

EXPLANATORY BULLETIN ON EMPLOYMENT OF HOMEWORKERS

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Preliminary Statements

Since the promulgation of the Labor Code of the Philippines in 1975, industrial homeworkers have always been covered by its provisions. There has been very little information about this, however, even during the effectivity of former Rule XIII of Book III of the Implementing Rules. Whether or not such provisions on the protection of this group of homebased workers were effective remains unmonitored. Such situation may be traced to the inadequacy of clarificatory guidelines in the past. This issuance therefore is intended to inform and guide not only the implementors in the Department of Labor and Employment but likewise the workers concerned and those who provide homework, with the end in view of strengthening implementation of the regulations on labor standards for homeworkers.

The above mentioned Rule is now renumbered as Rule XIV of the same Book because of the addition thereto of another Rule by Republic Act 6715. The seemingly gray areas in Rule XIV are discussed and/or illustrated hereunder based on the policies and standards of this Department on the protection and welfare of workers.

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Coverage of the Rule

(a) All workers who perform industrial homework as defined herein are covered by the Rule. The industrial activity performed in or around a home as contemplated in this Rule involves working on raw material, which may change in form beyond the raw or still crude state to that form in which it is necessary or customary to prepare it for the market.

(b) Homeworkers who perform the above described work but on their own account for their own market are deemed self-employed homeworkers, in which case the Rule does not apply. On the other hand, where a Homeworker performs such activity as directed by another, regardless of whether or not this other person supplies the raw material or the necessary tools and equipment, with the arrangement that the changed or processed form will be returned to the latter, such homeworker shall be deemed an employee of the other person.

(c) To determine whether or not there exists an employer-employee relationship, the traditional four-way test should be applied, namely: (1) selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power to control the employee's conduct — the last being the most important element.

In determining whether or not one is an employer of the industrial homeworker, the “control test” quoted hereunder and subsequently repeated in a number of Supreme Court decisions shall be the basis, to wit:

“It should be borne in mind that the control test calls merely for the existence of the right to control the manner of doing the work, not the actual exercise of the right (*Dy Keh Beng vs. International Labor and Marine Union of the Philippines, et. al.*, GR No. L-32245, May 25, 1979).”

(d) In situations where the workplace in which the processing of materials takes place is within the employer's

premises or elsewhere and the performance of the work is under the direct supervision of the employer, the arrangement is not deemed homework but ordinary factory work.

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Payment of Wages and Other Benefits

(a) Since the employer has no supervision over the time consumed by the industrial homemaker in the performance of work, the payment of such work is by results or output and hence, non-time rated. Such mode of payment, however, does not except the homemaker from the application of minimum wage legislations. The provisions of wage legislations or orders relative to payment by results is explicit that such shall be determined on the basis of the minimum wage of a proportion thereof (See RA 6727 and the Regional Wage Orders).

The wage rates applicable to a homemaker shall not be less than those prescribed by wage legislations or orders for his/her employer. The homemaker's employer may be categorized as non-agricultural, cottage/handicraft, countryside and barangay business enterprise, etc., depending on the number of employees, capitalization, registration, or the nature of the work involved in production.

(b) Payment by results is usually done by piece, by task or by bulk or volume. Under the law, payment by results should be fair and reasonable, determined in accordance with standard procedures and based on the applicable minimum wage. The minimum wage applicable to a homemaker shall be that which is prescribed by the wage legislation or wage order for the industrial category where the employer's undertaking falls. The provision of the Labor Code and its Implementing Regulations on the protection of wages (e.g., form, time, and place of payment) shall apply to industrial homeworkers.

(c) Homeworkers, however, are outside of the coverage of the Rule on Hours of Work and hence, they are not, under the law, entitled to overtime pay for work rendered in excess of eight (8) hours in a day and night shift differential pay for work performed between 10:00 p.m. to 6:00 a.m. In the absence of a regular schedule, they are not likewise entitled to a scheduled weekly rest day and the premium pay for work rendered on any rest day or on a special day.

(d) The Rule on Holidays with Pay likewise does not apply to workers whose time and performance is unsupervised by the employer. These include the industrial homeworkers who are paid a fixed amount for a fixed quantity or volume of work irrespective of the actual number of hours or days spent in the completion thereof. (Their counterparts who work in factories on piece rate basis, however, are covered by the Rule considering the close supervision exercised by the employer in their performance of work). Thus, an industrial homemaker may not be given an extra day's pay even if actual work happens to be performed on a regular holiday.

(e) If the industrial homemaker is paid on a piece-rate basis as contemplated under Section 3 of the Rules and Regulations Implementing PD 851, the employer shall grant the 13th month pay equivalent to one-twelfth (1/12) of the total earnings during the calendar year. Piece rate workers refer to those who are paid a standard amount for every piece or unit of work produced that is more or less regularly replicated without regard to the time spent in producing the same.

In order to be entitled to the 13th month pay, the homemaker must have rendered at least one (1) month service, whether continuous or broken, within the calendar year.

(f) The employment of an industrial homemaker may not be considered regular under any of the following situations: 1) the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of engagement, or, 2) the work or services to be performed is seasonal in nature and the employment is for the duration of the season. In such situations, the employment is deemed

terminated upon completion of the activity for which the worker is engaged or upon close of the season, without the employer being required to pay separation benefits.

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Extent of Liability of the Employer, Contractor and Subcontractor

The liability of the employer, contractor or subcontractor, as the case may be, to the homeworker is solidary (Art. 109 of the Labor Code).

In the event that the contractor or subcontractor fails to pay the wages of his employees in accordance with the law, the employer shall be jointly and severally liable with his contractor or subcontractor to such employees to the extent of the work performed under the contract, in the same manner and extent that he is liable to employees directly employed by him (Art. 106 of the Labor Code).

The very nature and character of industrial homework creates various arrangements that make it difficult to determine the real employer. Typical of such arrangements are as follows:

(a) Employer A owns a small factory with a few regular workers or a big enterprise with several employees. Skilled persons are likewise engaged by him to perform the same activity as those performed in his premises but in their respective homes. Employer A is the direct employer of the homeworkers.

(b) Employer B does not have work premises or tools and equipment but enters into a contract with a foreign principal or an exporter for the accomplishment of desired products. He sets the criteria and specifications for the size, quality or design of the products, exercises control over production processes and has substantial capital as required by appropriate registering government agencies to pay his employees in accordance with the regulations. Employer B is an independent contractor.

(c) An independent contractor may still enter into an agreement with another person or several persons to farm out or have accomplished for his own benefit the processing of specific materials which he either supplies or sells to the other person or persons or directs him/them to make use of to produce specific results. This other person who exercises or reserves the right to exercise supervision and control over the homeworker is now referred to as a subcontractor or Employer C for illustration purposes. He is the homeworker's direct employer and Employer B, the indirect employer.

(d) In a situation where Employer C has likewise substantial capital enabling him, for instance, to compensate the workers he engages in an amount and at a time provided by regulations, he is engaged in job contracting which is allowed under this jurisdiction. Employer C is a subcontractor.

(e) On the other hand, where Employer C is incapable to act independently as a subcontractor or fails to register as such with appropriate government agencies, he is merely acting as an agent of Employer B and is considered engaged in labor-only contracting which is prohibited by existing regulations. The exercise of control or the right to exercise supervision and control over the homeworker is still vested in Employer B who is considered the direct employer in the eyes of the law, with the subcontractor (labor-only contractor) acting on his behalf as his intermediary or representative.

(f) An industrial homeworker after several years of experience and having gained expertise in the activity being directed by Employer B or Employer C may also become a subcontractor; that is, if the said homeworker conducts activities as described in item (c) above.

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Registration of Homeworkers' Organizations

A homeworkers' organization or association may register with the Bureau of Labor Relations or with the appropriate Regional Office of the Department of Labor and Employment (DOLE) in order to be entitled to the rights of legitimate labor organizations under Article 242 of the Labor Code, as amended. Any applicant homeworke association or organization shall acquire legal personality and shall be entitled to all rights and privileges granted by law to a legitimate labor organization upon the issuance of a certificate of registration. An accredited homeworkers's organization/association may be entitled to preferential right as to the award of job orders from a registered employer, contractor, or subcontractor, as may be initiated by the Department.

A registered homeworkers' organization/association shall act as the representative or its members for the purpose of collective bargaining and to undertake all other activities designed to benefit the organization and its members, including cooperative, housing, welfare and other projects not contrary to law for their mutual aid protection.

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Registration of Employers, Contractors, and Subcontractors

Any employer, contractor, or subcontractor engaged in industrial homework shall register with the appropriate Government Office as may be required by law, in the place/region where the employer, contractor, subcontractor, as the case may be, has a principal office.

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Enforcement Power; Jurisdiction on Money Claims

Complaints for violation of labor standards and terms and conditions of employment involving money claims of homeworkers in an amount of not more than P5,000.00 per homeworke shall be filed with the Regional Office of the DOLE where the workplace is located. Claims exceeding P5,000.00 or in cases where the findings of the Regional Office show that the money claims due a homeworke exceed P5,000.00, the same shall be endorsed to the appropriate Regional Arbitration Branch of the NLRC. The complaint may be filed by the aggrieved homeworke or the registered or accredited organization where he is a member.

In case of disagreement between the homeworke and the employer, contractor or subcontractor on matters such as payment of homework, standard rates, conditions for payment of work, registration and similar other disagreements, either party may refer the case to the Regional Office having jurisdiction over the workplace.

The Regional Office shall resolve the case within ten (10) working days after the same is submitted for resolution and in cases of disagreement on any matter falling under the implementing rules, within the same period from receipt of copies of such cases.

The Order of the Regional Director shall be final and executory unless appealed to the Secretary of Labor and Employment within ten (10) calendar days from receipt thereof. Non-compliance with the Order issued by the Regional Director in pursuance of the implementation of Rule XIV is punishable with a fine of not less than One Thousand Pesos (1,000.00) nor more than Ten Thousand Pesos (P10,000.00) or imprisonment of not less than three months nor more than three years, or both such fine and imprisonment at the discretion of the Court (See Art. 128 (d) and 288 of the Labor Code).

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Keeping of Records of Homework

Employers of industrial homeworkers and the industrial homeworkers themselves should keep and maintain a record of production, earnings and related matters in contemplation of the enforcement power vested on the DOLE Regional Director.

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Non-Diminution of Benefits

Nothing in this Bulletin shall be construed as authorizing the withdrawal of any existing benefit of homeworkers provided under any law, order, agreement and employer practice, or policy.

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Date of Effectivity

The implementing rules on the employment of homeworkers, i.e., Rule XIV, Book III of the Rules Implementing the Labor Code, took effect on April 4, 1992, fifteen (15) days after its publication in a newspaper of general circulation. The said rule supersedes all DOLE orders, issuances, rules and regulations inconsistent thereto.

Adopted: 22 Nov. 1993

(Sgd.) MA. NIEVES ROLDAN-CONFESOR

Secretary

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