

RULES PRESCRIBING THE RETIREMENT AGE FOR UNDERGROUND MINE EMPLOYEES

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Pursuant to the provisions of Article 5 of the Labor Code and Article 287 of the same Code as amended by Republic Act No. 7641 and further by Republic Act No. 8558, the following Rule is hereby issued to implement the latter Act as follows:

RULE II-A

SECTION 1. Coverage — This Rule shall apply to all underground mine employees as contemplated under Republic Act No. 8558. For this purpose, an underground mine employee refers to any person employed to extract mineral deposits underground or to work in excavations or workings such as shafts, winzes, tunnels, drifts, crosscuts, raises, working places whether abandoned or in use beneath the earth's surface for the purpose of searching for and extracting mineral deposits.

As used herein, the terms "employee", "employees", or "covered workers" shall mean underground mine employee/s.

The term "Act" refers to Republic Act 7641 as amended by Republic Act 8558.

SECTION 2. Optional Retirement and Compulsory Retirement

2.1 Optional Retirement — In the absence of a retirement plan or other applicable agreement providing for retirement benefits of underground mine employees in the establishment, any such employee may retire upon reaching the age of fifty (50) years or more if he has served for at least five (5) years as underground mine employee or in underground mine of the establishment.

2.2 Compulsory Retirement — Where there is no such plan or agreement referred to in the immediately preceding sub-section, an underground mine employee shall be retired upon reaching the age of sixty (60) years.

2.3 Service Requirement — The minimum length of service of at least five (5) years required for entitlement to retirement pay shall include authorized absences and vacations, holidays, and mandatory fulfillment of a military or civic duty.

SECTION 3. Retirement under CBA/Contract

3.1 Any underground mine employee may retire or be retired by his employer upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contract, subject to the provisions of Section 4 hereof on the payment of retirement benefits.

3.2 In case of retirement under this Section, the underground mine employee shall be entitled to receive such retirement benefits as he may have earned under existing laws and any collective bargaining agreement and other agreements; provided, however, that the said employee's retirement benefits under any collective bargaining and other agreements shall not be less than those provided under this Rule; and provided further that if such benefits are less, the employer shall pay the difference between the amount due the employee under this Rule and that

provided under the collective bargaining agreement or other applicable employment contract.

3.3. Where both the employer and the employee contribute to a retirement fund in accordance with a collective bargaining agreement or other applicable employment contract, the employer's total contribution thereto shall not be less than the total retirement benefits to which the employee would have been entitled had there been no such retirement fund. In case the employer's contribution is less than the retirement benefits provided under this Rule, the employer shall pay the deficiency.

SECTION 4. Retirement Benefits

4.1 In the absence of an applicable employment contract, an underground mine employee who retires pursuant to the Act shall be entitled to retirement pay equivalent to at least one-half ($\frac{1}{2}$) month salary for every year of service, a fraction of at least six (6) months being considered as one whole year.

4.2 Components of One-half ($\frac{1}{2}$) Month Salary — For the purpose of determining the minimum retirement pay due an employee under this Rule, the term "one-half month salary" shall include all of the following:

- (a) Fifteen (15) days salary of the employee based on his latest salary rate. As used herein, term "salary" includes all remunerations paid by an employer to his employees for services rendered during the normal working days and hours, whether such payments are fixed or ascertained on a time, task, piece or commission basis, or other method of calculating the same, and includes the fair and reasonable value, as determined by the Secretary of Labor and Employment, of food, lodging or other facilities customarily furnished by the employer to his employees. The term does not include cost of living allowances, profit-sharing payments and other monetary benefits which are not considered as part of or integrated into the regular salary of the employees;
- (b) The cash equivalent of five (5) days of service incentive leave;
- (c) One-twelfth of the 13th month pay due the employee; and
- (d) All other benefits that the employer and employee may agree upon that should be included in the computation of the employee's retirement pay.

4.3 One-half Month Salary of Employees Who Are Paid by Results — For covered workers who are paid by results and do not have a fixed monthly rate, the basis for determination of the salary for fifteen days shall be their average daily salary (ADS), subject to the provisions of Rule VII-A, Book III of the rules implementing the Labor Code on the payment of wages of workers who are paid by results. The ADS is the average salary for the last twelve (12) months reckoned from the date of their retirement, divided by the number of actual working days in that particular period.

SECTION 5. Exemption from Tax — The retirement pay provided in the Act may be exempted from tax consistent with the requirements set by the Bureau of Internal Revenue.

SECTION 6. Penal Provision — It shall be unlawful for any person or entity to circumvent or render ineffective the provisions of the Act. Violations thereof shall be subject to the penal provisions provided under Article 288 of the Labor Code of the Philippines.

SECTION 7. Relation to Agreements and Regulations — Nothing in this Rule shall justify an employer from withdrawing or reducing any benefits, supplements or payments as provided in existing laws, individual or collective agreements, or employment practices or policies.

All rules and regulations, policy issuances or orders contrary to or inconsistent with this Rule are hereby repealed or modified accordingly.

SECTION 8. Effectivity — This Rule took effect on March 22, 1998 when RA 8558 went into force.

Adopted: 04 May 1998

(SGD.) CRESENCIANO B. TRAJANO
Secretary

[*] Also filed by the Bureau of Working Conditions on 28 May 1998.

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