

[DOLE DEPARTMENT ORDER NO. 19, s. 1993, April 01, 1993]

GUIDELINES GOVERNING THE EMPLOYMENT OF WORKERS IN THE CONSTRUCTION INDUSTRY

In the interest of stabilizing and promoting harmonious employer-employee relations in the construction industry and in order to ensure the protection and welfare of workers employed therein, the following guidelines are hereby issued for all concerned:

SECTION 1. Coverage This issuance shall apply to all operations and undertakings in the construction industry and its subdivisions, namely: general building construction, general engineering construction and special trade construction, based on the classification code of the Philippine Construction Accreditation Board of the Construction Industry Authority of the Philippines; to companies and entities involved in demolition works; and to those falling within the construction industry as determined by the Secretary of Labor and Employment.

SECTION 2. Employment Status

2.1 Classification of employees. The employees in the construction industry are generally categorized as a) project employee and b) non-project employees. Project employees are those employed in connection with a particular construction project or phase thereof and whose employment is co-terminus with each project or phase of the project to which they are assigned.

Non-project employees, on the other hand, are those employed without reference to any particular construction project or phase of a project.

2.2 Indicators of project employment. Either one or more of the following circumstances, among others, may be considered as indicators that an employee is a project employee.

- a. The duration of the specific/identified undertaking for which the worker is engaged is reasonably determinable.
- b. Such duration, as well as the specific work/service to be performed, is defined in an employment agreement and is made clear to the employee at the time of hiring.
- c. The work/service performed by the employee is in connection with the particular project/undertaking for which he is engaged.

- d. The employee, while not employed and awaiting engagement, is free to offer his services to any other employer.
- e. The termination of his employment in the particular project/undertaking is reported to the Department of Labor and Employment (DOLE) Regional Office having jurisdiction over the workplace within 30 days following the date of his separation from work, using the prescribed form on employees' terminations/dismissals/suspensions.
- f. An undertaking in the employment contract by the employer to pay completion bonus to the project employee as practiced by most construction companies.

2.3 **Project completion and rehiring of workers.**

- a. The employees of a particular project are not separated from work at the same time. Some phases of the project are completed ahead of others. For this reason, the completion of a phase of the project is considered the completion of the project for an employee employed in such phase. Meanwhile, those employed in a particular phase of a construction project are also not separated at the same time. Normally, less and less employees are required as the phase draws closer to completion.
- b. Upon completion of the project or a phase thereof, the project employee may be rehired for another undertaking provided, however, that such rehiring conforms with the provisions of law and this issuance. In such case, the last day of service with the employer in the preceding project should be indicated in the employment agreement.

2.4 **Types of non-project employees.** Generally there are three (3) types of non-project employees: first, probationary employees; second, regular employees; and third, casual employees.

- a. Probationary employees are those who, upon the completion of the probationary period, are entitled to regularization. Upon their engagement, probationary employee should be informed of the reasonable standards under which they will qualify as regular employees.
- b. Regular employees are those appointed as such or those who have completed the probationary period or those appointed to fill up regular positions vacated as a result of death, retirement, resignation or termination of employment of the regular holders thereof.
- c. Casual employees are those employed to perform work not related to the main line of business of the Employer. Casual employees who are employed for at least one year, whether continuous or broken, shall be considered regular with respect to the activity in which they are employed and their employment shall continue for as long as such activity exists, unless the employment is terminated sooner by the employer for a just or authorized cause, or voluntarily by the employee.

2.5 **Contracting and subcontracting.** The practice of contracting out certain phases of a construction project is recognized by law, particularly wage legislations and wage orders, and by industry practices. The Labor Code and its Implementing Regulations allow the contracting out of jobs under certain conditions. Where such job contracting is permissible, the construction workers are generally considered as employees of the contractor or sub-contractor, as the case may be, subject Art. 109 of the Labor Code, as amended.

SECTION 3. Conditions of Employment

3.1 **Security of tenure.** Project employees who have become regular shall enjoy security of tenure in their employment as provided under Article 280 of the Labor Code, as amended. Where their services are terminated for a cause/causes, they are not by law entitled to separation pay. The just causes for terminating employment are enumerated under Article 282 of the Code. Where the services of regular employees are terminated for any of the authorized causes under Article 283, as distinguished from just causes, they are entitled to separation pay.

3.2 **Project employees not entitled to separation pay** The project employees contemplated by paragraph 2.1 hereof are not by law entitled to separation pay if their services are terminated as a result of the completion of the project or any phase thereof in which they are employed. Likewise, project employees whose services are terminated because they have no more to do or their services are no longer needed in the particular phase of the project are not by law entitled to separation pay.

3.3 **Project employees entitled to separation pay**

- a. Project employees whose aggregate period of continuous employment in a construction company is at least one year shall be considered regular employees, in the absence of a "day certain" agreed upon by the parties for the termination of their relationship. Project employees who have become regular shall be entitled to separation pay.

A "day" as used herein, is understood to be that which must necessarily come, although it may not be known exactly when. This means that where the final completion of a project or phase thereof is in fact determinable and the expected completion is made known to the employee, such project employee may not be considered regular, notwithstanding the one-year duration of two or more employments in the same project or phase of the project.

The completion of the project or any phase thereof is determined on the date originally agreed upon or the date indicated on the contract or, if the same is extended, the date of termination of project extension.

- b. If the project or the phase of the project the employee is working on has not yet been completed and his services are unsatisfactory, the project employee is entitled to reinstatement with backwages to his former position or substantially equivalent position. If the reinstatement is no longer possible, the employee is entitled to his salaries for the unexpired portion of the agreement.