

REQUIRING ALL EMPLOYERS TO PAY THEIR EMPLOYEES A 13th-MONTH PAY

WHEREAS, it is necessary to further protect the level of real wages from the ravage of worldwide inflation;

WHEREAS, there has been no increase in the legal minimum wage rates since 1970;

WHEREAS, the Christmas season is an opportune time for society to show its concern for the plight of the working masses so they may properly celebrate Christmas and New Year.

NOW, THEREFORE, I, FERDINAND E. MARCOS, by virtue of the powers vested in me by the Constitution, do hereby decree as follows:

Section 1. All employers are hereby required to pay all their employees receiving a basic salary of not more than P1,000 a month, regardless of the nature of their employment, a 13th-month pay not later than December 24 of every year.

Section 2. Employers already paying their employees a 13th-month pay or its equivalent are not covered by this Decree.

Section 3. This Decree shall take effect immediately.

Done in the City of Manila, this 16th day of December 1975.

RULES AND REGULATIONS IMPLEMENTING PRESIDENTIAL DECREE NO. 851

By virtue of the powers vested in me by law, the following rules and regulations implementing Presidential Decree No. 851 are hereby issued for the guidance of all concerned.

Section 1. Payment of 13-month Pay All employers covered by Presidential Decree No. 851, hereinafter referred to as the "Decree", shall pay to all their employees receiving a basic salary of not more than P1,000 a month a thirteenth-month pay not later than December 24 of every year.

Section 2. Definition of certain terms As used in this issuance.

(a) "Thirteenth-moth pay" shall mean one twelfth (1/12) of the basic salary of an employee within a calendar year;

(b) "Basic salary" shall include all remunerations or earnings paid by an employer to an employee for services rendered but may not include cost-of-living allowances granted pursuant to Presidential Decree No. 525 or Letter of Instructions No. 174, profit-sharing payments, and all allowances and monetary benefits which are not considered or integrated

as part of the regular or basic salary of the employee at the time of the promulgation of the Decree on December 16, 1975.

Section 3. Employers covered The Decree shall apply to all employers except to:

- (a) Distressed employers, such as (1) those which are currently incurring substantial losses or (2) in the case of non-profit institutions and organizations, where their income, whether from donations, contributions, grants and other earnings from any source, has consistently declined by more than forty (40%) percent of their normal income for the last two (2) years, subject to the provision of Section 7 of this issuance;
- (b) The Government and any of its political subdivisions, including government-owned and controlled corporations, except those corporations operating essentially as private subsidiaries of the Government;
- (c) Employers already paying their employees 13-month pay or more in a calendar year of its equivalent at the time of this issuance;
- (d) Employers of household helpers and persons in the personal service of another in relation to such workers; and
- (e) Employers of those who are paid on purely commission, boundary, or task basis, and those who are paid a fixed amount for performing a specific work, irrespective of the time consumed in the performance thereof, except where the workers are paid on piece-rate basis in which case the employer shall be covered by this issuance insofar as such workers are concerned.

As used herein, workers paid on piece-rate basis shall refer to those who are paid a standard amount for every piece or unit of work produced that is more or less regularly replicated, without regard to the time spent in producing the same.

The term "its equivalent" as used in paragraph c) hereof shall include Christmas bonus, mid-year bonus, profit-sharing payments and other cash bonuses amounting to not less than 1/12th of the basic salary but shall not include cash and stock dividends, cost of living allowances and all other allowances regularly enjoyed by the employee, as well as non-monetary benefits. Where an employer pays less than 1/12th of the employees basic salary, the employer shall pay the difference.

Section 4. Employees covered Except as provided in Section 3 of this issuance, all employees of covered employers shall be entitled to benefit provided under the Decree who are receiving not more than P1,000 a month, regardless of their position, designation or employment status, and irrespective of the method by which their wages are paid, provided that they have worked for at least one month during the calendar year.

Section 5. Option of covered employers A covered employer may pay one-half of the 13th-month pay required by the Decree before the opening of the regular school year and the other half on or before the 24th day of December of every year.

In any establishment where a union has been recognized or certified as the collective bargaining agent of the employees therein, the periodicity or frequency of payment of the 13th month pay may be the subject of agreement.

Nothing herein shall prevent employers from giving the benefits provided in the Decree to their employees who are receiving more than One Thousand (P1,000) Pesos a month or benefits higher than those provided by the Decree.

Section 6. Special feature of benefit The benefits granted under this issuance shall not be credited as part of the regular wage of the employees for purposes of determining overtime and premium pay, fringe benefits, as well as premium contributions to the State Insurance Fund, social security, medicare and private welfare and retirement plans.

Section 7. Exemption of Distressed employers Distressed employers shall qualify for exemption from the requirement of the Decree upon prior authorization by the Secretary of Labor. Petitions for exemptions may be filed within the nearest regional office having jurisdiction over the employer not later than January 15, 1976. The regional offices shall transmit the petitions to the Secretary of Labor within 24 hours from receipt thereof.

Section 8. Report of compliance Every covered employer shall make a report of his compliance with the Decree to the nearest regional labor office not later than January 15 of each year.

The report shall conform substantially with the following form:

REPORT ON COMPLIANCE WITH PD NO. 851

1. Name of establishment
2. Address
3. Principal product or business
4. Total employment
5. Total number of workers benefited
6. Amount granted per employee
7. Total amount of benefits granted
8. Name, position and tel. no. of person giving information

Section 9. Adjudication of claims Non-payment of the thirteenth-month pay provided by the Decree and these rules shall be treated as money claims cases and shall be processed in accordance with the Rules Implementing the Labor Code of the Philippines and the Rules of the National Labor Relations Commission.

Section 10. Prohibition against reduction or elimination of benefits Nothing herein shall be construed to authorize any employer to eliminate, or diminish in any way, supplements, or other employee benefits or favorable practice being enjoyed by the employee at the time of promulgation of this issuance.

Section 11. Transitory Provision These rules and regulations shall take effect immediately and for purposes of the 13-month pay for 1975, the same shall apply only to those who are employees as of December 16, 1975.

Manila, Philippines, 22 December 1975.

SUPPLEMENTARY RULES AND REGULATIONS IMPLEMENTING P.D. NO. 851

To insure uniformity in the interpretation, application and enforcement of the provisions of P.D. No. 851 and its implementing regulations, the following clarifications are hereby made for the information and guidance of all concerned:

1. Contractors and Subcontractors, including Security and Watchman Agencies, are exempt for the year 1975 subject to the following conditions:

- (a) that the contracts of such enterprises were entered into before December 16, 1975;
- (b) that such enterprises have complied with all labor standards laws during the year;
- (c) that the contract cannot really accomodate 13-month pay or its equivalent; and
- (d) that the contract does not provide for cost escalation clause.

This exemption is without prejudice on the part of the workers to negotiate with their employers or to seek payment thereof by filing appropriate complaints with the Regional Offices of the Department of Labor.

2. Private school teachers, including faculty members of colleges and universities, are entitled to 1/12 of their annual basic pay regardless of the number of months they teach or are paid within a year.

3. New establishments operating for less than one year are not covered except subsidiaries or branches of foreign and domestic corporations.

4. Overtime pay, earnings and other remunerations which are not part of the basic salary shall not be included in the computation of the 13-month pay.

5. In view of the lack of sufficient time for the dissemination of the provisions of P.D. No. 851 and its Rules and the unavailability of adequate cash flow due to the long holiday season, compliance and reporting of compliance with this Decree are hereby extended up to March 31, 1976 except in private schools where compliance for 1975 may be made not later than 30 June 1976.

6. Nothing herein shall sanction the withdrawal or diminution of any compensation, benefits or any supplements being enjoyed by the employees on the effective date of this issuance.