

AMENDING CERTAIN ARTICLES OF PD 442 ENTITLED "LABOR CODE OF THE PHILIPPINES";

PRESIDENTIAL DECREE NO. 850, December 16, 1975

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WHEREAS, PD 442, as amended, otherwise known as the Labor Code of the Philippines, is designed to be a dynamic and growing body of laws which will reflect continuously the demands of development and the lessons of experience:

WHEREAS, in order to fully orient the Code towards economic development and justice, the Department of Labor has been conducting studies and discussions on the Labor Code with responsible public officials, labor organizations, employers' organizations, civic, professional and technical associations, educational institutions, and other knowledgeable groups representing various sectors of the economy;

WHEREAS, as a result of these discussions and consultations, especially the National Tripartite Conference on the Labor Code at the Development Academy of the Philippines last 24-26 October 1975, as well as the experience of the Department of Labor, it has been found necessary to make adjustments in the text of the Labor Code in order to fully align it with the over-riding priority of development and justice;

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby order and decree:

SECTION 1. Articles 13 to 39 of Title I, Book One of the Labor Code, except Articles 14, 26, 29, 32, 34 and 35 thereof, are hereby amended to read as follows:

"ART. 13. Definitions.—(a) "Worker" means any member of the labor force, whether employed or unemployed.

(b) "Recruitment and placement" refers to any act of canvassing, enlisting, contracting, transporting, utilizing, hiring or procuring workers, and includes referrals, contract services, promising or advertising for employment, locally or abroad, whether for profit or not: Provided, That any person or entity which, in any manner, offers or promises for a fee employment to two or more persons shall be deemed engaged in recruitment and placement.

(c) "Private fee-charging employment agency" means any person or entity engaged in the recruitment and placement of workers for a fee which is charge, directly or indirectly, from the workers.

(d) "License" means a document issued by the Department of Labor authorizing a person or entity to operate a private fee-charging employment agency.

(e) "Private non-fee-charging employment agency" means any person or entity engaged in the recruitment and placement of workers without charging directly or indirectly, any fee whether from the workers or from the employers.

(f) "Authority" means a document issued by the Department of Labor authorizing a person or entity to operate a private non-fee charging employment agency.

(g) "Seaman" means any person employed in a vessel engaged in maritime navigation.

(h) "Overseas employment" means employment of a worker outside the Philippines.

(i) "Emigrant" means any person, worker or otherwise, who emigrates to a foreign country by virtue of an immigrant visa or resident permit or its equivalent in the country of destination."

"ART. 15. Public Employment Offices.—The public employment offices of the Department of Labor shall undertake the recruitment and placement of workers. The public employment offices shall be under the administrative and technical supervision of the Bureau of Employment Services which shall establish regional offices to oversee their operations."

"ART. 16. Private recruitment.—Except as provided in Chapter II of this Title, no person or entity, other than the public employment offices, shall engage in the recruitment and placement of workers. However, schools and other civic or charitable organizations or employers for their own use may continue undertaking placement services under such rules and regulations as the Secretary of Labor may promulgate."

"ART. 17. Overseas Employment Development Board.—(a) An Overseas Employment Development Board is hereby created to undertake a systematic program for overseas employment of Filipino workers, other than seamen, in excess of domestic needs, to protect their rights to fair and equitable employment practices, and to promote the welfare of Filipino emigrants. It shall have the power and duty:

- To meet the increasing demand for trained and competent Filipino emigrants;
- To promote the development of skills and the careful selection of Filipino workers for overseas employment;
- To promote the overseas employment of Filipino workers under a government-to-government arrangement; a government-to-government arrangement;
- To secure the best possible terms and conditions of employment for Filipino emigrants and to ensure compliance thereof;
- To maintain a registry of Filipino emigrants; and
- To generate foreign exchange from the earnings of Filipinos employed under its program.

(b) The Board is authorized to establish offices abroad to attain the above objectives."

"ART. 18. Ban on direct-hiring.—No employer may hire a Filipino for overseas employment except through the Board. Direct-hiring by members of the diplomatic corps, international organizations and such other employers as may be allowed by the Secretary of Labor is exempted from the provision."

"ART. 19. Registration of emigrant workers.—

- To enable the Board to establish a data bank in aid of national manpower policy of formulation, any individual who has an approved application to emigrate to any country shall, before filing an application for passport with the Department of Foreign Affairs, register with the Overseas Employment Development Board. The registration shall include among others his name, address, civil status, profession, occupation, country of destination, and such other information as the Board may require.
- Emigrants residing abroad who are not registered with the Board (shall register with the Labor Attache or in his absence with any appropriate official of the Philippine Embassy or consulate nearest their residence or place of work in accordance with the preceding paragraph, and such registration shall be reported to the Board.
- The Board shall promote the welfare of registered emigrants and extend appropriate assistance to them whenever possible.

"ART. 20. National Seamen Board.—(a) A National Seamen Board is hereby created to establish and maintain

a comprehensive seamen program. It shall have the power and duty:

- To provide free placement services for seamen;
- To secure the best possible terms and conditions of employment for seamen, and to ensure compliance thereof;
- To maintain a complete registry of all Filipino seamen; and
- To regulate the activities of agents or representatives of shipping companies in the hiring of seamen for overseas employment.

(b) The Board shall have original and exclusive jurisdiction over all matters or cases including money claims involving employer-employee relations, arising out of or by virtue of any law or contracts involving Filipino seamen for overseas employment. The decision of the board shall be final and inappealable. The Board shall promulgate appropriate rules and regulations governing the processing, settlement, and/or adjudication of such cases."

"ART. 21. Foreign service role and participation.—To provide ample protection to Filipino workers abroad, the labor attaches, the labor reporting officers duly designated by the Secretary of Labor and the Philippine diplomatic or consular officials concerned shall, even with out prior instruction or advice from the home office, exercise the power and duty:

- To provide all Filipino workers within their jurisdiction assistance on all matters arising out of employment;
- To ensure that Filipino workers are not exploited or discriminated against;
- To verify and certify as requisite to authentication that the terms and conditions of employment in contracts involving Filipino workers are in accordance with the Labor Code and rules and regulations of the Overseas Employment Development Board and the National Seamen Board.
- To make continuing studies or research and recommendations on the various aspects of the employment market within their jurisdiction;
- To gather and analyze information on the employment situation and its probable trends, and to make such information available to the Department of Labor and the Department of Foreign Affairs; and
- To perform such other duties as may be required of them from time to time."

"ART. 22. Mandatory remittance of foreign exchange earnings.— It shall be mandatory for all Filipino workers abroad to remit a portion of their foreign exchange earnings to their families, dependants, and/or beneficiaries in the country in accordance with rules and regulations prescribed by the Secretary of Labor."

"ART. 23. Composition of the Boards.—(a) The Overseas Employment Development Board shall be composed of the Secretary of Labor as Chairman, the Undersecretary of Labor as Vice-Chairman and a representative each of the Department of Foreign Affairs, the Central Bank, the Department of Education and Culture, the National Manpower and Youth Council, a workers' organization and an employers' organization, as members.

(b) The National Seamen Board shall be composed of the Secretary of Labor as Chairman, the Undersecretary of Labor as Vice-Chairman, the Commandant of the Philippine Coast Guards, and a representative each of the Department of Foreign Affairs, the Central Bank, the Maritime Industry Authority, a national sea farers' organization and a national shipping association, as members.

(c) The Boards shall be attached to the Department of Labor for policy and program coordination. They shall each be assisted by a Secretariat headed by an Executive Director who shall be a Filipino citizen with sufficient experience in manpower administration including overseas employment activities. The Executive Director

shall be appointed by the President of the Philippines upon the recommendation of the Secretary of Labor, and shall receive an annual salary as fixed by law. The Secretary of Labor shall appoint the other members of the Secretariat.

(d) The Auditor General shall appoint his representative to the Boards to audit their respective accounts in accordance with auditing laws and pertinent rules and regulations."

"ART. 24. Boards to issue rules and collect fees.—The Boards shall issue appropriate rules and regulations to carry out their functions. They shall have the power to impose and collect fees from employers concerned, which shall be deposited to the respective accounts of said Boards and be used by them exclusively to promote their objectives."

"ART. 25. Authority or license to recruit.—

- No person or entity may operate a private non-fee-charging employment agency without an authority from the Department of Labor. His Secretary of Labor shall issue rules and regulations establishing the requirements and the procedure for the issuance of an authority.

- No person or entity may operate a private fee-charging employment agency without a license from the Department of Labor. No new application for a license to operate such agency shall be entertained upon the effectivity of the Code. The Department of Labor shall, within four years from the effectivity of the Code, phase out the operation of all private fee-charging employment agencies, including those engaged in the overseas recruitment and placement of individuals for personal services or to make up the crew of a vessel.

- Unless sooner revoked, cancelled or suspended for cause by the Secretary of Labor, every existing authority or license to hire or recruit workers on the date of effectivity of this Code shall remain valid for the duration indicated therein. Said authority or license to hire or recruit may be renewed only if the holders thereof comply with all pertinent provisions of the Code and its implementing rules and regulations."

"ART. 27. Citizen requirement.—No authority to recruit or hire shall be issued or renewed, and no license shall be renewed, except in favor of Filipino citizens or corporations, partnerships or entities at least sixty percent of the authorized capital stock of which is owned and controlled by Filipino citizens."

"ART. 28. Capitalization.—All applicants for authority to hire or renewal of license to recruit are required to have such substantial capitalization as determined by the Secretary of Labor.

"ART. 30. License Fee.—Any private fee-charging employment agency applying for renewal of its license shall file a written application with the Secretary of Labor and shall pay to the account of the Department of Labor an annual license fee of P2,000 in the case of recruitment for local employment and P6,000 in the case of recruitment for overseas employment."

ART. 31. Bonds.—Any private fee-charging employment agency and authority holder shall post a cash bond in the amount of P50,000 and P10,000 respectively and a surety bond of P150,000 and P30,000 respectively, to guarantee compliance with prescribed recruitment procedures, rules and regulations, and terms and conditions of employment as appropriate.

"The Secretary of Labor shall have the exclusive power to determine, decide, order or direct payment from, or application of, the cash and surety bonds for any claim or injury covered and guaranteed by the bonds."

"ART. 33. Reports on employment status.—Whenever the public interest so requires, the Secretary of Labor may direct all persons or entities within the coverage of this Title to submit a report on the status of employment, including job vacancies, details of job requisitions, separation from jobs, wages, other terms and conditions, and other employment data."

"ART. 36. Regulatory power.—(a) The Secretary of Labor shall have the power to restrict and regulate the

recruitment and placement activities of all agencies within the coverage of this Title and is hereby authorized to issue orders and promulgate rules and regulations to carry out the objectives and implement the provisions of this Title."

"ART. 37. Visitorial power.—The Secretary of Labor or his duly authorized representatives may at any time inspect the premises, books of accounts and records of any person or entity covered by this Title, require it to submit reports regularly on prescribed forms, and act on violations of any provision of this Title."

"ART. 38. Jurisdiction.—Any violation of the provisions of this Title or its implementing rules and regulations shall fall within the concurrent jurisdiction of the military tribunals and the regular courts. The body that first assumes jurisdiction shall exclude the other."

"ART. 39. Penalties.—(a) Any licensee or holder of authority found violating or causing another to violate any provision of this Title or its implementing rules and regulations shall, upon conviction thereof, suffer the penalty of imprisonment of not less than two years nor more than five years or a fine of not less than P10,000 nor more than P50,000 or both such imprisonment and fine, at the discretion of the court;

(b) Any person who is neither a licensee nor a holder of authority under this Title found violating any provision thereof or its implementing rules and regulations shall, upon conviction thereof, suffer the penalty of imprisonment of not less than four years nor more than eight years or a fine of not less than P20,000 nor more than P100,000 or both such imprisonment and fine, at the discretion of the court;

(c) If the offender is a corporation, partnership, association or entity, the penalty shall be imposed upon the officer or officers of the corporation, partnership, association or entity responsible for violation; and if such officer is an alien, he shall, in addition to the penalties herein prescribed, be deported without further proceedings;

(d) In every case, conviction shall cause and carry the automatic revocation of the license or authority and all the permits and privileges granted to such person or entity under this Title, and the forfeiture of the cash and surety bonds in favor of the Overseas Employment Development Board or the National Seamen Board, as the case may be, both of which are authorized to use the same exclusively to promote their objectives."

"ART. 45. National Manpower and Youth Council, Composition.— To carry out the objectives of this Title, the National Manpower and Youth Council, which is attached to the Department of Labor for policy and program coordination and hereinafter referred to as the Council, shall be composed of the Secretary of Labor as ex-officio chairman, the Secretary of Education and Culture as ex-officio vice-chairman, and as ex-officio members: the Director-General of the National Economic and Development Authority; the Secretary of Agriculture; the Secretary of Natural Resources; the Chairman of the Civil Service Commission; the Secretary of Social Welfare; the Secretary of Local Government and Community Development; the Chairman of the National Science Development Board, the Secretary of Industry and the Director-General of the Council. The Director-General of the Council shall have no vote.

"In addition, the President shall appoint the following members from the private sector: two representatives of national organizations of employers; two representatives of national workers organizations; and two from national family and youth organizations each for a term of three years."

"ART. 50. Industry Boards.—The Council shall establish industry boards to assist in the establishment of manpower development schemes, trades and skills standards and such other functions as will provide direct participation of employers and workers in the fulfillment of the Council's objectives, in accordance with guidelines to be established by the Council and in consultation with the National Economic and Development Authority.

"The maintenance and operations of the Industry Boards shall be financed through a funding scheme under such rates or fees and manners of collection and disbursements as may be determined by the Council."

"ART. 52. Incentive scheme.—An additional deduction from taxable income of one-half of the value of labor training expenses incurred for development programs shall be granted to the person or enterprise concerned provided that such development programs, other than apprenticeship, are approved by the Council and the deduction does not exceed ten percent of direct labor wage.

"There shall be a review of the said scheme two years after its implementation."

"ART. 53. Council Secretariat.—The Council shall have a Secretariat headed by a Director-General who shall be assisted by a Deputy Director-General, both of whom shall be career administrators appointed by the President of the Philippines on recommendation of the Secretary of Labor. The Secretariat shall be under the administrative supervision of the Secretary of Labor and shall have an Office of Manpower Planning and Development, an Office of Vocational Preparation, a National Manpower Skills Center, regional manpower development offices and such other offices as may be necessary.

"The Director-general shall have the rank and emoluments of as Undersecretary and shall serve for a term of ten years. The Executive-Directors of the Office of Manpower Planning and Development, the Office of Vocational Preparation and the National Manpower Skills Center shall have the rank and emoluments of a bureau director and shall be subject to civil service law, rules and regulations. The Director-General, Deputy Director-General, and Executive Directors shall be natural-born citizens, between thirty and fifty years of age at the time of appointment, with a master's degree, or its equivalent, and experience in national planning and development of human resources. The Executive Director of the National Manpower Skills Center shall, in addition to the foregoing qualifications, have undergone training in center management. Executive-Directors shall be appointed by the President on the recommendations of the Secretary of Labor.

"The Director-General shall appoint such personnel necessary to carry out the objectives, policies and functions of the Council subject to civil service rules. The regular professional and technical personnel shall be exempt from WAPCO rules and regulations.

"The Secretariat shall have the following functions and responsibilities:

- To prepare and recommend the manpower plan for approval by the Council;
- To recommend allocation of resources for the implementation of the manpower plan as approved by the Council;
- To carry out the manpower plan as the implementing arm of the Council;
- To effect the efficient performance of the functions of the Council and the achievement of the objectives of this Title;
- To determine specific allocation of resources for projects to be undertaken pursuant to approved manpower plans;
- To submit to the Council periodic reports on the progress and accomplishment of work programs;
- To prepare for approval by the Council an annual report to the President on plans, programs and projects on manpower and out-of-school youth development;
- To enter into agreements to implement approved plans and programs and perform any and all such acts as will fulfill the objectives of this Code as well as ensure the efficient performance of the functions of the Council; and
- To perform such other functions as may be authorized by the Council."

"ART. 54. Regional manpower development offices.—The Council shall create regional manpower development offices which shall determine the manpower needs of industry, agriculture and other sectors of

the economy within their respective jurisdiction; provided the Council's central planners with the data for updating the national manpower plan; recommend programs for the regional level agencies engaged in manpower and youth development within the policies formulated by the Council; administer and supervise Secretariat training programs within the region and perform such other functions as may be authorized by the Council."

SEC. 3. Articles 61, 62, 68 and 70 of Title II, Book Two of the Labor Code are hereby amended to read as follows:

"ART. 61. Contents of apprenticeship agreements.—Apprenticeship agreements, including wake rate' of apprentices, shall conform to applicable rules and regulations issued by the Secretary of Labor. Apprenticeship agreements providing for wage rates below the legal minimum wage, which in no case shall start below seventy-five percent of the applicable minimum wage, may be entered into only in accordance with the apprenticeship programs duly recognized by the Bureau of Apprenticeship. The Bureau of Apprenticeship shall develop standard model program of apprenticeship."

"ART. 62. Signing of apprenticeship agreement.—Every apprenticeship agreement shall be signed by the employer or his agent, or by an authorized representative of any of the recognized organizations, associations or groups and by the apprentice.

"An apprenticeship agreement with a minor shall be signed in his behalf by his parent or guardian or, if the latter is not available, by an authorized representative of the Department of Labor, and the same shall be binding during its life time.

"Every apprenticeship agreement entered into under this Title shall be ratified by the appropriate apprenticeship committees, if any, and a copy thereof shall be furnished both the employer and the apprentice."

"ART. 68. Aptitude testing of applicants.—Consonant with the minimum qualifications of apprentice-applicants required under this Chapter, employers of entities with duly recognized apprenticeship programs shall have primary responsibility for providing appropriate aptitude tests in the selection of apprentices. If they do not have adequate facilities for the purpose, the Department of Labor may perform the service free of charge."

"ART. 70. Voluntary organization of apprenticeship programs; Exemptions.—(a.) The organization of apprenticeship programs shall be primarily a voluntary undertaking by employers;

(b) When national security or particular requirement of economic development so demand, the President of the Philippines may require compulsory training of apprentices in certain trades, occupations, jobs or employment levels where shortage of trained manpower is deemed critical as determined by the Secretary of Labor. Appropriate rules in this connection shall be promulgated by the Secretary of Labor as the need arises; and

(c) Where services of foreign technicians are utilized by private companies in apprenticeable trades, said companies are required to set up appropriate apprenticeship programs."

SEC. 4. Articles 82, 83, 86, 87, 91, 92, 93 and 95 are hereby amended to read as follows:

"ART. 82. Coverage.—The provision of this Title shall apply to employees in all establishments and undertakings, whether for profit or not, but not to government employees, managerial employees, field personnel, members of the family of the employer who are dependent on him for support, domestic helpers, person in the personal service of another, and workers who are paid by results as determined by the Secretary of Labor in appropriate regulations.

"As used herein, "managerial employees" refers to those whose primary duty consists of the management of the establishment in which they are employed or of a department or subdivision there: of, and to other officers or members of the managerial staff.

"Field personnel" refers to non-agricultural employees who regularly perform their duties away from the principal place of business or branch office of the employer and whose actual hours of work in the field cannot be determined with reasonable certainty."

"ART. 83. Normal hours of work.—The normal hours of work of any employee shall not exceed eight in a day.

"Health personnel in cities or municipalities with a population of at least one million or in hospitals or clinics with a bed capacity of at least one hundred shall hold regular office hours for eight hours a day, for five days a week, or a total of forty hours a week, exclusive of time for meals, except where the exigencies of the service require that such personnel work for six days or forty eight hours, in which case they shall be entitled to an additional compensation of at least thirty percent of their regular wage for work on the sixth day. For purposes of this Article, "health personnel" shall include: resident physicians, nurses, nutritionists, dieticians, pharmacists, social workers, laboratory technicians, paramedical technicians, psychologists, midwives, attendants and all other hospital or clinic personnel.

"ART. 86. Night shift differential.—Every employee shall be paid a night shift differential of no less than ten percent of his regular wage for each hour of work performed between ten o'clock in the evening and six o'clock in the morning.

"ART. 87. Overtime work.—Work may be performed beyond eight hours a day provided that the employee is paid for the overtime, work, an additional compensation equivalent to his regular wage plus at least twenty-five percent thereof. Work performance beyond eight hours on a holiday or rest day shall be paid an additional compensation equivalent to the rate for the first eight hours on a holiday or rest day plus at least thirty percent thereof.

"ART. 91. Right to weekly rest day.—(a) It shall be the duty of every employer, whether operating for profit or not, to provide each of his employees a rest period of not less than twenty-four consecutive hours after every six consecutive normal work days.

(b) The employer shall determine and schedule the weekly rest day of his employees, subject to collective agreement and to such rules and regulations as the Secretary of Labor may provide. However, the employer shall respect the preference of employees as to their weekly rest day when such preference is based on religious grounds.

"ART. 92. When employer may require work on a rest day.—The employer may require his employees to work on anyday:

- In case of actual or impending emergencies caused by serious accidents, fire, flood, typhoon, earthquake, epidemic or other disaster or calamity to prevent loss of life and property, or imminent danger to public safety;
- In case of urgent work to be performed on the machinery, equipment, or installation to avoid serious loss which the employer would otherwise suffer;
- In the event of abnormal pressure of work due to special circumstances, where the employer cannot ordinarily be expected to resort to other measures;
- To prevent loss or damage to perishable goods;
- Where the nature of the work requires continuous operations and the stoppage of work may result in irreparable injury or loss to the employer; and
- Under other circumstances analogous or similar to the foregoing as determined by the Secretary of Labor.

"ART. 93. Compensation for rest day, Sunday or holiday work.— (a) Where an employee is made or permitted to work on his scheduled rest day, he shall be paid an additional compensation of at least thirty percent of his

regular, wage. An employee shall be entitled to such additional compensation for work performed on Sunday only when it is his established rest day.

(b) When the nature of the work of the employee is such that he has no regular work days, and no regular rest days can be scheduled, he shall be paid additional compensation of at least thirty percent of his regular wage for work performed on Sundays and holidays.

(c) Work performed on any legal holiday shall be paid an additional compensation of at least thirty percent of the regular wage of the employee. Where such holiday work falls on the employee's scheduled rest day, he shall be entitled to an additional compensation of at least fifty percent of his regular wage.

(d) Where the collective bargaining agreement or other applicable employment contract stipulates the payment of a higher premium pay than that prescribed under this Article, the employer shall pay such higher rate.

"ART. 94. Right to holiday pay.—(a) Every worker shall be paid his regular daily wage during regular holidays, except in retail and service establishments regularly employing less than ten workers;

(b) The employer may require an employee to work on any holiday but such employee shall be paid a compensation equivalent to twice his regular rate.

(c) As used in this Article, "holiday" includes New Year's Day, Maundy Thursday, Good Friday, the ninth of April, the first of May, the twelfth of June, the fourth of July, the thirtieth of November, the twenty-fifth and the thirtieth of December, and the day designated by law for holding a general election.

ART. 95. Right to service incentive leave.—

- Every employee who has rendered at least one year of service shall be entitled to a yearly service incentive of five days with pay.

- This provision shall not apply to those who are already enjoying the benefit herein provided, those enjoying vacation leave with pay of at least five days and those employed in establishments regularly employing less than ten employees or in establishments exempted from granting his benefit by the Secretary of Labor after considering the viability or financial condition of such establishment.

- The grant of benefit in excess of that provided herein shall not be made a subject of arbitration or any court or administrative action.

SEC. 5. A new chapter shall be placed after Article 93 as renumbered, which shall read:

"CHAPTER III—HOLIDAYS AND SERVICE LEAVES"

SEC. 6. Article 99 of the Code is hereby amended to read as follows:

"Art. 99. Prohibition against elimination or diminution of benefits.—Nothing in this Book shall be construed to eliminate or in any way diminish supplements or other employee benefits being enjoyed at the time of the promulgation of this Code."

SEC. 7. Article 110 of the Code is hereby amended to read as follows:

"ART. 110. Attorney's fees.—(a) In cases of unlawful withholding of wages the culpable party may be assessed attorney's fees equivalent to ten per cent of the amount of wages recovered.

(a) It shall be unlawful for any person to demand or accept, in any judicial or administrative proceedings for the recovery of the wages, attorney's fees which exceed ten percent of the amount of wages recovered."

SECTION 8. Article 117 of the Code is hereby amended to read as follows:

"ART. 117. Retaliatory measures.—It shall be unlawful for an employer to refuse to pay or reduce the wages and benefits, discharge or in any manner discriminate against any employee who has filed any complaint or instituted any proceeding under this Title or has testified or is about to testify in such proceedings."

SEC. 9. Article 119 of the Code is hereby amended to read as follows:

"ART. 119. Wages studies.—The Wage Commission in the Department of Labor shall conduct a continuing study of wage rates in the various agricultural and non-agricultural industries all over the country. The results of such study shall be periodically disseminated to the government, labor and management sectors for their information and guidance.

"If after such study, the Commission is of the opinion that a substantial number of employees in a given industry are receiving wages which, although complying with the minimum provided by law, are less than sufficient to maintain them in health, efficiency and general well-being, taking into account, among others, the peculiar circumstances of the industry and its geographical location, the Commission shall, with the approval of the Secretary of Labor, proceed to determine whether a wage recommendation shall be issued."

SEC. 10. Article 127 of the Code is hereby amended to read as follows:

"ART. 127. Visitorial and enforcement powers.—

- The Secretary of Labor or his duly authorized representative, including labor regulation officers, shall have access to employer's records and premises at any time of the day or night whenever work is being undertaken therein, and the right to copy therefrom, to question any employee and to investigate any fact, condition or matter which may be necessary to determine violations or which may aid in the enforcement of this Code and of any labor law, wage order or rules and regulations issued pursuant thereto.

- The Secretary of Labor or his duly authorized representatives shall have the power to order and administer, after due notice and hearing, compliance with the labor standards provisions of this Code based on the findings of labor regulation officers or industrial safety engineers made in the course of inspection, and to issue writs of execution to the appropriate authority for the enforcement of their order.

- The Secretary of Labor may likewise order stoppage of work or suspension of operations of any unit or department of an establishment when non-compliance with the law or implementing rules and regulations poses grave and imminent danger to the health and safety of workers in the workplace. Within twenty-four hours, a hearing shall be conducted to determine whether an order for the stoppage of work or suspension of operations shall be lifted or not. In case the violation is attributable to the fault of the employer, he shall pay the employees concerned their salaries or wages during the period of such stoppage of work or suspension of operation.

- It shall be unlawful for any person or entity to obstruct, impede, delay or otherwise render ineffective the orders of the Secretary of Labor or his duly authorized representative issued pursuant to the authority granted under this Article, and no inferior court or entity shall issue temporary or permanent injunction or restraining order or otherwise assume jurisdiction over any case involving the enforcement orders issued in accordance with this Article.

- Any government employee found guilty of violation of, or abuse of authority, under this Article shall after appropriate administrative investigation, be subject to summary dismissal from the service.

- The Secretary of Labor may by appropriate regulations require employers to keep and maintain such employment records as may be necessary in aid of his visitorial and enforcement powers under this Code."

SEC. 11. Article 137 of the Code is hereby amended to read as follows:

"ART. 137. Classification of certain women workers.—Any woman who is permitted or suffered to work with

or without compensation, in any night club, cocktail lounge, massage clinic, bar or similar establishment, under the effective control or supervision of the employer for a substantial period of time as determined by the Secretary of Labor, shall be considered as an employee of such establishments for purposes of labor and social legislation."

SEC. 12. Article 138 of the Code is hereby amended to read as follows:

"ART. 138. Minimum employable age.—(a) No child below fifteen years of age shall be employed, except when he works directly under the sole responsibility of his parents or guardian and his employment does not in any way interfere with his schooling.

(b) A person between fifteen and eighteen years of age may be employed for such number of hours and such periods of the day as determined by the Secretary of Labor in appropriate regulations.

(c) The foregoing provisions shall in no case allow the employment of a person below eighteen years of age in an undertaking which is hazardous or deleterious in nature as determined by the Secretary of Labor.

SEC. 13. Article 139 of the Code is hereby amended to read as follows:

"ART. 139. Prohibition against child discrimination.—No employer shall discriminate against any person in respect to terms and conditions of employment on account of his age."

SEC. 14. A provision shall be inserted in Book Three of the Labor Code which shall read as follows:

"Service charges.—All service charges collected by hotels, restaurants and similar establishments shall be distributed at the rate of eighty five percent for all covered employees and fifteen percent for management. The share of the employees shall be equally distributed among them. In case the service charge is abolished, the share of the covered employees shall be integrated into their wages."

SEC. 15. Paragraphs (i), (y), and (z) of Article 166 are hereby amended to read as follows:

- "Dependents" means the legitimate, legitimated or legally adopted child who is unmarried, not gainfully employed, and not over twenty-one years of age or over twenty-one years of age provided he is incapacitated and incapable of self-support due to a physical or mental defect which is congenital or acquired during minority; the legitimate spouse living with the employee and the legitimate parents of said employee wholly dependent upon him for regular support.

- "Average monthly salary credit" means the result obtained by dividing the sum of the monthly salary credits in the sixty-month period ending on the last day of the second quarter preceding the quarter of death or permanent disability by sixty, except where the month of death or permanent disability falls within eighteen calendar months from the month of coverage, in which case, the average monthly salary credit is the result obtained by dividing the sum of all monthly salary credits by the number of calendar months of coverage in the same period. In the case of the GSIS, the average monthly salary credit shall be the monthly salary or wage received by the employee on the month of contingency.

- 'Average daily salary credit' means the result obtained by dividing the sum of the six highest monthly salary credits in the twelve-month period ending on the last day of the second quarter preceding the quarter of sickness or injury by one hundred eighty, except where the month of injury falls within twelve calendar months from the first month of coverage in the System, in which case the average daily salary credit is the result obtained by dividing the sum of all monthly salary credits by thirty times the number of calendar months of coverage in the same period.

"In the case of the GSIS, the average daily salary credit shall be the actual daily salary or wage or the monthly

salary or wage divided by the actual number of working days of the month of contingency."

SEC. 16. Article 167 of the Code is hereby amended to read as follows:

"ART. 167. Compulsory coverage.—Coverage in the State Insurance Fund shall be compulsory upon all employers and their employees not over sixty years of age: Provided, that an employee who is over sixty years of age and paying contributions to qualify for the retirement or life insurance benefit administered by the System shall be subject to compulsory coverage."

SEC. 17. Article 173 of the Code is hereby amended to read as follows:

"ART. 173. Liability of third parties.—(a) When the disability or death is caused by circumstances creating a legal liability against a third party, the disabled employee or the dependent in case of his death shall be paid by the System under this Title. In case benefit is paid under this Title, the System shall be subrogated to the rights of the disabled employee or the dependents in case of his death, in accordance with the general law. (b) Where the System recovers from such third party damages in excess of those paid or allowed under this Title, such excess shall be delivered to the disabled employee or other persons entitled thereto, after deducting the cost of proceedings and expenses of the System.

SEC. 18. Paragraphs (f) and (j) of Article 176 of the Code are hereby amended and paragraphs (k) and (1) are thereto added to read as follows:

"ART. 176. Powers and duties.—

* * * * *

- To appoint the personnel of its staff, subject to civil service law and rules, but exempt from Wapco law and regulations;

- To acquire property, real or personal, which may be necessary or expedient for the attainment of the purposes of this Title;

- To enter into agreements or contracts for such service and aid as may be needed for the proper, efficient and stable administration of the program;

- To perform such other acts as it may deem appropriate for the attainment of the purposes of the Commission and proper enforcement of the provisions of this Title."

SEC. 19. Paragraph (b) of Article 190 of the Code is hereby amended to read as follows:

"(b) The payment of such income benefit shall be in accordance with the regulations of the Commission."

SEC. 20. Paragraph (a) of Article 191 of the Code is hereby amended to read as follows:

"(a) Under such regulations as the Commission may approve, any employee under this Title who contracts sickness or sustains an injury resulting in permanent total disability shall, for each month until death but not exceeding five years, be paid by the System during such disability an income benefit to be computed as follows:

"Fifty-one and seventy-five hundredths percent of the first three hundred pesos of average monthly salary credit or fraction thereof; plus

"Twenty-eight and seventy-five hundredths percent of the next three hundred pesos of average monthly salary credit or fraction thereof; plus

"Ten and thirty-five hundredths percent of each succeeding one hundred pesos of average monthly salary credit

or fraction thereof; plus

"One thousand-thirty-five-tenth thousandths of one percent of the average monthly salary credit for each month of paid coverage in the System in excess of one hundred twenty months of paid coverage as of the last day of the second quarter preceding the quarter of disability: Provided, that the monthly income benefit shall not be less than forth-five pesos."

SEC. 21. Article 193 of the Code is hereby amended to read as follows:

ART. 193. Death.—(a) Under such regulations as the Commission may approve, the System shall, upon the death of the employee, under this Title pay to the beneficiaries at their option: (1) a monthly income benefit equivalent to the monthly income benefit for permanent disability increased by ten percent for each dependent child but not exceeding five, beginning with the youngest and without substitution: Provided, that the monthly income benefit shall not be paid for more than five years, but the portion corresponding to the monthly income benefit for permanent total disability shall be guaranteed for five years; Provided, however, that total payments shall in no case exceed twelve thousand pesos; or (2) a lump sum benefit equivalent to fifty percent of the computed total income benefit for five years or twelve thousand pesos whichever is lesser and the balance apportioned in equal monthly income benefit within the five-year guaranteed period but the total payments including the lump sum shall in no case exceed twelve thousand pesos.

(b) Under such regulations as the Commission may approve, the System shall, upon the death of the employee who is under permanent total disability under this Title, pay to the beneficiaries at their option: (1) his monthly income benefit increased by ten percent for each dependent child but not exceeding five, beginning with the youngest and without substitution; Provided, that the monthly income benefit shall not be paid longer than the remaining guaranteed period nor total payments since disability exceed twelve thousand pesos; or (2) lump sum amount equivalent to fifty percent of the remaining guaranteed period, and the balance apportioned in equal monthly income benefit within the remaining guaranteed period but the total payments including the lump sum since disability shall not exceed twelve thousand pesos.

(c) The manner of payment referred to in the next preceding paragraph shall be reviewed after three years of implementation."

SEC. 22. Article 216 of the Code is hereby amended to read as follows:

"ART. 216. Jurisdiction of Labor Arbiters and the Commission.— (a) The Labor Arbiters shall have exclusive jurisdiction to hear and decide the following cases involving all workers, whether agricultural or non-agricultural:

- Unfair labor practice cases;
- Unresolved issues in collective bargaining including those which involve wages, hours of work, and other terms and conditions of employment duly indorsed by the Bureau in accordance with the provisions of this Code.
- All money claims of workers involving non-payment, or underpayment of wages, overtime or premium compensation, maternity or service incentive leave, separation pay and other money claims arising from employer-employee relations, except claims for employee's compensation, social security and medicare benefits and as otherwise provided in Article 127 of this Code;
- cases involving household services; and
- All other cases arising from employer-employee relations unless expressly excluded by this Code.

(b) The Commission shall have exclusive appellate jurisdiction over all cases decided by Labor Arbiters, compulsory arbitrators, and voluntary arbitrators in appropriate cases provided in Article 262 of this Code."

SEC. 23. Article 223 of the Code is hereby amended to read as follows:

"ART. 223. Execution of decisions, orders or awards.—(a) The Secretary of Labor, the Commission or any Labor or med-arbiter may, upon his own initiative or motion of any interested party, issue a writ of execution requiring a sheriff or a proper officer to execute final decisions, orders or awards of the Commission, Labor Arbiters, compulsory arbitrators or voluntary arbitrators.

(b) The Secretary of Labor, the Commission and the Director of Labor Relations may appoint sheriffs and take any measure under existing laws, decrees and general orders as may be necessary to ensure compliance with their decisions, orders or awards and those of Labor Arbiters and compulsory arbitrators, including the imposition of administrative fines which shall not be less than P500 nor more than P10,000."

SEC. 24. Article 224 of the Code is hereby amended to read as follows:

"ART. 224. Contempt powers of the Secretary of Labor.— In the exercise of his powers under this Code the Secretary of Labor may hold any person in direct or indirect contempt and impose the appropriate penalties therefor."

SEC. 25. Article 227 of the Code is hereby amended to read as follows:

"ART. 227. Indorsement of cases to Labor Arbiters.—(a) Except as provided in paragraph (b) of this Article, the Labor Arbiter shall entertain only cases indorsed to them for compulsory arbitration by the Bureau or by the Regional Director of the Department of Labor. All parties to a case shall be furnished by the Bureau or by the Regional Director with a written notice of such indorsement or non-indorsement. The indorsement or non-indorsement of the Regional Director may be appealed to the Bureau within ten working days from receipt of the notice.

(b) The parties may at any time, by mutual agreement, withdraw a case from the Conciliation Section and jointly submit it to a Labor Arbiter, except deadlocks in collective bargaining."

SEC. 26. Article 230 of the Code is hereby amended to read as follows:

"ART. 230. Union registration and collective agreement certification.—The Bureau shall keep a registry of labor organizations.

"The Bureau is hereby empowered to certify collective agreements which comply with standards established by the Code and/or the implementing rules and regulations issued by the Secretary of Labor for such purpose. However, the non-certification of a collective agreement shall not affect its validity.

"The Bureau shall maintain a file of all collective agreements and other related agreements and records of settlement of labor disputes, and copies of all orders and decisions of voluntary arbitrators. The file shall be open and accessible to interested parties under conditions prescribed by the Secretary of Labor, provided that no specific information submitted in confidence shall be disclosed.

"The Bureau shall also maintain a file, and shall undertake or assist in the publication, of all final decisions, orders and awards of the Secretary of Labor and the Commission. "

SEC. 27. Paragraph (h) of Article 239 of this Code is hereby amended to read as follows:

"(h) Other than for mandatory activities under this Code, checking off special assessments or any other fees without duly signed individual written authorizations of the members.

SEC. 28. Paragraph (o) of Article 241 of this Code is hereby amended to read as follows:

"(o) Other than the mandatory activities under the Code, no special assessment, attorney's fees, negotiation fees or any other extraordinary fees may be checked off from any amount due an employee without an

individual written authorization duly signed by the employee. The authorization should specifically state the amount, purpose and beneficiary of the deduction."

SEC. 29. Article 261 of the Code is hereby amended to read as follows:

"ART. 261. Grievance machinery.—Except as otherwise provided in paragraph (b) of Article 267 of this Code, all disputes, grievances or matters arising from the implementation or interpretation of a collective agreement shall be threshed out in accordance with the grievance procedure provided for in such agreement."

SEC. 30. Article 262 of the Code is hereby amended to read as follows:

"ART. 262. Voluntary arbitration.—All disputes, grievances and matters referred to in the immediately preceding Article which are not settled through the grievance procedure provided in the collective agreement shall be referred for voluntary arbitration prescribed in said agreement.

"Every collective agreement shall designate in advance an arbitrator or panel of arbitrators or include a provision making the selection of such arbitrator or panel of arbitrators from the list provided by the Bureau of definite and certain when the need arises. Such arbitrator or panel of arbitrators shall have exclusive original jurisdiction to hear and decide all disputes, grievances or matters arising from the implementation or interpretation of a collective agreement which have gone through the grievance procedure.

"The Labor Arbiter or the Bureau shall not entertain such disputes, grievances or matters and any decision of the Labor Arbiter or the Bureau concerning such dispute shall be null and void as in excess of jurisdiction.

"Voluntary arbitration awards or decisions shall be final, inappealable, and executory. However, voluntary arbitration awards or decisions on money claims involving an amount exceeding P100,000 or forty percent of the paid-up capital of the respondent employer, whichever is lower, may be appealed to the Commission on the ground of abuse of discretion or gross incompetence."

SEC. 31. Article 265 of the Code is hereby amended to read as follows:

"ART. 265. Tripartism and tripartite conferences.—(a) Tripartism in labor relations is hereby declared a State policy. Towards this end, the State shall encourage the representation of workers and employers in policy-making bodies of the government.

(b) The Secretary of Labor¹ or his duly authorized representatives may from time to time call a national, regional, or industrial tripartite conference of representatives of government, workers and employers for the consideration and adoption of voluntary codes of principles designed to promote industrial peace based on social justice or to align labor movement relations with established priorities in economic and social development. In calling such conference, the Secretary of Labor may consult with accredited representatives of workers and employers.

SEC. 32. Article 267 of the Code is hereby amended to read as follows:

"ART. 267. Miscellaneous provisions. (a) Pending the restoration of the right to strike and the right to lockout, all strike funds are hereby transformed into labor education and research funds. The collection of strike contributions is hereby prohibited. However, all unions are authorized to collect reasonable contributions for their labor education and research funds.

(b) With or without a collective agreement, no employer may shut down his establishment or dismiss or terminate the employment of employees with at least one year of service during the last two years, whether such service is continuous or broken, without prior written authority issued in accordance with such rules and regulations as the Secretary of Labor may promulgate.

(c) Any employee, whether employed for a definite period or not, with at least one year of service, whether

such service is continuous or broken, shall be considered a regular employee for purposes of membership in any labor union.

"(d) No docket fee shall be assessed in labor standards disputes. In all other disputes, docket fees may be assessed against the filing party, provided that in bargaining deadlocks, such fees shall be shared equally by the negotiating parties."

SEC. 33. Articles 268, 269, 270 and 271 of the Labor Code are hereby amended to read as follows:

"ART. 268. Coverage.—The provisions of this Title shall apply to all establishments or undertaking, whether for profit or not.

"ART 269. Security of Tenure.—In case of regular employment the employer shall not terminate the services of an employee except for a just cause or when authorized by this Title. An employee who is unjustly dismissed from work shall be entitled to reinstatement without loss of seniority rights and to his back wages computed from the time his compensation was withheld from him up to the time of his reinstatement."

"ART 270. Regular and Casual Employment.—The provisions of written' agreement to the contrary notwithstanding and regardless of the oral agreements of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer except where the employment has been fixed for a specific project or undertaking, the completion or termination of which has been determined at the time of the engagement of the employee or where the work or service to be performed is seasonal in nature and the employment is for the duration of the season."

"An employment shall be deemed to be casual if it is not covered by the preceding paragraph: provided, that, any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such actually exists."

"ART. 271. Probationary Employment.—Probationary employment shall not exceed six months from the date the employee started working, unless it is covered by an apprenticeship agreement stipulating a longer period. The services of an employee who has been engaged in a probationary basis may be terminated for a just cause or when he fails to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of his engagement. An employee who is allowed to work after a probationary period shall be considered a regular employee."

SEC. 34. Article 283 and 289 of the Code are hereby amended to read as follows:

"ART. 283. Application of law enacted prior to this Code.—All actions or claims accruing prior to the effectivity of this Code shall be determined in accordance with the laws in force at the time of their accrual."

"ART. 289. Disposition of pending cases.—All cases pending before the Court of Industrial Relations and the National Labor Relations Commission established under Presidential Decree No. 21 on the date of effectivity of this Code shall be transferred to and processed by the corresponding Labor Relations Division or the National Labor Relations Commission created under this Code having cognizance of the same in accordance with the procedure laid down herein and its implementing rules and regulations. Cases on labor relations on appeal with the Secretary of Labor or the Office of the President of the Philippines as of the date of effectivity of this Code shall remain under their respective jurisdiction and shall be decided in accordance with the rules and regulations in force at the time of appeal."

"All workmen's compensation cases pending before the Workmen's Compensation Units in the regional offices of the Department of Labor and those pending before the Workmen's Compensation Commission as of March 31, 1975 shall be processed and adjudicated in accordance with the law, rules and procedure existing prior to

the effectivity of the Employee's Compensation Commission and State Insurance Fund."

SEC. 35. If any provision or part of this Decree, or the application thereof to any person or circumstance, is held invalid, the remainder of this Decree, or the application of such provision or part to other persons or circumstances, shall not be affected thereby.

SEC. 36. All provisions of existing laws, orders, decrees, rules and regulations inconsistent herewith are hereby repealed.

This Decree shall take effect immediately.

Done in the City of Manila this 16th day of December, in the year of our Lord, nineteen hundred and seventy-five.

(Sgd.)

FERDINAND E. MARCOS

President

Republic of the Philippines

By the President:

(Sgd.)

JUAN C. TUVERA

Presidential Assistant

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