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COMPUTATION OF MINIMUM WAGE AND OTHER WAGE-RELATED BENEFITS OF WORKERS OF SERVICE AND OTHER JOB CONTRACTORS

BWC DEPARTMENT ORDER NO. 40, November 25, 1994

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To insure that the statutory minimum wage adjustments effected by Republic Act No. 6727 and the different wage orders and other statutory monetary benefits are properly implemented by service contractors such as security agencies, janitorial service firms and other service/job contractors, the following guidelines are hereby issued for the information and guidance of all concerned:

1.
Minimum Daily Rate

For all workers/employees both in and outside Metro Manila

P89.00 + mandated Wage Increase effected by Regional Wage Orders for the non-agricultural sector.

2.
Recommended computation of Equivalent Minimum Monthly Rates

For those who are required to work everyday including Sundays or rest days, special days and holidays

=

302.0 -

ordinary working days

18.0 -

9 regular holidays x 200%

2.6 -

1 regular holiday falling on last Sunday of August x 200% + (30% of 200%)

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391.5

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days

Equivalent Monthly Rate (EMR)

=

Applicable Daily Wage Rate or ADR x 391.5

12

For those who do not work but are considered paid on rest days and holidays

=

302 -

ordinary working days

2 -

special days

51 -

rest days

10 -

regular holidays

_____

365

days

Equivalent Monthly Rate (EMR)

=

ADR x 365

12

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

=

302.0 -

ordinary working days

2.6 -

2 special days (if worked) x 130%

10.0 -

regular holidays

_____

262.6

Equivalent Monthly Rate (EMR)

=

ADR x 262.6

12

3.
Components of Monthly Rates

Using the above indicated factors (a factor representing number of days as multiplier), the basic wage for the worked days and the holiday pay for the ten regular holidays are included in the monthly rates to be derived. Thirty percent (30%) rest day premium pay has been integrated in factor 391.5 for all the Sundays/rest days in a year including the last Sunday of August and in factors 314.6 and 262.6 for the two special days (November 1 and December 31) under Executive Order 203.

4.
Salary-Related benefits

Security guards, janitors and other workers of service agencies and similar job contractors are entitled to other statutory monetary benefits not included in the above monthly rates, as follows:

a. Night shift differential pay equivalent to 10% of the regular hourly rate for working between 10:00 p.m. to 6:00 a.m. of the following day;

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b. 13th month pay which is 1/12 of the total basic salary earned by an employee within a calendar year;

c. 6-day service incentive leave which is commutable to its cash equivalent if unused;

d. Overtime pay for work rendered in excess of eight (8) hours a day, equivalent to at least 25% of the regular wage on ordinary days and 30% on regular holidays, special days and rest days;

e. Premium pay of 30% of the daily rate whenever an ordinary working day is proclaimed by the President as a special day and 20% more for a total of 50% whenever rest days and special days coincide and work is rendered.

f. Maternity benefits in the case of women employees as required by the Social Security Law;

g. Termination pay if the separation is for authorized cause as provided by law;

h. Retirement pay under RA 7641 or granted pursuant to a bonafide retirement plan or in accordance with the applicable individual or collective agreement or established employer policy, whichever is superior; and

i. Other benefits granted by law, individual or collective agreement or company policy or practice.

5.
Liability of Contractors and Clients/Principals

Under Article 106 of the Labor Code, whenever an employer enters into a contract with another person for the performance of the former's work, the employees of the contractor shall be paid in accordance with law. In the event that the contractor fails to pay the wages of his employees in accordance with law, the employer shall be jointly and severally liable with his contractor to such employees to the extent of the performed under the contract, in the same manner and extent that he is liable to employees directly employed by him.

Article 109 further states that provisions of existing laws to the contrary notwithstanding, every employer or indirect employer shall be held responsible with his contractor for any violation of any provision of the same Code. For purposes of determining the extent of their civil liability on payment of wages, they (i.e., both the contractor and client employer) shall be considered as direct employers.

On the matter of wage increases or adjustments after execution of the service contracts, Section 6 of Republic Act 6727, the Wage Rationalization Law provides that "in the case of contracts for security services, the prescribed increases in the wage rates of workers shall be borne by the principals or clients of the service contractors and the contract shall be deemed amended accordingly. In the event, however, that the principal or client fails to pay the prescribed wage rates, the service contractor shall be jointly and severally liable with his principal or client." The provisions of regional wage orders on the matter are no different from the aforequoted provisions of RA 6727. The common requirement of the wage law and the wage orders on amendment of existing contracts allows the service or job contractor to comply with new wage (and/or allowance) rates.

6.
Enforcement

The Regional Offices of this Department shall be guided by this issuance in the enforcement of labor standards as they apply to security guards, workers of janitorial service firms and those of other service and job contractors.

7.
Effect of Existing Issuances and Agreements

Nothing herein shall be construed to authorize the reduction of benefits being enjoyed by employees at the time of issuance hereof.

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This Department Order supersedes Department Order No. 13, s. 1988 and shall take effect immediately.

Adopted: 25 Nov. 1994

(SGD.) MA. NIEVES R. CONFESOR
Secretary

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