



Republic of the Philippines
DEPARTMENT OF LABOR AND EMPLOYMENT
Intramuros, Manila

DEPARTMENT ORDER NO. 174
Series of 2017



RULES IMPLEMENTING ARTICLES 106 TO 109 OF THE LABOR CODE, AS AMENDED

By virtue of the power vested in the Secretary of Labor and Employment under Articles 5 and 106 to 109 of the Labor Code of the Philippines, as amended, the following regulations governing contracting and subcontracting arrangements are hereby issued:

Section 1. Guiding Principle. Non-permissible forms of contracting and subcontracting arrangements undermine the Constitutional and statutory right to security of tenure of workers.

Section 2. Coverage. These Rules shall apply to all parties in an arrangement where employer-employee relationship exists.

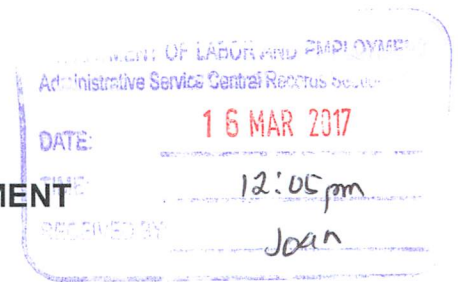
Contractors and subcontractors referred to in these Rules are prohibited from engaging in recruitment and placement activities as defined in Article 13(b) of the Labor Code, whether local or overseas employment.

Section 3. Definition of terms. The following terms, as used in these Rules, shall mean:

- a) **“Bond”** – refers to the bond under Article 108 of the Labor Code that the principal may require from the contractor to be posted equal to the cost of labor under contract.
- b) **“Cabo”** – refers to a person or group of persons or to a labor group which, under the guise of a labor organization, cooperative or any entity, supplies workers to an employer, with or without any monetary or other consideration, whether in the capacity of an agent of the employer or as an ostensible independent contractor.
- c) **“Contracting” or “Subcontracting”** – refers to an arrangement whereby a principal agrees to farm out to a contractor the performance or completion of a specific job or work within a definite or predetermined period, regardless of whether such job or work is to be performed or completed within or outside the premises of the principal.
- d) **“Contractor”** – refers to any person or entity engaged in a legitimate contracting or subcontracting arrangement providing services for a specific job or undertaking farmed out by principal under a Service Agreement.

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- d) **“Contractor”** – refers to any person or entity engaged in a legitimate contracting or subcontracting arrangement providing services for a specific job or undertaking farmed out by principal under a Service Agreement.

- e) **“Contractor’s employee”** – refers to employee of the contractor hired to perform or complete a job or work farmed out by the principal pursuant to a Service Agreement with the latter.
- f) **“In-house agency”** – refers to a contractor which is owned, managed, or controlled directly or indirectly by the principal or one where the principal owns/represents any share of stock, and which operates solely or mainly for the principal.
- g) **“In-house cooperative”** – refers to a cooperative which is managed, or controlled directly or indirectly by the principal or one where the principal or any of its officers owns/represents any equity or interest, and which operates solely or mainly for the principal.
- h) **“Labor-only contracting”** - refers to arrangement where the contractor or subcontractor merely recruits, supplies or places workers to perform a job or work for a principal, and the elements enumerated in Section 5 hereunder are present.
- i) **“Principal”** – refers to any natural or juridical entity, whether an employer or not, who puts out or farms out a job or work to a contractor.
- j) **“Service Agreement”** – refers to the contract between the principal and contractor containing the terms and conditions governing the performance or completion of a specific job or work being farmed out for a definite or predetermined period.
- k) **“Solidary liability”** – refers to the liability of the principal, pursuant to the provision of Article 109 of the Labor Code, as direct employer together with the contractor for any violation of any provision of the Labor Code.

It also refers to the liability of the principal, in the same manner and extent that he/she is liable to his/her direct employees, to the extent of the work performed under the contract when the contractor fails to pay the wages of his/her employees, as provided in Article 106 of the Labor Code, as amended.

- l) **“Substantial capital”** – refers to paid-up capital stock/shares at least **Five Million Pesos (P5,000,000.00)** in the case of corporations, partnerships and cooperatives; in the case of single proprietorship, a net worth of at least **Five Million Pesos (P5,000,000.00)**.

Section 4. Regulation of Contracting or Subcontracting. The Secretary of Labor and Employment shall regulate contracting and subcontracting arrangement by absolutely prohibiting labor-only contracting, and restricting job contracting allowed under the provisions of the Labor Code, as amended.

Section 5. Absolute Prohibition against Labor-only Contracting. Labor-only contracting, which is totally prohibited, refers to an arrangement where:

- a) i. The contractor or subcontractor does not have substantial capital, or

- ii. The contractor or subcontractor does not have investments in the form of tools, equipment, machineries, supervision, work premises, among others,

and
- iii. The contractor's or subcontractor's employees recruited and placed are performing activities which are directly related to the main business operation of the principal;

or
- b) The contractor or subcontractor does not exercise the right to control over the performance of the work of the employee.

Section 6. Other Illicit Forms of Employment Arrangements. In addition to Section 5 of these Rules, the following are hereby declared prohibited for being contrary to the law or public policy:

- a) When the principal farms out work to a "Cabo".
- b) Contracting out of job or work through an in-house agency.
- c) Contracting out of job or work through an in-house cooperative which merely supplies workers to the principal.
- d) Contracting out of a job or work by reason of a strike or lockout whether actual or imminent.
- e) Contracting out of a job or work being performed by union members and such will interfere with, restrain or coerce employees in the exercise of their rights to self-organization as provided in Article 259 of the Labor Code, as amended.
- f) Requiring the contractor's/subcontractor's employees to perform functions which are currently being performed by the regular employees of the principal.
- g) Requiring the contractor's/subcontractor's employees to sign, as a precondition to employment or continued employment, an antedated resignation letter; a blank payroll; a waiver of labor standards including minimum wages and social or welfare benefits; or a quitclaim releasing the principal or contractor from liability as to payment of future claims; or require the employee to become member of a cooperative.
- h) Repeated hiring by the contractor/subcontractor of employees under an employment contract of short duration.
- i) Requiring employees under a contracting/subcontracting arrangement to sign a contract fixing the period of employment to a term shorter than the term of the Service Agreement, unless the contract is divisible into phases for which substantially different skills are required and this is made known to the employee at the time of engagement.
- j) Such other practices, schemes or employment arrangements designed to circumvent the right of workers to security of tenure.

Section 7. When principal is deemed the direct employer of the contractor's or subcontractor's employees. In the event that there is a finding that the contractor or subcontractor is engaged in labor-only contracting under Section 5 and other illicit

forms of employment arrangements under Section 6 of these Rules, the principal shall be deemed the direct employer of the contractor's or subcontractor's employees.

Section 8. Permissible Contracting or Subcontracting Arrangements. Notwithstanding Sections 5 and 6 hereof, contracting or subcontracting shall only be allowed if all the following circumstances concur:

- a) The contractor or subcontractor is engaged in a distinct and independent business and undertakes to perform the job or work on its own responsibility, according to its own manner and method;
- b) The contractor or subcontractor has substantial capital to carry out the job farmed out by the principal on his account, manner and method, investment in the form of tools, equipment, machinery and supervision;
- c) In performing the work farmed out, the contractor or subcontractor is free from the control and/or direction of the principal in all matters connected with the performance of the work except as to the result thereto; and
- d) The Service Agreement ensures compliance with all the rights and benefits for all the employees of the contractor or subcontractor under the labor laws.

Section 9. Solidary Liability. In the event of violation of any provision of the Labor Code, including the failure to pay wages, there exists a solidary liability on the part of the principal and the contractor for purposes of enforcing the provisions of the Labor Code and other social legislations, to the extent of the work performed under the employment contract.

Section 10. Rights of Contractor's/ Subcontractor's Employees. All contractor's/subcontractor's employees, shall be entitled to security of tenure and all the rights and privileges as provided for in the Labor Code, as amended, to include the following:

- a) Safe and healthful working conditions;
- b) Labor standards such as but not limited to service incentive leave, rest days, overtime pay, holiday pay, 13th month pay, and separation pay;
- c) Retirement benefits under the SSS or retirement plans of the contractor/subcontractor, whichever is higher;
- d) Social security and welfare benefits; and
- e) Self-organization, collective bargaining and peaceful concerted activities including the right to strike.

Section 11. Required Contracts under these Rules.

- a) Employment contract between the contractor/subcontractor and its employees. Notwithstanding any oral or written stipulations to the contrary, the contract between the contractor/subcontractor and its employees shall be governed by the provisions of Articles 294 and 295 of the Labor Code, as amended, including the provisions on general labor standards. It shall include the following stipulations:
 - i. The specific description of the job or work to be performed by the employee; and

- ii. The place of work and terms and condition of employment, including a statement of the wage rate applicable to the individual employee.

The contractor/subcontractor shall inform the employee of the foregoing stipulations in writing on or before the first day of his/her employment.

- b) Service Agreement between the principal and the contractor. The Service Agreement shall include the following:
 - i. The specific description of the job or work being subcontracted, including its term or duration;
 - ii. The place or work and terms and conditions governing the contracting arrangement, to include the agreed amount of the contracted job or work as well as the standard administrative fee of not less than ten percent (10%) of the total contract cost; and
 - iii. A provision on the issuance of the bond/s as defined in Section 3(a) renewable every year.

Section 12. Effect of Violation of the Provisions on the Rights of Contractor's Employees and Required Contracts. A finding of violation of either Sections 10 or 11 hereof, shall render the principal the direct employer of the employees of the contractor or subcontractor, pursuant to Article 109 of the Labor Code, as amended.

Section 13. Effect of Termination of Employment. The termination of employment of the contractor's/subcontractor's employee prior to the expiration of the Service Agreement shall be governed by Articles 297, 298 and 299 of the Labor Code.

In case the termination of employment is caused by the pre-termination of the Service Agreement not due to authorized causes under Article 298, the right of the contractor's/subcontractor's employee to unpaid wages and other unpaid benefits including unremitted legal mandatory contributions, e.g., SSS, PhilHealth, Pag-IBIG, ECC, shall be borne by the party at fault, without prejudice to the solidary liability of the parties to the Service Agreement.

Where the termination results from the expiration of the Service Agreement, or from the completion of the phase of the job or work for which the employee is engaged, the latter may opt to wait for re-employment within three (3) months to resign and transfer to another contractor-employer. Failure of the contractor to provide new employment for the employee shall entitle the latter to payment of separation benefits as may be provided by law or the Service Agreement, whichever is higher, without prejudice to his/her entitlement to completion bonuses or other emoluments, including retirement benefits whenever applicable. The mere expiration of the Service Agreement shall not be deemed as a termination of employment of the contractor's/subcontractor's employees who are regular employees of the latter.

Section 14. Mandatory Registration and Registry of Legitimate Contractors. Consistent with the authority of the Secretary of Labor and Employment to restrict or prohibit the contracting out of labor to protect the rights of workers, it shall be mandatory for all persons or entities acting as contractors to register with the Regional Office of the Department of Labor and Employment (DOLE) where it principally operates.

Failure to register shall give rise to the presumption that the contractor is engaged in labor-only contracting.

Accordingly, the registration system, governing contracting arrangements and implemented by the Regional Offices of the DOLE is hereby established, with the Bureau of Working Conditions (BWC) as the central registry.

Section 15. Requirements for Registration. The verified application for registration as a contractor shall be filed at the DOLE Regional Office in the region where it seeks to principally operate. Whenever applicable, the applicant shall provide in the application form the following information:

- a) The name and business address of the applicant and the areas where it seeks to operate;
- b) The names and addresses of officers, if the applicant is a corporation, partnership, cooperative or a labor organization;
- c) The nature of the applicant's business and the industry or industries where the applicant seeks to operate;
- d) The number of regular workers and the total workforce;
- e) The list of clients, if any, the number of personnel assigned to each client, if any, and the services provided to the client;
- f) The description of the phases of the contract, including the number of employees covered in each phase, where appropriate; and
- g) Proof of compliance with substantial capital requirement as defined in Section 3(j) of these Rules.

The application shall be supported by:

- a) A certified true copy of a certificate of registration of firm or business name from the Securities and Exchange Commission (SEC), Department of Trade and Industry (DTI), Cooperative Development Authority (CDA), or from the DOLE if the applicant is a labor organization;
- b) A certified true copy of the license or business permit issued by the local government unit or units where the contractor operates;
- c) A certified listing, with proof of ownership or lease contract, of facilities, tools, equipment, premises implements, machineries and work premises, that are actually and directly used by the contractor in the performance or completion of the specific job or work contracted out. In addition, the applicant shall submit a photo of the office building and premises where it holds office;
- d) A copy of audited financial statements if the applicant is a corporation, partnership, cooperative or a labor organization, or a copy of the latest ITR if the applicant is a sole proprietorship; and
- e) A sworn disclosure that the registrant, its officers and owners or principal stockholders or any one of them, has not been operating or previously operating as a contractor under a different business name or entity or with pending cases of violations of these Rules and/or labor standards, or with a cancelled registration. In case any of the foregoing has a pending case, a copy of the complaint and the latest status of the case shall be attached.

Section 16. Filing and Processing of Application. The application, with all supporting documents, shall be filed in triplicate in the Regional Office where the applicant principally operates. No application for registration shall be accepted unless all the requirements in the preceding Section are complied with.

Section 17. Verification Inspection. Within two (2) working days upon receipt of the application with complete supporting documents, the authorized representative of the Regional Director shall conduct a verification inspection on the facilities, tools, equipment, and work premises of the applicant.

Section 18. Approval or Denial of the Application. The Regional Office shall deny or approve the application within three (3) working day after the verification inspection.

Applications that fail to meet the requirements set forth in Section 15 of these Rules shall be denied.

Section 19. Registration Fee. Payment of registration fee of One Hundred Thousand Pesos (P100,000.00) shall be required upon approval of the application.

Upon registration, the Regional Office shall return one set of the duly-stamped application documents to the applicant and retain one set for its file, and transmit the remaining set to the Bureau of Working Conditions (BWC) within five (5) days from registration.

Section 20. Validity of Certificate of Registration. The contractor shall be deemed registered only on the date of issuance of its Certificate of Registration.

The Certificate of Registration shall be effective for two (2) years, unless cancelled after due process. The same shall be valid in the region where it is registered.

In case the contractor has Service Agreements or operates outside the jurisdiction of the Regional Office where it is registered, it shall request a duly authenticated copy of its Certificate of Registration from the registering Regional Office and submit the same to the DOLE Regional Office where it seeks to operate together with a copy of its Service Agreement/s in the area, for purposes of monitoring compliance with these Rules.

Section 21. Renewal of Registration. All registered contractors shall apply for renewal of their Certificates of Registration thirty (30) days before the expiration of their registration to remain in the roster of legitimate service contractors. The applicant shall pay a registration renewal fee of One Hundred Thousand Pesos (P100,000.00) to the DOLE Regional Office.

Copies of all the updated supporting documents in letters (a) to (e) of Section 13 hereof shall be attached to the duly accomplished application form, including the following:

- a) Certificate of membership and proof of payment of SSS, PhilHealth, BIR, ECC and Pag-IBIG contributions for the last three (3) years, as well as loan

- amortization; and
- b) Certificate of pending or no pending labor standards violation case/s with the National Labor Relations Commission (NLRC) and Department of Labor and Employment (DOLE). The pendency of a case will not prejudice the renewal of the registration, unless there is a finding of violation of labor standards by the DOLE Regional Director.

Section 22. Semi-Annual Reporting. The contractor shall submit in triplicate its subscribed semi-annual report using a prescribed form to appropriate Regional Office. The report shall include:

- a) A list of contracts entered with the principal during the subject reporting period;
- b) The number of workers covered by each contract with the principal;
- c) Proof of payment of the Social Security System (SSS), the Pag-IBIG Fund, PhilHealth, Employees Compensation Commission (ECC), and Bureau of Internal Revenue (BIR) remittances due its employees during the subject reporting period and of amortization of declared loans due from its employees; and
- d) A certified list of all cases filed against the contractor before the NLRC and DOLE.

The Regional Office shall return one set of the duly-stamped report to the contractor, retain one set for its file, and transmit the remaining set to the BWC within five (5) days from receipt thereof.

Section 23. Grounds for Cancellation of Registration. The Regional Director shall, upon a verified complaint, cancel or revoke the registration of a contractor after due process, based on any of the following grounds:

- a. Misrepresentation of facts in the application;
- b. Submission of falsified or tampered application or supporting documents to the application for registration;
- c. Non-submission of Service Agreement between the principal and the contractor when required to do so;
- d. Non-submission of the required semi-annual report as provided in Section 22 (Semi-Annual reporting) thereof;
- e. Final findings that the contractor has engaged in labor-only contracting and/or other illicit forms of employment arrangements as provided in Section 6 hereof;
- f. Non-compliance with labor standards and working conditions;
- g. Findings of violation of Section 10 (Rights of contractor's employees), and Section 11 (Required contracts);
- h. Non-compliance with SSS, the HDMF, Pag-IBIG, PhilHealth, and ECC Laws;
- i. Collecting any fees not authorized by law and other applicable rules and regulations; and
- j. Violations of any provisions of the Labor Code.

Section 24. Due Process in Cancellation of Registration. Complaint/s based on any of the grounds enumerated in the preceding Section against the contractor shall be filed in writing and under oath with the Regional Office which issued the Certificate of Registration.

The complaint/s shall state the following:

- (a) The name/s and address/es of the complainant/s;
- (b) Name and address of the contractor;
- (c) The grounds;
- (d) When and where the action complained of happened;
- (e) The amount of claim if any; and
- (f) The relief sought.

Upon receipt of the complaint, the Regional Director shall direct, with notice to the complainant to file a verified answer/counter affidavit within seven (7) working days without extension, incorporating therein all pertinent documents in support of his or her defense, with proof of service of a copy to the complainant. Failure to file an answer/counter affidavit shall constitute a waiver on the part of the respondent. No motion to dismiss shall be entertained.

The Regional Director or his or her duly authorized representative may conduct a clarificatory hearing within seven (7) calendar days within which to file a verified answer/counter affidavit.

Within the said seven (7) calendar days period, the contractor shall make necessary corrections/rectifications on the violations that are immediately rectifiable upon its initiative in order to be fully compliant.

The Regional Director may avail himself of all reasonable means to ascertain the facts of the case, including conduct of inspection, where appropriate, and examination of informed persons.

The proceedings before the Regional Office shall be summary in nature.

The conduct of hearings shall be terminated within ten (10) calendar days from the first scheduled clarificatory hearing. The Regional Director shall resolve the case within seven (7) working days from the date of the last hearing. If there is no necessity to conduct a hearing, the case shall be resolved with seven (7) working days from receipt of the verified answer/counter affidavit.

Any motion for reconsideration from the Order of the Regional Director shall be treated as an appeal.

Section 25. Appeal. The Order of the Regional Director is appealable to the Secretary within ten (10) working days from receipt of the copy of the Order. The appeal shall be filed with the Regional Office which issued the cancellation Order. The Office of the Secretary shall have thirty (30) working days from receipt of the records of the case to resolve the appeal. The Decision of the Secretary shall be final and executory after ten (10) days from the receipt thereof by the parties. No motion for reconsideration of the Decision shall be entertained.

Section 26. Effects of Cancellation of Registration. A final Order of cancellation shall divest the contractor of its legitimate status to engage in contracting/subcontracting.

Such Order of cancellation shall be a ground to deny registration an application for renewal of registration to a contractor under the Rules.

No contractor whose registration is cancelled under these Rules or any of its officers shall be allowed to operate, and apply for new registration as contractor under either the same or different name.

The cancellation of the registration of the contractor for engaging in labor-only contracting or for violation of any of the provisions of these Rules involving a particular service agreement will not, however, impair the validity of existing legitimate job-contracting arrangements the contractor may have entered into with other principal prior to the cancellation of its registration. Any valid and subsisting Service Agreement shall be respected until its expiration; thereafter, contracting with a delisted contractor shall make the principal direct employer of all employees under the Service Agreement pursuant to Articles 106 and 109 of the Labor Code, as amended.

Section 27. Retaliatory Measures. Pursuant to Article 118 of the Labor Code, as amended, it shall be unlawful for the principal, contractor, or any party privy to the contract or services provided to refuse to pay or reduce the wages and benefits, and discharge or in any manner discriminate against any worker who has filed any complaint or instituted any proceeding on wages (under Title II, Book III of the Labor Code), labor standards violation, or has testified or is about to testify in such proceedings.

Section 28. Enforcement of Labor Standards and Working Conditions. Consistent with Article 128 of the Labor Code, as amended, the Regional Director through his/her duly authorized representatives, shall conduct routine inspection of establishments engaged in contracting arrangement regardless of the number of employees engaged by the principal or by the contractor. They 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 the Labor Code and of any labor law, wage order, or rules and regulations issued pursuant thereto.

The findings of the duly authorized representative shall be referred to the Regional Director for appropriate action as provided for in Article 128, and shall be furnished the collective bargaining agent, if any.

Based on the visitorial and enforcement power of the Secretary of Labor and Employment in Article 128 (a), (b), (c), and (d), the Regional Director shall issue compliance orders to give effect to the labor standards provisions of the Labor Code other labor legislation, and these Rules.

Section 29. Duty to Produce Copy of Contract between the Principal and the Contractor. The principal or the contractor shall be under an obligation to produce a copy of the Service Agreement in the ordinary course of inspection. The contractor shall likewise be under an obligation to produce a copy of any contract of employment

when directed to do so by the Regional Office Director or his/her authorized representative.

Section 30. Tripartite Implementation and Monitoring of Compliance. A region-based tripartite monitoring team on the observance of labor standards in contracting and subcontracting arrangements shall be constituted as a subcommittee of the Regional Tripartite Industrial Peace Council (RTIPC) within fifteen (15) days from the effectivity of these Rules. It shall submit a quarterly regional monitoring report to the DOLE Secretary and to the National Tripartite Industrial Peace Council (NTIPC). The Bureau of Working Conditions (BWC) shall ensure the implementation of this provision, and shall conduct capacity building to the members of the regional tripartite monitoring team.

Section 31. Financial Relief Program; Tripartite Co-Regulation Engagement. A Financial Relief Program or Unemployment Assistance Fund shall be established for employees under a Service Agreement or employees in transition from one Service Agreement to the next. For this purpose, the National Tripartite Industrial Peace Council (NTIPC), upon the effectivity of this issuance, shall continue a Local Service Provider Tripartite Working Group (LSP-TWG) composed of representatives of the stakeholders in the industry. The LSP-TWG shall:

- a) Recommend the mechanics and details in setting up the Financial Relief Program or Unemployment Assistance Fund with proposed funding sources before end of June 2018; and
- a) Draw-up the terms of a Tripartite Co-Regulation Engagement in ensuring full compliance with labor laws for approval/endorsement by the NTIPC, including a proposed Table of Progressive Rate of Increases in the minimum capitalization requirement at reasonable intervals to ensure that only legitimate contractors can engage in subcontracting arrangement.

Section 32. Enrollment in DOLE Programs on Improving Compliance with Labor Standards. For purposes of ensuring compliance with labor standards, the principal and subcontractors covered by these Rules are mandatorily required to enroll and participate in the DOLE programs such as the Incentivizing Compliance Program (Department Order No. 115-11).

Section 33. Contracting or Subcontracting in the Construction and Other Industries. Contracting or subcontracting arrangements in the Construction Industry, under the licensing coverage of the Philippine Construction Accreditation Board (PCAB), shall not be covered by the provisions of these Rules and shall continue to be governed by Department Order No. 19, Series of 1993 (*Guidelines Governing the Employment of Workers in the Construction Industry*) and Department Order No. 13, Series of 1998 (*Guidelines Governing the Occupational Safety and Health in the Construction Industry*); and DOLE-DPWH-DILG-DTI and PCAB Memorandum of Agreement-Joint Administrative Order No. 1, Series of 2011 (on coordination and harmonization of policies and programs on occupational safety and health in the construction industry).

In industries covered by a separate regulation of the DOLE or other government agency, contracting therein shall be governed by these Rules unless expressly provided otherwise.


Section 34. Prohibition on DOLE officials or employees. Any official or employee of the DOLE or its attached agencies is prohibited from engaging or having any interest in any contracting or subcontracting business.

Section 35. Supersession. All rules and regulations issued by the Secretary of Labor and Employment inconsistent with the provision of these Rules are hereby superseded.

Section 36. Separability Clause. If any provision or portion of these Rules are declared void or unconstitutional, the remaining portions or provisions hereof shall continue to be valid and effective.


Section 37. Effectivity. This Department Order shall be effective fifteen (15) days after completion of its publication in a newspaper of general circulation.

Manila, Philippines, 16 MAR 2017.



SILVESTRE H. BELLO III
Secretary

Dept. of Labor & Employment
Office of the Secretary



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