

FREQUENTLY ASKED QUESTIONS ON LABOR STANDARDS

1. How is the equivalent monthly rate (EMR) of the monthly-paid and daily-paid employees computed?

Under the Labor Code, private sector workers should receive the applicable minimum wages not lower than those prescribed by the Regional Boards under existing wage orders. At present, the prescribed minimum wages are for normal working hours, which shall not exceed eight hours per day.

For monthly-paid employees

The factor 365 days in a year is used in determining the equivalent annual salary of monthly-paid employees. To compute their EEMR, the procedure is as follows:

$$\text{EEMR} = \frac{\text{Applicable Daily Rate} \times 365 \text{ days}}{12}$$

Where 365 days =

298 days	- Ordinary working days
52 days	- Sundays/Rest days
12 days	- Regular Holidays
<u>3 days</u>	- Special days
365 days	- Total equivalent no. of days in a year

For daily-paid employees

The following formula may be used in computing the EMR of different groups of daily-paid employees for purposes of entitlement to minimum wages and allied benefits under existing laws:

- (a) For those who are required to work everyday including Sundays or rest days, special days and regular holidays.

$$\text{EEMR} = \frac{\text{Applicable Daily Rate} \times 392.50 \text{ days}}{12}$$

Where 392.50 days =

299.00 days	- Ordinary working days
22.00 days	- 12 Regular holidays x 200%
67.60 days	- 52 rest days x 130%
<u>3.90 days</u>	- 3 special days x 130%
392.50 days	- Total equivalent no. of days in a year

- (b) For those who do not work and are not considered paid on Sundays or rest days.

$$\text{EEMR} = \frac{\text{ADR} \times 313 \text{ days}}{12}$$

Where 313 days = 298 days - Ordinary working days
 12 days - Regular holidays
3 days - Special days
 313 days - Total equivalent no. of days in a year

- (c) For those who do not work and are not considered paid on Saturdays and Sundays or rest days.

$$EEMR = \frac{ADR \times 261 \text{ days}}{12}$$

Where 261 days = 246 days - Ordinary working days
 12 days - Regular holidays
3 days - Special days
 261 days - Total equivalent number of days

2. What is a Wage Distortion?

It is a situation where an increase in prescribed minimum 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.

3. How is Wage Distortion corrected?

Should disputes arise as a result of wage distortion, RA 6727 provides for correcting the distortions as follows:

- In **organized firms**, the employer and the union shall negotiate to correct the distortion using the grievance procedures in the CBA or, if the dispute remains unresolved, through voluntary arbitration.
- In **unorganized firms**, the employers and workers endeavor to correct the distortion. Any dispute is settled by conciliation through the National Conciliation and Mediation Board, or if it remains unresolved, by compulsory arbitration through the National Labor Relations Commission.

4. What are some of the suggested formulas for correcting Wage Distortion?

The following are some of the suggested formulas for correcting the effects of the implementation of wage orders in the existing wage structures of firms:

(a) Pineda Formula

$$\text{Wage distortion adjustment} = \frac{\text{Previous minimum wage}}{\text{Wage of Employee}} \times \text{Mandated wage Increase}$$

(b) Pineda-Cruz-So Formula

$$\text{Wage distortion adjustment} = \frac{\text{Previous minimum wage}^n}{\text{Wage of Employee}} \times \text{Mandated wage Increase}$$

Where : Exponent is represented by *n*

(c) Percentile Approach

$$\text{Wage distortion adjustment} = \frac{\text{Percentile weight of pay group}}{\text{Wage of Employee}} \times \text{Mandated wage Increase}$$

(d) Philippine Construction Supply Formula

$$\text{Wage distortion adjustment} = \frac{\text{Existing minimum wage}}{\text{Formula base range (FBR)}} \times \text{Mandated wage Increase}$$

Where : FBR = Actual wage rate (AWR) + Agreed amount of adjustment

(e) Jimenez, Ofreneo, Delas Alas Jr. (JODA) Formula

$$\text{Wage distortion adjustment} = \frac{W_b - W_a}{2}$$

New Daily wage rate = wage distortion adjustment + *W_c*

Where: *W_a* = old daily minimum wage
W_b = daily wage of employee (where *W_b* > *W_a*, or *W_b* is above *W_a*)
W_c = new daily minimum wage
= *W_a* + mandated wage increase

(f) **Wirerope Formula**

$$\text{Wage distortion adjustment} = \frac{\text{Existing minimum wage}}{\text{Present wage of employee}} \times (\text{Mandated Wage Increase} - \text{Creditable Increase})$$

(g) **Bagtas Approach**

$$\text{Wage distortion adjustment} = \frac{\text{Mandated Wage Increase}}{\text{Existing Minimum Wage}} \times \text{Present wage of employee}$$

5. Who are covered by wage orders issued by the Regional Wage Boards?

Wage Orders issued by the Boards cover only private sector workers, except for household helpers and persons in the personal employ of another, including family drivers.

6. Who are exempted from Wage Orders issued by the Regional Wage Boards?

Per the Rules on Exemption, the following categories of establishments may be exempted upon application with and as determined by the Board:

- distressed establishments
- new business enterprises
- retail/service establishments employing not more than 10 workers
- establishments adversely affected by natural calamities

The Boards may also exempt establishments other than those enumerated above only if they are in accord with the rationale for exemption stated in the Rules on Exemption and upon strong justifiable reasons.

7. Who are entitled to 13th-month pay?

Memorandum Order No. 28, issued by former President Corazon C. Aquino on August 13, 1986, and which modified PD No. 851, provides that all employers are hereby required to pay all their rank-and-file employees a 13th month pay not later than December 24 of every year.

8. What is the formula for computing 13th month pay?

$$\frac{\text{Total Basic Salary during the calendar year}}{12} = \text{13th Month Pay}$$

Note: Under the Revised Guidelines on the Implementation of the 13th Month Law, the “basic salary” of an employee for the purpose of computing the 13th month pay shall include all remunerations or earning paid by this employer 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 cost-of-living allowances. However these salary-related benefits should be included as part of the basic salary in the computation of the 13th month pay if by individual or collective agreement, company practice or policy, the same are treated as part of the basic salary of the employees.

9. Can employees who have resigned or whose services were terminated before December 24 (or the time of payment of the 13th month pay) still entitled to such 13th month pay?

An employee who has resigned or whose services were terminated at any time before the time for payment of the 13th month pay is entitled to this monetary benefit in proportion to the length of time he worked during the year, reckoned from the time he started working during the calendar year up to the time of his resignation or termination from the service. Thus, if the employee worked only from January up to September, his/her proportionate 13th month pay should be equivalent of 1/12 his/her total basic salary he earned during that period.

10. Are employees entitled to payment of their regular daily wages on regular holidays?

Every employee covered by the holiday pay rule is entitled to his daily basic wage for any unworked regular holiday. This means that the employee is entitled to at least 100% of his basic wage even if he did not report for work, *provided he is present or is on leave of absence with pay on the work day immediately preceding the holiday*. Under RA 9492, there are eleven (11) regular holidays in the Philippines, namely:

- New Year's Day - January 1
- Maunday Thursday - Movable dates
- Good Friday - Movable dates
- Araw ng Kagitingan - April 9
- Labor Day - May 1
- Bonifacio Day - November 30
- Independence Day - June 12
- National Heroes Day - last Monday of August
- Christmas Day - December 25
- Rizal Day - December 30
- E'dl Fi'tr - Movable dates
- E'dl Adha - Movable dates

11. What about on special non-working holidays?

During special days, the principle of "no work, no pay" applies and on such other special days as may be proclaimed by the President or by the Congress.

Workers who were not required or permitted to work on those days are not by law entitled to any compensation unless there is a voluntary practice or a Collective Bargaining Agreement (CBA) provision providing for payment of wages and other benefits for days declared as special days even if unworked.

Republic Act No. 9492 lists down three (3) special holidays that shall be observed in the country:

- Ninoy Aquino Day - Monday nearest Aug. 21
- All Saint's Day - November 1
- Last day of the year - December 31

12. How is premium pay (or pay for work performed within regular hours on non-working days, such as rest days, special days and regular holidays) computed?

On a Special Day:

$\text{Applicable Daily Rate [ADR]} \times 130\% = \text{Salary/Pay for the Special Day}$

On a Special Day which is also a Rest Day:

$\text{Applicable Daily Rate [ADR]} \times 150\% = \text{Salary/Pay for the Special Day}$

On a Regular Holiday:

$\text{Applicable Daily Rate [ADR]} \times 200\% = \text{Salary/Pay for the Regular Holiday}$

On a Regular Holiday which is also a Rest Day:

$\text{Applicable Daily Rate [ADR]} \times 260\% = \text{Salary/Pay for the Regular Holiday}$

13. What are the other usual pay or leave benefits that rank and file employees are entitled to?

(a) Overtime Pay

Overtime pay refers to additional pay given to rank and file employees for work performed beyond eight (8) hours a day computed as follows:

On ordinary days:

$$\frac{\text{Daily Basic Salary}}{8} = \text{Hourly Wage Rate [HWR]}$$

then: $[\text{HWR} \times 125\%] \times \text{No. of Overtime Hours} = \text{Overtime Pay}$

On rest days, special holidays or regular holidays:

$$\frac{\text{Daily Basic Salary for Rest Day, Special Day or Holiday}}{8} = \text{Hourly Wage Rate [HWR]}$$

then: $[\text{HWR} \times 130\%] \times \text{No. of Overtime Hours} = \text{Overtime Pay}$

(b) Night Shift Differential

This is additional compensation of *ten percent* (10%) of an employee's regular wage for each hour of work performed between 10:00pm and 6:00am, computed as follows:

Where Night Shift is regular work:

$$\frac{\text{Daily Basic Salary}}{8} = \text{Hourly Wage Rate [HWR]}$$

then: $[\text{HWR} \times 110\%] \times \text{No. of Hours Worked bet. 10pm-6am} = \text{Night Shift Premium Pay}$

Where Night Shift is on Rest Day, Special Holiday or Regular Holiday:

$$\frac{\text{Daily Basic Salary for Rest Day, Special Day or Holiday}}{8} = \text{Hourly Wage Rate [HWR]}$$

then: $[\text{HWR} \times 110\%] \times \text{No. of Hours Worked bet. 10pm-6am} = \text{Night Shift Premium Pay}$

(c) Service Incentive Leave

Every employee who has rendered at least one (1) year of service is entitled to a yearly service incentive leave of five (5) days with pay.

This benefit does not apply to the following:

- government employees

- domestic helpers and persons in the personal service of another
- managerial employees
- field personnel and those whose time and performance is unsupervised by the employer
- those already enjoying this benefits
- those enjoying vacation leave with pay of at least five (5) days
- those employed in establishments regularly employing less than ten (10) employees

The phrase "one year of service" of the employee means service within 12 months, whether continuous or broken, reckoned from the date the employee started working. The period includes authorized absences, unworked weekly rest days, and paid regular holidays. Where by individual or collective agreement, practice or policy, the period of working days is less than 12 months, said period shall be considered as one year for the purpose of determining entitlement to the service incentive leave.

The service incentive leave may be used for sick and vacation leave purposes. The unused service incentive leave is commutable to its money equivalent at the end of the year. In computing, the basis shall be the salary rate at the date of commutation.

The availment and commutation of this benefit may be on a *pro rata* basis.

(d) Paternity Leave

Republic Act No. 8187, otherwise known as the "Paternity Leave Act of 1996" permits a married male employee in the private and public sectors to take a leave for seven (7) days, with full pay, for the first 4 deliveries of his legitimate spouse with whom he is cohabiting provided:

1. The employee is lawfully married;
2. He is cohabiting with his legitimate wife;
3. His wife is pregnant or has delivered a child or suffered a miscarriage or abortion;
4. Must be of the first four deliveries;
5. The employer is notified within reasonable time of the pregnancy and of date of expected delivery (not required in case of abortion or miscarriage);
6. The benefit is availed of not later than 60 days after delivery.

The paternity benefit may be availed of before, during or after delivery, provided the total number of days does not exceed 7 working days. For example, the employee may

take a leave of 2 days before delivery, 1 day during delivery, and another 4 days after delivery. However, the benefit must be availed of not later than 60 days after date of delivery.

The benefit may be availed of only for the first four deliveries. Paternity leave is not commutable to cash if not availed of.

(e) Maternity Leave

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.

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.

The maternity leave shall be paid by the employer only for the first four (4) deliveries by a woman employee.

(f) Parental Leave for Solo Parents

Pursuant to Republic Act 8972, also known as the "Solo Parents' Welfare Act of 2000", any individual who falls under any of the following categories:

- (1) A woman who gives birth as a result of rape and other crimes against chastity even without a final conviction of the offender: Provided, That the mother keeps and raises the child;
- (2) Parent left solo or alone with the responsibility of parenthood due to death of spouse;
- (3) Parent left solo or alone with the responsibility of parenthood while the spouse is detained or is serving sentence for a criminal conviction for at least one (1) year;
- (4) Parent left solo or alone with the responsibility of parenthood due to physical and/or mental incapacity of spouse as certified by a public medical practitioner;

- (5) Parent left solo or alone with the responsibility of parenthood due to legal separation or *de facto* separation from spouse for at least one (1) year, as long as he/she is entrusted with the custody of the children;
- (6) Parent left solo or alone with the responsibility of parenthood due to declaration of nullity or annulment of marriage as decreed by a court or by a church as long as he/she is entrusted with the custody of the children;
- (7) Parent left solo or alone with the responsibility of parenthood due to abandonment of spouse for at least one (1) year;
- (8) Unmarried mother/father who has preferred to keep and rear her/his child/children instead of having others care for them or give them up to a welfare institution;
- (9) Any other person who solely provides parental care and support to a child or children;
- (10) Any family member who assumes the responsibility of head of family as a result of the death, abandonment, disappearance or prolonged absence of the parents or solo parent.

are entitled to, among others, a “parental leave” with full pay of not more than seven (7) working days every year; Provided, (a) that the solo parent has rendered service of at least one (1) year , whether continuous or broken; (b) He/she has notified his/her employer that he/she will avail himself/herself of it, within a reasonable period of time; and (c) He/she has presented to his/her employer a Solo Parent Identification Card, which may be obtained from the DSWD office of the city or municipality where he/she resides.

The term “children” refers to those living with and dependent upon the solo parent for support who are unmarried, unemployed and not more than eighteen (18) years of age, or even over eighteen (18) years but are incapable of self-support because of mental and/or physical defect/disability.

This benefit is not convertible to cash if not availed of by the employee.

(g) Leave for Victims of Violence Against Women and Their Children (VAWC)

Women victims of violence under Sec. 43 of R.A. 9262, or the “Anti-Violence against Women and their Children Act”, are entitled to a paid leave of absence from work up to 10 days.