

THE MINIMUM WAGE LAW

SEC. 1. Short Title of Act.— The Minimum Wage Law.

SEC. 2. Definitions.— Persons, employers, employee, agriculture, industry, employ, wage, facilities, hired farm labor, farm enterprise.

NOTES:

The statutory minimum rates apply to all enterprises where there is an employer-employee relationship. These include industrial and agricultural enterprises.

An *employer* includes any person acting directly or indirectly in the interest of an employer in relation to an employee. An *employee* includes any individual employed by the employer. *Hired farm labor* includes the labor of any person employed on a farm, except the labor of the farm operator and that of his parents, spouse and children.

An *enterprise* may be one or more undertakings or a chain of undertakings engaged in related activity under common ownership and management.

A *retail establishment* is typically an establishment open to the general consuming public for the sale of goods that are commonly bought by private individuals for their personal or household use. It is characterized by numerous small sales in the establishment, although some retail establishments sell by mail or maintain outside salesman.

Establishments engaged basically in selling industrial equipment, machinery, and supplies are not retail establishments.

In general, retail establishments are not engaged, to a substantial extent, in selling raw materials or supplies to manufacturing establishments or in selling for distribution or resale.

In some cases, retail establishments may make on the premises the goods they sell, as for example, bakeries or custom tailoring or dressmaking shops. This does not change their retail character

if the goods are consumers' goods and are sold directly to private individuals who use them personally.

Service enterprise is an establishment engaged predominantly in providing personal service to individuals for their own or household use, and includes, but is not restricted to, restaurants, cafeterias, hotels, laundries, barbershops and beauty shops, establishments engaged in cleaning, dyeing, pressing, altering, and repairing hats, clothings and household goods, shoe repair shops, public garages and public parking lots, watch repair shops, automobiles repair shops, household refrigerator service and repair shops, amusements, miscellaneous repair shops, business services and other personal services. (*Interpretative Bulletin No. 1, WAS*)

Charitable, Non-profit Organization Included; Meaning of Industry

The law also applies to charitable and non-profit making enterprises, so long as these enterprises employ labor, like the clerks in the Philippine Red Cross, the Boy Scouts of the Philippines and the YMCA, despite the fact that these organizations are neither agricultural nor industrial. The definition of the term "Industry" (also agriculture) is relevant only to the creation of wage boards to fix the minimum wage for the industry. In other words, the clerks and janitors of the Philippine Red Cross cannot ask for the creation of the wage boards, the Red Cross not being engaged in an industry, but they are entitled to be paid at least the minimum wage fixed in the statute.

The law is applicable to employees paid on daily, monthly, *pakiao*, piece work and commission basis. "Wage", as defined by the law, means any remuneration or earnings, however designated, capable of being expressed in terms of money, whether fixed or ascertained on a time, task, piece, 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 service rendered or to be rendered. (*Interpretative Bulletin No. 1, WAS*)

Chapter I, section C of the Code of Rules and Regulations to Implement the Minimum Wage Law, contains the definition of the words, terms, and phrases as used in the Act.

The law defines "agriculture" as to include farming in all its branches and among other things includes the cultivation and tillage of the soil, dairying, the production, cultivation, growing and harvesting of any agricultural or horticultural commodities,

the raising of livestock or poultry, and any practices performed by a farmer or 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.

Are fisheries included in this definition? It seems that fisheries are not included within the foregoing definition, and therefore, not within the operation of the Minimum Wage Law following the principle of statutory construction "*exclusio unius, exclusio alterius*". However, we are inclined to believe that fisheries have been excluded by oversight since under our present jurisprudence fisheries are included within the term agriculture, and the products thereof as agricultural produce.

SEC. 3. Statutory minimum wages—

a. For enterprise other than agriculture:

- (1) P4.00 a day for Manila and its environs;
- (2) P3.00 a day outside of Manila and its environs from August 4, 1951, to August 3, 1952; and P4.00 a day outside of Manila and its environs from August 4, 1952.

EXCEPTIONS:

Retail or service enterprises that employ not more than five employees.

Farm tenancy or domestic servants.

b. For farm enterprise comprising more than twelve (12) hectares:

- (1) P1.75 a day from August 4, 1951 to August 3, 1952.
Bottom cash wage P1.50 during that year.
- (2) P2.00 a day beginning Aug. 4, 1952, to Aug. 3, 1953.
Bottom cash wage P1.75.
- (3) P2.50 a day from August 4, 1953.
Bottom cash wage P2.25.

c. For crew of vessels of Philippine registry calling regularly at Manila. P4.00 a day.

d. For Government employees: The statutory minimum wages will apply on July 1, 1952.

e. Valuation of meals and housing facilities:

- (1) P0.30 per meal for agricultural employees.
P0.40 per meal for industrial employees (non-agricultural).

- (2) P0.20 daily for agricultural workers with respect to housing facilities.
P0.40 daily for industrial employees (non-agricultural) with respect to housing facilities.

EXCEPTIONS:

The foregoing rates apply until the fair and reasonable value is otherwise determined by the Secretary of Labor on petition of any interested party.

- f. Extension of time for the applicability of partial statutory minimum wage rate. — Not to exceed six (6) months, when to do so would avoid causing undue hardship to such industry.
- g. Piece-work or contract work. — To be investigated to determine whether it is being compensated in accordance with the law.

NOTES:

Every employer shall pay to each of his employees, who is employed by an enterprise *other than in agriculture*, wages at the rate of not less than —

1. P4.00 a day on August 4, 1951, and thereafter, for employees of an establishment located in Manila and its environs;
"Manila and its environs" includes the City of Manila and all the cities and municipalities adjacent thereto.
2. P3.00 a day on August 4, 1951, and for one year after said date, and thereafter P4.00 a day, for employees of establishments located outside Manila and its environs.

Every employer who operates a farm enterprise comprising more than twelve (12) hectares whether contiguous or not but located in the same province or in immediately adjacent provinces shall pay to each of his employees, who is engaged in *agriculture*, wages at the rate of not less than —

1. On August 4, 1951, and for one year thereafter, P1.75 a day, and no allowance for board and lodging shall reduce wage below P1.50 in cash during that year;
2. For the year beginning August 4, 1952, P2.00 a day, and no allowance for board and lodging shall reduce this wage below P1.75 in cash; and

of the effectivity of the Act the "statutory minimum" is already enforced. But this is clearly in conflict with the last portion of the section which states that during the period of extension the wage to be paid must "not be less than the rate provided to take effect on the date of the effectivity of this Act"; and to interpret it this way would be to make the application of this provision impossible. Therefore, it is submitted that the term "statutory minimum" as used in this particular section of the law should be understood to mean the minimum wage as recommended by the Wage Board which is not less than the rate fixed by the Act in order to give a reasonable interpretation of the provision in question.

Any employer providing work on *pakiao*, piece-work or commission basis shall pay to his employees wages not less than the applicable minimum rates established by law. Such employer may request the Wage Administration Service for investigation under Section 3 (h) of the law to determine whether or not the wages paid to his employees are in accordance with the Minimum Wage Law. (Interpretative Bulletin No. 1, WAS)

General Rule in Computing the Minimum Wage:

In determining whether the employer is paying his employees in accordance with the Minimum Wage Law, the general rule is: Divide total amount of earnings in a given period by the number of days worked (on basis of 8-hour daily labor). This rule applies to both daily and monthly employee. An employer can not reduce the monthly salary of his employee even if the same is above the minimum, in order to conform exactly to the required minimum.

Section 19 of the law provides that nothing therein shall justify an employer in reducing the wage now paid to any employee in excess of the minimum wage established under the Act, on the date of the enactment. (Interpretative Bulletin No. 1, WAS)

SEC. 4. Appointment of Wage Board to fix minimum industry rate:

- a. Administrative investigation leading to appointment of wage board.
- b. Test to determine minimum wage.
- c. Factors to be considered.

NOTES:

It is to be noted in Sec. 4 (a) of the law that the Secretary

of Labor's power to cause an investigation may either be at his discretion or upon petition of six or more employees in any industry.

The test provided by law for the determination of a minimum wage is the "minimum standard of living necessary for the health, efficiency, and general well-being of employees." In the determination of a minimum wage, the Secretary of Labor and a Wage Board shall, among other relevant factors, consider the following:

- (1) The cost of living;
- (2) The wages established for work of like or comparable character by collective agreements or arbitration awards;
- (3) The wages paid for work of like or comparable character by employers who voluntarily maintain reasonable standard; and
- (4) Fair return of the capital invested.

The factors to be considered in the determination of the minimum wage above the statutory minimum, is essentially a combination of two principles of wage fixation widely used in the United States, namely, the "Cost-of-Living" and the "Fair Wage" principles or bases.

Negatively stated, the District of Columbia Minimum Wage Law, defines a minimum wage based on the cost-of-living, as "what wages are inadequate to supply the necessary cost of living to any such workers to maintain them in good health and to protect their morals".

"Fair-wage laws include as factors to be weighed in reaching the minimum rate, a fair return for the work performed, and the wages paid for similar work by employers who voluntarily maintain minimum fair-wage standards * * * * all relevant circumstances affecting the value of the service or class of service rendered." (National Consumers' League, Standard Bill for Minimum Wage Legislation)

SEC. 5. WAGE BOARD:

a. Composition:

1. Chairman representing the public
2. Representatives of employers
3. Representatives of employees

Representatives to be selected from nominations submitted by employers and employees or organizations thereof, in such industry.

b. Quorum. The members of the Wage Board.

c. Recommendations: Majority (3) vote of all its members.

d. Compensation: Per diems of P7.00 a day of actual attendance

and traveling expenses. The chairman, if a government employee, is not entitled to per diems.

e. Duties:

1. To receive evidence and information.
2. Submission of recommendation within 30 days of its organization.
- f. Guiding policy in the formulation of its recommendation.
- g. Minimum wage in various localities.
- h. Part-time employment, special cases, industrial homeworkers.
- i. Oath, deposition and attendance of witnesses.
- j. Immunity from legal prosecution.

NOTES:

Chapter VI of the Code of Rules and Regulations to Implement the Minimum Wage Law, amplifies Section 5 of the Act, providing for the organization of the Wage Board and mode of procedure to be taken therein.

SEC. 6. Wage Order:

- a. Procedure for issuance
- b. Effectivity—fifteen (15) days after publication
- c. Binding effect on employers

SEC. 7. Right of Review:

- a. Filing of a petition for review in the Supreme Court within fifteen (15) days after the entry and publication of the order.
- c. Limited to questions of law.

NOTES:

It appears from Sec. 5 (b) of the Act, that the Secretary of Labor is afforded too much deference in the appreciation of the evidence and information by the Wage Board. Although it is true that the Wage Board has power to summon other witnesses and to oblige the Secretary of Labor to furnish additional information for their consideration in the determination of the minimum wage of the industry under consideration, yet it is no less true that the Board cannot disregard the recommendations of the said Secretary without its decision being prejudiced in any way by the subsequent action of the said Secretary, whose decision, in case of disagreement between the latter and the Wage Board, shall

prevail. The law further provides that the appointment of a Wage Board does not preclude the Secretary of Labor from subsequently appointing a new Wage Board for the same industry. It is not amiss to point out at this juncture, that due to the nature of the office of the Secretary of Labor, political pressure and considerations may colour his actuations.

Section 7 (a) of the law provides for the remedy of a right of review by the Supreme Court to any person aggrieved by an order of the Secretary of Labor issued under this Act. However, it is submitted that the remedy provided by law is both ineffectual and negatory on the ground that the findings of the Secretary of Labor on questions of fact is conclusive, when in cases of this nature and character, facts are the determinative factors in its resolutions. It is evident from the Act itself, that the determination of the minimum wage depends primarily on questions of fact. Questions of law seldom will arise.

Section 6 (a) which provides for the procedure in the adaption and issuance of Wage Orders, involves unnecessary duplication of action on the part of the Wage Board and the Secretary of Labor with respect to the separate hearings required by law prior to the issuance of an order. This results in unnecessary delay and expenditures.

In view of the foregoing criticisms, it is respectfully recommended that the function of determining the minimum wage be left to the Court of Industrial Relations which is believed to be better and properly qualified to undertake such function, without fear of undue influence and unnecessary duplication of work.

Section 5 (a) which grants to the Secretary of Labor the power to add specific home industries to the coverage of this act by regulation, when he deems it necessary to carry further the purposes of this Act, is submitted to be unconstitutional on the ground that there is no sufficient standard. No where in this act does the definition of home industries appear upon which we can test the validity of the inclusion of any specific industry. It is believed that the provision, as it now stands, leaves to the Secretary of Labor unlimited discretion to define by regulation what a home industry consists of, which is an undue delegation of legislative power.

SEC. 8. Power of Secretary of Labor or the Chairman of Wage Board to administer oaths, take depositions and require the attendance and testimony of witnesses.

SEC. 9. Learners or Apprentices and Handicapped Workers:

- a. Learners or apprentices may be employed for not more than one (1) year, under special certificates issued by the Secretary of Labor, at wages not lower than 75 per cent of the applicable minimum.

EXCEPTIONS:

Students or graduates of authorized nautical schools, may be employed without compensation in vessels of Philippine registry.

- b. Handicapped workers may be employed at wages not lower than 50 per cent of the applicable minimum and at such conditions and prerequisites provided by law.

NOTES:

Learners, apprentices, handicapped workers and industrial homeworkers may be paid wages lower than the minimum wage. However, in no case shall the wage or wages of laborers, apprentices and industrial homeworkers be lower than 75 per cent of the applicable minimum. No learner, apprentice, handicapped worker or industrial homeworker may be employed without the necessary special certificate issued by the Wage Administration Service in accordance with the regulations which may be adopted by the said office. Special certificate for learners and apprentices and for rates less than the statutory minimum, may be issued for a period of not more than one year. On the other hand, no reduction on the wage rate of industrial homeworkers may be made unless so recommended by a Wage Board and approved by the Secretary of Labor.

The employment of learners or apprentices who are students or graduates of authorized Nautical Schools in vessels of Philippine Registry may be permitted by the Wage Administration Service without compensation. (Interpretative Bulletin No. 1, WAS)

Chapter IV of the Code of Rules and Regulations to Implement the Minimum Wage Law promulgated by the Chief of the Wage Administration Service as per Administrative Order No. 2, dated May 26, 1951, Series of 1951, and as duly approved by the Secretary of Labor, defines who are learners, apprentices and handicapped workers, and provides for the manner and procedure for the issuance of special certificates. Chapter V of the same Code deals with industrial homeworkers and provides also for the manner

of issuance and revocation of permits and certificates, and the manner of payment.

SEC. 10. Payment of wages:

- a. In legal tender

EXCEPTIONS:

Payment by bank check or postal check or money order may be made when customary or necessary because of special circumstances, upon authorization of the Secretary of Labor.

- b. To be paid directly to employees

EXCEPTIONS:

- (1) Where the employee is insured, premiums advanced by employer may be deducted;
- (2) In case of *force majeure*;
- (3) Where the right of the employee or his union to check-off is recognized or authorized.

- c. In case of employee's death.—Wages shall be paid to his heirs following the requisites and conditions provided by law.

- d. Withholdings, deductions on wages, and the requirement of deposits.—As payment or security for losses and damages caused by the employee to tools, materials and equipment shall not be allowed except as provided by law.

- e. Period and place of payment:

1. Twice a month at intervals not exceeding sixteen (16) days.
2. If hired to perform a task requiring more than a fortnight for completion, the time for payment of wages shall be paid according to collective agreement or arbitration award, otherwise the general rule prevails and a final settlement made within two (2) weeks after completion of the task.
3. Place of payment—at or near the place of undertaking, except as otherwise provided.

- f. Contractor's payroll:

1. Direct employer.—He shall provide in contract with

NOTES:

Under this section of the law, a person in order to be held liable for false reporting must have knowledge of the falsity of such statement, report or record and it must be false in a material respect. What is meant by "*false in a material respect*?" This section being penal in character, the term "material" must be construed as having the same meaning given under the Revised Penal Code. The term "material matter" means the main fact which was the subject of the injury, or any circumstance which tends to prove that fact, or any fact or circumstance which tends to corroborate or strengthen the testimony relative to the subject of the injury, or which legitimately affects the credit of any witness who testifies (U. S. v. Estrana, 16 Phil. 520).

SEC. 15. Penalties and recovery of wage due:

- a. By a natural person.—Upon conviction, P2,000 fine or at least one year imprisonment, or both such fine and imprisonment.
- b. By a juridical person.—The manager or the person acting as such shall be responsible. In case of a government corporation, the managing head; except when the violation was due to an act or omission of some other person over whom he has no control, in which case the latter shall be held responsible.

Recovery of wages due by court action:

- a. Unpaid wages.—The Secretary of Labor may bring an action in court in behalf of an employee to recover wages owing to him with legal interest.
- b. Underpayment.—An employee may bring an action in court against his employer for underpayment and recover his unpaid salary with legal interest. He cannot be charged attorney's fee exceeding 10 per cent of the amount awarded, unless it is less than P100 in which event the fee may be P10, but not in excess of that amount.
- c. Commencement of action.—On the date when the complaint is filed if he is specifically named as a party plaintiff in the complaint or on the date in which he is so named.

NOTES:

Under Sec. 1 of Art. 7 of the Code of Rules and Regula-

tions to Implement the Minimum Wage Law, claims for unpaid wages may be classified into two kinds, namely, (a) claims for non-payment and (b) claims for underpayment of wages.

A claim for non-payment of wages is one where the employer has failed to pay the entire wages to which an employee is entitled; while a claim for underpayment of wages is one where the employer fails to pay a portion of the wage and/or the corresponding overtime pay due the employees.

Before the Court of proper jurisdiction can take cognizance of a claim arising out of non-payment or underpayment of wages, the parties are required by law to submit themselves to mediation. In case no amicable settlement is arrived at, the parties have the choice of submitting the matter in controversy before an arbitrator of the Wage Administration Service whose decision shall be final and conclusive between them, or to pursue a court action. The manner and procedure of mediation and arbitration are provided for in Article 7 of Chapter III of the Code of Rules and Regulation to Implement the Minimum Wage Law.

SEC. 16. Jurisdiction of the court:

- a. The Court of First Instance has jurisdiction:

- (1) To restrain violation of this Act;
- (2) To order recovery of unpaid wages and underpayments.

Decision shall be rendered within fifteen (15) days from the time the case is submitted for decision and appeal lies as provided by law.

- b. The Court of Industrial Relations has jurisdiction:

- (1) Where the issue or one of the issues involves minimum wages above the applicable statutory minimum, and the Secretary of Labor has issued no wage order for the industry; when it involves a single enterprise as employer.
- (2) Where the demand for minimum wages involves an actual strike, and the Secretary of Labor failed to secure a settlement through conciliation within the first fifteen (15) days.

Decision rendered by the Court of Industrial Relations in banc within fifteen (15) days after the case has been submitted for determination; its finding of fact when supported by substantial evid-

ence shall be conclusive and shall be subject only to appeal by certiorari.

SEC. 17. Statute of Limitation. — An action may be commenced within three (3) years after the cause of action accrued, otherwise it shall be forever barred.

SEC. 18. Protection of the Service:

- a. Personnel subject to Civil Service rules and regulations.
- b. Disqualification of personnel and officials of the Service from having any connection or influence, directly or indirectly with employers or employees.
- c. Officials: removal on account of malfeasance or non-feasance. Accepting bribe—punishable.

SEC. 19. Fair labor standards not denied to employees, legal barrier against reduction of wages or supplements furnished on April 6, 1951.

NOTES:

Nothing in this Act shall deprive an employee of the right to seek fair wages, shorter working hours and better working conditions nor justify an employer in violating any other labor law applicable to his employees in reducing the wage now paid to any of his employees in excess of the minimum wage established under this Act, or in reducing supplements furnished on the date of enactment. (Sec. 19, Act No. 602)

SEC. 20. Waiver of rights and benefits granted by law is against public policy.

SEC. 21. Report by the Secretary.

SEC. 22. Appropriation.

SEC. 23. Repeal of inconsistent prior enactment.

NOTES:

The following are submitted to have been repealed by the Minimum Wage Law:

Act No. 3958. An act to amend further Act numbered twenty-five hundred and forty-nine, entitled "An Act prohibiting in the Philippine Islands the forcing, compelling, or obliging

of any laborer or other employee to purchase merchandise, commodities, or personal property under certain conditions, and the payment of the wages of a laborer or employee by means of tokens or objects other than the legal tender currency of the Philippine Islands," as amended by Act numbered thirty hundred and eighty-five.

Act No. 3959. An Act making it obligatory for any person, company, firm or corporation owning any work of any kind executed by contract to require the contractor to furnish a bond guaranteeing the payment of the laborers, providing penalties for the violation hereof, and for other purposes.

Com. Act No. 37. An Act increasing the rates of salaries and wages of low-paid employees and common laborers of the National Government to the minimum rates fixed by the President under Executive Orders Numbered forty-nine and fifty, dated August nineteenth and twenty-fourth, respectively, nineteen hundred and thirty-six, and appropriating the necessary funds to cover the amount of the increases for the period from September first to December thirty-first, Nineteen hundred and thirty-six.

Sec. 5 of Com. Act No. 103 providing for the determination of a minimum wage and maximum "canon" or rental by the Court of Industrial Relations.

Com. Act No. 211. An Act to fix a minimum daily wage for laborers employed in public works, and providing penalties for the violation thereof.

SEC. 24. Separability.

SEC. 25. Effectivity—August 4, 1951.

Jose E. Pantangco
Rodolfo B. Santiago