chairman

Rules Implementing WAGE ORDER NO. NCR-10, AS AMENDED

Pursuant to RA 6727 otherwise known as Wage Rationalization Act and Section 15 of Wage Order No. NCR-10, as amended, the following rules are hereby issued for guidance and compliance by all concerned:

RULE I

GENERAL PROVISIONS

SECTION 1. Title. This Rules shall be known as “The Rules Implementing Wage Order No. NCR-10, as amended”;

SECTION 2. Definition of Terms. As used in this Rules,

- (a) “**Order**” means Wage Order No. NCR-10, as amended;
- (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, Valenzuela and the Municipalities of Navotas, Pateros, San Juan, and Taguig;
- (g) “**Agriculture**” refers to farming in all its branches and among others, includes the cultivation and tillage of the soil, production, cultivation, growing and harvesting of any agricultural or horticultural commodities, dairying, raising of livestock or poultry, the culture of fish and other aquatic products in farms or ponds, and any activity performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, but does not include the manufacturing and/or processing of sugar, coconut, abaca, tobacco, pineapple, aquatic or other farm products;
- (h) “**Establishment**” refers to an economic unit, which engages in one or predominantly one kind of economic activity at a single fixed location.

For purposes of determining eligibility for exemption, establishments under the same owner/s but separately registered with the Securities and Exchange Commission (SEC), Department of Trade and Industry (DTI) or Cooperative Development Authority

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

- (i) **“Retail Establishment”** is one principally engaged in the sale of goods to end-users for personal or household use.
- (j) A retail establishment that regularly engages in wholesale activities loses its retail character.
- (k) **“Service Establishment”** is one principally engaged in the sale of service to individuals for their own or household use and is generally recognized as such;
- (l) **“Distressed Establishments”** refer to establishments which meet the criteria enumerated in Section 3A of the National Wages and Productivity Commission (NWPC) Guidelines No. 01 Series of 1996, known as Rules on Exemption from Compliance with the Prescribed Wage Increases/Cost of Living Allowances Granted By the Regional Tripartite Wages and Productivity Board;
- (m) **“Establishments Facing Potential Losses”** refer to establishments as defined in the National Wages and Productivity Commission (NWPC) Policy Guidelines No. 01, series of 2001;
- (n) **“Barangay Micro Business Enterprise (BMBE)”** refers to any business entity or enterprise granted a Certificate of Authority under Republic Act No. 9178.
- (o) **“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;
- (p) **“Full Accounting Period”** refers to a period of twelve (12) months of business operations;
- (q) **“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;
- (r) **“Stock Corporation”** refers to a corporation, duly registered with Securities and Exchange Commission (SEC), organized for profit and issues shares of stock to its members;
- (s) **“Non-stock, Non-profit Organization”** refers to one organization, duly registered with Securities and Exchange Commission, organized principally for public purposes such as charitable, educational, cultural or similar purposes and does not issue shares of stock to its members;
- (t) **“Partnership”** refers to an association, duly registered with Securities and Exchange Commission (SEC), of two or more persons who bind themselves to contribute money, property, or industry to a common fund with the intention of dividing the profits among themselves or for the exercise of a profession;

- (u) **“Single Proprietorship”** refers to a business unit, duly registered with Department of Trade and Industries (DTI), owned and controlled by only one person;
- (v) **“Cooperative”** refers to a duly registered association of persons with the Cooperative Development Authority (CDA) who voluntarily join together to form a business establishment which they themselves own, control and patronize, and which may fall under any of the following types: credit, consumers, producers, marketing, service or multi-purpose;
- (w) **“Prescribed Emergency Cost of Living Allowance (ECOLA)”** refers to the emergency cost of living allowance prescribed by the Board for covered private sector workers and employees in the National Capital Region;
- (x) **“Wage Distortion”** refers to a situation where an increase in the prescribed wage rates results in the elimination or severe contraction of intentional quantitative differences in wage or salary rates between and among employee groups in an establishment as to effectively obliterate the distinctions embodied in such wage structure based on skills, length of service, or other logical bases of differentiation.

RULE II

EMERGENCY COST OF LIVING ALLOWANCE

SECTION 1. *Amount and Effectivity of ECOLA.* Effective 10 July 2004, private sector workers and employees in the National Capital Region receiving a basic daily wage rate of up to TWO HUNDRED NINETY (₱ 290.00) PESOS per day shall receive an emergency cost of living allowance (ECOLA) in the amount of TWENTY (₱ 20.00) PESOS per day.

SECTION 2. The total compensation of workers earning the prevailing minimum wage rates in the National Capital Region shall be as follows:

INDUSTRY/ SECTOR	BASIC WAGE	ECOLA Under WO NCR-09	ECOLA Under WO NCR-10	TOTAL
I. Non-Agriculture	₱ 250.00	₱ 30.00	₱ 20.00	₱ 300.00
II. Agriculture	₱ 213.00	₱ 30.00	₱ 20.00	₱ 263.00
III. Private Hospitals with Bed capacity of 100 or less	₱ 213.00	₱ 30.00	₱ 20.00	₱ 263.00
IV. Retail /Service Establishments employing 15 workers or less	₱ 213.00	₱ 30.00	₱ 20.00	₱ 263.00
V. Manufacturing	₱ 213.00	₱ 30.00	₱ 20.00	₱ 263.00

Establishments
regularly
Employing less
Than 10
workers

SECTION 3. Coverage. The emergency cost of living allowance prescribed in the Order shall apply to private sector workers and employees in the National Capital Region, regardless of their positions, designation or status, and irrespective of the method by which their wages are paid, except household or domestic helpers; workers employed in the personal service of another, including family drivers; and workers of registered Barangay Micro Business Enterprises (BMBEs) with Certificates of Authority.

SECTION 4. Basis. The emergency cost of living allowance prescribed herein shall be for the normal working hours a day, not to exceed eight (8) hours, pursuant to Article 83 of the Labor Code, as amended.

SECTION 5. Application to Private Educational Institutions. In the case of private educational institutions, the share of covered workers and employees in the increase in tuition fees for School Year 2004-2005 shall be considered as compliance with the emergency cost of living allowance prescribed in this Order. However, payment of any shortfall in the emergency cost of living allowance set forth in the Order shall be covered starting School Year 2005-2006.

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

In any case, all private educational institutions shall implement the emergency cost of living allowance prescribed in the Order starting School Year 2005-2006.

SECTION 6. Application to Workers Covered by Contracts for Works and Services. In the case of workers covered by contracts for works and services, including but not limited to construction projects, security, janitorial, and other similar services, the prescribed emergency cost of living allowance set forth in the Order shall be borne by the principal of the construction/service contractors and the contract previously forged between them is deemed amended accordingly. In the event that the principal fails to pay the prescribed allowance, the contractor shall be jointly and severally liable with the principal.

SECTION 7. Workers Paid by Result. All workers paid by results including those who are paid on piecework, "takay", "pakyaw", or task basis shall receive not less than the prescribed emergency cost of living allowance under the Order for the normal working hours a day which shall not exceed eight (8) hours, or a proportion thereof for work of less than the normal working hours. The adjusted emergency cost of living allowance for workers paid by results shall be computed in accordance with the following steps:

$$\frac{\text{Amount of ECOLA}^*}{\text{Prescribed AMW}^{**}} \times 100 = \% \text{ increase (ECOLA)}$$

Existing rate/pc. x % increase (ECOLA) = Increase (ECOLA) in rate/pc.

3. Existing rate/piece + Increase (ECOLA) in rate/pc = Adjusted rate/piece

* ECOLA is the emergency cost of living allowance

**AMW is the applicable minimum wage rate

SECTION 8. Allowances of Special Groups of Persons. The ECOLA of apprentices and learners shall in no case be less than seventy-five percent (75%) of the prescribed allowance. Pursuant to Section 5, Title II of Republic Act No. 7277, otherwise known as the Magna Carta for Disabled Persons, all handicapped employees shall receive the full allowance prescribed in the Order.

All recognized learnership and apprenticeship agreements entered into before 10 July 2004, shall be considered as automatically modified insofar as their wage clauses are concerned to reflect the ECOLA prescribed under the Order.

SECTION 9. Mobile and Branch Workers. The ECOLA of workers, who by the nature of their work have to travel, shall be those applicable in the domicile or head office of the employer. The minimum wage rates of workers working in branches or agencies of establishments 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 ECOLA being enjoyed by the workers prior to such transfer. The workers transferred to the other Regions with higher wage rates shall be entitled to the ECOLA applicable therein.

RULE III

EXEMPTIONS

SECTION 1. Who May Be Exempted. Upon application with and as determined by the Board, based on compliance with the requirements in the applicable rules and regulations, the following may be exempted from the applicability of this Order:

- I. Retail/Service establishments regularly employing not more than ten (10) workers.
- II. Distressed establishment in accordance with the criteria enumerated in the National Wages and Productivity Commission (NWPC) Guidelines No. 01, series of 1996.
- III. Establishments Facing Potential Losses as defined in the National Wages and Productivity Commission (NWPC) Policy Guidelines No. 01, series of 2001.
- IV. Establishments with 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 THREE MILLION (P 3,000,000.00) PESOS.

SECTION 2. Application for Exemption. Within seventy-five (75) days from the date of publication of this Rules, pursuant to Resolution No. 01, series of 1999 issued by the Commission, an application for exemption shall be filed with the Board in two (2) copies by the owner/manager or duly authorized representative of an establishment, either through personal service or by registered mail. The date of mailing shall be deemed as the date of filing.

All applications for exemption shall be under oath and must be supported by a proof of notice to the Union/s or if there is no union, a copy of the circular giving general notice to all workers that an application for exemption from compliance with the Order has been filed with the Board. The proof of notice, which may be translated in the vernacular, shall state that the workers' representative was furnished a copy of the application with all the supporting documents. The notice shall be posted in a conspicuous place in the establishment.

All applications for exemption shall also be supported with a certificate of registration as a business enterprise from the appropriate government agency/ies (e.g. Securities and Exchange Commission (SEC) registration in the case of a corporation, partnership or association; Cooperative Development Authority (CDA) registration in the case of a cooperative; Department of Trade and Industry (DTI) business name registration in the case of sole proprietorship);

SECTION 3. Criteria and Additional Supporting Documents For Exemption. In order to determine whether an applicant establishment is qualified for exemption, the following are the criteria and additional supporting documents required:

I. Retail/Service Establishments

A. Criteria:

1. Engaged in the retail sale of goods or services to end-users for personal or household use; and
2. 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.

B. Additional Supporting Documents:

1. An affidavit from the employer stating the principal economic activity and the number of workers employed in the establishment;
2. Business permit for the current year from the appropriate government agency/ies.

II. Distressed Establishment:

A. Criteria:

1. For stock corporations/cooperatives, deficit as of the last full accounting period or interim period, if any, immediately preceding the effectivity of the Order amounts to 20% or more of the paid-up capital for the same period; or registers

a capital deficiency i.e. negative stockholders' equity as of the last full accounting period or interim period, if any, immediately preceding the effectivity of the Order;

2. For single proprietorships/partnerships operating for at least two (2) years, the net accumulated losses for the last two (2) full accounting periods and interim period, if any, 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 the establishment registers a capital deficiency i.e. negative net worth as of the last full accounting period or interim period, if any immediately preceding the effectivity of the Order.

Single proprietorships/partnerships operating for less than two (2) years may be granted exemption when the net accumulated losses for the period 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.

3. For non-stock, non-profit organizations operating for at least two (2) years, when the net accumulated losses for the last two full accounting periods and interim period, if any, immediately preceding the effectivity of the Order amounts to 20% or more of the fund balance/members' contribution at the beginning of the period under review; or when an organization 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.

Non-stock, non-profit organizations operating for less than two (2) years may be granted exemption when the net accumulated losses for the period immediately preceding the effectivity of the Order amounts to 20% or more of the fund balance/members' contribution at the beginning of the period under review.

4. For banks and quasi-banks under receivership/liquidation, a certification from the Bangko Sentral ng Pilipinas (BSP) that it is under receivership or liquidation on account of insolvency as provided in Section 30, R.A. 7653, otherwise known as the New Central Bank Act.

Banks under controllership/conservatorship may apply for exemption as a distressed establishment under Section 3(b) hereof.

B. Additional Supporting Documents:

1. For corporations, cooperatives, single proprietorships, partnerships, non-stock, non-profit organizations:
 - a. Audited financial statements (together with the Auditor's opinion and notes thereto) for the last two full accounting periods immediately preceding the effectivity of the Order,

filed with and stamped "received" by the Securities and Exchange Commission (SEC) and/or the Bureau of Internal Revenue (BIR)/Bank;

- b. Audited interim quarterly financial statements (together with the Auditor's opinion and notes thereto) for the first quarter of 2004, where applicable;
- c. Annual Income tax returns for the last two taxable periods, filed with and stamped "received" by the BIR;
- d. First quarter income tax returns for 2004, filed with and stamped "received" by the BIR, where applicable.

2. For Banks and Quasi-Banks

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

III. Establishments Facing Potential Losses

A. Criteria:

1. For single proprietorships, partnerships and stock and non-stock corporations charging fees for services rendered, when projected losses during the current year of effectivity of the Order and, if applicable, the next full accounting year, amount to 20% or more of total paid up capital of the current year.
2. In the case of non-stock, non-profit organizations, when potential deficit (i.e. total receipts net of total expenses) during the current year of effectivity of the Order and, if applicable, the next full accounting year amounts to 20% or more of the fund balance/members' contribution of the current year.

B. Additional Supporting Documents:

1. Projected financial statements for the current year of effectivity of the Order and, if applicable, the next full accounting year.
2. Audited financial statements (together with the Auditor's opinion and notes thereto) for the last full accounting period immediately preceding the effectivity of the Order, filed with and stamped "received" by the Securities and Exchange Commission (SEC) and/or Bureau of Internal Revenue (BIR)/Bank, or a verified statement under oath containing the following information:
 - a. paid-up capital;
 - b. retained earnings at the beginning of the fiscal/calendar year; and
 - c. actual start of operation.
3. To confirm the grant of exemption, audited financial statements for the next full accounting period/s referred to in Section 3, (c. 1 & 2) hereof, stamped "received" by the Securities and Exchange

Commission (SEC) and/or the Bureau of Internal Revenue (BIR)/Bank to be submitted within twenty (20) days from submission to the said agencies.

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

IV. Establishments with Total Assets of Not More Than Three Million (P 3,000,000.00) Pesos

A. Criteria:

1. Its total assets during the current year of effectivity of the Order amount to not more than three million (P 3,000,000.00) pesos.
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.

B. Additional Supporting Documents:

1. For New Establishments

- a. Mayor's Permit;
- b. Sworn Statement of Assets and Liabilities showing the list and values of assets owned and to be used in the conduct of business, which shall be supported by the following information:
 - b. 1 date of acquisition;
 - b. 2 acquisition cost; and
 - b. 3 depreciated value.
- c. Copy of Loan Contract/s and Duly-Notarized Certification of Amortization Payments on the Loan (if any); and
- d. Duly notarized copy of Contract of Lease for assets used in the conduct of business covered by lease agreement (if any).

2. For Establishments Existing for at least One (1) Year, the following shall be submitted in addition to the aforementioned required documents:

- a. Audited Financial Statement for the last full accounting period; or Sworn Statement of Assets and Liabilities showing the list and values of assets owned and being used in the conduct of business, which shall be supported by the following information:
 - a.1 date of acquisition;
 - a.2 acquisition cost; and
 - a.3 depreciated value.

and

- b. Income Tax Return (ITR) and Account Information Form duly filed with BIR.

SECTION 5. Extent of Exemption. The Board shall grant full exemption to all categories of establishments that meet the applicable criteria for exemption, but in no case shall it exceed one (1) year from 10 July 2004, in accordance with the provisions of Section 8, NWPC Guidelines No. 01, series of 1996.

In the case of distressed establishments, the Board may grant partial exemption of 50% with respect to the amount or period of exemption pursuant to Section 8, NWPC Guidelines No. 01, series of 1996.

SECTION 6. Effect of Filing of an Application for Exemption. Whenever an application for exemption has been filed with the Board, the Regional Office of the Department shall be notified. Pending resolution of the said application, action on any complaint for alleged non-compliance with the Order shall be deferred by the Regional Office of the Department.

SECTION 7. Application for Projects/Branches/Divisions. Where the exemption being sought for is for a particular project/branch/division not separately registered and licensed, the consolidated audited financial statements of the establishment shall be used as basis for determining its distressed condition.

SECTION 8. 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 9. Effect of Disapproved Application. In the event that the application for exemption is not granted, or not confirmed in the case of establishments facing potential losses, the workers and employees shall receive the appropriate compensation due them as provided for under the Order plus an interest of one percent (1%) per month retroactive to 10 July 2004.

SECTION 10. Motion for Reconsideration. An aggrieved party may file with the Board, a motion for reconsideration of the decision on the application for exemption, within ten (10) days from receipt of the decision, stating the particular grounds upon which the motion is based, copy furnished the other party and the Regional Office of the Department.

SECTION 11. 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 receipt of the decision. The appeal must be filed in the manner prescribed by the Commission and must be based on any of the following grounds:

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

RULE IV CREDITABLE INCREASE

SECTION 1. Organized Establishments. Wage increases granted by an employer in an organized establishment within three (3) months prior to the effectivity of the Order shall be credited as compliance with the prescribed allowance set forth therein, provided that an agreement to this effect has been forged between the parties or a provision in the collective bargaining agreement 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 increase prescribed in this Order.

In case the increases given are less than the prescribed allowance, 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.

SECTION 2. Unorganized Establishments. In unorganized establishments, wage increases granted by the employer within three (3) months prior to the effectivity of the Order shall be credited as compliance.

In case the increases given are less than the prescribed adjustment, the provisions of the last paragraph of the preceding Section shall be applied.

RULE V WAGE DISTORTION

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, such dispute shall be decided by the voluntary arbitrator or panel of voluntary arbitrators within ten (10) calendar days from the time said dispute was referred to voluntary arbitration.

In cases where there are no collective bargaining agreements or recognized labor unions, the employers and workers shall 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.

SECTION 2. Effect of Dispute. The pendency of a dispute arising from a wage distortion shall not in any way delay the applicability of the emergency cost of living allowance prescribed in the Order.

RULE VI SPECIAL PROVISIONS

SECTION 1. Complaints for Non-Compliance. Complaints for non-compliance with the allowance set forth in 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 2. Non-Diminution of Benefits. Nothing in the Order, and this Rules shall be construed as authorizing the reduction of 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 or employer practices or policies.

SECTION 3. 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 (P25,000.00) nor more than One hundred thousand pesos (P100,000.00) 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 imposable 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 4. 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 5. 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 6. 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, 2005 and every year thereafter in accordance with the form prescribed by the Commission.

SECTION 7. Effect on Other Issuances. The provisions of existing laws and decrees on wages and their implementing rules and regulations and issuances not otherwise repealed, modified or inconsistent with the Order, and this Rules shall continue to have full force and effect.

SECTION 8. Separability Clause. If any provision or part of the Order and this Rules, 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.

Effectivity. This Rules shall take effect on 10 July 2004.

Done in City of Manila, Republic of the Philippines this 8th day of July, 2004.

(SGD.) DANIEL R. ANG
Workers' Representative

(SGD.) VICENTE LEOGARDO, JR.
Employers' Representative

(SGD.) GERMAN N. PASCUA, JR.
Workers' Representative

(SGD.) CLETO T. VILLATUYA
Employers' Representative

(SGD.) LUWINA S. ENECIO
Vice-Chairman

(SGD.) SCHOLASTICA D. CORORATON
Vice-Chairman

(SGD.) CIRIACO A. LAGUNZAD III
Chairman

Approved this 21st day of July, 2004. Subject to the notation on page 16.

(SGD.) MANUEL G. IMSON (as Acting Secretary)
For: PATRICIA A. STO. TOMAS
Secretary
Department of Labor and Employment

APPENDIX

SUGGESTED FORMULA IN DETERMINING THE EQUIVALENT MONTHLY MINIMUM WAGE RATES

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

Equivalent Monthly Rate (EMR) = $\frac{\text{Applicable Daily Wage Rate (ADR)} \times 392.80 \text{ days}}{12}$?

12

Where 392.80 days:

300	days	Ordinary working days
20	days	10 regular holidays x 200%
2.6	days	1 regular holiday (falling on last Sunday of August x 200% + (30% of 200%))
66.30	days	51 rest days x 130%
3.90	days	3 special days x 130%
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392.80	days	Total equivalent number of days

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

EMR = ADR x 365 days

12

Where 365 days:

300 days	Ordinary working days
51 days	Rest days
11 days	Regular holidays
3 days	Special days
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365 days	Total equivalent number of days

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

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

Where 314 days:

300 days	Ordinary working days
11 days	Regular holidays
3 days	3 special days (if considered paid; if actually worked this is equivalent to 3.9 days)
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314 days	Total equivalent number of days

4. For those who do not work and are not considered paid on Saturdays and Sundays or rest days:

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

Where 262 days:

248 days	Ordinary working days
11 days	Regular holidays*
3 days	3 special holidays (if considered paid; if actually worked this is equivalent to 3.9 days)
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262 days	Total equivalent number of days

² Section 26, Chapter 7 of Executive Order No. 292, as amended by R.A. 9177 included *EIDUL FITR* among the list of regular holidays, thereby increasing its number to eleven (11) regular holidays.