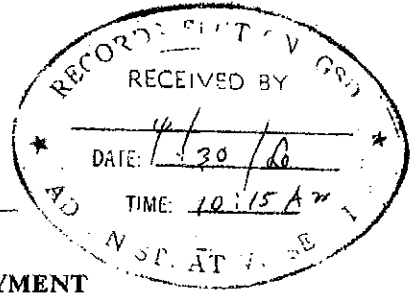


DEPARTMENT ORDER NO. 19
(Series of 1993)



**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 employees 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-terminous 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 practised 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 employees 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 subcontractor, as the case may be, subject to 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 work 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 employment in the project or phase thereof or 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 in 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 terminated without just cause or authorized cause and there is no showing that 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.

3.4. Completion of the project. - Project employees who are separated from work as a result of the completion of the project or any phase thereof in which they are employed are entitled to the pro-rata completion bonus if there is an undertaking for the grant of such bonus. An undertaking by the employer to pay a completion bonus shall be an indicator that an employee is a project employee. Where there is no such undertaking, the employee may be considered a non-project employee. The pro-rata completion bonus may be based on the industry practice which is at least the employee's one-half (1/2) month salary for every 12 months service and may be put into effect for any project bid (in case of bid projects) tender submitted (in case of negotiated projects) thirty (30) days from the date of issuance of these Guidelines.

3.5. Statutory benefits. - During the period of their employment, the construction employees whether project or non-project shall enjoy all the benefits due them under the law, both monetary and non-monetary.

3.6. Payment by results. - Where the payment for work or services rendered is by results, e.g., piece rate or "pakiao", the rate shall be determined on the basis of not less than the minimum wage applicable in the region where the construction project is located. The minimum wage rates of workers who are paid by results may be determined by the appropriate DOLE Regional Office on its initiative or upon request of interested parties.

Section 4. PREVENTIVE SUSPENSION

Subject to Article 277 (b) of the Code, project and non-project employees may be preventively suspended if their continued employment poses a serious and imminent threat to the life or property of the employer or of their co-workers. No preventive suspension, however, shall last longer than fifteen (15) days. The employer shall thereafter reinstate the worker in his former or in a substantially equivalent position or the employer may extend the period of suspension provided that during the period of extension, he pays the wages and other benefits due to the worker. The employer shall designate a day, time and place within the period of preventive suspension, with notice to the employee, to hold a fact-finding investigation, to enable the suspended employee to be heard and be assisted by his counsel or representative, if he so desires, of the charge against him and thereby exonerate the employee, or upon the employees' failure to vindicate himself, to find the employee guilty and thereby, to terminate his employment. Such termination shall not prejudice the right of the employee to question the severance of relationship in the appropriate forum.

Section 5. SELF-ORGANIZATION AND COLLECTIVE BARGAINING

In recognition of the right of employees to self-organization and collective bargaining, this Department hereby encourages the formation of "trade" unions in the construction industry, provided that the formation or activities of a recognized trade union will not prejudice existing bargaining units, subject to existing laws. As used herein, trade unions refer to a combination of workers of the same trade or of several allied trades, for the purpose of securing by united action the most favorable conditions regarding wages, hours of labor and other terms and conditions of employment for its members.

Section 6. LIABILITIES/RESPONSIBILITIES OF THE EMPLOYER AND THE WORKERS.

6.1. Requirements of labor and social legislations. - (a) The construction company and the general contractor and/or subcontractor referred to in Sec. 2.5 shall be responsible for the workers in its employ on matters of compliance with the requirements of existing laws and regulations on hours of work, wages, wage-related benefits, health, safety and social welfare benefits, including submission to the DOLE-Regional Office of Work Accident/Illness Report, Monthly Report on Employees' Terminations/Dismissals/Suspensions and other reports. The prime/general contractor shall exercise sound judgment and discretion in contracting out projects to ensure compliance with labor standards.

(b) Project and non-project employees shall observe the requirements of labor and social legislations and reasonable company rules and regulations on matters pertaining to their obligations.

6.2. Implementation of safety and health standards. - The Department through the Regional Offices shall strictly enforce the Occupational Safety and Health Standards, as amended, particularly Rule 1005 on Duties of Employers, Workers and Other Persons and Rule 1410 on Construction Safety. Through the Bureau of Working Conditions, the Department may issue a code of practice on Occupational Safety and Health for the construction industry.

6.3. Wage Increases. - As regards wage increases, whether mandated or agreed upon by the parties, the prescribed increase in the wage rates of the workers in construction projects shall be borne by the principals or clients of the construction contractors and the contracts shall be deemed amended accordingly. The wage rates of project employees shall depend on the skills or level of competence of such project employees as determined by NMYC Trade and Standards subscribed to by the Philippine Construction Industry under the Five Year

Construction Manpower Development Plan dated November 1991, provided that the rates established shall not be lower than that prescribed by the appropriate wage order and regulations. The liability in subsequent mandated grants of wage increases and/or allowances to construction workers shall be determined in accordance with the provisions of the applicable wage legislations or orders.

Section 7. EFFECT ON EXISTING ISSUANCES AND AGREEMENTS

This issuance shall serve as guides for this Department and its agencies in the administration and enforcement of applicable labor and social legislations and their implementing regulations.

Nothing herein shall be construed to authorize diminution or reduction of benefits being enjoyed by employees at the time of issuance hereof.

This Department Order supersedes Policy Instructions No. 20 of 1977 and shall take effect immediately.

1 April 1993


MA. NIEVES R. CONFESOR
Secretary