GUIDELINES GOVERNING THE EMPLOYMENT AND WORKING CONDITIONS OF SECURITY GUARDS AND SIMILAR PERSONNEL IN THE PRIVATE SECURITY INDUSTRY

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For the purpose of ensuring the private security personnel of their rights to the minimum benefits mandated by law, these guidelines are hereby issued for compliance of all concerned.

SECTION 1. Coverage. This issuance shall apply to all private security agencies or operators, their principals or clients, all companies allowed to directly employ security guards and to all security guards, whether agency or company employees, for compliance and entitlement, respectively, to existing labor standards laws and benefits.

SECTION 2. Definition of Terms. For the purpose of this Guidelines, the following terms are defined:

a. "Principal" refers to any employer, company or establishment to whom a security job, service or work is provided by a security service contractor, whether or not the arrangement is covered by a written contract.

b. "Security service contractor" is synonymous with a private security agency which means any person, association, partnership, firm or private corporation, who contracts, recruits, trains, furnishes or posts any security guard or similar personnel to individuals, corporations, offices and organizations, whether private or public, for their security needs as the Philippine National Police may approve.

SECTION 3. Employment Status

3.1 Employer-employee relationship. — The security service contractor is the employer of its security guard and similar personnel. The principal where the security guards are assigned is considered an "indirect employer" for unpaid wages and other wage related benefits based on the joint and several liability of the principal with the service contractor under the Labor Code, unless the private security agency is owned, managed or controlled by the principal or the facts show that the principal controls the manner by which the security service is performed or where the security guard is directly hired by the establishment.

3.2 Probationary employment. — The probationary period of a newly hired security guard or similar personnel in the private security industry shall not exceed six (6) months. While engaged on probationary basis, his/her services may be terminated for failure to meet the reasonable standards or criteria made known by the security agency/employer to the guard at the time of engagement or for just cause/s.

3.3 Regular employment. — Any security guard or similar personnel in the private security industry who allowed to work after the probationary period shall be considered a regular employee.

SECTION 4. Service Contracts. The security service contractor and/or the principal shall produce or submit the original copy of their service contract when directed to do so by the Regional Director or his/her duly authorized representative. The service contract shall stipulate, among others:

a. A statement that the security guards/personnel shall be paid not less than the minimum wage and other benefits under the Labor Code and other existing laws;

b. An escalation clause to immediately effect the common provision in the wage orders that the prescribed increase in the wage rates of the workers shall be borne by the principal or client of the service contractors and the contracts shall be deemed amended accordingly.

c. A statement that security service contractor and/or the principal shall comply with Social Security, Employees Compensation, Philippine Health Insurance Corporation and Home Development Mutual Fund laws on employees' coverage or membership.

d. The kind or nature of security service.

e. The schedule of payment of 13th month pay per PD 851 and retirement pay per R.A. 7641.

SECTION 5. Employment Contracts

5.1 The security service contractor shall provide his security guards, detachment commanders/supervisors and other security personnel, a copy of the employment contract duly signed by the parties which shall contain the terms and conditions of employment, such as those provided under Section 5 hereof.

5.2 For every assignment of a security guard/personnel to a principal, the duty detail order shall contain the following, among others:

a. Description of job, work or service to be performed

b. Hours and days of work, work shift and applicable premium, overtime and night shift pay rates.

SECTION 6. Terms and Conditions of Employment.

6.1 The security guards and similar personnel in the employ of any private security agency or company should be duly licensed and must have passed the physical and neuropsychiatric examinations required by the PNP. They are entitled to the mandatory benefits under the Labor Code and other existing laws, including coverage by SSS, ECC, Philhealth and HDMF.

6.2 The basic wage rate of a security guard/personnel shall not be less than the minimum wage rate for non-agricultural sector in the region where he/she is assigned, regardless of the nature of business of the principal, or in the Region where the security guard has been engaged, whichever is higher.

Where a security guard/personnel is recruited through a branch office in another Region where the principal is likewise located, the non-agricultural minimum wage rate applicable in the workplace of the principal shall govern.

Security guards or other personnel employed and/or assigned by a security service contractor in one Region but who are transferred, moved or assigned to another Region shall be paid based on the more beneficial wage rate.

In case of transfer or reassignment to another principal within the Region, the wage rates may be adjusted provided that the same shall not be less than the applicable regional minimum wage rate.

6.3 Statutory Benefits. The security guards/personnel are entitled to not less than the following benefits depending on the working hours, work shift and workdays under the given conditions, which benefits should be included in the cost distribution in the service contract:

a. Basic salary for all actual workdays and for the ten regular holidays (as holiday pay) which must not be lower than the minimum wage rates above described and to be computed by using the factors recommended herein or by more favorable practice of the employer. In addition, one hundred percent (100%) of the basic salary is due whenever work is rendered on a regular holiday.

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b. Allowance in addition to the basic salary, if any is prescribed by the applicable Regional Wage Order.

c. Premium pay of 30% of the daily rate for work on special days and rest days, which is increased to 50% whenever work is performed on coinciding rest days and special days.

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

e. Night shift pay equivalent to 10% of the regular hourly rate for work rendered between 10:00 pm to 6:00 am of the following day.

f. Five (5) day service incentive leave for every year of service which benefits can be availed of during days of absence and, if not used, are convertible into its cash equivalent. A proportionate leave benefit per month may be derived by dividing 5 days by 12 months times the daily rate.

g. Paternity leave of seven (7) days with full pay. This leave shall be granted before, during or after childbirth or after spontaneous miscarriage by his legal spouse. The paternity leave with pay is granted for only four deliveries, including miscarriage.

h. 13th month pay which is 1/12 of the total basic salary earned within a calendar year.

6.4 Recommended Computation of Equivalent Monthly rates

Using the applicable daily wage rate (ADR) and a factor representing the number of paid days in a year, the following procedures are recommended to facilitate computation of equivalent monthly rates (EMR).

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

EMR = (ADR x 391.5)/12

where 391.5 is derived from:

302.0 — ordinary working days

18.0 — 9 regular holidays x 200%

2.6 — a regular holiday on last Sunday

of August x 200% + (30% of 200%)

66.3 — 51 rest days x 130%

2.6 — 2 special days x 130%

391.5 days considered paid in a year

For those who are considered paid on all including unworked Sundays or rest days, special days and regular holidays:

EMR = (ADR x 365)/12

where 365 days derived from:

302 — ordinary working days

2 — special days

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51 — rest days

10 — regular holidays

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365 days

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

EMR = (ADR x 314.6)/12

where 314.6 is derived from:

2.6 — 2 special days (if worked)x 130%

10.0 — regular holidays

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314.6 days considered paid in a year

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

EMR = (ADR x 262.6)/12

where 262.6 is derived from:

250.0 — ordinary working days

2.6 — 2 special days (if worked) x 130%

10.0 — regular holidays

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262.6 days

By using the above indicated factors, the basic wage for the worked days and holiday pay for the 10 regular holidays are included in the monthly rates. Thirty percent (30%) rest day premium 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 No. 203 of 1987.

Not included in the above formula is the premium pay due an employee whenever work is rendered on an ordinary working day proclaimed by the President as a special day (that is other than Nov. 1 and Dec. 31).

6.5 Other Mandatory Benefits. In appropriate cases, security guards/similar personnel are entitled to the mandatory benefits as listed below, although the same may not be included in the monthly cost distribution in the contracts, except the required premiums for their coverage:

a. Maternity benefit as provided under the SS Law

b. Separation pay if the termination of employment is for authorized cause as provided by law and as enumerated below:

Half-Month Pay Per Year of service, but in no case less than One Month Pay, if separation is due to:

1. Retrenchment or reduction of personnel effected by management to prevent serious losses;

2. Closure or cessation of operation of an establishment not due to serious losses or financial reverses;

3. Illness or disease not curable within a period of 6 months and continued employment is prohibited by law or prejudicial to the employee's health or that of co-employees; or

4. Lack of service assignment for a continuous period of 6 months.

One Month Pay Per Year of service, if separation is due to:

1. Installation of labor-saving device, such as replacement of employees by equipment/machinery;

2. Redundancy, as when the position of the employee has been found to be surplusage or unnecessary in the operation of the agency;

3. Impossible reinstatement of the employee to his/her former position or to a substantially equivalent position for reasons not attributable to the fault of the employer, as when the reinstatement ordered by a competent authority cannot be implemented due to closure or cessation of operations of the establishment/employer, or the position to which the employee is to be reinstated no longer exists and there is no substantially equivalent position to which he/she can be assigned.

c. Cash income benefits under the State Insurance Fund in case of work-related sickness or other contingencies.

d. Retirement pay granted by R.A. 7641 to any security guard/personnel who retires under an applicable employer plan or policy.

For this purpose, the security service contractor shall create or put up a trust fund for retirement benefit. The Trust Fund Agreement shall be executed by and between the trustor and trustee in favor of the employee-beneficiary for payment of retirement benefit in accordance with R.A. 5487 and R.A. 7641.

The Fund shall be administered and maintained by a trust company, bank, investment house, pre-need company or corporation duly authorized to perform trust function exclusively for collective investment or re-investment of certain money received in its capacity as trustee, or similar arrangement as may be agreed upon in accordance with law.

As such, any payment for retirement benefits collected in advance by the contractor from the principal/s shall be deposited by the contractor/trustor to the trustee in favor of the security guard as benefit upon retirement or when his/her employment is terminated due to authorized causes.

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

SECTION 7. Deductions From Salary — No deduction shall be made from the salary of the security guards/personnel, except for:

a. SSS contribution

b. EC contribution

c. HDMF contribution

e. Philhealth contribution

e. Withholding tax from income, provided a proper withholding tax receipt is issued to the employee before the filing of income tax return every year

f. Union dues, if applicable

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g. Other deductions authorized by

SECTION 8. Liability and Responsibilities of Contractors and Clients/Principals.

8.1 Joint and several liability. — When the security service contractor fails to pay the wages of its security guards/personnel, the principal shall be jointly and severally liable with security service contractor to the extent of the work performed by such employees under the contract, in the same number and extent that the principal is liable to its direct employees.

If there are wage increases or adjustments after the execution of the service contract, the prescribed increases in the wage rates of guards shall be borne by the principal and the service contract shall be deemed amended accordingly. In the event that the principal fails to pay the prescribed increases, the security service contractor shall be jointly and severally liable with the principal.

The security guards' contractual relationship is with their employer, the security service contractor. Thus, their immediate recourse for payment of wage increase before litigation is with their direct employer, the security service contractor. In order for the security service contractor to comply with the new rates, the consideration paid by the principal for the security guards' wages has to be adjusted in conformity with the mandated wage increase.

In case of finding of violations on wages and other labor standards due the security guards, the DOLE Regional Director shall serve summons to both the security service contractor and the principal to determine the extent of liability of the parties.

8.2 Solidary liability. For purposes of immediate relief, the principal shall be deemed as the direct employer of the security guard/personnel in any of the following cases, and therefore shall be solidarily liable for whatever monetary claims the security guard/personnel may have against his employer:

a. When the security service contractor is found to be engaged in labor-only contracting; contracting out of work which will either displace its employees or reduce their regular work hours or any prohibited activity;

b. When the security service contractor is declared guilty of unfair labor practice, i.e., contracting out of a job, work or service being performed by union members when such will interfere with, restrain or coerce employees in the exercise of their rights to self-organization; or

c. When a violation of the relevant provisions of the Labor Code has been established by the Regional Director in the exercise of his/her enforcement powers.

The principal shall also be deemed solidarily liable with the security service contractor to the extent of accrued claims and benefits that the latter may owe to its security guards/personnel in the following instances:

a. When the license or business permit of the security service contractor is cancelled, revoked or not renewed by the competent authority, or

b. When the contract between the principal and the security service contractor is preterminated for reasons not attributable to the fault of the latter.

8.3 Responsibilities and Obligations of security Service Contractors and Principals in the Execution of Service Contracts. — The service contracts or agreements between a security service contractor and its principal/s shall ensure compliance with the minimum wage and other labor standards under the laws, including the mandatory coverage by the SSS, EC, Philhealth and HDMF.

Government agencies or instrumentalities engaging security services from private security agencies shall likewise observe compliance with all labor laws and shall require the security service contractor to submit, among others

requirements and as part of their bid, an undertaking to pay their workers the above benefits.

8.4 Keeping of records. — The principals as indirect employees shall keep and maintain their own separate records or files on the assignment of security guards in their premises during the period of the service contract, which shall be open for inspection and verification by this Department. The security agency, however, as the direct employer shall observe the rule on general record keeping under the Labor Code, as amended.

SECTION 9. Right to Security of Tenure and Due Process.

9.1 Security guards and similar personnel who have become regular employees shall enjoy security of tenure in their employment as provided by law. Their services can only be terminated for just or authorized causes after due process.

Termination for a just cause or causes as stated in Art. 281 of the Labor Code does not entitle the security guard/personnel to separation pay, unless otherwise provided in the employer policy or individual contract or collective agreement.

9.2 Notice of Termination — In case of termination of employment due to authorized causes provided in Art. 283 and 284 of the Labor Code and in the succeeding subsection, the employer shall serve a written notice on the security guard/personnel and the DOLE at least one (1) month before the intended date thereof.

9.3 Reserved Status — A security guard or similar personnel may be placed in a workpool or on reserved status due to lack of service assignments after expiration or termination of the service contract with the principal where he/she is assigned, or due to the temporary suspension of agency operations.

No security guard or personnel can be placed in a workpool or on reserved status in any of the following situations: a) after expiration of a service contract if there are other principals where he/she can be assigned; b) as a measure to constructively dismiss the security guard; and c) as an act of retaliation for filing complaints against the employer on violations of labor laws, among others.

If, after a period of 6 months, the security agency/employer cannot provide work or give an assignment to the reserved security guard, the latter can be dismissed from service and shall be entitled to separation pay as prescribed in subsection 5.6.

Security guards on reserved status who accept employment in other security agencies or employers before the end of the above six-month period may not be given separation pay.

9.4 Preventive Suspension — Subject to the constitutional rights of the workers to security of tenure and the right to be protected against dismissal except for a just and authorized cause and without prejudice to the requirement of notice under Art. 282 of the Labor Code, a security guard/personnel may be preventively suspended if his continued employment poses a serious and imminent threat to life or property of the employer, its principal or the guard's co-workers.

No preventive suspension shall last longer than thirty (30) days. The security agency shall thereafter reinstate the security guard/personnel in his/her former position or it may extend the period of suspension, provided that during the period of extension, the agency pays the wages and other benefits due the guard/personnel.

The employer shall designate a day, time and place within the period of preventive suspension, with notice to the employee, to hold a fact-finding investigation thus enabling the suspended employee to be heard and assisted by a counsel or representative. If he/she so desires, of the charge against him/her and thereby by exonerated; or, upon the employee's failure to vindicate himself/herself, to find the employee guilty and thereby, to terminate his/her employment. Such termination, however, shall not prejudice the right of the employee to question the severance

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of relationship in the appropriate forum.

The above procedure shall likewise be observed by the employer/agency in case the employment is terminated due to any of the just causes.

9.5 Report of dismissal, termination or retirement. — The security service contractor shall submit a monthly report of all dismissals or termination, including retirement, effected during the month to the DOLE Regional Office having jurisdiction over its main or branch office using the prescribed form and indicating all information as required by DOLE for policy and statistical purposes.

SECTION 10. Right to Self-Organization and Collective Bargaining.

The security guards and other personnel employed by the security service contractor shall have the right to form, join or assist in the formation of a labor organization of their own choosing for purposes of collective bargaining and to engage in concerted activities which are not contrary to law including the right to strike.

SECTION 11. Penal Provision. — Violation of any of the provisions of this Guidelines which are declared unlawful or punishable by law shall be punished accordingly.

SECTION 12. Effect on Existing Issuances and Agreements.

This issuance shall serve as a guide for the DOLE and its agencies in the administration and enforcement of applicable labor and social legislations and their implementing regulations.

Nothing herein shall be construed to authorize diminution or reduction of benefits being enjoyed by the security guards and similar personnel at the time of issuance hereof.

This Guidelines supersedes Department Order No. 40 s. 1994 and other existing orders which are inconsistent hereto and shall take effect immediately.

Adopted: 18 Dec. 2001

(SGD.) PATRICIA A. STO. TOMAS
Secretary

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