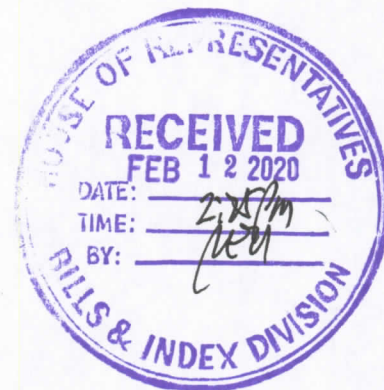


Republic of the Philippines
House of Representatives
Quezon City, Metro Manila
Eighteenth Congress
First Regular Session
HOUSE BILL NO. 6272



Introduced by:

ACT-CIS Party Representatives: Eric Yap, Jocelyn P. Tulfo, Nina Taduran

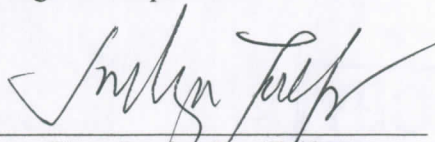
EXPLANATORY NOTE

The Thirteenth Month Pay has been in existence since the issuance of P.D. 851 on the 16th of December 1975 by the late President Marcos. Since that time, many improvements and developments in the field of labor law and labor relations have been made. However, even though the grant of thirteenth month pay to workers is an often litigated matter, the codification of the modifications done to P.D. 851 through various issuances has been left unheeded.

This situation leads to various cases wherein employers and employees are both unaware of the full extent of the rights afforded to them and whether or not they are entitled to the benefit of a thirteenth month pay. Exceedingly dire is the current trend that is present in labor relations wherein employers have begun to neglect their duty to give their covered employees their thirteenth month pay as the struggle to pursue money claims before the proper venue is too much of a risk for the employee to take. In fact, it has been observed that most money claims arising from employer-employee relations have, to some extent, the issue of whether or not the employee is entitled to their thirteenth month pay. In situations wherein the thirteenth month pay is indeed found to be proper, none or very minimal penalty is given to the erring employer giving them no deterrent to correct their wrongdoings in the future. What it leads to now is the strained relation between the employer and the employee and the eventual dismissal of the claiming party due to some manufactured incompatibility with their work environment.

This factual backdrop being properly set-forth, it is now timely and proper for congress to act on its duty to protect labor as dictated by the state policies in Article III of the Philippine Constitution. This Act effectively codifies the necessary rules on the payment of thirteenth month pay and provides for a deterring effect to those employers who wilfully or negligently fail in their obligation to pay the mandatory benefit restated in this law. In that manner, the knowledge of who is covered under the obligation to pay the benefit of the thirteenth month pay is made clear and the penalties for the failure to abide by the said obligations is made more powerful to avoid the abuses now present.

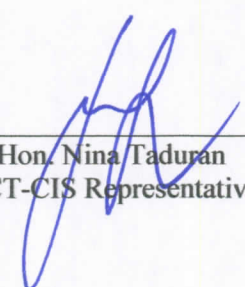
In order to protect the welfare of laborers, and in order to properly inform the employers of their obligations under law, this act is now urged to be passed.



Hon. Jocelyn Pua Tulfo
ACT-CIS Representative



Hon. Eric Go Yap
ACT-CIS Representative



Hon. Nina Taduran
ACT-CIS Representative

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HOUSE BILL NO. 6272

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**AN ACT SUPERSEDING PRESIDENTIAL DECREE NO. 851 AND ITS IMPLEMENTING RULES AND
REGULATIONS INSTITUTING THE NEW THIRTEENTH MONTH PAY LAW AND REQUIRING A
DOLE APPROVED COMPLIANCE REPORT PRIOR TO THE ISSUANCE OF A LOCAL GOVERNMENT
BUSINESS PERMIT**

Be it enacted by the Senate and the House of Representatives of the Philippines in Congress assembled:

**Article I
Title, Policy, Principles, and Definition of Terms**

Section 1. Title –

This Act shall be known as the **“New Thirteenth Month Pay Law”**

Section 2. Declaration of State Policy and Principles –

It is hereby recognized and declared that it is the policy of the State to recognize labor as a primary social economic force. In so recognizing, it shall protect the rights of the workers and promote their welfare.

It is further recognized and declared that the State shall afford full protection to labor, and that laborers shall be entitled to humane conditions of work, and a living wage.

Finally, it is also recognized and declared that the State has the power to regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns on investments, and to expansion and growth.

Section 3. Definition of Terms –

- (a) “Thirteenth Month Pay” shall be recognized as the amount not less than 1/12 of the basic salary earned by an employee within a calendar year. It shall be understood to be completely separate or distinct to any year-end bonus or other monetary or non-monetary year end additional remuneration given to employees.
- (b) “Basic Salary” shall include all remunerations or earnings paid by an employer to an employee for services rendered but does not include allowances and monetary benefits which are not considered or integrated as part of the regular or basic salary, such as the cash equivalent of unused vacation and sick leave credits, overtime, premium, night differential and holiday pay, and include cost-of-living allowances. However, these salary-related benefits should be included as part of the basic salary in computation of the

13th pay if by individual or collective bargaining agreement, company practice or policy, the same are treated as part of the basic salary of employees.

- (c) "Rank-and-File Employees" shall include all employees not considered managerial employees.
- (d) "Managerial Employees" shall mean all employees who are vested with powers or prerogatives to lay down and execute management policies and/or the power or prerogative to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees, or to effectively recommend such managerial actions.
- (e) "Workers paid on piece-rate basis" shall refer to those who are paid a standard amount for every piece of unit or work produce that is more or less regularly replicated, without regard to the time spent in producing the same.
- (f) "Domestic worker" or "Kasambahay" refers to any person engaged in domestic work within an employment relationship such as, but not limited to, the following: general househelp, nursemaid or "yaya", cook, gardener, or laundry person, but shall exclude any person who performs domestic work only occasionally or sporadically and not on an occupational basis.

The term shall not include children who are under foster family arrangement, and are provided access to education and given an allowance incidental to education, i.e. "baon", transportation, school projects and school activities.

Article II

Entitlement to the Benefit of Thirteenth Month Pay

Section 4. Payment of Thirteenth Month Pay –

It is hereby required that all employers shall pay to all their rank-and-file employees their Thirteenth Month Pay not later than December 24 of every year.

All employers shall also give the benefit of a Thirteenth Month Pay to Domestic Workers or "Kasambahay" they have under their employ not later than December 24 of every year.

Section 5. Coverage of the Thirteenth Month Pay –

All rank-and-file employees or domestic workers who have worked for at least one month during the calendar year are entitled to receive their thirteenth month pay regardless of the nature of their employment and irrespective of the methods by which their wages are paid.

All rank-and-file employees and domestic workers who have retired or whose employment was separated within the calendar year but have worked at least one month within the same calendar year are entitled to the benefit of thirteenth month pay in proportion to the length of time he or she has worked during the year reckoned from the time he or she has started work during the calendar year or the time the last thirteenth month pay was given, up to the time of his or her resignation or separation or termination from the service.

Section 6. Treatment of Thirteenth Month Pay –

The amount received as Thirteenth Month Pay 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 social security system, health insurance contribution, or any private welfare and retirement plans.

Article III

Exemptions to the Obligation to pay 13th Month Pay

Section 7. Excluded Entities –

The following entities are exempted from the obligation to give the Thirteenth Month Pay:

- (a) 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.
- (b) Employers who are already paying their employees Thirteenth month pay or more in a calendar year or its equivalent at the time of the passage of this law.
- (c) Employers of those who are paid on purely commission, boundary, or task basis, and those who are paid a fixed amount for performing specific work, irrespective of the time consumed in the performance thereof, except those workers who are paid on piece-rate basis, in which case the employer shall grant such workers the required Thirteenth Month Pay.

Section 8. Exclusion for Distressed Employers –

Financially Distressed employers shall qualify for exemption from the requirement of paying the benefit of Thirteenth month pay upon application and authorization from the Secretary of Labor. Petitions for exemptions for payment of the thirteenth month pay for the calendar year may be filed with the nearest DOLE regional office having jurisdiction over the employer not later than December 15 of the year the employer seeks exemption for. The DOLE regional office shall forward the petition for exemption not longer than 24 hours from the date of receipt thereof or no longer than three working days if sufficient justification is given.

The DOLE Secretary shall immediately consider and decide on the petition in no more than three working days or within five working days if sufficient justification is given.

The petition to exclude shall not be accepted by the DOLE Regional Office if the financial statements sufficiently showing incapability to pay the benefit of Thirteenth Month Pay is not attached thereto.

Article IV Reportorial Requirement

Section 9. Mandatory Reportorial Requirement –

All employers covered under the obligation to give the benefit of Thirteenth Month Pay shall submit on or before the 15th day of January of the year following the due date of giving the thirteenth month pay a “Compliance Report” to the DOLE regional office having jurisdiction over their area containing the following information:

- (a) Registered Name of the Establishment
- (b) Principal Place of Business
- (c) Primary Business Purpose or Type of Business Engaged In
- (d) Total Number of Employees
- (e) Total Number of Employees Receiving Benefit of 13th Month Pay
- (f) Amount Granted per Employee Countersigned by each said Employee
- (g) Total Peso Amount Given as Thirteenth Month Pay
- (h) Name, Position, and Contact Number of person giving the information

The Compliance Report shall be approved or denied by the DOLE Regional Office having jurisdiction over the submitting business entity within three business days or five business days if sufficient reason has been given.

Denials of compliance report shall state the reason therefore. The submitting business entity shall be given five days to conform to the stated reason. Failure to comply within five days shall be sufficient cause for the filing of a claim for non-payment of the thirteenth month pay.

Section 10. Failure to Submit Reportorial Requirement –

Employers failing to submit their Compliance Report or those who's Compliance Reports have been denied by the DOLE Regional Office shall be barred from filing their application for a local business permit with any Local Government Unit until an approved Compliance Report has been presented stating that the previous unpaid obligations of the employer has been paid with all the penalties applicable based on the ruling of the NLRC whenever applicable.

Article V Penalties

Section 11. Penalty for Non-Payment of Thirteenth Month Pay –

The non-payment of the benefit of the thirteenth month pay, or the failure to acquire an approved compliance report from the DOLE Regional office shall give rise to a cause of action for money claims to be proceeded against in accordance with the Implementing Rules and Regulations of the Labor Code of the Philippines and the relevant issuances of the National Labor Relations Commission.

In cases where the non-payment of the benefit of the thirteenth month pay is proven, and the decision declaring the finding of non-payment of the benefit of Thirteenth Month Pay has reached finality, said decision shall give rise to a cause of action belonging to the unpaid employee or employees to cancel the local business permit of an employer with the Local Government Unit issuing the same.

In cases where the non-paying entity is a corporation, the final decision finding the non-payment of thirteenth month pay shall give rise to a cause of action for the cancellation of the SEC registration of the corporation.

Section 12. Criminal Aspect –

A final judgment of non-payment of the benefit of Thirteenth Month Pay shall give rise to a criminal action independent from any other cause of action arising from the judgment. The criminal aspect may be instituted separately and independently from all other cause of action arising from this law.

The employer or, in cases where the employer is a corporation, the beneficial owner of the employing corporation, shall suffer the penalty of six months imprisonment to one year imprisonment, to be determined by the judge, without the benefit of parol.

Article VI Final Provisions

Section 13. Implementing Rules and Regulations –

The DOLE shall formulate the necessary rules and regulations within ninety days from the approval of this Act, for its effective implementation.

Section 14. Separability Clause –

If any provision of this Act is held invalid, the other provisions not affected shall remain in full force and effect.

Section 15. Repealing Clause –

All laws, decrees, or rules inconsistent with this Act are hereby repealed or modified accordingly.

Section 16. Effectivity –

This Act shall take effect fifteen days after the completion of its publication in the Official Gazette or in at least two newspapers of general circulation

Approved.