

GUIDELINES ON THE EMPLOYMENT OF LOCAL HIRES

DFA DEPARTMENT ORDER NO. 10-2014, July 30, 2014

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A. GENERAL PROVISIONS

Section 1. Legal Basis. Section 24 of Republic Act No. 7157 or the Philippine Foreign Service Act of 1991 states that, “The Secretary may authorize chiefs of mission or principal officers to appoint alien or locally hired employees for their respective embassies and consulates: Provided, that Filipino citizens shall be given preference. Such employees, however, may not be transferred to another country but may be assigned from one office to another within the same country where originally appointed at the discretion of the chief of mission concerned.”

Section 2. Objective. This Order aims to streamline and facilitate the recruitment of staff support services in areas covered by Foreign Service Posts, hereinafter referred to as Posts, the formulation of employment contracts, the implementation of internationally-accepted labor standards and the application of benefits and other matters related to the employment of locally-hired personnel.

Section 3. Definition of Local Hires. “Local Hires” refer to persons of any nationality directly recruited by the Post in the host country to provide staff support services and compensated in accordance with the terms and conditions of the employment contract based on local labor laws, relevant rules and regulations in the host country and issuances of the Department of Foreign Affairs, hereinafter referred to as the Department.

Section 4. Submission of Relevant Laws and Regulations. Posts shall submit to the Department the English version of the host country’s labor laws and regulations on the following:

4.1 Monetary benefits:

- salary and required increases;
- overtime pay;
- holiday pay;
- separation pay;
- retirement pay;
- social security and pension benefits;
- compensation for work-related injury or illness;
- medical benefits;
- leave benefits;

- monetization of leave credits;
- terminal leave benefits; and
- other monetary benefits required by law.

4.2 Non-monetary benefits:

- weekly day-off;
- probationary period;
- compensatory time off; and
- other non-monetary benefits.

4.3 Other conditions of employment:

- hours of work;
- salary deductions required by Law;
- security of tenure;
- grounds and procedure for termination of services; and
- other relevant laws and regulations of the host country.

Each Post shall indicate whether a particular benefit provided for in the labor laws and regulations of the host country:

- Must be complied with by diplomatic and consular missions;
- May be adopted at the discretion of diplomatic and consular missions;
- Are not allowed to be applied to diplomatic and consular missions; or
- Must follow the relevant law or regulation of the Sending State of the diplomatic or consular mission.

Each Post shall also indicate if a particular benefit is applicable only to citizens of the host country, permanent residents of the host country, or citizens of the Sending State of the mission.

Posts shall consult labor and other concerned officials of their respective host countries on local labor laws and regulations related to the hiring of personnel, and shall submit to OPAS a report on the outcome of said consultations.

Posts may also request authority from the Department to hire consultants on employment laws to ensure that the contract for local hires complies with local labor laws and regulations.

Any update, revision or amendment of the above-mentioned laws and regulations shall be submitted promptly to the Department.

B. EMPLOYMENT PROCEDURES

Section 5. Creation of New Local Hire Item. Posts that need a new item for a local hire in the staffing pattern are required to submit to the Office of Personnel and Administrative Services (OPAS) the following information:

5.1 Request and justification for hiring of local staff support service;

- 5.2 Description of duties and functions;
- 5.3 Qualifications in addition to those enumerated in Section 6 thereof;
- 5.4 Cost-benefit analysis between Philippine-based and locally-hired Personnel; and
- 5.5 Other relevant information.

OPAS and the Office of Fiscal Management shall recommend the creation of a new local hire item for the consideration of the Undersecretary for Administration.

Section 6. Qualifications. An applicant for local hire must:

- 6.1 Possess the relevant work experience and college degree, except for positions where experience and training may be considered in lieu of formal education;
- 6.2 For Translator, Interpreter and Writer, be fluent in spoken and written English and in the language of the host country;
- 6.3 Have legal status in the host country;
- 6.4 Have a police clearance certificate issued in the host country and, if a Filipino citizen an NBI clearance;
- 6.5 Pass the appropriate examination and background check conducted by Post;
- 6.6 Be at least twenty (20) years of age and not older than sixty four (64) years old at the start or renewal of their employment contracts, without prejudice to age requirements under local labor law or regulation; and
- 6.7 Be physically fit to assume the responsibilities of the job, as shown by a physician's certification and results of the appropriate medical examination in the host country.

The applicant must also possess additional competencies as determined by the concerned Post for the available position.

Philippine citizens applying for local hire positions shall be given preference provided they possess all qualifications under Section 6 and none of the disqualifications under Section 7 of this Order.

Section 7. Disqualifications. The following persons are disqualified from applying as local hires:

- 7.1 Relatives within the third degree of consanguinity or affinity of the Head of Post or the appointing authority;
- 7.2 Those without legal status in the host country;
- 7.3 Wards at Migrant Workers and Other Overseas Filipinos Resource Centers (MWOFRFC);
- 7.4 Former local hires, terminated for cause, of Philippine embassies, consulates, missions and attached agencies abroad; and
- 7.5 Relatives within the third degree of consanguinity or affinity and private staff of Foreign Service Personnel at Post, except in emergency cases as authorized by the Secretary of Foreign Affairs or his/her authorized representative.

Section 8. Documents for Initial Appointment. After a person has been selected by a Post for initial appointment as local hire, the Post shall submit the following documents to the Department for processing of the appointment:

- 8.1 Proposed Employment Contract;
- 8.2 Personal History Statement;
- 8.3 Sworn Statement executed by the Local Hire that he/she does not fall under any of the disqualifications provided under Section 7 of this Order.
- 8.4 Police Clearance for foreign nationals, and Police and NBI Clearance for Filipino citizens; and
- 8.5 Physician's Certification on state of health and fitness to work.

Each local hire must submit documents in Paragraphs 8.4 and 8.5 every five (5) years after the initial

appointment.

Section 9. Authorization for Initial Appointment. All initial appointments of local hires shall be with prior authorization from the Secretary of Foreign Affairs or his/ her authorized representative. The initial appointment shall be for a fixed period of six (6) months, unless a different minimum period is required under local labor laws or regulations.

Section 10. Renewal of Appointment. The appointment of local hires may be renewed subject to the evaluation of the availability of funds, performance of the local hire, and applicable local labor laws and regulations.

Section 11. Employment Contract. In formulating the contract of local hires, Posts shall be guided by the model employment contract recommended by the Department, which shall be customized to incorporate the requirements of local labor laws and regulations, pursuant to the provisions of this Order.

The proposed employment contract shall be submitted to the Department for approval in accordance with Section 8 of this Order.

Section 12. Passports. Official passports shall not be issued to local hires of Philippine citizenship, except in cases where the possession of such document is necessary in the performance of duties involving Assistance to Nationals and/or security-related functions, subject to the approval of the Secretary of Foreign Affairs or his/her authorized representative.

Local hires who are allowed to use official passports under this Section shall not be entitled to benefits accorded to regular Foreign Service personnel of the Department.

Section 13. Visas/Work Permits. The Department and the Posts shall not be involved in facilitating visa or work permit - applications of local hires or their family members, unless the intervention of the Post is required by the Foreign Ministry and other authorities of the host country for identification, accreditation or other official purpose.

C. BENEFITS

Section 14. General Rule. In relation to Section 4 of this Order, any employment benefit that the host country does not require foreign missions to provide to their local hires shall not be granted to local hires of the Post, unless such grant is authorized by the Department.

Section 15. Salary Scales and Salary Increases. The criteria for the determination of the salary rate of a Local Hire shall include, but not be limited to:

- 15.1 Minimum wage law or regulation of the Receiving State;
- 15.2 Prevailing rates for comparative positions in the Receiving State;
- 15.3 Qualifications of the prospective local hire;
- 15.4 Duties and responsibilities of the position;
- 15.5 Duration of work, whether full time or part time; and
- 15.6 Salary rates of Post's incumbent locally-hired personnel.

Posts may recommend, for the Department's consideration, increase in salaries for deserving local hires based on their performance at the end of each calendar year.

Section 16. Payment of Taxes. Each local hire shall be responsible for paying all taxes due on the salary and other monetary benefits received, unless local law or regulation require the Post to deduct such taxes and remit them to the local authorities.

Failure to pay taxes required under local law or regulation shall be a ground for the non-renewal of his/her employment contract.

Section 17. Leave Entitlements. Leave entitlements of local hires shall be based on local labor laws and regulations of the host country, but in no case should such leave exceed thirty (30) days vacation leave and thirty (30) days sick leave for each year of service, pursuant to Section 80 of Republic Act No. 7157.

Section 18. Social Security, Retirement or Pension Benefits. Local hires must be enrolled by the Post in a Social Security, Retirement or Pension plan as provided by local labor law or regulation or by Philippine law.

After the local hire has been enrolled in the applicable Social Security, Retirement or Pension Plan, his/her accumulated vacation and sick leave credits shall not be converted to TLB, unless said leave credits were accrued before the effectivity of this Order.

The vacation and sick leave credits of a local hire accumulated before enrolment in the Social Security, Retirement or Pension plan shall be monetized in accordance with a schedule to be issued by OFM towards the end of each calendar year.

For countries where there are no social security, retirement or pension plan, or where a local hire cannot qualify in a plan, vacation and sick leave credits of the concerned local hire after the effectivity of this Order may be converted to Terminal Leave Benefits up to the combined maximum of one hundred twenty (120) days, without prejudice to the leave credits accumulated under Philippine law before the effectivity of this Order.

Section 19. Bonuses. Bonuses, such as 13th month pay, 14th month pay, mid-year bonus, year-end bonus, holiday bonus, performance bonus, cash gifts and incentive pay, shall be granted only if required by local law or regulation.

Section 20. Overtime Service and Compensatory Time Off. If local labor law or regulation requires payment for overtime service, Post must secure prior authorization from the Department in order to comply with said required payment for overtime service rendered by the local hire.

Compensatory time off (CTO) may be granted to local hires in lieu of payment for overtime service if CTO is not prohibited by local labor law or regulation.

D. OTHER PROVISIONS

Section 21. Performance Appraisal. Each Post shall use the Department's Individual Performance Commitment and Review Form (IPCRF) for local hires.

Section 22. Separation Procedures. In considering the pre-termination or non-renewal of the employment contract of a local hire, Post shall comply with local labor laws and regulations, particularly provisions on prior notification, and seek the prior approval of the Department, unless the immediate termination of the local hire is required due to exigencies in the service and justified under local labor laws and regulations.

In case of termination due to the retirement of the local hire, Posts shall submit, at least twelve (12) months prior to the date of retirement, the following documents to the Department for review:

22.1 Local labor laws, rules and regulations on retirement, duration of prior notice, procedural requirements, separation pay and other relevant provisions;

22.2 Draft notice of separation due to retirement; and

22.3 Draft computation of retirement benefits in accordance with Section 17 of this Order.

Section 23. Local Hires of Service Attaches or Representatives. The provisions of this Order shall also apply to the local hires of overseas offices, service attaches or representatives of other Philippine government agencies (partner agencies).

Section 24. Prohibition to Engage in the Recruitment Business. Pursuant to RA 8042 (Migrant Workers and Overseas Filipinos Act of 1995), it shall be unlawful for local hires or their relatives within the fourth civil degree of consanguinity or affinity, to engage, directly or indirectly, in the business of recruiting migrant workers.

Section 25. Settlement of Claims/Disputes. In case of dispute in the implementation of the employment contract, laws and regulations of the host country and Department issuances, the dispute shall be resolved on a case-to-case basis taking into consideration the particular circumstances of the concerned Post, the availability of funds and the interests of the involved parties.

Section 26. Transitory Provisions. In case the employment contract existing at the time this Order takes effect is for a fixed period, the terms and conditions thereof shall be respected until the expiration of such fixed period.

If the employment of the local hire is continued after such expiration, the terms and conditions provided in this Order shall apply to the new contract.

In case the existing employment contract, which started as a fixed period contract, is already considered as a contract for an indefinite period under local labor law and regulation at the time this Order takes effect, such contract shall be amended in accordance with the provisions of this Order and the requirements of local labor laws and regulations on amending an employment contract.

In any case, all Posts with local hires shall, within 30 days from the effectivity of this Order, submit to the Department the customized employment contract with the terms and conditions provided in this Order, applicable local labor laws and regulations, and financial implications, if any.

Section 27. Repealing Clause. The provisions of Department Order No. 38- 91, Department Order No. 19A-95, Foreign Service Circular No. 99-07 and CIR- 1445-OPAS-2010 and any other Department Orders, Circulars and Regulations contrary to or inconsistent with the provisions of this Order are hereby repealed or amended accordingly.

Section 28. Separability Clause. If any part of this Order is declared contrary to law or unconstitutional by competent authority, the other parts not covered by such declaration shall remain in full force and effect.

Section 29. Effectivity Clause. This Order shall take effect after fifteen (15) days from the date of its deposit with the Office of the National Administrative Register (ONAR).

(SGD) ALBERT F. DEL ROSARIO
Secretary of Foreign Affairs

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