

eCodal - BOOK THREE Conditions of Employment

TITLE I Working Conditions and Rest Periods

CHAPTER I Hours of Work

ARTICLE 82. *Coverage.* — The provisions 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, persons 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" refer to those whose primary duty consists of the management of the establishment in which they are employed or of a department or subdivision thereof, and to other officers or members of the managerial staff.

"Field personnel" shall refer 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.

ARTICLE 83. *Normal Hours of Work.* — The normal hours of work of any employee shall not exceed eight (8) hours a day.

Health personnel in cities and municipalities with a population of at least one million (1,000,000) or in hospitals and clinics with a bed capacity of at least one hundred (100) shall hold regular office hours for eight (8) hours a day, for five (5) days a week, exclusive of time for meals, except where the exigencies of the service require that such personnel work for six (6) days or forty-eight (48) hours, in which case, they shall be entitled to an additional compensation of at least thirty percent (30%) 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.

ARTICLE 84. *Hours Worked.* — Hours worked shall include (a) all time during which an employee is required to be on duty or to be at a prescribed workplace; and (b) all time during which an employee is suffered or permitted to work.

Rest periods of short duration during working hours shall be counted as hours worked.

ARTICLE 85. *Meal Periods.* — Subject to such regulations as the Secretary of Labor may prescribe, it shall be the duty of every employer to give his employees not less than sixty

(60) minutes time-off for their regular meals.

ARTICLE 86. *Night-Shift Differential*. — Every employee shall be paid a night shift differential of not less than ten percent (10%) of his regular wage for each hour of work performed between ten o'clock in the evening and six o'clock in the morning.

ARTICLE 87. *Overtime Work*. — Work may be performed beyond eight (8) 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 (25%) thereof. Work performed beyond eight hours on a holiday or rest day shall be paid an additional compensation equivalent to the rate of the first eight hours on a holiday or rest day plus at least thirty percent (30%) thereof.

ARTICLE 88. *Undertime Not Offset by Overtime*. — Undertime work on any particular day shall not be offset by overtime work on any other day. Permission given to the employee to go on leave on some other day of the week shall not exempt the employer from paying the additional compensation required in this Chapter.

ARTICLE 89. *Emergency Overtime Work*. — Any employee may be required by the employer to perform overtime work in any of the following cases:

- (a) When the country is at war or when any other national or local emergency has been declared by the National Assembly or the Chief Executive;
- (b) When it is necessary to prevent loss of life or property or in case of imminent danger to public safety due to an actual or impending emergency in the locality caused by serious accidents, fire, flood, typhoon, earthquake, epidemic, or other disaster or calamity;
- (c) When there is urgent work to be performed on machines, installations, or equipment, in order to avoid serious loss or damage to the employer or some other cause of similar nature;
- (d) When the work is necessary to prevent loss or damage to perishable goods; and
- (e) Where the completion or continuation of the work started before the eighth hour is necessary to prevent serious obstruction or prejudice to the business or operations of the employer.

Any employee required to render overtime work under this Article shall be paid the additional compensation required in this Chapter.

ARTICLE 90. *Computation of Additional Compensation*. — For purposes of computing overtime and other additional remuneration as required by this Chapter, the "regular wage" of an employee shall include the cash wage only, without deduction on account of facilities provided by the employer.

CHAPTER II Weekly Rest Periods

ARTICLE 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 (24) consecutive hours after every six (6) consecutive normal work days.

(b) The employer shall determine and schedule the weekly rest day of his employees subject to collective bargaining agreement and to such rules and regulations as the Secretary of Labor and Employment 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.

ARTICLE 92. *When Employer May Require Work on a Rest Day.* — The employer may require his employees to work on any day:

(a) In case of actual or impending emergencies caused by serious accident, fire, flood, typhoon, earthquake, epidemic or other disaster or calamity to prevent loss of life and property, or imminent danger to public safety;

(b) In cases of urgent work to be performed on the machinery, equipment, or installation, to avoid serious loss which the employer would otherwise suffer;

(c) In the event of abnormal pressure of work due to special circumstances, where the employer cannot ordinarily be expected to resort to other measures;

(d) To prevent loss or damage to perishable goods;

(e) 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

(f) Under other circumstances analogous or similar to the foregoing as determined by the Secretary of Labor and Employment.

ARTICLE 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 (30%) 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 workdays and no regular rest days can be scheduled, he shall be paid an additional compensation of at least thirty percent (30%) of his regular wage for work performed on Sundays and holidays.

(c) Work performed on any special holiday shall be paid an additional compensation of at least thirty percent (30%) 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 (50%) 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.

CHAPTER III Holidays, Service Incentive Leaves, and Service Charges

ARTICLE 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 (10) 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; and

(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 thirtieth of December and the day designated by law for holding a general election.

ARTICLE 95. *Right to Service Incentive Leave.* — (a) Every employee who has rendered at least one year of service shall be entitled to a yearly service incentive leave of five days with pay.

(b) 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 this benefit by the Secretary of Labor and Employment after considering the viability or financial condition of such establishment.

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

ARTICLE 96. *Service Charges.* — All service charges collected by hotels, restaurants and similar establishments shall be distributed at the rate of eighty-five percent (85%) for all covered employees and fifteen percent (15%) 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 considered integrated in their wages.

TITLE II Wages

CHAPTER I Preliminary Matters

ARTICLE 97. *Definitions.* — As used in this Title:

(a) "*Person*" means an individual, partnership, association, corporation, business trust, legal representatives, or any organized group of persons.

(b) "*Employer*" includes any person acting directly or indirectly in the interest of an employer in relation to an employee and shall include the government and all its branches, subdivisions and instrumentalities, all government-owned or controlled corporations and institutions, as well as non-profit private institutions, or organizations.

(c) "*Employee*" includes any individual employed by an employer.

(d) "*Agriculture*" includes farming in all its branches and, among other things, includes cultivation and tillage of soil, dairying, the production, cultivation, growing and harvesting of any agricultural and horticultural commodities, the raising of livestock or poultry, and any practices performed by a farmer on a farm as an incident to or in conjunction with such farming operations, but does not include the manufacturing or processing of sugar, coconuts, abaca, tobacco, pineapples or other farm products.

(e) "*Employ*" includes to suffer or permit to work.

(f) "*Wage*" paid to any employee shall mean the remuneration or earnings, however designated, capable of being expressed in terms of money, whether fixed or ascertained on a time, task, piece, or commission basis, or other method of calculating the same, which is payable by an employer to an employee under a written or unwritten contract of employment for work done or to be done, or for services rendered or to be rendered and includes the fair and reasonable value, as determined by the Secretary of Labor and Employment, of board, lodging, or other facilities customarily furnished by the employer to the employee. "Fair and reasonable value" shall not include any profit to the employer, or to any person affiliated with the employer.

ARTICLE 98. *Application of Title*. — This Title shall not apply to farm tenancy or leasehold, domestic service and persons working in their respective homes in needle work or in any cottage industry duly registered in accordance with law.

CHAPTER II Minimum Wage Rates

ARTICLE 99. *Regional Minimum Wages*. — The minimum wage rates for agricultural and non-agricultural employees and workers in each and every region of the country shall be those prescribed by the Regional Tripartite Wages and Productivity Boards.

ARTICLE 100. *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 promulgation of this Code.

ARTICLE 101. *Payment by Results*. — (a) The Secretary of Labor and Employment shall regulate the payment of wages by results, including *pakyao*, piecework, and other non-time work, in order to ensure the payment of fair and reasonable wage rates, preferably through time and motion studies or in consultation with representatives of workers' and employers' organizations.

CHAPTER III Payment of Wages

ARTICLE 102. *Forms of Payment.* — No employer shall pay the wages of an employee by means of promissory notes, vouchers, coupons, tokens, tickets, chits, or any object other than legal tender, even when expressly requested by the employee.

Payment of wages by check or money order shall be allowed when such manner of payment is customary on the date of effectivity of this Code, or is necessary because of special circumstances as specified in appropriate regulations to be issued by the Secretary of Labor and Employment or as stipulated in a collective bargaining agreement.

ARTICLE 103. *Time of Payment.* — Wages shall be paid at least once every two (2) weeks or twice a month at intervals not exceeding sixteen (16) days. If on account of *force majeure* or circumstances beyond the employer's control, payment of wages on or within the time herein provided cannot be made, the employer shall pay the wages immediately after such *force majeure* or circumstances have ceased. No employer shall make payment with less frequency than once a month.

The payment of wages of employees engaged to perform a task which cannot be completed in two (2) weeks shall be subject to the following conditions, in the absence of a collective bargaining agreement or arbitration award:

1. That payments are made at intervals not exceeding sixteen (16) days, in proportion to the amount of work completed;
2. That final settlement is made upon completion of the work.

ARTICLE 104. *Place of Payment.* — Payment of wages shall be made at or near the place of undertaking, except as otherwise provided by such regulations as the Secretary of Labor and Employment may prescribe under conditions to ensure greater protection of wages.

ARTICLE 105. *Direct Payment of Wages.* — Wages shall be paid directly to the workers to whom they are due, except:

(a) In cases of *force majeure* rendering such payment impossible or under other special circumstances to be determined by the Secretary of Labor and Employment in appropriate regulations, in which case, the worker may be paid through another person under written authority given by the worker for the purpose; or

(b) Where the worker has died, in which case, the employer may pay the wages of the deceased worker to the heirs of the latter without the necessity of intestate proceedings. The claimants, if they are all of age, shall execute an affidavit attesting to their relationship to the deceased and the fact that they are his heirs, to the exclusion of all other persons. If any of the heirs is a minor, the affidavit shall be executed on his behalf by his natural guardian or next-of-kin. The affidavit shall be presented to the employer who shall make payment through the Secretary of Labor and Employment or his representative. The

representative of the Secretary of Labor and Employment shall act as referee in dividing the amount paid among the heirs.

The payment of wages under this Article shall absolve the employer of any further liability with respect to the amount paid.

ARTICLE 106. *Contractor or Subcontractor*. — Whenever an employer enters into a contract with another person for the performance of the former's work, the employees of the contractor and of the latter's subcontractor, if any, shall be paid in accordance with the provisions of this Code.

In the event that the contractor or subcontractor fails to pay the wages of his employees in accordance with this Code, the employer shall be jointly and severally liable with his contractor or subcontractor to such employees to the extent of the work performed under the contract, in the same manner and extent that he is liable to employees directly employed by him.

The Secretary of Labor and Employment may, by appropriate regulations, restrict or prohibit the contracting-out of labor to protect the rights of workers established under this Code. In so prohibiting or restricting, he may make appropriate distinctions between labor-only contracting and job contracting as well as differentiations within these types of contracting and determine who among the parties involved shall be considered the employer for purposes of this Code, to prevent any violation or circumvention of any provision of this Code.

There is "labor-only" contracting where the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such person are performing activities which are directly related to the principal business of such employer. In such cases, the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him.

ARTICLE 107. *Indirect Employer*. — The provisions of the immediately preceding article shall likewise apply to any person, partnership, association or corporation which, not being an employer, contracts with an independent contractor for the performance of any work, task, job or project.

ARTICLE 108. *Posting of Bond*. — An employer or indirect employer may require the contractor or subcontractor to furnish a bond equal to the cost of labor under contract, on condition that the bond will answer for the wages due the employees should the contractor or subcontractor, as the case may be, fail to pay the same.

ARTICLE 109. *Solidary Liability*. — The provisions of existing laws to the contrary notwithstanding, every employer or indirect employer shall be held responsible with his contractor or subcontractor for any violation of any provision of this Code. For purposes of

determining the extent of their civil liability under this Chapter, they shall be considered as direct employers.

ARTICLE 110. *Worker Preference in Case of Bankruptcy.* — In the event of bankruptcy or liquidation of an employer's business, his workers shall enjoy first preference as regards their wages and other monetary claims, any provisions of law to the contrary notwithstanding. Such unpaid wages and monetary claims shall be paid in full before claims of the government and other creditors may be paid.

ARTICLE 111. *Attorney's Fees.* — (a) In cases of unlawful withholding of wages, the culpable party may be assessed attorney's fees equivalent to ten percent of the amount of wages recovered.

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

CHAPTER IV Prohibitions Regarding Wages

ARTICLE 112. *Non-Interference in Disposal of Wages.* — No employer shall limit or otherwise interfere with the freedom of any employee to dispose of his wages. He shall not in any manner force, compel, or oblige his employees to purchase merchandise, commodities or other property from any other person, or otherwise make use of any store or services of such employer or any other person.

ARTICLE 113. *Wage Deduction.* — No employer, in his own behalf or in behalf of any person, shall make any deduction from the wages of his employees, except:

(a) In cases where the worker is insured with his consent by the employer, and the deduction is to recompense the employer for the amount paid by him as premium on the insurance;

(b) For union dues, in cases where the right of the worker or his union to check-off has been recognized by the employer or authorized in writing by the individual worker concerned; and

(c) In cases where the employer is authorized by law or regulations issued by the Secretary of Labor and Employment.

ARTICLE 114. *Deposits for Loss or Damage.* — No employer shall require his worker to make deposits from which deductions shall be made for the reimbursement of loss of or damage to tools, materials, or equipment supplied by the employer, except when the employer is engaged in such trades, occupations or business where the practice of making deductions or requiring deposits is a recognized one, or is necessary or desirable as determined by the Secretary of Labor and Employment in appropriate rules and regulations.

ARTICLE 115. *Limitations.* — No deduction from the deposits of an employee for the actual amount of the loss or damage shall be made unless the employee has been heard thereon, and his responsibility has been clearly shown.

ARTICLE 116. *Withholding of Wages and Kickbacks Prohibited.* — It shall be unlawful for any person, directly or indirectly, to withhold any amount from the wages of a worker or induce him to give up any part of his wages by force, stealth, intimidation, threat or by any other means whatsoever without the worker's consent.

ARTICLE 117. *Deduction to Ensure Employment.* — It shall be unlawful to make any deduction from the wages of any employee for the benefit of the employer or his representative or intermediary as consideration of a promise of employment or retention in employment.

ARTICLE 118. *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.

ARTICLE 119. *False Reporting.* — It shall be unlawful for any person to make any statement, report, or record filed or kept pursuant to the provisions of this Code knowing such statement, report or record to be false in any material respect.

CHAPTER V Wage Studies, Wage Agreements, and Wage Determination

ARTICLE 120. *Creation of National Wages and Productivity Commission.* — There is hereby created a National Wages and Productivity Commission, hereinafter referred to as the Commission, which shall be attached to the Department of Labor and Employment (DOLE) for policy and program coordination.

ARTICLE 121. *Powers and Functions of the Commission.* — The Commission shall have the following powers and functions:

- (a) To act as the national consultative and advisory body to the President of the Philippines and Congress on matters relating to wages, incomes and productivity;
- (b) To formulate policies and guidelines on wages, incomes and productivity improvement at the enterprise, industry and national levels;
- (c) To prescribe rules and guidelines for the determination of appropriate minimum wage and productivity measures at the regional, provincial, or industry levels;
- (d) To review regional wage levels set by the Regional Tripartite Wages and Productivity Boards to determine if these are in accordance with prescribed guidelines and national development plans;

- (e) To undertake studies, researches and surveys necessary for the attainment of its functions and objectives, and to collect and compile data and periodically disseminate information on wages and productivity and other related information, including, but not limited to, employment, cost-of-living, labor costs, investments and returns;
- (f) To review plans and programs of the Regional Tripartite Wages and Productivity Boards to determine whether these are consistent with national development plans;
- (g) To exercise technical and administrative supervision over the Regional Tripartite Wages and Productivity Boards;
- (h) To call, from time to time, a national tripartite conference of representatives of government, workers and employers for the consideration of measures to promote wage rationalization and productivity; and
- (i) To exercise such powers and functions as may be necessary to implement this Act.

The Commission shall be composed of the Secretary of Labor and Employment as *ex-officio* chairman, the Director-General of the National Economic and Development Authority (NEDA) as *ex-officio* vice-chairman, and two (2) members each from workers and employers sectors who shall be appointed by the President of the Philippines upon recommendation of the Secretary of Labor and Employment to be made on the basis of the list of nominees submitted by the workers and employers sectors, respectively, and who shall serve for a term of five (5) years. The Executive Director of the Commission shall also be a member of the Commission.

The Commission shall be assisted by a Secretariat to be headed by an Executive Director and two (2) Deputy Directors, who shall be appointed by the President of the Philippines, upon the recommendation of the Secretary of Labor and Employment.

The Executive Director shall have the same rank, salary, benefits and other emoluments as that of a Department Assistant Secretary, while the Deputy Directors shall have the same rank, salary, benefits and other emoluments as that of a Bureau Director. The members of the Commission representing labor and management shall have the same rank, emoluments, allowances and other benefits as those prescribed by law for labor and management representatives in the Employees' Compensation Commission.

ARTICLE 122. *Creation of Regional Tripartite Wages and Productivity Boards.* — There is hereby created Regional Tripartite Wages and Productivity Boards, hereinafter referred to as Regional Boards, in all regions, including autonomous regions as may be established by law. The Commission shall determine the offices/headquarters of the respective Regional Boards.

The Regional Boards shall have the following powers and functions in their respective territorial jurisdictions:

- (a) To develop plans, programs and projects relative to wages, incomes and productivity improvement for their respective regions;
- (b) To determine and fix minimum wage rates applicable in their regions, provinces or industries therein and to issue the corresponding wage orders, subject to guidelines issued by the Commission;
- (c) To undertake studies, researches, and surveys necessary for the attainment of their functions, objectives and programs, and to collect and compile data on wages, incomes, productivity and other related information and periodically disseminate the same;
- (d) To coordinate with the other Regional Boards as may be necessary to attain the policy and intention of this Code;
- (e) To receive, process and act on applications for exemption from prescribed wage rates as may be provided by law or any Wage Order; and
- (f) To exercise such other powers and functions as may be necessary to carry out their mandate under this Code.

Implementation of the plans, programs, and projects of the Regional Boards referred to in the second paragraph, letter (a) of this Article, shall be through the respective regional offices of the Department of Labor and Employment within their territorial jurisdiction; Provided, however, That the Regional Boards shall have technical supervision over the regional office of the Department of Labor and Employment with respect to the implementation of said plans, programs and projects.

Each Regional Board shall be composed of the Regional Director of the Department of Labor and Employment as chairman, the Regional Directors of the National Economic and Development Authority and the Department of Trade and Industry as vice-chairmen and two (2) members each from workers' and employers' sectors who shall be appointed by the President of the Philippines, upon the recommendation of the Secretary of Labor and Employment, to be made on the basis of the list of nominees submitted by the workers' and employers' sectors, respectively, and who shall serve for a term of five (5) years.

Each Regional Board to be headed by its chairman shall be assisted by a Secretariat.

ARTICLE 123. *Wage Order*. — Whenever conditions in the region so warrant, the Regional Board shall investigate and study all pertinent facts; and based on the standards and criteria herein prescribed, shall proceed to determine whether a Wage Order should be issued. Any such Wage Order shall take effect after fifteen (15) days from its complete publication in at least one (1) newspaper of general circulation in the region.

In the performance of its wage-determining functions, the Regional Board shall conduct public hearings/consultations, giving notices to employees' and employers' groups, provincial, city and municipal officials and other interested parties.

Any party aggrieved by the Wage Order issued by the Regional Board may appeal such order to the Commission within ten (10) calendar days from the publication of such order. It shall be mandatory for the Commission to decide such appeal within sixty (60) calendar days from the filing thereof.

The filing of the appeal does not stay the order unless the person appealing such order shall file with the Commission, an undertaking with a surety or sureties satisfactory to the Commission for the payment to the employees affected by the order of the corresponding increase, in the event such order is affirmed.

ARTICLE 124. *Standards/Criteria for Minimum Wage Fixing.* — The regional minimum wages to be established by the Regional Board shall be as nearly adequate as is economically feasible to maintain the minimum standards of living necessary for the health, efficiency and general well-being of the employees within the framework of the national economic and social development program. In the determination of such regional minimum wages, the Regional Board shall, among other relevant factors, consider the following:

- (a) The demand for living wages;
- (b) Wage adjustment vis-à-vis the consumer price index;
- (c) The cost of living and changes or increases therein;
- (d) The needs of workers and their families;
- (e) The need to induce industries to invest in the countryside;
- (f) Improvements in standards of living;
- (g) The prevailing wage levels;
- (h) Fair return of the capital invested and capacity to pay of employers;
- (i) Effects on employment generation and family income; and
- (j) The equitable distribution of income and wealth along the imperatives of economic and social development.

The wages prescribed in accordance with the provisions of this Title shall be the standard prevailing minimum wages in every region. These wages shall include wages varying with industries, provinces or localities if in the judgment of the Regional Board, conditions make such local differentiation proper and necessary to effectuate the purpose of this Title.

Any person, company, corporation, partnership or any other entity engaged in business shall file and register annually with the appropriate Regional Board, Commission and the National Statistics Office, an itemized listing of their labor component, specifying the

names of their workers and employees below the managerial level, including learners, apprentices and disabled/handicapped workers who were hired under the terms prescribed in the employment contracts, and their corresponding salaries and wages.

Where the application of any prescribed wage increase by virtue of a law or wage order issued by any Regional Board results in distortions of the wage structure within an establishment, the employer and the union shall negotiate to correct the distortions. Any dispute arising from wage distortions shall be resolved through the grievance procedure under their collective bargaining agreement and, if it remains unresolved, through voluntary arbitration. Unless otherwise agreed by the parties in writing, such dispute shall be decided by the voluntary arbitrators within ten (10) calendar days from the time said dispute was referred to voluntary arbitration.

In cases where there are no collective agreements or recognized labor unions, the employers and workers shall endeavor to correct such distortions. Any dispute arising therefrom shall be settled through the National Conciliation and Mediation Board and, if it remains unresolved after ten (10) calendar days of conciliation, shall be referred to the appropriate branch of the National Labor Relations Commission (NLRC). It shall be mandatory for the NLRC to conduct continuous hearings and decide the dispute within twenty (20) calendar days from the time said dispute is submitted for compulsory arbitration.

The pendency of a dispute arising from a wage distortion shall not in any way delay the applicability of any increase in prescribed wage rates pursuant to the provisions of law or wage order.

As used herein, a wage distortion shall mean a situation where an increase in prescribed wage rates results in the elimination or severe contraction of intentional quantitative differences in wage or salary rates between and among employee groups in an establishment as to effectively obliterate the distinctions embodied in such wage structure based on skills, length of service, or other logical bases of differentiation.

All workers paid by result, including those who are paid on piecework, *takay*, *pakyaw* or task basis, shall receive not less than the prescribed wage rates per eight (8) hours of work a day, or a proportion thereof for working less than eight (8) hours.

All recognized learnership and apprenticeship agreements shall be considered automatically modified insofar as their wage clauses are concerned to reflect the prescribed wage rates.

ARTICLE 125. *Freedom to Bargain*. — No wage order shall be construed to prevent workers in particular firms or enterprises or industries from bargaining for higher wages with their respective employers.

ARTICLE 126. *Prohibition against Injunction*. — No preliminary or permanent injunction or temporary restraining order may be issued by any court, tribunal or other entity against

any proceedings before the Commission or the Regional Boards.

ARTICLE 127. *Non-Diminution of Benefits*. — No wage order issued by any regional board shall provide for wage rates lower than the statutory minimum wage rates prescribed by Congress.

CHAPTER VI Administration and Enforcement

ARTICLE 128. *Visitorial and Enforcement Power*. — (a) The Secretary of Labor and Employment or his duly authorized representatives, 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 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.

(b) Notwithstanding the provisions of Articles 129 and 217 of this Code to the contrary, and in cases where the relationship of employer-employee still exists, the Secretary of Labor and Employment or his duly authorized representatives shall have the power to issue compliance orders to give effect to the labor standards provisions of this Code and other labor legislation based on the findings of labor employment and enforcement officers or industrial safety engineers made in the course of inspection. The Secretary or his duly authorized representatives shall issue writs of execution to the appropriate authority for the enforcement of their orders, except in cases where the employer contests the findings of the labor employment and enforcement officer and raises issues supported by documentary proofs which were not considered in the course of inspection.

An order issued by the duly authorized representative of the Secretary of Labor and Employment under this Article may be appealed to the latter. In case said order involves a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Secretary of Labor and Employment in the amount equivalent to the monetary award in the order appealed from.

(c) The Secretary of Labor and Employment 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.

(d) It shall be unlawful for any person or entity to obstruct, impede, delay or otherwise render ineffective the orders of the Secretary of Labor and Employment or his duly

authorized representatives 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.

(e) 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.

(f) The Secretary of Labor and Employment 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.

ARTICLE 129. *Recovery of Wages, Simple Money Claims and Other Benefits.* — Upon complaint of any interested party, the Regional Director of the Department of Labor and Employment or any of the duly authorized hearing officers of the Department is empowered, through summary proceeding and after due notice, to hear and decide any matter involving the recovery of wages and other monetary claims and benefits, including legal interest, owing to an employee or person employed in domestic or household service or househelper under this Code, arising from employer-employee relations: *Provided*, That such complaint does not include a claim for reinstatement: *Provided, further*, That the aggregate money claims of each employee or househelper do not exceed five thousand pesos (P5,000.00). The Regional Director or hearing officer shall decide or resolve the complaint within thirty (30) calendar days from the date of the filing of the same. Any sum thus recovered on behalf of any employee or househelper pursuant to this Article shall be held in a special deposit account, and shall be paid, on order of the Secretary of Labor and Employment or the Regional Director directly to the employee or househelper concerned. Any such sum not paid to the employee or househelper, because he cannot be located after diligent and reasonable effort to locate him within a period of three (3) years, shall be held as a special fund of the Department of Labor and Employment to be used exclusively for the amelioration and benefit of workers.

Any decision or resolution of the Regional Director or hearing officer pursuant to this provision may be appealed on the same grounds provided in Article 223 of this Code, within five (5) calendar days from receipt of a copy of said decision or resolution, to the National Labor Relations Commission which shall resolve the appeal within ten (10) calendar days from the submission of the last pleading required or allowed under its rules.

The Secretary of Labor and Employment or his duly authorized representative may supervise the payment of unpaid wages and other monetary claims and benefits, including legal interest, found owing to any employee or house helper under this Code.

TITLE III Working Conditions for Special Groups of Employees

CHAPTER I Employment of Women

ARTICLE 130. [132] *Facilities for Women.* — The Secretary of Labor and Employment shall establish standards that will ensure the safety and health of women employees. In appropriate cases, he shall, by regulations, require any employer to:

- (a) Provide seats proper for women and permit them to use such seats when they are free from work and during working hours, provided they can perform their duties in this position without detriment to efficiency;
- (b) To establish separate toilet rooms and lavatories for men and women and provide at least a dressing room for women;
- (c) To establish a nursery in a workplace for the benefit of the women employees therein; and
- (d) To determine appropriate minimum age and other standards for retirement or termination in special occupations such as those of flight attendants and the like.

ARTICLE 131. [133] *Maternity Leave Benefits.* — (a) Every employer shall grant to any pregnant woman employee who has rendered an aggregate service of at least six (6) months for the last twelve (12) months, maternity leave of at least two (2) weeks prior to the expected date of delivery and another four (4) weeks after normal delivery or abortion with full pay based on her regular or average weekly wages. The employer may require from any woman employee applying for maternity leave the production of a medical certificate stating that delivery will probably take place within two weeks.

(b) The maternity leave shall be extended without pay on account of illness medically certified to arise out of the pregnancy, delivery, abortion or miscarriage, which renders the woman unfit for work, unless she has earned unused leave credits from which such extended leave may be charged.

(c) The maternity leave provided in this Article shall be paid by the employer only for the first four (4) deliveries by a woman employee after the effectivity of this Code.

ARTICLE 132. [134] *Family Planning Services; Incentives for Family Planning.* — (a) Establishments which are required by law to maintain a clinic or infirmary shall provide free family planning services to their employees which shall include, but not be limited to, the application or use of contraceptive pills and intrauterine devices.

(b) In coordination with other agencies of the government engaged in the promotion of family planning, the Department of Labor and Employment shall develop and prescribe incentive bonus schemes to encourage family planning among female workers in any establishment or enterprise.

ARTICLE 133. [135] *Discrimination Prohibited.* — It shall be unlawful for any employer to discriminate against any woman employee with respect to terms and conditions of

employment solely on account of her sex.

The following are acts of discrimination:

- (a) Payment of a lesser compensation, including wage, salary or other form of remuneration and fringe benefits, to a female employee as against a male employee, for work of equal value; and
- (b) Favoring a male employee over a female employee with respect to promotion, training opportunities, study and scholarship grants solely on account of their sexes.

Criminal liability for the willful commission of any unlawful act as provided in this article or any violation of the rules and regulations issued pursuant to Section 2 hereof shall be penalized as provided in Articles 288 and 289 of this Code: *Provided*, That the institution of any criminal action under this provision shall not bar the aggrieved employee from filing an entirely separate and distinct action for money claims, which may include claims for damages and other affirmative reliefs. The actions hereby authorized shall proceed independently of each other.

ARTICLE 134. [136] *Stipulation against Marriage*. — It shall be unlawful for an employer to require as a condition of employment or continuation of employment that a woman employee shall not get married, or to stipulate expressly or tacitly that upon getting married, a woman employee shall be deemed resigned or separated, or to actually dismiss, discharge, discriminate or otherwise prejudice a woman employee merely by reason of her marriage.

ARTICLE 135. [137] *Prohibited Acts*. — It shall be unlawful for any employer:

- (1) To deny any woman employee the benefits provided for in this Chapter or to discharge any woman employed by him for the purpose of preventing her from enjoying any of the benefits provided under this Code;
- (2) To discharge such woman on account of her pregnancy, or while on leave or in confinement due to her pregnancy;
- (3) To discharge or refuse the admission of such woman upon returning to her work for fear that she may again be pregnant.

ARTICLE 136. [138] *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 establishments under the effective control or supervision of the employer for a substantial period of time as determined by the Secretary of Labor and Employment, shall be considered as an employee of such establishment for purposes of labor and social legislation.

CHAPTER II Employment of Minors

ARTICLE 137. [139] *Minimum Employable Age*. — (a) No child below fifteen (15) 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) Any person between fifteen (15) and eighteen (18) years of age may be employed for such number of hours and such periods of the day as determined by the Secretary of Labor and Employment in appropriate regulations.

(c) The foregoing provisions shall in no case allow the employment of a person below eighteen (18) years of age in an undertaking which is hazardous or deleterious in nature as determined by the Secretary of Labor and Employment.

ARTICLE 138. [140] *Prohibition against Child Discrimination*. — No employer shall discriminate against any person in respect to terms and conditions of employment on account of his age.

CHAPTER III Employment of Househelpers

ARTICLE 139. [141] *Coverage*. — This Chapter shall apply to all persons rendering services in households for compensation.

"Domestic or household service" shall mean service in the employer's home which is usually necessary or desirable for the maintenance and enjoyment thereof and includes ministering to the personal comfort and convenience of the members of the employer's household, including services of family drivers.

ARTICLE 140. [142] *Contract of Domestic Service*. — The original contract of domestic service shall not last for more than two (2) years but it may be renewed for such periods as may be agreed upon by the parties.

ARTICLE 141. [143] *Minimum Wage*. — (a) Househelpers shall be paid the following minimum wage rates:

(1) Eight hundred pesos (P800.00) a month for househelpers in Manila, Quezon, Pasay, and Caloocan cities and municipalities of Makati, San Juan, Mandaluyong, Muntinlupa, Navotas, Malabon, Parañaque, Las Piñas, Pasig, Marikina, Valenzuela, Taguig and Pateros in Metro Manila and in highly urbanized cities;

(2) Six hundred fifty pesos (P650.00) a month for those in other chartered cities and first-class municipalities; and

(3) Five hundred fifty pesos (P550.00) a month for those in other municipalities.

Provided, That the employers shall review the employment contracts of their househelpers every three (3) years with the end in view of improving the terms and conditions thereof.

Provided, further, That those househelpers who are receiving at least One Thousand pesos (P1,000.00) shall be covered by the Social Security System (SSS) and be entitled to all the

benefits provided thereunder.

ARTICLE 142. [144] *Minimum Cash Wage*. — The minimum wage rates prescribed under this Chapter shall be the basic cash wages which shall be paid to the househelpers in addition to lodging, food and medical attendance.

ARTICLE 143. [145] *Assignment to Non-Household Work*. — No househelper shall be assigned to work in a commercial, industrial or agricultural enterprise at a wage or salary rate lower than that provided for agricultural or non-agricultural workers as prescribed herein.

ARTICLE 144. [146] *Opportunity for Education*. — If the househelper is under the age of eighteen (18) years, the employer shall give him or her an opportunity for at least elementary education. The cost of education shall be part of the househelper's compensation, unless there is a stipulation to the contrary.

ARTICLE 145. [147] *Treatment of Househelpers*. — The employer shall treat the househelper in a just and humane manner. In no case shall physical violence be used upon the househelper.

ARTICLE 146. [148] *Board, Lodging, and Medical Attendance*. — The employer shall furnish the househelper, free of charge, suitable and sanitary living quarters as well as adequate food and medical attendance.

ARTICLE 147. [149] *Indemnity for Unjust Termination of Services*. — If the period of household service is fixed, neither the employer nor the househelper may terminate the contract before the expiration of the term, except for a just cause. If the househelper is unjustly dismissed, he or she shall be paid the compensation already earned plus that for fifteen (15) days by way of indemnity.

If the househelper leaves without justifiable reason, he or she shall forfeit any unpaid salary due him or her not exceeding fifteen (15) days.

ARTICLE 148. [150] *Service of Termination Notice*. — If the duration of the household service is not determined either in stipulation or by the nature of the service, the employer or the househelper may give notice to put an end to the relationship five (5) days before the intended termination of the service.

ARTICLE 149. [151] *Employment Certification*. — Upon the severance of the household service relation, the employer shall give the househelper a written statement of the nature and duration of the service and his or her efficiency and conduct as househelper.

ARTICLE 150. [152] *Employment Record*. — The employer may keep such records as he may deem necessary to reflect the actual terms and conditions of employment of his househelper, which the latter shall authenticate by signature or thumbmark upon request of the employer.

CHAPTER IV Employment of Homeworkers

ARTICLE 151. [153] *Regulation of Industrial Homeworkers.* — The employment of industrial homeworkers and field personnel shall be regulated by the government through the appropriate regulations issued by the Secretary of Labor and Employment to ensure the general welfare and protection of homeworkers and field personnel and the industries employing them.

ARTICLE 152. [154] *Regulations of Secretary of Labor.* — The regulations or orders to be issued pursuant to this Chapter shall be designed to assure the minimum terms and conditions of employment applicable to the industrial homeworkers or field personnel involved.

ARTICLE 153. [155] *Distribution of Homework.* — For purposes of this Chapter, the "employer" of homeworkers includes any person, natural or artificial who, for his account or benefit, or on behalf of any person residing outside the country, directly or indirectly, or through an employee, agent contractor, sub-contractor or any other person:

(1) Delivers, or causes to be delivered, any goods, articles or materials to be processed or fabricated in or about a home and thereafter to be returned or to be disposed of or distributed in accordance with his directions; or

(2) Sells any goods, articles or materials to be processed or fabricated in or about a home and then rebuys them after such processing or fabrication, either by himself or through some other person.

CHAPTER V Employment of Night Workers

ARTICLE 154. *Coverage.* — This chapter shall apply to all persons, who shall be employed or permitted or suffered to work at night, except those employed in agriculture, stock raising, fishing, maritime transport and inland navigation, during a period of not less than seven (7) consecutive hours, including the interval from midnight to five o'clock in the morning, to be determined by the Secretary of Labor and Employment, after consulting the workers' representatives/labor organizations and employers.

"Night worker" means any employed person whose work requires performance of a substantial number of hours of night work which exceeds a specified limit. This limit shall be fixed by the Secretary of Labor after consulting the workers' representatives/labor organizations and employers.

ARTICLE 155. *Health Assessment.* — At their request, workers shall have the right to undergo a health assessment without charge and to receive advice on how to reduce or avoid health problems associated with their work:

(a) Before taking up an assignment as a night worker;

(b) At regular intervals during such an assignment; and

(c) If they experience health problems during such an assignment which are not caused by factors other than the performance of night work.

With the exception of a finding of unfitness for night work, the findings of such assessments shall not be transmitted to others without the workers' consent and shall not be used to their detriment.

ARTICLE 156. *Mandatory Facilities.* — Suitable first-aid facilities shall be made available for workers performing night work, including arrangements where such workers, where necessary, can be taken immediately to a place for appropriate treatment. The employers are likewise required to provide safe and healthful working conditions and adequate or reasonable facilities such as sleeping or resting quarters in the establishment and transportation from the work premises to the nearest point of their residence subject to exceptions and guidelines to be provided by the DOLE.

ARTICLE 157. *Transfer.* — Night workers who are certified as unfit for night work, due to health reasons, shall be transferred, whenever practicable, to a similar job for which they are fit to work.

If such transfer to a similar job is not practicable, these workers shall be granted the same benefits as other workers who are unable to work, or to secure employment during such period.

A night worker certified as temporarily unfit for night work shall be given the same protection against dismissal or notice of dismissal as other workers who are prevented from working for reasons of health.

ARTICLE 158. *Women Night Workers.* — Measures shall be taken to ensure that an alternative to night work is available to women workers who would otherwise be called upon to perform such work:

(a) Before and after childbirth, for a period of at least sixteen (16) weeks, which shall be divided between the time before and after childbirth;

(b) For additional periods, in respect of which a medical certificate is produced stating that said additional periods are necessary for the health of the mother or child:

(1) During pregnancy;

(2) During a specified time beyond the period, after childbirth is fixed pursuant to subparagraph (a) above, the length of which shall be determined by the DOLE after consulting the labor organizations and employers.

During the periods referred to in this article:

(i) A woman worker shall not be dismissed or given notice of dismissal, except for just or authorized causes provided for in this Code that are not connected with pregnancy,

childbirth and childcare responsibilities.

(ii) A woman worker shall not lose the benefits regarding her status, seniority, and access to promotion which may attach to her regular night work position.

Pregnant women and nursing mothers may be allowed to work at night only if a competent physician, other than the company physician, shall certify their fitness to render night work, and specify, in the case of pregnant employees, the period of the pregnancy that they can safely work.

The measures referred to in this article may include transfer to day work where this is possible, the provision of social security benefits or an extension of maternity leave.

The provisions of this article shall not have the effect of reducing the protection and benefits connected with maternity leave under existing laws.

ARTICLE 159. *Compensation*. — The compensation for night workers in the form of working time, pay or similar benefits shall recognize the exceptional nature of night work.

ARTICLE 160. *Social Services*. — Appropriate social services shall be provided for night workers and, where necessary, for workers performing night work.

ARTICLE 161. *Night Work Schedules*. — Before introducing work schedules requiring the services of night workers, the employer shall consult the workers' representatives/labor organizations concerned on the details of such schedules and the forms of organization of night work that are best adapted to the establishment and its personnel, as well as on the occupational health measures and social services which are required. In establishments employing night workers, consultation shall take place regularly.