FOURTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
First Regular Session)

S E N A T E

Senate Bill No. 159

INTRODUCED BY **SEN. JINGGOY EJERCITO ESTRADA**

EXPLANATORY NOTE

This bill seeks to establish the New Labor Code of the Philippines And For Other Purposes.

I. Rationale

1. **The Constitutional Mandate on Labor: (Article XIII, Sec. 3, Constitution of the Philippines)**

> "The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.
>
> "It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.
>
> "The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.
>
> "The State shall regulate the relations between workers and employers, recognizing the rights of labor to its just share in the fruits of production and the right of enterprises to a reasonable returns on investments, and to expansion and growth."

The above-stated Constitutional provision is entirely quoted in Article 3, Declaration of Policy, of the proposed New Labor Code. And foremost, Article 3 will reinforce the narrow orientation and coverage of the Constitution to afford full protection to labor based on employer-employee relationship.*This change is a significant* improvement of the 1974 Labor Code which quoted its Declaration of Policy from Section 9 of Article 11 of the 1973 Constitution of the Philippines, to wit:

"**Section 9. Declaration of Principles and State Policies –**

> The State shall promote a just and dynamic social order that will ensure the prosperity and independence of the Nation and free the people from poverty through policies that provide adequate social services, promote full employment, a rising standard of living and improved quality of life for all."

2. **The Challenge of the Emerging World Economic Order.**

The Congressional Commission on Labor (LABORCOM) was created by Joint Resolution No.31 and signed into law on February 9, 1998, to review and assess the state of Philippine Labor in the light of the implementation of the Manila Action Plan of the Asia Pacific Economic Cooperation (APEC), and recommend policy, institutional and infrastructural measures to ensure the protection of the rights and promotion of the welfare of the workers. The whereas clauses of the Joint Resolution No.31 read:

> "WHEREAS, the workers are the lifeline of the economy; they represent the human element – the brains and the brawn in the transformation of resources, both natural and capital, into goods and services in accordance with the needs of the society;
>
> "WHEREAS, without the workers, capital cannot be translated into wealth; it is, by itself, worthless;
>
> "WHEREAS, what is technology without the worker to operate it; what is production process without the worker to execute it; what is commodity without the worker to buy and consume it;
>
> "WHEREAS, the largest component of income of most Filipino individuals and families is a return for their skills and knowledge;
>
> "WHEREAS, for decades, the Filipino worker has a comparative advantage in relation to his Asian and African counterpart in terms of literacy and skills; he is educated and equipped with the know-how and communication skills that most big companies ordinarily require; he has been bringing in the much-needed dollars into our otherwise wobbly economy;
>
> "WHEREAS, the emerging world economic order has spawned structural changes in national economies; trade liberalization, deregulation, privatization, and market integration; these current developments have fundamentally altered the work environment particularly in Third World countries like the Philippines;
>
> "WHEREAS, because of the mobility of capital and sophisticated communications, workers across the globe are now in direct competition, competitively underbidding each other, and virtually keeping wages at low levels;
>
> "WHEREAS, capitalists have adopted "flexible" management policies such as subcontracting, casualization of workers, job-sharing which have engendered an atmosphere of insecurity and helplessness in the labor market;

"WHEREAS, more and more are now constantly threatened by retrenchment, company closures and union busting while not a single company has been penalized for a labor law violation."

The work of the Commission was undertaken principally through four Standing Committees: (i) Committee on Employment and Productivity; (ii) Committee on Labor Relations; (iii) Committee on Labor Standards and Working Conditions; and (iv) Committee on Institutions and Bureaucracy.

Technical Working Group, Sectoral and Regional Consultations, and Standing Committee Meetings were conducted by each Committee, deliberating on issues and problems within their respective areas of concern. Participants to these meetings included experts and resource persons from Government, employers and labor sectors and concerned non-government organizations. The results of these meetings/consultations form part of the bases for the Report of each Standing Committee, and become the major consideration of the Final Report of the Commission, entitled "Human Capital in the Emerging Economy". The Final Report of the Commission was presented to Malacañang on February 10, 2001, in the presence of Congressional leaders.

The four Standing Committees (LABORCOM) came out with policy recommendations as prioritized by the Congressional Oversight Committee on Labor and Employment (COCLE) which was created by Concurrent Resolution No. 31 on February 2001 and became effective after the term of the LABORCOM expired in June 2001, to oversee and monitor the implementation of LABORCOM recommendations, as well as all programs, projects and activities related to labor, employment and allied concern in both the public and private sector. The Committee on Employment and Human Resources Development listed 19 policy recommendations, among which are the following:

i) Consider apprenticeship as a training modality.

ii) Apprenticeship should be a dual training mode: theoretical education and practical training in school.

iii) Apprenticeship period should be based on the nature of the occupation. The length of the period should be determined by a Tripartite body and provided for in the apprenticeship agreement.

iv) To redefine the term "apprentice" as a person undergoing training for an approved apprenticeable occupation in an established period assured by an apprenticeship agreement.

v) Contents of the apprenticeship agreement should be specified in details.

The Committee on Labor Relations made 33 recommendations, among which are the following:

i) Grievance machinery remains the recommended mechanism for dispute settlement.

ii) Strengthen provisions on social dialogue and promote the concept of shared responsibility and tripartism. Promote conciliation and mediation as the first level of government intervention and encourage best-offer arrangements.

iii) The rules on the formation and recognition of unions must be simplified to avoid costly restraints. Other forms of worker's organization should also be recognized as collective bargaining units.

iv) The registration of trade unions should be made ministerial in the DOLE. The resolution of claims of recognition or certification cases should be purely administrative and without judicial intervention.

v) The development of industry-wide organizations should be promoted. Encourage industry-wide bargaining.

vi) Take measures to ensure workers' representation and bargaining status in the event of a change of management due to takeovers, consolidation or mergers.

vii) Limit the jurisdiction of the Secretary of Labor on disputes involving the national interest to disputes involving essential services only as defined by the ILO.

The Committee on Labor Standards and Working Conditions listed 11 policy recommendations. They include the following:

i) Policies have to be modified to address the actual situation, the participation of children below 14 years of age in paid and unpaid labor activities

ii) Concrete policy guidelines should be instituted for the immediate protection and withdrawal of children employed in hazardous industries including children in the hotel and entertainment industries.

iii) Strengthening the Regional Tripartite Wages and Productivity Boards

iv) Productivity

The Committee on Institutions and Bureaucracy listed 16 policy recommendations. Among others, they are as follows:

i) Encourage the Institute of Labor Studies of the DOLE to undertake studies that could assist or guide the parties in collective bargaining

ii) Part of the mandate of the proposed National Employment Plan is the maintenance and networking of the Public Employment Service Office (PESO); and strengthening of the Special Program for Employment of Students (SPES)

iii) DOLE should focus more on worker safety and occupational health (preventive)

3. **Considerable/substantial changes of P.D. 442, otherwise known as the Labor Code of the Philippines, as amended, since its promulgation in 1974.**

In Book I, "Pre-employment", the changes are introduced largely by R.A. 8042, or the "Migrant Workers Act of 1995" which was approved on June 7, 1995. The law affected provisions of Title I of this Book which reflects the policy shift on overseas employment from a stop-gap measure in the 80's to managing the outflow of labor, as a matter of employment option. Other significant enactment

that modified, superseded or amended/existing provisions of this Book is : (i) E.O. 797, "Reorganizing the Ministry of Labor and Employment, Creating the POEA, as amended, by E.O. No. 247 "Reorganizing the POEA"

In Book II, "Human Resources Development Program", the National Manpower and Youth Council (NMYC), was established in 1975 to take charge of training and manpower/human resources development. This was changed after the Congressional Committee on Education Report of 1992 identified the weaknesses in the educational system and manpower training and recommended remedial measures. This paved the way to the enactment of R.A. 7796 or the "TESDA Law" and R.A. 7686 or the "Dual Training System Act of 1994." These laws reflect the policy shift in the country's human resource development program from a purely government undertaking to private sector-government partnership. The National Manpower Development Program in this Book is taken over by TESDA to achieve a truly world-class and globally competitive Filipino workforce. The private sector involvement in the technical-vocational training is enhanced further through the "Dual Training System" provided for by R.A. 7686.

In Book III, "Conditions of Employment," the changes are introduced by R.A. 6727 or the "Wage Rationalization Act" which also created the National Wages and Productivity Commission (NWPC) and Regional Tripartite Wages and Productivity Boards (RTWPB). Other changes are introduced by the following enactments: (i) R.A. 8188 "Double Indemnity Act", (ii) R.A. 6971 "Productivity Incentives Act of 1990", (iii) P.D. 851, as amended by Memorandum Order No. 28 "13th Month Pay Law", (iv) R.A. 8424 "Tax Reform Act", (v) R.A. 8187 "Paternity Leave Act of 1996", (vi) R.A. 7877 "Anti-Sexual Harassment Act of 1995 and (vii) R.A. 7610, as amended, by R.A. 7658 "Special Protection of Children against Child Abuse, Exploitation and Discrimination Act."

In Book IV, "Health, Safety and Social Welfare Benefits", recent enactments like, R.A. 8282 "Social Security Systems Act of 1997," R.A. 8291 "GSIS Act of 1997", R.A. 7699 "Limited Portability Scheme," R.A.7742 "Pag-Ibig Fund", and R.A. 8425, "Social Reform and Poverty Alleviation Act" have introduced significant changes on the health, safety and social welfare benefits of all workers. Hence, relevant provisions of these laws are included under this Book.

In Book V, "Labor Relations", most of the changes have been made by new laws and have been reflected in the present Labor Code, such as R.A. 6715 (The New Labor Relations Law); R.A. 7700 "Concurrent Jurisdication Between and Among the 1st, 2nd and 3rd Divisions of the NLRC" to further ensure the speedy disposition of cases; and Section 10 of R.A. 8042 "Migrant Workers Act" which transferred the jurisdiction to hear and decide money claims of OCW's to the NLRC from POEA.

Other enactments are yet to be reflected in this Book, like the amendments on the powers and functions of the Bureau of Labor Relations with the creation of the National Conciliation and Mediation Board (NCMB) by E.O. 126 as amended by E.O. 251. The same E.O. also affected the Institute for Labor and Manpower Studies which was transformed into the Institute for Labor Studies and its education function was transferred to the BLR.

In Book VI, "Post-Employment", the changes were introduced by R.A. 6715 "New Labor Relations Law" and R.A. 7641 "New Retirement Law" approved on December 9, 1992. The amendments have been integrated but specific to

Article 287 on retirement R.A. 8558 introduced an additional paragraph in this Article, providing for lower retirement age for underground mine workers.

In Book VII "Transitory and Final Provisions," majority of the provisions under this Book have been rendered obsolete with the changes that took place since the enactment of this Code.

The present Labor Code consists of **287** Articles excluding the Articles in Book VII, Transitory and Final Provisions, which majority of the provisions have been rendered obsolete with the changes that took place since the enactment of this Code. Out of these **287** Articles, **106** Articles are being amended, **10** Articles are deleted for being repealed/superseded by subsequent laws, orders or legislative proposals, **28** Articles are new provisions, and **161** Articles are being retained for its present applicability.

II. Objectives

The Congressional Oversight Committee on Labor and Employment (COCLE) presented the different policy recommendations of the LABORCOM in the Technical Consultation Meetings that it had conducted in order to finalize what policy recommendations could be inputted into the proposed "New Labor Code". And taking into account the results of the TCM's, reflecting the views, comments and reactions of Government, employer and labor sectors, and concerned Non-government organizations and academe, and the Center for Research and Special Studies (CRSS) draft of the Labor Code translating the various LABORCOM recommendations, this bill, seek to achieve the following objectives:

1. ***In Book One – Pre-employment,*** among which: **(i)** Providing a more effective regulation of recruitment and placement activities with the restoration of the 'regulatory functions' of the POEA; and **(ii)** Greater protection and promotion of the rights and welfare of the overseas contract workers by securing the best terms and conditions of employment for OFW's, establishing a one-stop-shop processing centers and imposing a stiffer penalty for illegal recruitment as well as, those with a license or authority who violated any provision of this Title.

2. ***In Book Two – Human Resources Development Programs***, among which: **(i)** The Technical Education and Skills Development Authority (TESDA), R.A. 7796, which took over, provides a manpower development program more directly related to the requirements of the economy; and **(ii)** Improvement of the training and employment of apprentices, learners and handicapped workers, which establishes apprenticeship as a training modality and a dual training mode: theoretical education and practical training in school, and the learners to receive a training allowance which shall begin at not less than the applicable minimum wage, while the handicapped workers can undergo training as apprentices, and adding, is the creation of the Special Program for Employment of Students (SPES).

3. ***In Book Three – Conditions of Employment***, among which **(i)** Ensure humane conditions of work, increasing the service incentive leave from five (5) to ten (10) days, granting male workers paternity leave of seven (7) days with full pay and granting the right to family and medical leave of four (4) weeks without pay every year when

the worker and his family is suffering from serious illness; **(ii)** Fuller enforcement of the law on wages, by declaring unlawful "Labor-Only Contracting" and giving the workers first and absolute preference regarding their wages and monetary claims in case of closures or cessations of operations of the employer's business; **(iii)** Improvement of the working conditions for special groups of employees: women minors, house helpers and industrial homeworkers, increasing the maternity leave benefits for women workers from 45 to 60 days and 78 days for caesarean delivery, providing for the enabling law for Convention 182 recently ratified by the Senate on "Worst Forms of Child Labor" for minor workers and strengthening the provisions on househelpers by adopting some provisions of the "Batas Kasambahay"; and **(iv)** Incorporating the "Productivity and Performance Incentives and Gainsharing Program;

4. *In Book Four – **Health, Safety and Social Welfare Benefits***, among which: **(i)** A strengthened and coordinated program on occupational health and safety, by making the DOLE the principal agency in coordinating and monitoring the activities of all laws to promote occupational safety and health. The DOLE Secretary shall issue rules and regulations necessary to implement the provisions of this Title; and **(ii)** A strengthened employees compensation program, by removing from the employee the burden of proving that his/her 'sickness' is compensable, and increasing the age limit from sixty (60) to seventy (70) years old for compulsory coverage in the State Insurance Fund.

5. *In Book Five – **Labor Relations***, among which: **(i)** Affording the fullest possible exercise by workers of their constitutional rights to: self-organization: collective bargaining; peaceful concerted activities; and the right to strike in accordance with law; by making the registration of labor organizations clearly a ministerial functions; holding of a certification elections shall no longer require a petition, only a "request"; defining additional terms like, "industry union" and "workers association" and providing for the organization of 'workers association' by "ambulant, intermittent, etc."; providing for a six (6) years term of the collective bargaining agreement because other provisions of the CBA can be renegotiated after three (3) years; providing for the procedures for determining a representative even where there is a bargaining agent but there is no collective bargaining agreements; making violation of the duty of fair representation and entering into CBA's which provide terms and conditions of employment below minimum standards established by law; and replacing the phrase "in an industry indispensable to national interest" to "in an enterprise engaged in providing essential services", such as, but not limited to, hospital, electrical services, water supply and communication and transportation in the assumption power of the Secretary of Labor over labor disputes; **(ii)** Providing that the exercise of free ingress to or egress from the employer's premises shall not be used to take out company's products, machineries and equipments or to bring in new employees for the operation of the company; and (iii) Speedy labor justice by strengthening the administrative machinery for the expeditious settlement of labor disputes: providing that "no labor dispute shall be under the jurisdiction of the National Labor Relations Commission (NLRC) until after all the efforts to resolve

...en labor dispute at the work place by the grievance machinery or by conciliation in accordance with the rules and regulations promulgated by the Sec. of Labor have failed; expressly providing that the National Conciliation and Mediation Board (NCMB) "shall implement the preferential use of voluntary modes of settling labor disputes through conciliation"; providing that "the cost of Voluntary Arbitration *including the Voluntary Arbitrator's fee shall be borne by* the special voluntary arbitration fund supplemented by the appropriations of the budget of the Board and strengthening the NLRC by increasing the number of divisions from five (5) to eight (8) and also increasing the number of years of experience for Executive Labor Arbiter and Labor Arbiter from seven (7) to ten (10) years.

6. ***In Book Six – Post Employment***, among which: **(i)** Providing more clearly for the right of a regular employee to security of tenure ; **(ii)** Defining clearly what is a regular or an indefinite period of employment and temporary or a definite period of employment; **(iii)** Providing for a clearer idea of a probationary period; and implementation of the right to security of tenure of employees in case there is a merger or consolidation of employers corporations.

7. ***In Book Seven – Transitory and Final Provision***, among which: **(i)** Providing for a longer period of prescription for the filing of money claims from three (3) to five (5) years; and **(ii)** Providing that "*Employee dismissal actions shall prescribe in four* (4) years".

Other provisions under this Book are deleted for becoming dead letter laws.

In view of the foregoing premises, I earnestly urge this Chamber's approval of this measure.

JINGGOY EJERCITO ESTRADA
Senator

FOURTEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
First Regular Session)

SENATE

S. B. No. 159

Introduced by: **SEN. JINGGOY EJERCITO ESTRADA**

AN ACT
ESTABLISHING THE NEW LABOR CODE OF THE PHILIPPINES AND FOR OTHER PURPOSES

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

PRELIMINARY TITLE

GENERAL PROVISIONS

ARTICLE 1. **Title** – This Act shall be known as the " New Labor Code of the Philippines." (a)

ARTICLE 2. **Date of Effectivity**. This Code shall take effect fifteen (15) days after its publication in the Official Gazette. (a)

ARTICLE 3. **Declaration of basic policy**. — The State shall afford full protection to labor, local and overseas, organized and unorganized. It shall promote full employment and equality of employment opportunities for all. It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations and peaceful concerted activities including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and right of enterprises to reasonable returns on investments and to expansion and growth. (a)

ARTICLE 4. **Construction in favor of labor**. — All doubts in the implementation and interpretation of the provisions of this Code, including its implementing rules and regulations, shall be resolved in favor of labor. (a)

ARTICLE 5. **Rules and regulations**. — The Department of Labor and Employment in consultation with other government agencies charged with the administration and enforcement of this Code or any of its parts shall promulgate the necessary implementing rules and regulations. Such rules and regulations shall become effective fifteen (15) days after announcement of their adoption in newspapers of general circulation.

ARTICLE 6. **Applicability.** — All rights and benefits granted to workers under this Code shall, except as may otherwise be provided herein, apply alike to all workers, in the private sector.

The terms and conditions of employment of all government employees, including employees of government-owned and controlled corporations with original charters shall be governed by the Civil Service Law, rules and regulations. (a)

BOOK ONE

PRE-EMPLOYMENT

ARTICLE 7. **Statement of objectives.** — It is the policy of the State to:

(a) Promote and maintain a state of full employment through active industrial policy, balanced agricultural development, unified human resources development and enhanced employment facilitation assistance to job seekers;

(b) Protect every citizen desiring to work locally or overseas by securing for him the best possible terms and conditions of employment;

(c) Facilitate a free choice of available employment by persons seeking work in conformity with the national interest;

(d) Facilitate and regulate the movement of workers in conformity with the national interest;

(e) Regulate the employment of aliens, including the establishment of a registration and/or work permit system;

(f) Strengthen the network of public employment offices and rationalize the participation of the private sector in the recruitment and placement of workers, locally and overseas, to serve national development objectives;

(g) Insure careful selection of Filipino workers for overseas employment in order to protect the good name of the Philippines abroad. (A, Art.12)

Title I

RECRUITMENT AND PLACEMENT OF WORKERS

CHAPTER I

GENERAL PROVISIONS

ARTICLE 8. **Definitions.** — (a) "Workers" means any member of the labor force, whether employed or unemployed.

(b) "Recruitment and placement" refers to any act of canvassing, enlisting, contracting, transporting, utilizing, hiring or procuring workers, and includes referrals, contract

services, promising or advertising for employment, locally or abroad, whether for profit or not: Provided, That any person or entity which, in any manner, offers or promises for a fee employment to two or more persons shall be deemed engaged in recruitment and placement.

(c) "Private employment agency" means any person or entity engaged in the recruitment and placement of workers for a fee which is charged, directly or indirectly, from the workers or employers or both.

(d) "Plan" means National Employment Plan.

(e) "Human resources development" means the development of the capacity of the workers through technical and skills development.

(f) "Active industrial policy" means the promotion of rapid industrial growth for job creation purposes. (Art.13-a)

ARTICLE 9. **Employment promotion.** — The Secretary of Labor and Employment in coordination with the Local Government Units shall have the power and authority to:

(a) Initiate, organize and maintain employment offices in addition to the existing employment offices under the Department of Labor as the need arises;

(b) Organize and establish a nationwide job clearance and labor market information system to inform applicants registering with a particular employment office of job opportunities in other parts of the country as well as job opportunities abroad and promote job and skills matching;

(c) Develop and organize a program that will facilitate occupational, industrial and geographical mobility of labor and provide assistance in the relocation of workers from one area to another;

(d) Require any person, establishment, organization or institution to submit such employment information as may be prescribed by the Secretary of Labor; and

(e) Formulate a National Employment Plan and recommend appropriate employment policies, strategies and measures to maximize employment based on active industrial policy, balanced agricultural development, unified human resource development and enhanced employment facilitation assistance. (Art.14-a)

ARTICLE 10. **Bureau of Local Employment.** — The Bureau of Local Employment shall be primarily responsible for assisting the Secretary of Labor and Employment in developing and monitoring a comprehensive national employment plan and its implementing programs. (Art.15-a)

ARTICLE 11. **Private recruitment.** — Except as provided in Chapter II of this Title, no person or entity, other than the public employment offices, shall engage in the recruitment and placement of workers.

ARTICLE. 12. **Philippine Overseas Employment Administration.** - The Philippine Overseas Employment Administration or POEA shall have the following powers and functions:

(a) Regulate private sector participation in the recruitment and overseas placement of workers by setting up a licensing and registration system;

(b) Formulate and implement, in coordination with appropriate entities concerned, when necessary, a system for promoting and monitoring the overseas employment of Filipino workers taking into consideration their welfare and the domestic manpower requirements;

(c) Protect the rights of Filipino workers for overseas employment to fair and equitable recruitment and employment practices and ensure their welfare;

(d) Exercise original and exclusive jurisdiction to hear and decide all claims arising out of an employer-employee relationship or by virtue of any law or contract involving Filipino workers for overseas employment including the disciplinary cases; and all pre-employment cases which are administrative in character involving or arising out of violation of requirement laws, rules and regulations, or violation of the conditions for issuance of license or authority to recruit workers.

All prohibited recruitment activities and practices which are penal in character as enumerated and defined under and by virtue of existing laws, shall be prosecuted in the regular courts in close coordination with the appropriate Departments and agencies concerned.

(e) Maintain a registry of skills for overseas placements;

(f) Recruit and place workers to service the requirement for trained and competent Filipino workers by foreign governments and their instrumentalities and such other employers as public interest may require consistent with Section 4 of Republic Act No.8042: Provided, that no Filipino worker shall be deployed to countries that have a track record of violating the rights of Migrant Workers;

(g) Promote the development of skills and careful selection of Filipino workers for overseas employment.

(h) Undertake overseas market development activities for placement of Filipino workers;

(i) Secure the best terms and conditions of employment of Filipino contract workers and ensure compliance therewith;

(j) Promote and protect the well-being of Filipino workers overseas;

(k) Develop and implement programs for the effective monitoring of returning contract workers, promoting their re-training and re-employment or their smooth reintegration into the mainstream of the national economy in coordination with other government agencies;

(l) Institute a system for ensuring fair and speedy disposition of cases involving violation of recruitment rules and regulations as well as violation of terms and conditions of overseas employment;

(m) Establish a system for speedy and efficient enforcement of decisions laid down through the exercise of its adjudicatory function;

(n) Establish and maintain close relationship and enter into joint projects with the Department of Foreign Affairs, Philippine Tourism Authority, Manila International Airport Authority, Department of Justice, Department of Budget and Management and other relevant government entitles, in the pursuit of its objectives. The Administration shall also establish and maintain joint projects with private organizations, domestic or foreign, in the furtherance of its objectives. (Art.17-a)

ARTICLE 13. **Ban on direct-hiring.** — No employer may hire a Filipino worker for overseas employment except through the Boards and entities authorized by the Secretary of Labor and Employment. Direct-hiring by members of the diplomatic corps, international organizations and such other employers as may be allowed by the Secretary of Labor is exempt from this provision.

ARTICLE 14. **National Seafarers Office.** – A National Seafarers Office is hereby created under the POEA, which shall have the following powers and functions:

(1) To develop an integrated maritime manpower development and placement program for Filipino seafarer here and overseas;

(2) To develop, in coordination with other agencies involved in the maritime industry, a one-stop shop for the licensing and deployment of Filipino seafarer. (Art.20-a)

ARTICLE 15. **Foreign service role and participation.** — To provide ample protection to Filipino workers abroad, the labor attaches, the labor reporting officers duly designated by the Secretary of Labor and the Philippine diplomatic or consular officials concerned shall, even without prior instruction or advice from the home office, exercise the power and duty to:

(a) Provide all Filipino workers within their jurisdiction assistance on all matters arising out of employment;
(b) Insure that Filipino workers are not exploited or discriminated against;
(c) Verify and certify as requisite to authentication that the terms and conditions of employment in contracts involving Filipino workers are in accordance with the Labor Code and rules and regulations of the Philippine Overseas Employment Administration (POEA);
(d) Make continuing studies or researches and recommendations on the various aspects of the employment market within their jurisdiction;
(e) Gather and analyze information on the employment situation and its probable trends, and to make such information available ; and
(f) Perform such other duties as may be required of them from time to time.

ARTICLE 16. **Mandatory remittance of foreign exchange earnings.** ---- It shall be mandatory for all Filipino workers abroad to remit a portion of their foreign exchange earnings to their families, dependents and/or beneficiaries in the country in accordance with rules and regulations prescribed by the Secretary of Labor.

ARTICLE 17. **Agencies to issue rules and collect fees.** — The Agencies involved in the recruitment and placement of workers shall issue appropriate rules and regulations to carry out their functions. They shall have the power to impose and collect fees from employers concerned, which shall be deposited to the respective accounts of said Agencies and be used by them exclusively to promote their objectives. (Art.24-a)

Title I
RECRUITMENT AND PLACEMENT OF WORKERS

CHAPTER II

REGULATION OF RECRUITMENT AND PLACEMENT ACTIVITIES

ARTICLE 18. **Private sector participation in the recruitment and placement** of workers. — Pursuant to national development objectives and in order to harness and

maximize the use of private sector resources and initiative in the development and implementation of a comprehensive employment program, the private employment sector shall participate in the recruitment and placement of workers, locally and overseas, under such guidelines, rules and regulations, as may be issued by the Secretary of Labor and Employment.

ARTICLE 19. **Travel agencies prohibited to recruit.** — Travel agencies and sales agencies of airline companies are prohibited from engaging in the business of recruitment and placement of workers for overseas employment whether for profit or not.

ARTICLE 20. **Citizenship requirement.** — Only Filipino citizens or corporations, partnerships or entities at least 75 percent of the authorized and voting capital stock of which is owned and controlled by Filipino citizens shall be permitted to participate in the recruitment and placement of workers, locally or overseas.

ARTICLE 21. **Capitalization and Licensing.** — All applicants for authority to hire or renewal of license to recruit are required to have such substantial capitalization and other requirements as determined by the Secretary of Labor and Employment. No agency shall be denied a license unless the said agency is unable to meet the required capitalization and other conditions set by the Department of Labor and Employment. (Art.28-a)

ARTICLE 22. **Non-transferability of license or authority.** — No license or authority shall be used directly or indirectly by any person other than the one in whose favor it was issued at any place other than that stated in the license or authority, nor may such license or authority be transferred, conveyed or assigned to any other person or entity. Any transfer of business address, appointment or designation of any agent or representative including the establishment of additional offices anywhere shall be subject to the prior approval of the Department of Labor.

ARTICLE 23. **Registration fees.** — The Secretary of Labor and Employment shall promulgate a schedule of fees for the registration of all applicants for license or authority.

ARTICLE 24. **Bonds.** — All applicants for license or authority shall post such cash and surety bonds as determined by the Secretary of Labor and Employment to guarantee compliance with prescribed recruitment procedures, rules and regulations, and terms and conditions of employment as may be appropriate.

ARTICLE 25. **Fees to be paid by workers.** — Any person applying with a private fee charging employment agency for employment assistance shall not be charged any fee until he has obtained employment through his efforts or has actually commenced employment. Such fee shall be always covered with appropriate receipt clearly showing the amount paid. The Secretary of Labor and Employment shall promulgate a schedule of allowable fees.

ARTICLE 26. **Reports on employment status.** — Whenever the public interest so requires, the Secretary of Labor may direct all persons or entities within the coverage of this Title to submit a report on the status of employment, including job vacancies; details of job requisitions, separation from jobs, wages, other terms and conditions, and other employment data.

ARTICLE 27. **Prohibited practices.** — It shall be unlawful for any individual, entity, licensee or holder of authority:

(a) To charge or accept directly or indirectly any amount greater than that specified in the schedule of allowable fees prescribed by the Secretary of Labor, or to make a worker pay any amount greater than that actually received by him as a loan or advance;

(b) To furnish or publish any false notice or information or document in relation to recruitment or employment;

(c) To give any false notice, testimony, information or document or commit any act or misrepresentation for the purpose of securing a license or authority under this Code;

(d) To induce or attempt to induce a worker already employed to quit his employment in order to offer him to another unless the transfer is designed to liberate the worker from oppressive terms and conditions of employment;

(e) To influence or to attempt to influence any person or entity not to employ any worker who has not applied for employment through his agency;

(f) To engage in the recruitment or placement of workers in jobs harmful to public health or morality or to the dignity of the Republic of the Philippines;

(g) To obstruct or attempt to obstruct inspection by the Secretary of Labor or by his duly authorized representatives;

(h) To fail to file reports on the status of employment, placement vacancies, remittance of foreign exchange earnings, separation from jobs, departures and such other matters or information as may be required by the Secretary of Labor;

(i) To substitute or alter employment contracts approved and verified by the Department of Labor and Employment from the time of actual signing thereof by the parties up to and including the periods of expiration of the same without the approval of the Secretary of Labor.

(j) To become an officer or member of the Board of any corporation engaged in travel agency or to be engaged directly or indirectly in the management of a travel agency;

(k) To withhold or deny travel documents from applicant workers before departure for monetary or financial considerations other than those authorized under this Code and its implementing rules and regulations

ARTICLE 28. **Suspension and/or cancellation of license or authority.** — The Secretary of Labor and Employment shall have the power to suspend or cancel and in both instances impose a fine, any license or authority to recruit employees for overseas employment for violation of rules and regulations issued by the Secretary of Labor and Employment and the Philippine Overseas Employment Administration or for violations of the provisions of this and other applicable laws. (Art.35-a)

Title I

RECRUITMENT AND PLACEMENT OF WORKERS

CHAPTER III

MISCELLANEOUS PROVISIONS

ARTICLE 29. **Regulatory power.** — The Secretary of Labor shall have the power to restrict and regulate the recruitment and placement activities of all agencies within the coverage of this Title and is hereby authorized to issue orders and promulgate rules and regulations to carry out the objectives and implement the provisions of this Title.

ARTICLE 30. **Visitorial power.** — The Secretary of Labor or his duly authorized representatives may, at any time, inspect the premises, books of accounts and records of any person or entity covered by this Title, require it to submit reports regularly on prescribed forms, and act on violations of any provisions of this Title.

ARTICLE 31. **Illegal Recruitment.** - (a) Any recruitment activities, including the prohibited practices enumerated under Article 27 of this Code, to be undertaken by non-licensees or non-holders of authority shall be deemed illegal and punishable under Article 32 of this Code. The Department of Labor and Employment or any law enforcement officer may initiate complaints under this Article.

(b) Illegal recruitment when committed by a syndicate or in large scale shall be considered an offense involving economic sabotage and shall be penalized in accordance with Article 39 hereof.

Illegal recruitment is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring and/or confederating with one another in carrying out any unlawful or illegal transaction, enterprises or scheme defined under the first paragraph hereof. Illegal recruitment is deemed committed in large scale if committed against three (3) or more persons individually or as a group.

(c) Victims of illegal recruitment shall automatically be covered by the government's witness protection program.

(d) A criminal action arising from illegal recruitment as defined herein shall be filed with the Regional Trial Court of the province or city where the offense was committed or where the offended party actually resides at the time of the commission of the offense: *Provided,* that the court where the criminal action is first filed shall acquire jurisdiction to the exclusion of other courts: *Provided, however,* that the aforestated provisions shall also apply to those criminal actions that have already been filed in court at the time of the effectivity of this Act. (Art.38-a)

ARTICLE 32. **Penalties** - (a) The penalty of life imprisonment and a fine of not less than Two Hundred Thousand Pesos (₱200,000) nor more than Five Hundred Thousand Pesos (P500,000.) shall be imposed if illegal recruitment constitutes economic sabotage as defined herein:

(b) Any license or holder of authority found violating or causing another to violate any provision of this Title or its implementing rules and regulations shall, upon conviction thereof, suffer the penalty of imprisonment of not less than two (2) years nor more than five (5) years and a fine of not less than ₱20,000 nor more than ₱200,000;

(c) Any person who is neither a licensee nor a holder of authority under this Title found violating any provision thereof or its implementing rules and regulations shall, upon conviction thereof, suffer the penalty of imprisonment of not less than four (4) years nor more than eight (8) years and a fine of not less than ₱50,000 nor more than ₱400,000;

(d) If the offender is a corporation, partnership, association or entity, the penalty shall be imposed upon the officer or officers of the corporation, partnership, association or entity responsible for violation; and if such officer is an alien, he shall, in addition to the penalties herein prescribed, be deported without further proceedings;

(e) In every case, conviction shall cause and carry the automatic revocation of the license or authority and all the permits and privileges granted to such person or entity under this Title, and the forfeiture of the cash and surety bonds in favor of the Department of Labor

and Employment which is authorized to use the same exclusively to promote its objectives. (Art.39-a)

TITLE II
EMPLOYMENT OF NON-RESIDENT ALIENS

ARTICLE 33. **Employment permit of non-resident aliens.** — Any alien seeking admission to the Philippines for employment purposes and any domestic or foreign employer who desires to engage an alien for employment in the Philippines shall obtain an employment permit from the Department of Labor and Employment.

The employment permit may be issued to a non-resident alien or to the applicant employer after a determination of the non-availability of a person in the Philippines who is competent, able and willing at the time of application to perform the services for which the alien is desired.

For an enterprise registered in preferred areas of investments, said employment permit may be issued upon recommendation of the government agency charged with the supervision of said registered enterprise.

ARTICLE 34. **Prohibition against transfer of employment.** — (a) After the issuance of employment permit, the alien shall not transfer to another job or change his employer without prior approval of Secretary of Labor.

(b) Any non-resident alien who shall take up employment in violation of the provision of this Title and its implementing rules and regulations shall be punished in accordance with the provisions of Articles 294 and 295 of the Labor Code.

In addition, the alien worker shall be subject to deportation after service of his sentence.

ARTICLE 35. **Submission of list.** — Any employer employing non-resident foreign nationals on the effective date of this Code shall submit a list of such nationals to the Secretary of Labor and Employment within 30 days after such date indicating their names, citizenship, foreign and local addresses, nature of employment and status of stay in the country. The Secretary of Labor and Employment shall then determine if they are entitled to an employment permit.

BOOK TWO

Human Resources Development Program

TITLE I

TRAINING AND EMPLOYMENT OF SPECIAL WORKERS

CHAPTER I

APPRENTICES

ARTICLE 36. **Statement of Objectives.** - This Title aims:

(1) To help meet the demand of the economy for trained manpower;

(2) To establish a national apprenticeship system that is competency- and occupation-based, including an on- and off-the job training program through the participation of employers, workers, and government.

(3) To establish apprenticeship standards for the protection of apprentices. (Art.57-a)

ARTICLE 37. **Definition of Terms** – As used in this Title:

(a) "Apprenticeship" means enterprise-based practical training with compulsory related theoretical instructions in or outside the enterprise involving a contract between an apprentice and an enterprise on an approved apprenticeable occupation.

(b) An "apprentice" is a person undergoing training for an approved apprenticeable occupation in an established period assured by an apprenticeship agreement.

(c) An "apprenticeable occupation" is an occupation promulgated by the TESDA Board, with equal representation from firm owners, workers and training institutions, and approved for apprenticeship by TESDA. The apprenticeable occupation requires a minimum duration of four (4) months; *provided,* however, that the TESDA Board may prescribe a longer training period depending on its approved occupational skills standards.

(d) "Apprenticeship agreement" is a contract wherein an enterprise binds itself to train the apprentice who in turn accepts the terms of training for a recognized apprenticeable occupation emphasizing the rights, duties and responsibilities of each party.

(e) "Occupational Skills Standards" are written specifications setting out the requirements of knowledge and skills with respect to a particular trade.

(f) "Occupational Skills Assessment" is a formal recognition of a worker's skills qualification for a particular trade.

(g) "Apprenticeship fee" is a tax imposed on enterprises with the view in mind of financing apprenticeship-training activities. (Art.58-a)

ARTICLE 38. **Qualifications of an apprentice** - To qualify as an apprentice, a person shall:

(a) be a high school graduate;

(b) possess vocational aptitude and capacity for apprenticeship as established through appropriate testing; and

(c) possess the ability to comprehend and follow oral and written instructions.

Industry training boards, industry associations, and labor groups may recommend to the TESDA appropriate educational requirements for different occupations. (Art.59-a)

ARTICLE 39. **Training of apprentices** - Registered enterprises may enter into apprenticeship agreements or train apprentices in approved apprenticeable occupations. (Art.60-a)

ARTICLE 40. **Contents of apprenticeship agreements**. — Apprenticeship agreements, shall conform to the rules issued by the TESDA and shall include:

(a) The nature, and purpose of training;

(b) The curriculum and period of training;

(c) The prescribed training allowance which in no case shall start below 75% of the applicable minimum wage;

(d) Schedule of training allowance payments;

(e) Training hours which shall not exceed the working hours of a regular employee;

(f) The process of termination of apprenticeship; and

(g) The general rights and obligations of both parties. (Art.61-a)

ARTICLE 41. **Signing of apprenticeship agreement** – Every apprenticeship agreement shall be signed by the employer or his agent, or by an authorized representative of any of the recognized organizations, associations or groups and by the apprentice.

An apprenticeship agreement with a minor shall be signed in his behalf by his parent or guardian or, if the latter is not available, by an authorized representative of the Department of Labor and Employment, and the same shall be binding during its lifetime.

Every apprenticeship agreement entered into under this title shall be ratified by the Tripartite Apprenticeship Committee which shall have equal representation consisting of two (2) from enterprise, two (2) from workers, and one (1) from the government. (Art.62-a)

ARTICLE 42. **Apprenticeship schemes** – Registered enterprise, group or association, industry organization or civic group wishing to organize the apprenticeship program, or a would-be apprentice, may choose from any of the following apprenticeship schemes which may use the dual training system approach:

(a) Apprenticeship involving a company and an identified training institution;

(b) Apprenticeship involving a group of companies and a training institution;

(c) Apprenticeship involving an industry training center and a company or a group of companies;

(d) Other schemes to be established by the TESDA in consultation with industry training boards, industry association and labor groups, and subject to the approval of the TESDA Board. (Art.63-a)

ARTICLE 43. **Apprenticeship Administration** - The overall policy for apprenticeship shall be the function of the TESDA Board. The responsibility for apprenticeship administration, monitoring and evaluation of on- and off-the-job training shall be the concern of the TESDA Secretariat particularly the Office of Apprenticeship.

The identification and prioritization of apprenticeable occupations and the development of standards and curricula shall be the responsibility of industry training boards, industry associations and labor groups. The Tripartite Plant Apprenticeship Committees shall be established in participating enterprises to ensure that program implementation is in accordance with policies.

Any of the apprenticeship schemes recognized herein may be undertaken or sponsored by an enterprise or by a group or association thereof, or by a civic organization. Actual training of apprentices may be undertaken:

(a) In the premises of the sponsoring enterprise in the case of individual apprenticeship programs;

(b) In the premises of one or several designated firms in the case of programs sponsored by a group or association of enterprises or by civic organizations; or

(c) In TESDA training center or other training institution. (Art.64-a)

ARTICLE 44. – **Investigation of Violation of Apprenticeship Agreement** - The Tripartite Plant Apprenticeship Committee, upon complaint of any interested party or *motu propio*, shall have the initial responsibility for settling differences arising from apprenticeship agreements. In case it is not able to settle such differences, the TESDA Secretariat or its authorized representative shall investigate and render a decision pursuant to pertinent rules and regulations. (Art.65-a)

ARTICLE 45. - **Appeal to the TESDA Secretariat** – The decision of the TESDA Secretariat may be appealed by any aggrieved person to the TESDA Board within five (5) days from receipt of the decision. The decision of the TESDA Board shall be final and executory. (Art.66-a)

ARTICLE 46. **Exhaustion of administrative remedies.** — No person shall institute any action for the enforcement of any apprenticeship agreement or damages for breach of any such agreement, unless he has exhausted all available administrative remedies.

ARTICLE 47. **Aptitude Testing of Applicants** – Consonant with the minimum qualifications of the apprentice-applicants required under this Chapter, the employers or entities with duly recognized apprenticeship programs shall have the primary responsibility for providing appropriate aptitude tests in the selection of apprentices. If they do not have adequate facilities for the purpose, the TESDA may perform the service free of charge. (Art.68-a)

ARTICLE 48. **Responsibility for Theoretical Instruction.** — Supplementary theoretical instruction to apprentices in cases where the program is undertaken in the plant may be done by the employer. If the latter is not prepared to assume the responsibility, the same may be delegated to an appropriate government agency.

ARTICLE 49. - **Voluntary Organization of Apprenticeship Program: Exemptions** -
(a) The organization of apprenticeship programs shall be primarily a voluntary undertaking of enterprises.

(b) When national security or particular requirements of economic development so demand, the President of the Philippines may require compulsory training of apprentices in certain trades, occupations, jobs or employment levels where shortage of trained manpower is deemed critical as determined by the TESDA Board upon the recommendation of its Secretariat.

(c) Where services of foreign technicians are utilized by private companies in apprenticeable trades, such companies are required to set-up appropriate apprenticeship programs. (Art.70-a)

ARTICLE 50. **Apprenticeship Training Fund and Exemption.** —There shall be an Apprenticeship-Training Fund which shall be derived from the apprenticeship fee paid by

every enterprise in industries employing apprenticeable trades. Workers who are graduates of Apprenticeship Programs shall likewise pay a one-time apprenticeship fee upon employment as contribution to the Apprenticeship Training Fund. *The apprenticeship fee rates and guidelines to* be applied shall be approved by the TESDA Board after a public hearing with the management and labor sectors. The fee shall be collected and paid through the SSS and transferred to the Apprenticeship Training Fund to be administered by the TESDA. The apprenticeship fee rate may be increased by the TESDA Subject to the requirements of a public hearing.

The Apprenticeship Training Fund shall be deemed distinct and separate from the TESDA Development Fund under Section 31 of republic Act No. 7796 or the TESDA Law, and as such, shall not be subject to its implementing rules and regulations. Such Apprenticeship Fund may be used to defray expenses of the trainees in the institution or training center as well as other expenses to be approved by the TESDA Board to improve the implementation of the program.

An additional deduction from taxable income equivalent to fifty (50) percent of training expenses shall be granted to persons or enterprises organizing the program and shall be exempted from:

(a) Paying the apprenticeship fee;

(b) Duty on all equipment dedicated to training; and

(c) VAT on locally purchased training equipment and materials.

Provided that such program is duly recognized by the Department of Labor and Employment. *Provided, further,* that such deduction shall not exceed ten (10) percent of direct labor wage.

Micro-cottage and small enterprises or those with less than 100 employees shall also be exempt from the payment of apprenticeship fee. (Art.71-a)

ARTICLE 51. - **Exemption from Probationary Employment; System of Equivalency** - Certified apprenticeship graduates shall be exempted from probationary employment. They shall be employed as regular workers if chosen to be retained by the Enterprise.

Apprenticeship graduates shall, likewise be awarded equivalent unit credits in the formal system of education and that can be used in pursuing tertiary degree courses, subject to the integrated policies and guidelines on equivalency and adult education acceleration program of TESDA, Commission on Higher Education (CHED) and DECS. (Art.72-a)

TITLE I

TRAINING AND EMPLOYMENT OF SPECIAL WORKERS

CHAPTER II

LEARNERS

ARTICLE 52. **Learners Defined.** — Learners are persons hired as trainees in semi-skilled and other industrial occupations which are non-apprenticeable. Learnership programs must be approved by the TESDA. (Art.73-a)

ARTICLE 53. **When Learners may be hired.** — Learners may be employed when no experienced workers are available, the employment of learners is necessary to prevent curtailment of employment opportunities, provided, that the employment does not create unfair competition in terms of labor costs or impair or lower working standards. Provided, further, that the number of apprentices shall not exceed 10% of the total workforce of the company.

ARTICLE 54. **Learnership Agreement.** — Any employer/enterprise desiring to employ learners shall enter into a learnership agreement with them, which agreement shall include:

(a) The names and addresses of the learners;

(b) The duration of the learnership period, which shall not exceed three (3) months;

(c) The training allowances of the learners which shall begin at not less than the applicable minimum wage for a specific occupation and subject to tripartite consultation;

(d) A commitment to employ the learners, if they so desire, as regular employees upon completion of the learnership. All learners who have been allowed or suffered to work during the first two (2) months shall be deemed regular employees if training is terminated by the employer before the end of the stipulated period through no fault of the learner. (Art.75-a)

ARTICLE 55. **Learners in piece work.** — Learners employed in piece or incentive rate jobs during the training period shall be paid in full for the work done.

ARTICLE 56. **Penalty clause.** — Any violation of this Chapter or its implementing rules and regulations shall be subject to the general penalty clause provided for in this Code.

TITLE I

THE MINIMUM EMPLOYMENT OF SPECIAL WORKERS

CHAPTER III

HANDICAPPED WORKERS

ARTICLE 57. **Definition.** — Handicapped workers are those whose earning capacity is impaired by physical or mental deficiency or injury.

ARTICLE 58. **When employable.** — Handicapped workers may be employed when their employment is necessary to prevent curtailment of employment opportunities and when it does not create unfair competition in labor costs or impair or lower working standards.

ARTICLE 59. **Employment agreement.** — Any employer who employs handicapped workers shall enter into an employment agreement with them, which agreement shall include:

(a) The names and addresses of the handicapped workers to be employed;

(b) The rate to be paid the handicapped workers which shall be not less than 75 percent of the applicable minimum wage;

(c) The duration of employment period; and

(d) The work to be performed by the handicapped workers.

The employment agreement shall be subject to inspection by the Secretary of Labor and Employment or his duly authorized representatives.

ARTICLE 60. **Eligibility for apprenticeship**. — Subject to the appropriate provisions of this Code, handicapped workers may be hired as learners or undergo training as apprentices if their handicap is not such as to effectively impede the performance of job operations in the particular occupations for which they are hired. (Art.81-a)

TITLE I
Training and Employment of Special Workers

CHAPTER IV
Other Training Programs

ARTICLE 61. **Special Program for Employment of Students.** – Any provision of law to the contrary notwithstanding, any person or entity employing more than ten (10) persons may employ poor but deserving students fifteen (15) years of age but not more than twenty-five (25) years old, paying them a salary or wage not lower than the minimum wage for private employers and the applicable hiring rate for the national and local government agencies: Provided, however, that their employment shall not exceed three (3) months. Provided, further, that students employed in activities related to their course shall earn equivalent academic credits as may be determined by appropriate government agencies.

For this purpose, poor but deserving students refers to those whose parents' combined income, together with their own, if any, do not exceed the annual national poverty threshold level for a family of six (6) for the preceding year as may be determined by the National Statistics Coordination Board (NSCB). Employment facilitation services for applicants to the program shall be done by the Public Employment Service Office (PESO). (N)

SECTION 4. **BOOK THREE**

Conditions of Employment

TITLE I
WORKING CONDITIONS AND REST PERIODS

CHAPTER I
HOURS OF WORK

ARTICLE 62. **Coverage.** — The provision of this Title shall apply to employees, whether regular or temporary as defined in Article 284, in all establishments and undertakings, whether for profit or not, but not to government employees, managerial employees, field personnel, immediate members of the family of the employer who are dependent on him for support, domestic helpers, and persons in the personal service of another.

As used herein, "managerial employees" refer to managers and supervisors as defined in Article 215(w).

"Field personnel" refer to non-agricultural employees who regularly perform their duties away from the principal place of business or branch office of the employer and whose actual hours of work in the field cannot be determined with reasonable certainty.

All employers, contractors and subcontractors, shall observe the provisions of this book and are directly liable for their violations in accordance with Article 71 of this Code. (Art.82-a)

ARTICLE 63. **Normal hours of work.** — The normal hours of work of any employee shall not exceed eight in a day.

Health personnel in cities or municipalities with a population of at least one million (1,000,000) or in hospitals or clinics with a bed capacity of at least one hundred (100) shall hold regular office hours for eight (8) hours a day, for five (5) days a week, exclusive of time for meals, except where the exigencies of the service require that such personnel work for six (6) days or forty-eight (48) hours, in which case they shall be entitled to an additional compensation of at least thirty (30%) percent of their regular wage for work on the sixth day. For purposes of this Article, "health personnel" shall include: resident physicians, nurses, nutritionists, dieticians, pharmacists, social workers, laboratory technicians, paramedical technicians, psychologists, midwives, attendants and all other hospital or clinic personnel.

ARTICLE 64. **Hours worked.** — Hours worked shall include (a) all time during which an employee is required to be on duty or to be at a prescribed workplace, and (b) all time during which an employee is suffered or permitted to work.

Rest periods of short duration during working hours shall be counted as hours worked.

ARTICLE 65. **Meal periods.** — Subject to such regulations as the Secretary of Labor may prescribe, it shall be the duty of every employer to give his employees not less than sixty minutes time-off for their regular meals.

ARTICLE 66. **Night shift differential.** — Every employee shall be paid a night shift differential of not less than ten (10%) percent of his regular wage for each hour of work performed between ten o'clock in the evening and six o'clock in the morning.

ARTICLE 67. **Overtime work** ----- Work may be performed beyond eight (8) hours a day provided that the employee is paid for the overtime work, an additional compensation equivalent to his regular wage plus at least twenty-five percent (25%) thereof. Work performed beyond eight hours on a holiday or rest day shall be paid an additional compensation equivalent to the rate of the first eight hours on a holiday or rest day plus at least thirty percent (30%) thereof.

ARTICLE 68. **Undertime not offset by overtime.** — Undertime work on any particular day shall not be offset by overtime work on the same or any other day, except as otherwise provided in a Collective Bargaining Agreement. Permission given to the employee to go on leave on some other day of the week shall not exempt the employer from paying the additional compensation required in this Chapter. (Art.88-a)

ARTICLE 69. **Emergency overtime work.** — Any employee may be required by the employer to perform overtime work in any of the following cases:

(a) When the country is at war or when any other national or local emergency has been declared by Congress or the Chief Executive;

(b) When it is necessary to prevent loss of life or property or in case of imminent danger to public safety due to an actual or impending emergency in the locality caused by serious accidents, fire, flood, typhoon, earthquake, epidemic or other disaster or calamity;

(c) When there is urgent work to be performed on machines, installation or equipment, in order to avoid serious loss or damage to the employer or some other cause of similar nature;

(d) When the work is necessary to prevent loss or damage to perishable goods;

(e) Where the completion or continuation of the work started before the eight (8th) hour is necessary to prevent serious obstruction or prejudice to the business or operations of the employer.

Any employee required to render overtime work under this Article shall be paid the additional compensation required in this Chapter.

ARTICLE 70. **Computation of additional compensation**. - For purposes of computing overtime and other additional remuneration as required by this Chapter the regular wage of an employee shall include the cash wage and the corresponding cash equivalent of the facilities provided by the employer if the value of the same is deducted from the salary of the employee or added to his salary as part of his regular wage. (Art.90-a)

TITLE I

WORKING CONDITIONS AND REST PERIODS

CHAPTER II

WEEKLY REST PERIODS

ARTICLE 71. **Right to weekly rest day**. — (a) It shall be the duty of every employer, whether operating for profit or not, to provide each of his employees a rest period of not less than twenty-four consecutive hours after every six consecutive normal work days.

(b) The employer shall determine and schedule the weekly rest day of his employees, subject to collective agreement and to such rules and regulations as the Secretary of Labor and Employment may provide. However, the employer shall respect the preference of employees as to their weekly rest day when such preference is based on religious grounds.

ARTICLE 72. **When employer may require work on a rest day**. — The employer may require his employees to work on any day:

(a) In case of actual or impending emergencies caused by serious accidents, fire, flood, typhoon, earthquake, epidemic or other disaster or calamity to prevent loss of life and property or imminent danger to public safety;

(b) In cases of urgent work to be performed on the machinery, equipment or installation to avoid serious loss which the employer would otherwise suffer;

(c) In the event of abnormal pressure of work due to special circumstances, where the employer cannot ordinarily be expected to resort to other measures;

(d) To prevent loss or damage to perishable goods;

(e) Where the nature of the work requires continuous operations and the stoppage of work may result in irreparable injury or loss to the employer; and

(f) Under other circumstances analogous or similar to the foregoing as determined by the Secretary of Labor and Employment.

ARTICLE 73. **Compensation for rest day, Sunday or holiday work.** — (a) Where an employee is made or permitted to work on his scheduled rest day, he shall be paid an additional compensation of at least thirty percent (30%) of his regular wage. An employee shall be entitled to such additional compensation for work performed on Sunday only when it is his established rest day.

(b) When the nature of the work of the employee is such that he has no regular workdays and no regular rest days can be scheduled, he shall be paid an additional compensation of at least thirty percent (30%) of his regular wage for work performed on Sundays and holidays.

(c) Work performed on any special holiday shall be paid an additional compensation of at least thirty (30%) percent of the regular wage of the employee. Where such holiday work falls on the employee's scheduled rest day, he shall be entitled to an additional compensation of at least fifty percent (50%) of his regular wage.

(d) Where the collective bargaining agreement or other applicable employment contract stipulates the payment of a higher premium pay than that prescribed under this Article, the employer shall pay such higher rate.

TITLE I

WORKING CONDITIONS AND REST PERIODS

CHAPTER III

HOLIDAYS, SERVICE INCENTIVE LEAVES AND SERVICE CHARGES

ARTICLE. 74. **Right to Holiday and 13th Month Pay. –**

(a) Every worker shall be paid his regular daily wage during regular holidays, except in retail and service establishments regularly employing less than (10) workers;

(b) The employer may require an employee to work on any holiday but such employee shall be paid a compensation equivalent to twice his regular rate; and

(c) As used in this Article, "holiday" includes: New Year's Day, Maundy Thursday, Good Friday, the ninth of April, the first of May, the twelfth of June, the last Sunday of August, the thirtieth of November, the twenty-fifth and the thirtieth of December, and the day designated by law for holding a general election.

(d) All employers are required to pay all their rank and file employees regardless of the nature of the employment, a 13th-month pay not later than December of every year. The provisions of Presidential Decree No. 851 shall apply.

(e) The provisions of PD 1083 regarding payment of holiday pay for days therein enumerated as Muslim holidays shall continue. (Art.94-a)

ARTICLE 75. **Right to Service Incentive Leave.** –

(a) Every employee who has rendered at least one year of service shall be entitled to a yearly service incentive leave of ten (10) days each with pay. Unused service incentive leave may be converted to cash at the option of the employee.

(b) This provision shall not apply to those who are already enjoying the benefit herein provided, those enjoying vacation leave with pay of at least ten (10) days and those employed in establishments regularly employing less than ten employees or in establishments exempted from granting this benefit by the Secretary of Labor after considering the viability or financial condition of such establishment.

(c) The grant of benefit in excess of that provided herein shall not be made a subject of arbitration or any court or administrative action. (A, Art.95)

ARTICLE 76. **Paternity Leave and Right to Family and Medical Leave** – Notwithstanding any law, rules and regulations to the contrary, every married male employee in the private and public sectors shall be entitled to a paternity leave of seven (7) days with full pay for the first four (4) deliveries of the legitimate spouse with whom he is cohabiting. The male employee applying for paternity leave shall notify his employer of the pregnancy of his legitimate spouse and the expected date of such delivery.

For purposes of this Act, delivery shall include childbirth or any miscarriage.

The employers shall grant up to four (4) weeks of unpaid leave a year to employees whose spouse, parent, unmarried child, or when they themselves are suffering from serious illness. (n)

ARTICLE 77. **Service charges.** — All service charges collected by hotels, restaurants and similar establishments shall be distributed at the rate of eighty-five percent (85%) for all covered employees and fifteen percent (15%) for management. The share of the employees shall be equally distributed among them. In case the service charge is abolished, the share of the covered employees shall be considered integrated into their wages.

TITLE II

WAGES
CHAPTER I

PRELIMINARY MATTERS

ARTICLE 78. **Definition.** — As used in this Title: (a) "Person" means an individual, partnership, association, corporation, business trust, legal representative or any organized group of persons.

(b) "Employer" includes any person acting directly or indirectly in the interest of an employer in relation to an employee and shall include the Government and all its branches, subdivisions and instrumentalities, all government-owned or controlled corporations and institutions, as well as contractors and subcontractors and non-profit private institutions or organizations.

(c) "Employee" includes any individual employed by an employer as defined in the preceding paragraph.

(d) "Agriculture" includes farming in all its branches and among other things includes the cultivation and tillage of soil, dairying, the production, cultivation, growing and harvesting of any agricultural and horticultural commodities, the raising of livestock or poultry, and any practices performed by a farmer 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.

(e) "Employ" includes to suffer or permit to work.

(f) "Wage" paid to any employee shall mean the remuneration or earnings, however designated, capable of being expressed in terms of money, whether fixed or ascertained on a time, task, piece, or 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 services rendered or to be rendered and includes the fair and reasonable value, as determined by the Secretary of Labor and Employment, of board, lodging or other facilities customarily furnished by the employer to the employee. "Fair and reasonable value" shall not include any profit to the employer or to any person affiliated with the employer. (Art.97-a)

ARTICLE 79. **Application of Title.** — This Title shall not apply to farm tenancy or leasehold, domestic service and persons working in their respective homes in needlework or in any cottage industry duly registered in accordance with law.

TITLE II

WAGES

CHAPTER II

MINIMUM WAGE RATES

ARTICLE 80. **Regional minimum wages.** - The minimum wage rates for agricultural and non-agricultural employees and workers in each and every region of the country shall be those prescribed by the Regional Tripartite Wages and Productivity Boards.

ARTICLE 81. **Prohibition against elimination or diminution of benefits.** — Nothing in this Book shall be construed to eliminate or in any way diminish supplements, or other employee benefits being enjoyed at the time of the promulgation of this Code.

ARTICLE 82. **Payment by results.** — The Secretary of Labor and Employment shall regulate the payment of wages by results, including pakyao, piecework and other non-time work, in order to ensure the payment of fair and reasonable wage rates, preferably through time and motion studies or in consultation with representatives of workers' and employers' organizations.

TITLE II

WAGES

CHAPTER III
PAYMENT OF WAGES

ARTICLE 83. **Forms of payment.** - No employer shall pay the wages of an employee by means of promissory notes, vouchers, coupons, tokens, tickets, chits or any object other than legal tender, even when expressly requested by the employee.

Payment of wages by check or money order or through a bank, shall be allowed when such manner of payment is customary or advisable, or is necessary because of special circumstances as specified in appropriate regulations to be issued by the Secretary of Labor and Employment or as stipulated in a collective bargaining agreement. (A, Art.102)

ARTICLE 84. **Time of payment.** — Wages shall be paid at least once every two (2) weeks or twice a month at intervals not exceeding sixteen (16) days. If on account of *force majeure* or circumstances beyond the employer's control, payment of wages on or within the time herein provided cannot be made, the employer shall pay the wages immediately after such *force majeure* or circumstances have ceased. No employer shall make payment with less frequency than once a month.

The payment of wages of employees engaged to perform a task which cannot be completed in two weeks shall be subject to the following conditions in the absence of a collective bargaining agreement or arbitration award:

(1) That payments are made at intervals not exceeding sixteen days, in proportion to the amount of work completed; and

(2) That final settlement is made upon completion of the work.

ARTICLE 85. **Place of payment.** — Payment of wages shall be made at or near the place of undertaking, except as otherwise provided by such regulations as the Secretary of Labor may prescribe under conditions to ensure greater protection of wages.

ARTICLE 86. **Direct payment of wages.** — Wages shall be paid directly to the workers to whom they are due, except:

(a) In cases of *force majeure* rendering such payments impossible or under other special circumstances to be determined by the Secretary of Labor in appropriate regulations, in which case the worker may be paid through another person under written authority given by the worker for the purpose; or

(b) Where the worker has died, in which case the employer may pay the wages of the deceased worker to the heirs of the latter without the necessity of intestate proceedings. The claimant, if they are all of age, shall execute an affidavit attesting to their relationship to the deceased and the fact that they are his heirs, to the exclusion of all other persons. If any of the heirs is a minor, the affidavit shall be executed on his behalf by his natural guardian or next of kin. The affidavit shall be presented to the employer who shall make payment through the Secretary of Labor or his representative. The representative of the Secretary of Labor shall act as referee in dividing the amount paid among the heirs. The payment of wages under this Article shall absolve the employer of any further liability with respect to the amount paid.

ARTICLE 87. **Contractor or subcontractor.** - Whenever an employer enters into a contract with another person for the performance of the former's work, the employees of the contractor and of the latter's subcontractor, if any, shall be paid in accordance with the provisions of this Code.

In the event that the contractor or subcontractor fails to pay the wages of his employees in accordance with this Code, the employer shall be jointly and severally liable with his contractor or subcontractor to such employees to the extent of the work performed under the contract, in the same manner and extent that he is liable to employees directly employed by him.

"Labor-only" contracting is hereby declared unlawful. For this purpose, labor-only contracting shall refer to an arrangement where the contractor or subcontractor merely recruits, supplies or places workers to perform a job, work or service for a principal, and any of the following elements are present:

(1) The contractor or subcontractor does not have substantial capital or investment which relates to the job, work or service to be performed and the employees recruited, supplied or placed by such contractor or subcontractor are performing activities which are directly related to the main business of the principal: or

(2) The contractor does not exercise the right to control the performance of the work of the contractual employee.

The foregoing provisions shall be without prejudice to the application of Article 251(c) of the Labor Code, as amended.

"Substantial capital or investment" refers to capital stocks and subscribed capitalization in the case of corporations, tools, equipment, implements, machineries and work premises, actually and directly used by the contractor or subcontractor in the performance or completion of the job, work or service contracted out.

The "right to control" shall refer to the right reserved to the person for whom the services of the contractual workers are performed, to determine not only the end to be achieved, but also the manner and means to be used in reaching that end. (Art.106-a)

ARTICLE 88. **Licensing of job contractors**. - The Secretary of Labor and Employment through the Regional Office shall issue qualified applicants the job contractor's license in accordance with guidelines prescribed for the purpose. The applicant must be a Filipino citizen or a corporation of which one hundred percent (100%) of authorized and voting capital is owned and controlled by Filipino citizens, a partnership, cooperative, craft union or any other entity. Such a contractor shall, likewise, comply with the requirements of other government authorities. (n)

ARTICLE 89. **Indirect employer**. — The provisions of the immediately preceding Article shall likewise apply to any person, partnership, association or corporation which, not being an employer, contracts with an independent contractor for the performance of any work, task, job or project.

ARTICLE 90. **Posting of bond**. — An employer or indirect employer may require the contractor or sub-contractor to furnish a bond equal to the cost of labor under contract, on condition that the bond will answer for the wages due the employees should the contractor or sub-contractor, as the case may be, fail to pay the same.

ARTICLE. 91. **Solidary liability**. - The provisions of existing laws to the contrary notwithstanding, every employer or indirect employer shall be held responsible with his contractor or subcontractor for any violation of any provision of this Code.

For purposes of determining the extent of their civil liability under this Chapter, they shall be considered as direct employers if the contractor or subcontractor is not authorized by the Secretary of Labor and Employment or his duly authorized representative to undertake contracting activities. (Art.109-a)

ARTICLE 92. **Worker preference in case of closure**. - In the event of bankruptcy, liquidation, closure or cessation of operations of an employer's business, his

workers shall enjoy first and absolute preference as regards their wages and other monetary claims, any provision of law to the contrary notwithstanding. Such unpaid wages and monetary claims shall be paid in full before claims of the government and other creditors may be paid. (Art.110-a)

ARTICLE 93. **Attorney's fees.** — (a) In cases of unlawful withholding of wages the culpable party may be assessed attorney's fees equivalent to ten percent of the amount of wages recovered.

(b) It shall be unlawful for any person to demand or accept, in any judicial or administrative proceedings for the recovery of the wages, attorney's fees which exceed ten percent of the amount of wages recovered.

TITLE II

WAGES

CHAPTER IV

PROHIBITIONS REGARDING WAGES

ARTICLE 94. **Non-interference in disposal of wages.** — No employer shall limit or otherwise interfere with the freedom of any employee to dispose of his wages. He shall not in any manner force, compel or oblige his employees to purchase merchandise, commodities or other property from the employer or from any other person or otherwise make use of any store or services of such employer or any other person.

ARTICLE 95. **Wage deduction.** — No employer, in his own behalf or in behalf of any person, shall make any deduction from the wages of his employees except:

(a) In cases where the worker is insured with his consent by the employer, and the deduction is to recompense the employer for the amount paid by him as premium on the insurance;

(b) For union dues, in cases where the right of the worker or his union to check off has been recognized by the employer or authorized in writing by the individual worker concerned; and

(c) In cases where the employer is authorized by law or regulations issued by the Secretary of Labor.

ARTICLE 96. **Deposits for loss or damage.** — No employer shall require his worker to make deposits from which deduction shall be made, for the reimbursement of loss of or damage to tools, materials or equipment supplied by the employer, except when the employer is engaged in such trades, occupations or business where the practice of making deductions or requiring deposits is a recognized one, or is necessary or desirable as determined by the Secretary of Labor and Employment in appropriate rules and regulations.

ARTICLE 97. **Limitations.** — No deduction from the deposits of an employee for the actual amount of the loss or damage shall be made unless the employee has been heard thereon, and his responsibility has been clearly shown.

ARTICLE 98. **Withholding of wages and kickbacks prohibited.** — It shall be unlawful for any person, directly or indirectly, to withhold any amount from the wages of a

worker or induce him to give up any part of his wages by force, stealth, intimidation, threat or by any other means whatsoever without the worker's consent.

ARTICLE 99. **Deduction to ensure employment.** — It shall be unlawful to make any deduction from the wages of any employee for the benefit of the employer or his representative or intermediary as consideration of a promise of employment or retention in employment.

ARTICLE 100. **Retaliatory measures.** — It shall be unlawful for an employer to refuse to pay or reduce the wages and benefits, discharge or in any manner discriminate against any employee who has filed any complaint or instituted any proceeding under this Title or has testified or is about to testify in such proceedings.

ARTICLE 101. **False reporting.** — It shall be unlawful for any person to make any statement, report or record filed or kept pursuant to the provisions of this Code knowing such statement, report or record to be false in any material respect.

TITLE II

WAGES
CHAPTER V

WAGE STUDIES, WAGE AGREEMENTS AND WAGE DETERMINATION

ARTICLE 102. **Creation of the National Wages and Productivity Commission.** – There is hereby created a National Wages and Productivity Commission, hereinafter referred to as the Commission which shall be attached to the Department of Labor and Employment for policy and program coordination.

The Commission shall be composed of three (3) representatives each from the government, the workers' and the employers' sectors. The Secretary of Labor and Employment and the Director-General of the National Economic and Development Authority (NEDA) shall serve as the ex-officio Chairman and ex-officio vice-Chairman respectively. The three (3) representatives each from workers and employers sectors shall be appointed by the President of the Philippines upon recommendation of the Secretary of Labor and Employment on the basis of the list of nominees submitted by the workers and employers sectors, respectively, and shall serve for a term of six (6) years. They shall receive a per diem of not less than five hundred pesos (₱500.00) for each meeting actually attended, exclusive of actual, ordinary and necessary travel and representation expenses.

The Commission shall be assisted by a Secretariat to be headed by an Executive Director and two (2) Deputy Directors, who shall be appointed by the President of the Philippines, upon the recommendation of the Secretary of Labor and Employment.

The Executive Director shall have the same rank, salary, benefits and other emoluments as that of a Department Assistant Secretary, while the Deputy Directors shall have the same rank, salary, benefits and other emoluments as that of a Bureau Director, The members of the Commission representing labor and management shall have the same rank, emoluments, allowances and other benefits as those prescribed by law for labor and management representatives in the Employees' Protection and Rehabilitation Commission. (Art.120-a)

ARTICLE 103. **Powers and Functions of the Commission.** — The Commission shall have the following powers and functions:

(a) To act as the national consultative and advisory body to the President of the Philippines and Congress on matters relating to wages, incomes and productivity;

(b) To formulate policies and guidelines on wages, incomes and productivity improvement at the enterprise, industry and national levels;

(c) To prescribe rules and guidelines for the determination of appropriate minimum wage and productivity measures at the regional, provincial or industry levels;

(d) To review regional wage levels set by the Regional Tripartite Wages and Productivity Boards to determine if these are in accordance with prescribed guidelines and national development plans;

(e) To undertake studies, researches and surveys necessary for the attainment of its functions and objectives, and to collect and compile data and periodically disseminate information on wages and productivity and other related information, including, but not limited to, employment, cost-of-living, labor costs, investments and returns;

(f) To review plans and programs of the regional Tripartite Wages and Productivity Boards to determine whether these are consistent with national development plans;

(g) To exercise technical and administrative supervision over the Regional Tripartite Wages and Productivity Boards;

(h) To call, from time to time, a national tripartite conference of representatives of government, workers, and employers for the consideration of measures to promote wage rationalization and productivity; and

(i) To exercise such powers and functions as may be necessary to implement this Act. (Art.121-a)

ARTICLE 104. Creation of Regional Tripartite Wages and Productivity Boards. — There is hereby created Regional Tripartite Wages and Productivity Boards, hereinafter referred to as Regional Boards in all regions, including autonomous regions as may be established by law. The Commission shall determine the offices/headquarters of the respective Regional Boards.

The Regional Boards shall have the following powers and functions in their respective territorial jurisdiction:

(a) To develop plans, programs and projects relative to wages, incomes and productivity improvement for their respective regions;

(b) To determine and fix minimum wage rates applicable in their respective regions, provinces or industries therein and to issue the corresponding wage orders, subject to guidelines issued by the Commission;

(c) To undertake studies, researches, and surveys necessary for the attainment of their functions, objectives and programs and to collect and compile data on wages, incomes, productivity and other related information and periodically disseminate the same;

(d) To coordinate with the other Regional Boards as may be necessary to attain the policy and intention of this Code;

(e) To receive, process and act on applications for exemption from prescribed wage rates as may be provided by law or any Wage Order; and

(f) To exercise such other powers and functions as may be necessary to carry out their mandate under this Code.

Implementation of the plans, programs and projects of the Regional Boards referred to in the second paragraph, letter (a) of this Article, shall be through the respective regional offices of the Department of Labor and Employment within their territorial jurisdiction; *Provided,* however, That the Regional Boards shall have technical supervision over the regional office of the Department of Labor and Employment with respect to the implementation of said plans, programs and projects.

Each Regional Board shall be composed of the Regional Director of the Department of Labor and Employment as chairman, the Regional Directors of the National Economic and Development Authority and Department of Trade and Industry as vice-chairmen and three (3) members each from workers and employers sectors who shall be appointed by the President of the Philippines, upon recommendation of the Secretary of Labor and Employment, to be made on the basis of the list of nominees submitted by the workers and employers sectors, respectively, and who shall serve for a term of three (3) years.

Each Regional Board to be headed by its chairman shall be assisted by a Secretariat.

The members of the Board shall receive a per diem of not less than Five Hundred Pesos (₱500.00) for each meeting actually attended, exclusive of actual, ordinary and necessary travel and representation expenses. (Art.122-a)

ARTICLE. **105. Wage Order**. - Whenever conditions in the region so warrant, the Regional Board at its own initiative or at the instance of the workers by a petition shall investigate and study all pertinent facts; and based on the standards and criteria herein prescribed, shall proceed to determine whether a Wage Order should be issued. Any such Minimum Wage Order shall take effect after fifteen (15) days from its complete publication in at least one (1) newspaper of general circulation in the region.

In the performance of its wage-determining functions, the Regional Board shall conduct public hearings/consultations, giving notices to employees' and employers' groups, provincial, city and municipal officials and other interested parties.

Any party aggrieved by the Wage Order issued by the Regional Board may appeal such order to the Commission within ten (10) calendar days from the publication of such order. It shall be mandatory for the Commission to decide such appeal within sixty (60) calendar days from the filing thereof.

The filing of the appeal does not stay the order unless the person appealing such order shall file with the Commission an undertaking with a surety or sureties satisfactory to the Commission for the payment to the employees affected by the order of the corresponding increase, in the event such order is affirmed. (Art.123-a)

ARTICLE. **106. Standards/Criteria for Minimum Wage Fixing**. - The regional minimum wages to be established by the Regional Board shall be as nearly adequate as is economically feasible to maintain the minimum standards of living necessary for the health, efficiency and general well-being of the employees within the framework of the national economic and social development program. In the determination of such regional minimum wages, the Regional Board shall, among other relevant factors, consider the following:

(a) The demand for living wages;

(b) Wage adjustment vis-a-vis the consumer price index;

(c) The cost of living and changes or increases therein;

(d) The needs of workers and their families;

(e) The need to induce industries to invest in the countryside;

(f) Improvements in standards of living;

(g) The prevailing wage levels;

(h) Fair return of the capital invested and capacity to pay of employers;

(i) Effects on employment generation and family income;

(j) The equitable distribution of income and wealth along the imperatives of economic and social development; and

(k) Productivity

The wages prescribed in accordance with the provisions of this Title shall serve as reference rate for wage bargaining in establishments in every region. These wages shall include wages varying within industries, provinces or localities if in the judgment of the Regional Board conditions make such local differentiation proper and necessary to effectuate the purpose of this Title.

Any person, company, corporation, partnership or any other entity engaged in business shall file and register annually with the appropriate Regional Board, Commission and the National Statistics Office an itemized listing of their labor component, specifying the names of their workers and employees below the managerial level, including learners and disabled/ handicapped workers who were hired under the terms prescribed in the employment contracts, and their corresponding salaries and wages.

Where the application of any prescribed wage increase by virtue of a law or Wage order issued by any Regional Board results in distortions of the wage structure within an establishment, the employer and the union shall negotiate to correct the distortions. Any dispute arising from wage distortions shall be resolved through the grievance procedure under their collective bargaining agreement and, if it remains unresolved, through voluntary arbitration. Unless otherwise agreed by the parties in writing, such dispute shall be decided by the voluntary arbitrator or panel of voluntary arbitrators within ten (10) calendar days from the time said dispute was referred to voluntary arbitration.

In cases where there are no collective agreements or recognized labor unions, the employers and workers shall endeavor to correct such distortions. Any dispute arising therefrom shall be settled through the National Conciliation and Mediation Board and, if it remains unresolved after ten (10) calendar days of conciliation, shall be referred to the appropriate branch of the National Labor Relations Commission (NLRC). It shall be mandatory for the NLRC to conduct continuous hearings and decide the dispute within twenty (20) calendar days from the time said dispute is submitted for compulsory arbitration.

The pendency of a dispute arising from a wage distortion shall not in any way delay the applicability of any increase in prescribed wage rates pursuant to the provisions of law or Wage Order..

As used herein, a wage distortion shall mean a situation where an increase in prescribed 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.

All workers paid by result, including those who are paid on piecework, *takay*, *pakyaw* or task basis, shall receive the wage rates prescribed in an Order from the Department of Labor and Employment approving the Payment-by-Result Plan. In the absence of such approval, the employee shall receive not less than the legal minimum wage per eight (8) hours of work a day, or a proportion thereof for working less than eight (8) hours.

All recognized learnership and apprenticeship agreements shall be considered automatically modified insofar as their wage clauses are concerned to reflect the prescribed wage rates. (Art.124-a)

ARTICLE 107. **Freedom to bargain.** — No Wage Order shall be construed to prevent workers in particular firms or enterprises of industries from bargaining for higher wages with their respective employer.

ARTICLE 108. **Prohibition Against Injunction.** — No preliminary or permanent injunction or temporary restraining order may be issued by any court, tribunal or other entity against any proceedings before the Commission or the Regional Boards.

ARTICLE 109. **Non-diminution of Benefits.** — No Wage Order issued by any Regional Board shall provide for wage rates lower than the statutory minimum wage rates prescribed by Congress.

TITLE II

Wages

CHAPTER VI

ADMINISTRATION AND ENFORCEMENT

ARTICLE 110. **Visitorial and enforcement power.** - (a) The Secretary of Labor and Employment or his duly authorized representatives, including labor regulation officers, shall have access to employers' 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 this Code and of any labor law, wage order or rules and regulations issued pursuant thereto.

(b) In cases where the relationship of employer-employee still exists, the Secretary of Labor and Employment or his duly authorized representatives shall have the power to issue compliance orders, after the parties are given the opportunity to present their sides, to give effect to the labor standards provisions of this Code and other labor legislations regardless of the amount involved based on the findings of labor regulation officers or industrial safety

engineers made in the course of inspection. The Secretary or his duly authorized representatives shall issue writs of execution to the appropriate authority for the enforcement of their orders, except in cases where the employer contests the findings of the labor regulation officer and raises issues supported by documentary proofs which were not considered in the course of inspection.

(c) The Secretary of Labor and Employment may likewise order stoppage of work or suspension of operations of any unit or department of an establishment when non-compliance with the law or implementing rules and regulations poses grave and imminent danger to the health and safety of workers in the workplace. Within twenty-four hours, a hearing shall be conducted to determine whether an order for the stoppage of work or suspension of operations shall be lifted or not. In case the violation is attributable to the fault of the employer, he shall pay the employees concerned their salaries or wages during the period of such stoppage of work or suspension of operation.

(d) It shall be unlawful for any person or entity to obstruct, impede, delay or otherwise render ineffective the visitorial and enforcement powers or orders of the Secretary of Labor or his duly authorized representatives issued pursuant to the authority granted under this article, and no inferior court or entity shall issue temporary or permanent injunction or restraining order or otherwise assume jurisdiction over any case involving the enforcement orders issued in accordance with this article.

(e) Any government employee found guilty of violation of, or abuse of authority, under this Article shall after appropriate administrative investigation, be subject to summary dismissal from the service.

(f) The Secretary of Labor and Employment may, by appropriate regulations require employers to keep and maintain such employment records as may be necessary in aid of his visitorial and enforcement powers under this Code. (Art.128-a)

ARTICLE 111. **Recovery of wages, simple money claims and other benefits.** — Upon complaint of any interested party, the Regional Director of the Department of Labor and Employment or any of the duly authorized hearing officers of the Department is empowered, through summary proceeding and after due notice, to hear and decide any matter involving the recovery of wages and other monetary claims and benefits, including legal interest, owing to an employee or person employed in domestic or household service or househelper under this Code, arising from employer-employee relations: *Provided*, that such complaint does not include a claim for reinstatement: *Provided, further*, that the aggregate money claims of each employee or househelper do not exceed fifty thousand pesos (₱50,000). The Regional Director or hearing officer shall decide or resolve the complaint within thirty (30) calendar days from the date of the filing of the same. Any sum thus recovered on behalf of any employee or househelper pursuant to this Article shall be held in a special deposit account by, and shall be paid, on order of the Secretary of Labor and Employment or the Regional Director directly to the employee or househelper concerned. Any such sum not paid to the employee or househelper, because he cannot be located after diligent and reasonable effort to locate him within a period of three (3) years, shall be held as a special fund of the Department of Labor and Employment to be used exclusively for the amelioration and benefit of workers.

Any decision or resolution of the Regional Director or hearing officer pursuant to this provision may be appealed on the same grounds provided in Article 225 of this Code, within five (5) calendar days from receipt of a copy of said decision or resolution, to the National Labor Relations Commission which shall resolve the appeal within ten (10) calendar days from the submission of the last pleading required or allowed under its rules.

The Secretary of Labor and Employment or his duly authorized representative may supervise the payment of unpaid wages and other monetary claims and benefits, including legal interest, found owing to any employee or househelper under this Code.

TITLE III

Productivity and Performance Incentives and Gainsharing Program

CHAPTER I

POLICY AND DEFINITION

ARTICLE 112. Policy – It is the declared policy of the state to encourage higher levels of productivity, recognizing the complex challenges of globalization, in order that Philippine products and services can meet global competition, maintain industrial peace and harmony and promote the principles of partnership and shared responsibility in the relations between workers and employers so as to strengthen the cooperation between labor and capital, and further recognizing the right of labor to its share in the fruits of production and the right of business enterprises to reasonable return on investment and to expansion and growth, and accordingly to provide corresponding incentives to both labor and capital for undertaking voluntary programs that ensure workers with a just share in the fruits of their labor in relation to the profit yielded to the employer as a result of increased productivity and, thus, enhance the quality of life of the workers and employees. (n)

ARTICLE 113. Definition of Terms – As used herein:

(a) "Business Enterprise" – refers to industrial, agricultural or agro-industrial establishments engaged in the production, manufacturing, processing, repacking or assembly of goods, including service-oriented enterprises that are established and operated for profit or gain.

(b) "Labor-Management Committee" – refers to a negotiating body in a business enterprise composed of the representatives of labor and management created to establish a productivity and performance incentives and gainsharing program, and to settle disputes arising therefrom in accordance with section 9 hereof.

(c) "Productivity and Performance Incentives Program" - refers to a formal agreement voluntary established by a joint labor-management committee or any existing labor-management mechanism containing a productivity and performance improvement program that will promote gainful employment, improve working conditions, attain and maintain industrial peace and result in increased productivity and efficiency. Including cost savings, as well as a gainsharing program whereby the employer and the workers share in the positive results of business operation brought about by improvement in productivity. The agreement shall be ratified by at least a majority of the employees who have rendered at least six (6) months of continuous service. In case the joint labor-management committee makes fundamental changes in the program, the employees shall likewise ratify such changes.

(d) "Gainsharing" - refers to a reward system formulated to complement the productivity and performance incentives program designed to improve the productivity performance of the organization. The gainsharing system to be adopted by business enterprises may take the form of profit sharing or other forms of gainsharing mechanisms such as productivity bonus, performance bonus, production bonus, employee stock option plan, among others. (n)

CHAPTER II

COVERAGE

ARTICLE 114. Coverage – this title shall apply to all business enterprises with or without existing and duly recognized collective bargaining representatives, including government-owned and controlled corporations performing proprietary functions. It shall cover all employees and workers regardless of their designation or status and irrespective of the manner and mode by which their wages are paid. (n)

CHAPTER III

CONTENTS OF PRODUCTIVITY AND PERFORMANCE INCENTIVES AND GAINSHARING PROGRAM

ARTICLE 115. Productivity and performance incentives and gainsharing program –

(a) The productivity and performance incentives program shall contain provisions for measuring productivity, performance and efficiency improvements, the gainsharing or reward system adopted in sharing productivity bonuses, coverage, percentage sharing, and forms of bonus payment in accordance with the terms and conditions that may be agreed upon by labor and management: Provided, that the productivity bonus shall be distributed at least once a year, or such frequency as may be determine by the parties.

(b) Productivity agreements voluntarily reached by the parties as provided in this title may supplement existing collective bargaining agreements. (n)

ARTICLE 116. Benefits and Tax Incentives. – (a) Subject to the provisions of section 6 hereof, a business enterprise which adopts a productivity and performance incentives and gainsharing program, duly and mutually agreed upon by parties to the labor-management committee, shall be granted a special deduction from the gross income equivalent to fifty percent (50%) of the total productivity bonuses given to employees under the program over and above the total allowable ordinary and necessary business deductions for said bonuses under the national internal revenue code, as amended.

(b) Grants for manpower training and special studies given to rank-and-file employees pursuant to a skills development, program prepared by the labor-management committee under the productivity and performance incentives program shall also entitle then business enterprises to a special deduction from gross income equivalent to fifty percent (50%) of the total grants over and above the allowable ordinary and necessary business deduction for said grants under the national internal revenue code, as amended.

(c) Bonuses provided for under the productivity and performance incentives and gainsharing program shall be given to the employees in a manner determined by the parties from the start of such program over and above existing bonuses granted by the business enterprises and by law, provided, that the said bonuses shall not be deemed as salary increases due the employees and workers.

(d) The special deductions from the gross income provided for herein shall be allowed starting the next taxable year after the effectivity of this title. (n)

ARTICLE 117. Notification. – A business enterprises which adopts a productivity and performance incentives and gainsharing program shall submit copies of the same to the appropriate regional tripartite wages and productivity board for evaluation and certification. The

board shall then forward the certifiable productivity incentives program of business enterprises to the bureau of internal revenue for record purposes. (n)

ARTICLE 118. Non-diminution of Benefits. – Nothing in this title shall be construed to diminish or reduce any benefits and other privileges enjoyed by the workers under existing laws, decrees, executive orders, company policy or practice, or any agreement or contract between the employer and employees. (n)

CHAPTER IV

FORMATION OF LABOR-MANAGEMENT COMMITTEE AND DISPUTES AND GRIEVANCES

ARTICLE 119. Labor Management Committee. – (a) A business enterprise or its employees, through their authorized representative, may initiate the formation of a labor-management committee or any labor-management mechanism that shall be composed of representatives from the management and from the rank-and-file employees which shall establish and implement a productivity and performance incentives program and settle disputes arising therefrom in accordance with section 9 hereof: provided, that both management and labor shall have equal representation in said committee or mechanism: provided, further, that at the request of any party to the negotiation, the national wages and productivity boards of the department of labor and employment shall provide the necessary studies, technical information and assistance, and expert advice to enable the parties to conclude productivity agreements. In case there is already an existing labor mechanism in the enterprise, such mechanism may suffice; provided, that it includes as one of its objectives the development and implementation of a productivity and performance incentives and gainsharing program.

(b) In business enterprises with duly recognized collective bargaining representatives, the representatives of labor shall be those designated by the collective bargaining agent of the bargaining unit.

(c) In business enterprises without duly recognized collective bargaining representatives, the representatives of labor shall be elected by at least a majority of all rank-and-file employees who have rendered at least six (6) months of continuous service. (N)

ARTICLE 120. Disputes and Grievances. – Whenever disputes, grievances, or other matters arise from the interpretation of implementation of the productivity and performance incentives program, the Labor-Management committee shall meet to resolve the dispute within fifteen (15) days and shall suspend the effectivity of the program pending settlement of such dispute or grievance: provided, however, that if within the period the dispute remains unresolved, the committee may seek the assistance of a third party such as the National Conciliation and Mediation Board of the Department of Labor and Employment, the Regional Tripartite Wages and Productivity Boards or a facilitator acceptable to both parties in resolving the conflict. The third party shall act only in an advisory capacity for purposes of rendering interpretation and Clarification to facilitate the adoption of a final resolution of the parties: provided, further, that the business enterprises shall not be deemed to have forfeited any tax incentives accrued prior to the date of occurrence of such dispute or grievance, and the workers shall not be required to reimburse the productivity bonuses already granted to them under the incentive program. Likewise, bonuses that have already accrued before the dispute or grievance shall be paid the workers within six (6) month from their accrual. Any dispute which remains unresolved within thirty (30) days from the time of its submission to the labor management committee shall be submitted to voluntary arbitration in line with the pertinent provisions of the labor code, as amended.

The productivity and performance incentives and gainsharing program shall include the name of the voluntary arbitrator or panel of voluntary arbitrators previously chosen and agreed upon by the parties. (n)

ARTICLE 121. Penalty. - Any person who shall make any fraudulent claim under this title, regardless of whether or not a tax benefit has been granted, shall upon conviction be punished with imprisonment of not less than six (6) months but not more than one (1) year or a fine of not less than six thousand pesos (P6,000.00), or both, at the discretion of the court, without prejudice to prosecution for any other acts punishable under existing laws.

In case of partnerships or corporations, the penalty shall be imposed upon the officer or employee who knowingly approved, authorized or ratified the filing of the fraudulent claim, and other persons responsible therefore. (n)

TITLE IV

WORKING CONDITIONS FOR SPECIAL GROUPS OF EMPLOYEES

CHAPTER I

EMPLOYMENT OF WOMEN

ARTICLE 122. **Night work prohibition.** — No woman, regardless of age, shall be employed or permitted or suffered to work, with or without compensation:

(a) In any industrial undertaking or branch thereof between ten o'clock at night and six o'clock in the morning of the following day; or

(b) In any commercial or non-industrial undertaking or branch thereof, other than agricultural, between midnight and six o'clock in the morning of the following day; or

(c) In any agricultural undertaking at night time unless she is given a period of rest of not less than nine (9) consecutive hours.

ARTICLE. 123. **Exceptions.** - The prohibitions prescribed by the preceding Article shall not apply in any of the following cases:

(a) In cases of actual or impending emergencies caused by serious accident, fire, flood, typhoon, earthquake, epidemic or other disasters or calamity, to prevent loss of life or property, or in cases of *force majeure* or imminent danger to public safety;

(b) In cases of urgent work to be performed on machineries, equipment or installation, to avoid serious loss which the employer would otherwise suffer;

(c) Where the work is necessary to prevent serious loss of perishable goods;

(d) Where the woman employee holds a responsible position of managerial or technical nature, or where the woman employee has been engaged to provide health and welfare service;

(e) Where the women employees are immediate members of the family operating the establishment or undertaking; and

(f) Under other analogous cases exempted by the Secretary of Labor and Employment in appropriate regulations. (Art.131-a)

ARTICLE 124. **Facilities for women.** — The Secretary of Labor and Employment shall establish standards that will insure the safety and health of women employees. In appropriate cases, he shall by regulations require any employer to:

(a) Provide seats proper for women and permit them to use such seats when they are free from work and during working hours, provided they can perform their duties in this position without detriment to efficiency;

(b) To establish separate toilet rooms and lavatories for men and women and provide at least a dressing room for women;

(c) To establish a nursery in a workplace for the benefit of the women employees therein; and

(d) To determine appropriate minimum age and other standards for retirement or termination in special occupations such as those of flight attendants and the like.

ARTICLE 125. **Maternity leave benefits.** — (a) Every employer shall grant to any pregnant woman employee, whether married or not and regardless of her employment status, maternity leave of sixty (60) days for normal delivery and seventy-eight (78) days in case of caesarean delivery. 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.

(b) 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.

(c) The maternity leave provided in this Article shall be paid by the employer only for the first four deliveries or miscarriages by a woman employee. (Art.133-a)

ARTICLE 126. **Family planning services; incentives for family planning.** — (a) Establishments which are required by law to maintain a clinic or infirmary shall provide free family planning services to their employees which shall include, but not limited to, the application or use of contraceptive pills and intra-uterine devices.

(b) In coordination with other agencies of the government engaged in the promotion of family planning, the Department of Labor and Employment shall develop and prescribe incentive bonus schemes to encourage family planning among female workers in any establishment or enterprise.

ARTICLE 127. **Discrimination prohibited.** — It shall be unlawful for any employer to discriminate against any woman employee with respect to terms and conditions of employment solely on account of her sex.

The following are acts of discrimination:

(a) Giving preference to a male applicant over a female applicant in the hiring process, whether through notices, announcements or advertisements for employment or apprenticeship or in the actual recruitment, hiring or employment of workers where the particular job can be equally handled by a woman;

(b) Payment of a lesser compensation, including wage, salary or other form of remuneration and fringe benefits, to a female employee as against a male employee, for work of equal value;

(c) Favoring a male employee over a female employee with respect to promotion, assignment, training opportunities, study and scholarship grant solely on account of their sexes; and

(d) Favoring a male employee over a female employee with respect to dismissal of personnel or the application of any retrenchment policy of the employer solely on account of their sexes.

Criminal liability for the willful commission of any unlawful act as provided in this article or any violation of the rules and regulations issued pursuant to Section 2 hereof shall be penalized as provided in Articles 293 and 294 of this Code: Provided, that the institution of any criminal action under this provision shall not bar the aggrieved employee from filing an entirely separate and distinct action for money claims, which may include claims for damages and other affirmative reliefs. The actions hereby authorized shall proceed independently of each other. (Art.135-a)

ARTICLE 128. **Stipulation against marriage.** — It shall be unlawful for an employer to require as a condition of employment or continuation of employment that a woman employee shall not get married, or to stipulate expressly or tacitly that upon getting married a woman employee shall be deemed resigned or separated or to actually dismiss, discharge, discriminate or otherwise prejudice a woman employee merely by reason of her marriage.

ARTICLE 129. **Prohibited acts.** — It shall be unlawful for any employer:

(1) To deny any woman employee the benefits provided for in this Chapter or to discharge any woman employed by him for the purpose of preventing her from enjoying any of the benefits provided under this Code;

(2) To discharge such woman on account of her pregnancy, or while on leave or in confinement due to her pregnancy;

(3) To discharge or refuse the admission of such woman upon returning to her work for fear that she may again be pregnant. or

(4) To deny any woman the benefits of employment or other statutory benefits under our laws by reason of her sex. (Art. 137-a)

ARTICLE 130. **Classification of certain women workers.** — Any woman who is permitted or suffered to work with or without compensation in any night club, cocktail lounge, massage clinic, bar or similar establishment, under the effective control or supervision of the employer for a substantial period of time as determined by the Secretary of Labor and Employment, shall be considered as an employee of such establishment for purposes of labor and social legislation.

TITLE III

WORKING CONDITIONS FOR SPECIAL GROUPS OF EMPLOYEES

CHAPTER II

EMPLOYMENT OF MINORS

ARTICLE. 131. **Minimum employable age.** - (a) Children below fifteen (15) years of age shall not be employed, except:

1. When a child in an industrial undertaking works directly under the sole responsibility of his parents or legal guardian and where only members of the employer's family are employed, *Provided,* that his employment, neither endangers his life, safety, health and morals, nor impairs his normal development and in any way interferes with his schooling.

2. Where employment or participation in public entertainment or information through cinema, theater, radio or television is essential; *Provided,* the employment contract is concluded by the child's parents or legal guardian, with the express agreement of the child concerned, if possible, and the approval of the Department of Labor and Employment.

3. In other permissible employments as may be determined by the Secretary of Labor and Employment taking into consideration the welfare and normal development of a child

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The following requirements in all instances, shall be strictly complied with: :

1. The employer shall ensure the protection, health, safety, morals and normal development of the child;

2. The employer shall institute measures to prevent the child's exploitation or discrimination, taking into account the system and level of remuneration, and the duration and arrangement of working time; and

3. The employer shall formulate and implement, subject to the approval and supervision of competent authorities, a continuous program for training and skills acquisition of the child.

In the above exceptional cases where any such child may be employed, the employer shall first secure, before engaging such child, a work permit from the Department of Labor and Employment which shall ensure observance of the above requirements.

The Department of Labor and Employment shall promulgate rules and regulations necessary for the effective implementation of this section

(b) Any person between fifteen (15) and eighteen (18) years of age may be employed for such number of hours and such periods of the day as determined by the Secretary of Labor in appropriate regulations.

(c) The foregoing provisions shall in no case allow the employment of a person below eighteen (18) years of age in any work, undertaking or activity which is considered hazardous hereof and as may be further determined by the Secretary of Labor and Employment. (Art.139-a)

ARTICLE 132. ***Worst forms of child labor*** - No child shall be employed in or exposed to the worst forms of child labor which comprised of:

1) All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom, and forced or compulsory labor, including forced or compulsory recruitment of children for use in armed conflict;

2) The use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;

3) The use, procuring or offering of a child for illicit activities, particularly the production and trafficking of drugs as defined in relevant international treaties;

4) Work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

Any work, undertaking or activity shall be considered hazardous if it falls under any of the following conditions:

A) It debases, degrades or demeans the intrinsic worth and dignity of a child as a human being; or

B) It exposes the child to physical, emotional or sexual abuse, or is found to be highly stressful psychologically or may prejudice morals; or

C) It is performed underground, underwater or at dangerous heights; or

D) It involves the use of dangerous machinery, equipment and tools such as power-driven or explosive power-actuated tools; or

E) It exposes the child to physical danger such as, but not limited to the dangerous feats of balancing, physical strength or contortion, or which requires the manual transport of heavy loads; or

F) It is perfomed in an unhealthy environment exposing the child to hazardous working conditions, elements, substances, co-agents or processes involving the ionizing radiation, chemicals, fire, flammable substances, noxious components and the like, or to extreme temperatures, noise levels, or vibrations; or

G) It is performed under particularly difficult conditions such as very long hours, during the night, or without the possibility of returning home each day; or

H) It exposes the child to biological agents such as bacteria, fungi, viruses, protozoans, hematoads and other parasites, or to sub-human conditions; or

I) It involves the manufacture or handling of explosives and other pyrotechnical products.

Any employer found to be violating the provisions of paragraphs (c) and (d) hereof, or the employer of the subcontractor who employs, or the one who facilitates the employment of a child in hazardous work, shall suffer the penalty of a fine of not less than ten thousand pesos (p10,000.00) but not more than five hundred thousand pesos (p500,000.00), or imprisonment of not less than six (6) months but not more than six (6) years, or both such fine and imprisonment at the discretion of the court.

If a corporation commits the violation, the board of directors/trustees and officers, which include the president, treasurer and secretary of the said corporation, shall be penalized as provided for herein.

The secretary of Labor and Employment or his/her fully authorized representative may, after due notice and hearing, order the closure of any business firm or establishment found to have repeatedly violated any of the provisions hereof more than three (3) times. He/she may likewise order the immediate closure of any such firm or establishment if:

1) The violation of any provision hereof has resulted in the death, insanity or serious physical injury of a child employed in such establishment; or

2) Such firm or establishment engaged or employed a child in prostitution or in obscene or lewd shows.

In case of such closure, the employer shall be required to pay his/her employees their separation pay and other monetary benefits provided for by law.

Parents, biological or by legal fiction, and legal guardians found to be violating the provisions hereof shall pay the fine as provided herein or be required to render community service for not less than thirty (30) days but not more than one (1) year, or both such fine and community service at the discretion of the court: Provided, that a maximum length of community service shall be imposed on parents or legal guardians who have repeatedly violated the

provisions hereof three (3) times; Provided, further, that in addition to the community service in its maximum period, the penalty of arresto menor shall be imposed on the parents or legal guardians who have repeatedly violated the provisions hereof more than three (3) times. (n)

ARTICLE 133. **Prohibition against child discrimination.** — No employer shall discriminate against any person in respect to terms and conditions of employment on account of his age.

TITLE III

WORKING CONDITIONS FOR SPECIAL GROUPS OF EMPLOYEES

CHAPTER III
EMPLOYMENT OF HOUSEHELPERS

ARTICLE 134. **Coverage.** — This Chapter shall apply to all persons rendering services in households for compensation.

"Domestic or household service" shall mean services in the employer's home which is usually necessary or desirable for the maintenance and enjoyment thereof and includes ministering to the personal comfort and convenience of the members of the employer's household, including services of family drivers.

ARTICLE 135. **Contract of Domestic service.** — The original contract of Domestic service shall not last for more than two (2) years but it may be renewed for such periods as may be agreed upon by the parties.

ARTICLE. 136. **Minimum wage.** – (a) Househelpers shall be paid the following minimum wage rates:

(1) One Thousand Two Hundred (P1,200.00) pesos a month for househelpers in the National Capital Region;

(2) One Thousand (P1,000.00) pesos a month for those in other chartered cities and first-class municipalities; and

(3) Nine Hundred (P900.00) pesos a month for those in other municipalities.

Provided, that the employers shall review the employment contracts of their househelpers every three (3) years with the end in view of improving the terms and conditions thereof. (Art.143-a)

ARTICLE 137. **Minimum cash wage.** — The minimum wage rates prescribed under this Chapter shall be the basic cash wages which shall be paid to the househelper in addition to lodging, food and medical attendance.

ARTICLE 138. **Payment of wages.** - Payment of wages shall be made directly to the househelper in cash, at least once every two (2) weeks or twice a month. No deductions from said wages shall be made by the employer except those provided by law. The express written consent of the househelper shall first be secured before any deduction from his/her wages is made. (N)

ARTICLE 139. **Thirteenth (13^{th}) month pay.** - Revising for the purpose Guideline No. 2 of the revised guidelines on the implementation of the thirteenth month pay law (16 November 1987). All househelpers shall be entitled to a thirteenth (13^{th}) month pay of Memorandum No.

28, said thirteenth (13th) month pay shall be paid to a househelpers not later than the 16th of December of every year. (n)

ARTICLE 140. **Membership in the Social Security System (SSS).** - All househelpers regardless of age and compensation levels, shall be covered by the Social Security System (SSS) and be entitled to all the benefits provided under Republic Act No. 1161, as amended. The employers of said househelpers shall pay for the employer's share of the aforementioned SSS contribution without deducting the same from the monthly compensation of the househelpers.

For this purpose, the Social Security System (SSS) is hereby required to implement an outreach program that will facilitate the remittance of SSS contributions by either the homeowners or the househelpers by whatever means deemed feasible. Said outreach program should be conceptualized and initiated within a period of one (1) year from the date of effectivity hereof. (n)

ARTICLE 141. **Membership in the Philippine Health Insurance Corporation (PHILHEALTH).** - All househelpers, regardless of age and compensation levels, shall be covered under the Philippine Health Insurance Corporation (Philhealth), and be entitled to all the benefits provided for under the law. The employer of said househelper shall pay for the employer's share of the aforementioned Philhealth, without deducting the same from the monthly compensation of the househelper. (n)

ARTICLE 142. **Normal hours of work.** - Cognizant of the peculiarities of the relationship between the employer and the househelper, the normal hours of work of *kasambahays* shall be set at ten (10) hours per day, exclusive of one (1) hour breaks each for breakfast, lunch and dinner. Any work done by the household beyond the normal hours of work per day shall be duly compensated by the employer. Furthermore, the household shall be allowed at least eight (8) hours of continuous rest period per day. (n)

ARTICLE 143. **Regular working days.** - No household shall render work for more than six (6) days per week. While the specific day of the week set aside as rest day for the household may be stipulated in the employment contract, the same may be changed for another day of the week upon the mutual agreement of the employer and the household as the exigencies of the household may dictate. (n)

ARTICLE 144. **Vacation leaves.** - All household shall be entitled to a fourteen (14) day vacation leave with pay, in addition to the one (1) day per week designated as the rest day. Said leave may only commence at the end of the first year of employment, and shall not cumulate from year to year. (n)

ARTICLE 145. **Maternity benefits.** - All female household shall be entitled to maternity benefits pursuant to article 133 of the Labor Code of the Philippines. (n)

ARTICLE 146. **Assignment to non-household work.** — No household shall be assigned to work in a commercial, industrial or agricultural enterprise at a wage or salary rate lower than that provided for agricultural or non-agricultural worker as prescribed herein.

ARTICLE 147. **Opportunity for education.** — If the household is under the age of eighteen (18) years, the employer shall give him or her an opportunity for at least elementary education. The cost of such education shall be part of the household's compensation, unless there is a stipulation to the contrary.

ARTICLE 148. **Treatment of household.** — The employer shall treat the household in a just and humane manner. In no case shall physical violence be used upon the household.

ARTICLE 149. **Board, lodging and medical attendance.** — The employer shall furnish the househelper free of charge suitable and sanitary living quarters as well as adequate food and medical attendance.

ARTICLE 150. ***Indemnity for unjust termination of services.*** — *If the period of* household service is fixed, neither the employer nor the househelper may terminate the contract before the expiration of the term, except for a just cause. If the househelper is unjustly dismissed, he or she shall be paid the compensation already earned plus that for fifteen (15) days by way of indemnity.

If the househelper leaves without justifiable reason, he or she shall forfeit any unpaid salary due him or her not exceeding fifteen (15) days.

ARTICLE 151. **Service of termination notice.** — If the duration of the household service is not determined either in stipulation or by the nature of the service, the employer or the househelper may give notice to put an end to the relationship five (5) days before the intended termination of the service.

ARTICLE 152. **Employment certification.** — Upon the severance of the household service relation, the employer shall give the househelper a written statement of the nature and duration of the service and his or her efficiency and conduct as househelper.

ARTICLE 153. **Employment records.** — The employer may keep such records as he may deem necessary to reflect the actual terms and conditions of employment of his househelper which the latter shall authenticate by signature or thumbmark upon request of the employer.

TITLE III

WORKING CONDITIONS FOR SPECIAL GROUPS OF EMPLOYEES

CHAPTER IV

EMPLOYMENT OF HOMEWORKERS

ARTICLE 154. **Regulation of industrial homeworkers.** - The employment of industrial homeworkers and field personnel shall be regulated by the Government through appropriate regulations issued by the Secretary of Labor and Employment to ensure the general welfare and protection of homeworkers and field personnel and the industries employing them.

ARTICLE 155. **Regulations of Secretary of Labor and Employment.** - The regulations or orders to be issued pursuant to this Chapter shall be designed to assure the minimum terms and conditions of employment applicable to the industrial homeworkers and field personnel involved.

ARTICLE 156. **Homeworker's Contractor as the Employer.** - For purposes of this Chapter, the "employer" of homeworkers shall be the homeworker's contractor who for his account or benefit, or on behalf of any person , directly :

(1) Delivers any goods, articles or materials to be processed or fabricated in or about a home and thereafter to be returned or to be disposed of or distributed in accordance with his directions; or

(2) Sells any goods, articles or materials for the purpose of having the same processed or fabricated in or about a home and then rebuys them after such processing or fabrication.

For the purpose of this Chapter, the Homeworker's Contractor shall be solidarily liable with any person for whom he may have engaged the services of the Homeworkers. (Art.155-a)

BOOK FOUR

Health, Safety and Social Welfare Benefits

TITLE I

MEDICAL, DENTAL AND OCCUPATIONAL SAFETY

CHAPTER I

MEDICAL AND DENTAL SERVICES

ARTICLE 157. **First-aid treatment.** — Every employer shall keep in his establishment such first-aid medicines and equipment as the nature and conditions of work may require, in accordance with such regulations as the Department of Labor and Employments shall prescribe.

The employer shall take steps for the training of a sufficient number of employees in first-aid treatment.

ARTICLE 158. **Emergency medical and dental services.** — It shall be the duty of every employer to furnish his employees in any locality with free medical and dental attendance and facilities consisting of:

(a) The services of a full-time registered nurse when the number of employees exceeds 50 but not more than 200 except when the employer does not maintain hazardous work places, in which case the services of a graduate first-aider shall be provided for the protection of the workers, where no registered nurse is available. The Secretary of Labor and Employment shall provide by appropriate regulations the services that shall be required where the number of employees does not exceed fifty (50) and shall determine by appropriate order hazardous workplaces for purposes of this Article;

(b) The services of a full-time registered nurse, a part-time physician and dentist, and an emergency clinic, when the number of employees exceeds two hundred (200) but not more than three hundred (300) and;

(c) The services of a full-time physician, dentist and a full-time registered nurse as well as a dental clinic, and an infirmary or emergency hospital with one bed capacity for every one hundred (100) employees, when the number of employees exceeds three hundred (300).

In cases of hazardous workplaces, no employer shall engage the services of a physician or dentist who cannot stay in the premises of the establishment for at least two (2) hours, in the case of those engaged on part-time basis, and not less than eight (8) hours in the case of those employed on full-time basis. Where the undertaking is non-hazardous in nature, the physician and dentist may be engaged on retained basis, subject to such regulations as the Secretary of Labor and Employment may prescribe to insure immediate availability of medical and dental treatment and attendance in case of emergency

ARTICLE 159. **When emergency hospital not required.** — The requirement for an emergency hospital or dental clinic shall not be applicable in case there is a hospital or dental clinic which is accessible from the employer's establishment and he makes arrangements for the reservation therein of the necessary beds and dental facilities for the use of his employees.

ARTICLE 160. **Health program.** — The physician engaged by an employer shall, in addition to his duties under this Chapter, develop and implement a comprehensive occupational health program for the benefit of the employees of his employer.

ARTICLE 161. **Qualifications of health personnel.** — The physicians, dentists and nurses employed by employers pursuant to this Chapter shall have the necessary training in industrial medicine and occupational safety and health. The Secretary of Labor and Employment, in consultation with industrial, medical and occupational safety and health associations, shall establish the qualifications, criteria and conditions of employment of such health personnel.

ARTICLE 162. **Assistance of employer.** — It shall be the duty of any employer to provide all the necessary assistance to ensure the adequate and immediate medical and dental attendance and treatment to an injured or sick employee in case of emergency.

TITLE I

MEDICAL, DENTAL AND OCCUPATIONAL SAFETY

CHAPTER II

OCCUPATIONAL HEALTH AND SAFETY

ARTICLE 163. **Safety and health standards.** — The Secretary of Labor and Employment shall by appropriate orders set and enforce mandatory occupational safety and health standards to eliminate or reduce occupational safety and health hazards in all work places and institute new and update existing programs to ensure safe and healthful working conditions in all places of employment.

ARTICLE 164. **Research.** — It shall be the responsibility of the Department of Labor and Employment to conduct continuing studies and researches to develop innovative methods, techniques and approaches for dealing with occupational safety and health problems; to discover latent diseases by establishing causal connections between diseases and work in environmental conditions; and to develop medical criteria which will assure insofar as practicable that no employee will suffer impairment or diminution in health, functional capacity or life expectancy as a result of his work and working conditions.

ARTICLE 165. **Training programs.** — The Department of Labor and Employment shall develop and implement training programs to increase the number and competence of personnel in the field of occupational safety and industrial health.

ARTICLE 166. **Administration of safety and health laws.** — (a) The Department of Labor and Employment shall be solely responsible for the administration and enforcement of occupational safety and health laws, regulations and standards in all establishments and workplaces wherever they may be located; however, chartered cities may be allowed to conduct industrial safety inspections of establishments within their respective jurisdiction where they have adequate facilities and competent personnel for the purpose as determined by the Department of Labor Employment and subject to national standards established by the latter.

(b) The Secretary of Labor and Employment may, through appropriate regulations, collect reasonable fees for the inspection of steam boilers, pressure vessels and piping and electrical installations, the test and approval for safe use of materials, equipment and other safety devices, and the approval of plans for such materials, equipment and devices. The fees so collected shall be deposited in the national treasury to the credit of the occupational safety and health fund and shall be expended exclusively for the administration and enforcement of safety and other labor laws administered by the Department of Labor and Employment.

(c) The Department of Labor and Employment shall be the principal agency in coordinating and monitoring the activities of all laws to promote occupational safety and health. The Secretary of Labor and Employment shall issue rules and regulations necessary to implement this provision for purposes of this title. The term "Occupational Safety and Health" shall include any matter that affects the safety and health of workers in all places of employment.

(d) In addition to the penalties provided for by existing laws, the Department of Labor and Employment may, by appropriate regulations, prescribe administrative fines for violations of occupational safety and health standards or regulations promulgated thereunder which in no case shall be less than One Hundred Pesos (₱100.00) nor more than Ten Thousand Pesos (₱10,000.00) a day, depending upon the gravity of the violation uncovered until the same has been corrected by the offender. The fines shall accrue to the State Investment Compensation Fund and shall be managed by the Employees Compensation Commission which shall be used to implement programs and promote research and training in occupational safety and health. (Art. 165-a)

TITLE II

EMPLOYEES' COMPENSATION AND STATE INSURANCE FUND

CHAPTER I

POLICY AND DEFINITIONS

ARTICLE 167. Policy. - The State shall promote and develop a tax-exempt employees' compensation program whereby employees and their dependents, in the event of work-connected disability or death, may promptly secure medical or related benefits and lump-sum income benefits. It shall initiate policies and undertake programs on rehabilitation. (Art.166-a)

ARTICLE 168. Definition of Terms - As used in this Title, unless the context indicates otherwise:

(a) "Code" means the Labor Code of the Philippines instituted under Presidential Decree numbered four hundred forty-two, as amended.

(b) "Commission" means the Employees' Compensation Commission created under this Title.

(c) "SSS" means the Social Security System created under Republic Act numbered Eleven Hundred Sixty-One, as amended.

(d) "GSIS" means the Government Service Insurance System created under Commonwealth Act Numbered One Hundred Eighty-Six, as amended.

(e) "System" means the SSS or GSIS, as the case may be.

(f) "Employer" means any person, natural or juridical, employing the services of the employee.

(g) "Employee" means any person compulsorily covered by the GSIS under Commonwealth Act Numbered One Hundred Eighty-Six, as amended, including members of the Armed Forces of the Philippines, and any person employed as casual, emergency, temporary, substitute or contractual; or any person compulsorily covered by the SSS under Republic Act Numbered Eleven Hundred Sixty-One, as amended.

(h) "Person" means any individual, partnership, firm, association, trust, corporation or legal representative thereof.

(i) "Dependent" **(For SSS)** - The dependents shall be the following:

(1) The legal spouse entitled by law to receive support from the member;

(2) The legitimate, legitimated or legally adopted, and illegitimate child who is unmarried, not gainfully employed and has not reached twenty-one (21) years of age, or if over twenty-one (21) years of age, he is congenitally or while still a minor has been permanently incapacitated and incapable of self-support, physically or mentally; and

(3) The parent who is receiving regular support from the member.

(For GSIS) - The dependents shall be the following:

(a) Legitimate spouse dependent for support upon the member or pensioner;

(b) The legitimate, legitimated, legally adopted child, including the illegitimate child, who is unmarried, not gainfully employed, and has not reached twenty-one years of age, or if over twenty-one years of age, he is incapacitated and incapable of self-support due to a mental or physicial defect acquired prior to the age of twenty-one years; and

(c) The parents dependent upon the member for support.

(J) "Beneficiaries" **(For the SSS).** - The dependent spouse until he or she remarries, the dependent legitimate, legitimated or legally adopted, and illegitimate children, who shall be the primary beneficiaries of the member: *Provided,* that the dependent illegitimate children shall be entitled to fifty percent (50%) of the share of the legitimate, legitimated or legally adopted children; *Provided, Further*, That in the absence of the dependent legitimate, legitimated or legally adopted children of the member, his/her dependent illegitimate children shall be entitled to one hundred percent (100%) of the benefits. In their absence, the dependent parents who shall be the secondary beneficiaries of the member.

(For the GSIS). – Primary beneficiaries as the legal dependent spouse until he/she remarries and the dependent children, and secondary beneficiaries as the dependent parents and subject to restrictions on dependent children, the legitimate dependants.

(k) "Injury" means any harmful change in the human organism from any accident arising out of and in the course of employment.

(l) "Sickness" means any illness definitely accepted as an occupational disease listed by the Commission, or any illness arising out of or aggravated by his employment. Any illness, the etiology or cause of which is still undetermined or unknown, shall be made compensable if acquired by the employee during his employment. For this purpose, the Commission is

empowered to determine and approve occupational diseases and work-related illnesses that may be considered compensable based on peculiar hazards of employment.

(m) "Death" means loss of life resulting from injury or sickness.

(n) "Disability" means loss or impairment of a physical or mental function resulting from injury or sickness.

(o) "Compensation" means all payments made under this Title for income benefits and medical or related benefits.

(p) "Income benefit" means all payments made under this Title to the employee or his dependents.

(q) "Medical benefit" means all payments made under this Title to the providers of medical care, rehabilitation services and hospital care.

(r) "Related benefit" means all payments made under this Title for appliances and supplies.

(s) "Appliances" means crutches, artificial aids and other similar devices and their replacement or repair except when the need for such replacement or repair arises from the fault of the employee.

(t) "Supplies" means medicine and other medical, dental or surgical items.

(u) "Hospital" means any medical facility, government or private, authorized by law, an active member of good standing of the Philippine Hospital Association and accredited by the Commission.

(v) "Physician" means any doctor of medicine duly licensed to practice in the Philippines, an active member in good standing of the Philippine Medical Association and accredited by the Commission.

(w) "Wages" or "Salary" insofar as they refer to the computation of benefits, as defined in Republic Act No. 1161, as amended, for SSS and Presidential Decree No. 1146, as amended, for GSIS, respectively, except that part in excess of Twelve Thousand Pesos (₱12,000.00).

(x) "Monthly salary credit" means the wage or salary base for contributions as provided in Republic Act numbered Eleven Hundred Sixty-One, as amended, or the wages or salary.

(For SSS) Average Monthly Salary Credit . - The result obtained by dividing the sum of the last sixty (60) monthly salary credit immediately preceding the semester of contingency by sixty (60), or the result obtained by dividing the sum of all the monthly salary credit paid prior to the semester of contingency by the number of monthly contributions paid in the same period, whichever is greater, *Provided,* that if the injury or sickness caused the disability, it shall be deemed as permanent disability for the purpose of computing the average monthly salary credit.

In the case of the **GSIS**, current daily compensation.

(aa) "Quarter" means a period of three (3) consecutive months ending on the last day of March, June, September and December.

(bb) "Semester" means a period of two consecutive quarters ending in the quarter of death, permanent disability, injury or sickness.

(cc) "Credited years of service". — For a member covered prior to January nineteen hundred eighty five (1985) minus the calendar year of coverage plus the number of calendar years in which six (6) or more contributions have been paid from January nineteen hundred eighty five (1985) up to the calendar year containing the semester prior to the contingency. For a member covered in or after January nineteen hundred eighty five (1985), the number of calendar years in which six (6) or more contributions have been paid from the year of coverage up to the calendar year containing the semester prior to the contingency: *Provided*, That the Commission may provide for a different number of contributions in a calendar year for it to be considered as a credited year of service.

(dd) "Monthly Income Benefit" means the highest of the following amounts:

(1) The sum of the following:
(i) three hundred pesos (₱300.00); plus
(ii) twenty per cent (20%) of the average monthly salary credit; plus
(iii) two per cent (2%) of the average monthly salary credit for each credited year of service in excess of ten (10) years; or

(2) Forty percent (40%) of the average monthly salary credit; or

(3) One thousand pesos (₱1,000). (Art.167-a)

TITLE II

EMPLOYEES' COMPENSATION AND STATE INSURANCE FUND

CHAPTER II

COVERAGE AND LIABILITY

ARTICLE 169. **Compulsory coverage.** — Coverage in the State Insurance Fund shall be compulsory upon all employers and their employees not over seventy (70) years of age: *Provided*, That an employee who is over sixty (60) years of age and paying contributions to qualify for the retirement or life insurance benefit administered by the System shall be subject to compulsory coverage. (Art. 168-a)

ARTICLE 170. **Foreign employment.** — The Commission shall ensure adequate coverage of Filipino employees employed abroad, subject to regulations as it may prescribe.

ARTICLE 171. **Effective date of coverage.** — Compulsory coverage of the employer during the effectivity of this Title shall take effect on the first day of his operation, and that of the employee on the date of his employment.

ARTICLE 172. **Registration.** — Each employer and his employees shall register with the System in accordance with its regulations.

ARTICLE 173. **Limitation of liability.** — The State Insurance Fund shall be liable for compensation to the employee or his dependents, except when the disability or death was

occasioned by the employee's intoxication, willful intention to injure or kill himself or another, notorious negligence, or otherwise provided under this Title.

ARTICLE 174. – **Extent of Liability**. – The employee or his heirs shall have the right to avail themselves of the benefits under this Code and to sue the employer in the regular courts under the Civil Code for damages by reason of the employer's negligence. The payment of compensation under this Title shall not bar the recovery of benefits as provided for in the Administrative Code of 1987, R.A. No. 8282, R.A. No. 8291, and other laws whose benefits are administered by the System or by other agencies of the government (Art.173-a)

ARTICLE 175. **Liability of third parties.** — (a) When the disability or death is caused by circumstances creating a legal liability against a third party, the disabled employee or the dependents in case of his death shall be paid by the System under this Title. In case benefit is paid under this Title, the System shall be subrogated to the rights of the disabled employee or the dependents in case of his death, in accordance with the general law.

(b) Where the System recovers from such third party damages in excess of those paid or allowed under this Title, such excess shall be delivered to the disabled employee or other persons entitled thereto, after deducting the cost of proceedings and expenses of the System.

ARTICLE 176. **Deprivation of benefits.** — Except as otherwise provided under this Title, no contract, regulation or device whatsoever shall operate to deprive the employee or his dependents of any part of the income benefits and medical or related services granted under this Title. Existing medical services being provided by the employer shall be maintained and continued to be enjoyed by their employees.

TITLE II

EMPLOYEES' COMPENSATION AND STATE INSURANCE FUND

CHAPTER III

ADMINISTRATION

ARTICLE 177. **Employees' Compensation Commission.** –

(a) To initiate, rationalize, and coordinate the policies of the employees' compensation program, the Employees' Compensation Commission is hereby created to be composed of five *ex-officio* members, namely: the Secretary of Labor and Employment as Chairman, the GSIS President and General Manager, the SSS President, the Executive Director of the Occupational Safety and Health Center, and the Executive Director of the ECC Secretariat, and six (6) appointive members, two of whom shall represent the employees, two from the employers, and the other two from the general public, to be appointed by the President of the Philippines for a term of six years. The appointive member shall have at least five (5) years experience in workmen's compensation, social security or public health programs. All vacancies shall be filled for the unexpired term only.

(b) The Vice Chairman of the Commission shall be alternated each year between the GSIS President and General Manager and the SSS President. The presence of six (6) members shall constitute a quorum. Each member shall receive a *per diem* of two thousand five hundred pesos (₱2,500.00) for every meeting that is actually attended by him, exclusive of actual, ordinary and necessary travel and representation expenses. In his absence, any member may designate an official of the institution he serves on full-time basis as his representative to act in his behalf.

(c) The general conduct of the operations and management functions of the GSIS or SSS under this Title shall be vested in its respective chief executive officers, who shall be immediately responsible for carrying out the policies of the Commission. (Art.176-a)

ARTICLE 178. **Powers and duties.** — The Commission shall have the following powers and duties:

(a) To assess and fix a rate of contribution from all employers;

(b) To determine the rate of contribution payable by an employer whose records show a high frequency of work accidents or occupational diseases due to failure by the said employer to observe adequate safety measures;

(c) To approve rules and regulations governing the processing of claims and the settlement of disputes arising therefrom as prescribed by the System;

(d) To initiate policies and programs toward adequate occupational health and safety and accident prevention in the working environment, rehabilitation other than those provided for under ARTICLE 191 hereof, and other related programs and activities, and to appropriate funds therefor;

(e) To make the necessary actuarial studies and calculations concerning the grant of constant help and income benefits for permanent disability or death, and the rationalization of the benefits for permanent disability and death under the Title with benefits payable by the System for similar contingencies: Provided, that the Commission may upgrade benefits and add new ones, subject to approval of the President; and Provided, further, That the actuarial stability of the State Insurance Fund shall be guaranteed: Provided, finally, that such increases in benefits shall not require any increases in contribution, except as provided for in paragraph (b) hereof;

(f) To appoint the personnel of its staff, subject to civil service law and rules, but exempt from WAPCO law and regulations;

(g) To adopt annually a budget of expenditures of the Commission and its staff chargeable against the State Insurance Funds: Provided, that the SSS and GSIS shall advance on a quarterly basis the remittances of allotment of the loading fund for this Commissions operational expenses based on its annual budget as duly approved by the Department of the Budget and Management;

(h) To have the power to administer oath and affirmation, and to issue subpoena and subpoena *duces tecum* in connection with any question or issue arising from appealed cases under this Title;

(i) To sue and be sued in court;

(j) To acquire property, real or personal, which may be necessary or expedient for the attainment of the purposes of this Title;

(k) To enter into agreements or contracts for such services and aid as may be needed for the proper, efficient and stable administration of the program; and

(l) To perform such other acts as it may deem appropriate for the attainment of the purposes of the Commission and proper enforcement of the provisions of this Title.

ARTICLE 179. **Management of funds.** — All revenues collected by the System under this Title shall be deposited, invested, administered and disbursed in the same manner and under the same conditions, requirements and safeguards as provided by Republic Act numbered eleven hundred sixty-one, as amended, and Commonwealth Act numbered one hundred eighty-six, as amended, with regard to such other funds as are thereunder being paid to or collected by the SSS and GSIS, respectively: Provided, That the Commission, SSS and GSIS may disburse each year not more than 12 per cent of the contributions and investment earnings collected for operational expenses, including occupational health and safety programs, incidental to the carrying out of this Title.

ARTICLE 180. **Investment of funds.** — Provisions of existing laws to the contrary notwithstanding, all revenues as are not needed to meet current operational expenses under this Title shall be accumulated in a fund to be known as the State Insurance Fund, which shall be used exclusively for payment of the benefits under this Title, and no amount thereof shall be used for any other purpose. All amounts accruing to the State Insurance Fund, which is hereby established in the SSS and the GSIS, respectively, shall be deposited with any authorized depository bank approved by the Commission, or invested with due and prudent regard for the liquidity needs of the System.

ARTICLE 181. **Settlement of claims.** — The System shall have original and exclusive jurisdiction to settle any dispute arising from this Title with respect to coverage, entitlement to benefits, collection and payment of contributions and penalties thereon, or any other matter related thereto, subject to appeal to the Commission, which shall decide appealed cases within 20 working days from the submission of the evidence.

ARTICLE 182. **Review.** — Decisions, orders or resolutions of the Commission may be reviewed on certiorari by the Supreme Court only on questions of law upon petition of an aggrieved party within 10 days from notice thereof.

ARTICLE 183. **Enforcement of decisions.** — (a) Any decision, order or resolution of the Commission shall become final and executory if no appeal is taken therefrom within 10 days from notice thereof. All awards granted by the Commission in cases appealed from decisions of the System shall be effected within 15 days from receipt of notice.

(b) In all other cases, decisions, orders and resolutions of the Commission which have become final and executory shall be enforced and executed in the same manner as decisions of the Regional Trial Court, and the Commission shall have the power to issue to the city or provincial sheriff or to the sheriff whom it may appoint such writs of execution as may be necessary for the enforcement of such decisions, orders or resolutions, and any person who shall fail or refuse to comply therewith shall, upon application by the Commission, be punished by the proper court for contempt.

TITLE II

EMPLOYEES' COMPENSATION AND STATE INSURANCE FUND

CHAPTER IV

CONTRIBUTIONS

ARTICLE 184. **Employer's contributions.** — (a) Under such regulations as the System may prescribe, beginning as of the last day of the month when an employee's compulsory coverage takes effect and every month thereafter during his employment, his employer shall

prepare to remit to the System a contribution equivalent to one percent of his monthly salary credit.

(b) The rate of contribution shall be reviewed periodically and, subject to the limitations herein provided, may be revised as the experience in risk, cost of administration, and actual or anticipated as well as unexpected losses, may require.

(c) Contributions under this Title shall be paid in their entirety by the employer and any contract or devise for the deduction of any portion thereof from the wages or salaries of the employees shall be null and void.

(d) When a covered employee dies, becomes disabled or is separated from employment, his obligation to pay the monthly contribution arising from the employment shall cease at the end of the month of contingency and during such months that he is not receiving wages or salary.

ARTICLE 185. **Government guarantee.** — The Republic of the Philippines guarantees the benefits prescribed under this Title, and accepts general responsibility for the solvency of the State Insurance Fund. In case of any deficiency, the same shall be covered by supplemental appropriations from the national government.

TITLE II

EMPLOYEES' COMPENSATION AND STATE INSURANCE FUND

CHAPTER V

MEDICAL BENEFITS

ARTICLE 186. **Medical services.** — Immediately after an employee contracts sickness or sustains an injury, he shall be provided by the System during the subsequent period of his disability with such medical services and appliances as the nature of his sickness or injury and progress of his recovery may require, subject to the expense limitation prescribed by the Commission.

ARTICLE 187. **Liability.** — The System shall have the authority to choose or order a change of physician, hospital or rehabilitation facility for the employee, and shall not be liable for compensation for any aggravation of the employee's injury or sickness resulting from unauthorized changes by the employee of medical services, appliances, supplies, hospitals, rehabilitation facilities or physicians.

ARTICLE 188. **Attending physician.** — Any physician attending an injured or sick employee shall comply with all the regulations of the System and submit reports in prescribed forms at such time as may be required concerning his condition or treatment. All medical information relevant to the particular injury or sickness shall on demand be made available to the employee or the System.

No information developed in connection with treatment or examination for which compensation sought shall be considered as privileged communication.

ARTICLE 189. **Refusal of examination or treatment.** — If the employee unreasonably refuses to submit to medical examination or treatment the System shall stop the payment of further compensation during such time as such refusal continues. What constitutes an unreasonable refusal shall be determined by the System which, may on its own initiative

determine the necessity, character, and sufficiency of any medical services furnished or to be furnished.

ARTICLE 190. **Fees and other charges.** — All fees and other charges for hospital services, medical care and appliances, including professional fees, shall not be higher than those prevailing in wards of hospitals for similar services to injured or sick persons in general, and shall be subject to the regulations of the Commission. Professional fees shall only be appreciably higher than those prescribed under Republic Act number sixty-one hundred eleven, as amended, otherwise known as the Philippine Medical Care Act of 1969.

ARTICLE 191. **Rehabilitation services.** — (a) The System shall establish a continuing program for the rehabilitation of injured and handicapped employees, who shall be entitled to rehabilitation services, which shall consist of medical, surgical or hospital treatment, including appliances if he has been handicapped by the injury, to help him become physically independent.

(b) The System shall establish centers equipped and staffed to provide a balanced program of remedial treatment, vocational assessment and preparation designed to meet the individual needs of each handicapped employee to restore him to suitable employment, including assistance as may be within its resources to help each rehabilitee to develop his mental, vocational or social potential. (Art.190-a)

TITLE II

EMPLOYEES' COMPENSATION AND STATE INSURANCE FUND

CHAPTER VI

DISABILITY BENEFITS

ARTICLE 192. - **Temporary total disability.** – (a) Under such regulations as the Commission may approve, any employee under this Title who sustains an injury or contracts sickness resulting in temporary total disability shall, for each day of such disability or fraction thereof, be paid by the System an income benefit equivalent to ninety (90) percent of his average daily salary credit, subject to the following conditions: the daily income benefit shall not be less than one hundred (₱100.00) Pesos nor more than three hundred (₱300.00) Pesos, nor paid for a continuous period longer than two hundred forty days, except as otherwise provided for in the Rules, and the System shall be notified of the injury or sickness.

(b) the payment of such income benefit shall be in accordance with the regulations of the Commission. (Art.191-a)

ARTICLE 193. **Permanent Total Disability.** – (a) Under such rules as the Commission may approve, any employee under this Title who contracts sickness or sustains an injury resulting in his permanent total disability shall be paid by the System a lump sum amount equivalent to the monthly income benefit times sixty (60) but in no case less than sixty thousand pesos (₱60,000.00) nor more than two hundred forty thousand pesos (₱240,000.00), over and above whatever lump sum or pension benefits he may have received under other applicable social security programs

(b) The following disabilities shall be deemed total and permanent:

(1) Temporary total disability lasting continuously for more than two hundred forty (240) days, except as otherwise provided for in the Rules;

(2) Complete loss of sight of both eyes;

(3) Loss of two (2) limbs at or above the ankle or wrist;

(4) Permanent complete paralysis of two (2) limbs;

(5) Brain injury resulting in incurable imbecility or insanity; and

(6) Such cases as determined by the Medical Director of the System and approved by the Commission. (Art.192-a)

ARTICLE 194. **Permanent Partial Disability.** - (a) Under such regulations as the System may approve, any employee under this Title who contracts sickness or sustains an injury resulting in permanent partial disability shall be paid by the System a lump-sum amount equivalent to the percentage of the permanent loss times the lump-sum amount for total permanent disability.

(b) The benefit shall be paid in accordance with the following schedule –

Complete and Permanent Loss of the use of	Benefit PERCENTAGE
One thumb	17%
One index finger	13
One middle finger	10
One ring finger	8
One little finger	5
One big toe	10
Any toe	5
One arm	83
One hand	65
One foot	52
One leg	77
One ear	17
Both ears	34
Hearing of one ear	17
Hearing of both ears	34
Sight of one eye	42

(c) A loss of a wrist shall be considered as loss of the hand, and a loss of an elbow shall be considered as a loss of the arm. A loss of an ankle shall be considered as a loss of the foot, and a loss of a knee shall be considered as a loss of the leg. A loss of more than one (1) joint shall be considered as a loss of the whole finger or toes, and a loss of only the first joint shall be considered as loss of one-half (1/2) of the whole finger or toe: *Provided,* that such a loss shall be either the functional loss of the use or physical loss of the member.

(d) In cases of injuries or illnesses resulting in a permanent partial disability not listed in the preceding schedule, the benefit shall be an income benefit equivalent to the percentage of the permanent loss of the capacity to work times the lump sum amount for permanent total disability. (Art.193-a)

TITLE II

EMPLOYEES' COMPENSATION AND STATE INSURANCE FUND

CHAPTER VII

DEATH BENEFITS

ARTICLE 195. **Death** - (a) Under such regulation as the Commission may approve, The System shall pay to the primary beneficiaries upon the death of the covered employee under this Title the lump sum benefit for permanent total disability as specified in Art. 192 *Provided, however, that if he has no primary beneficiary, the System shall pay to his secondary beneficiaries fifty (50) percent of the lump sum benefit for permanent total disability as specified in Art. 193.*

(b) The Lump-Sum benefit provided herein shall be the new amount of the income benefit for the surviving beneficiaries upon the approval of this Act.

(c) Funeral Benefit. - A funeral benefit in an amount as the System may approve, but not less than twenty thousand (₱20,000) pesos , shall be paid upon the death of a covered employee or a permanently totally disabled pensioner. (Art.194-a)

TITLE II

EMPLOYEES' COMPENSATION AND STATE INSURANCE FUND

CHAPTER VIII

PROVISIONS COMMON TO INCOME BENEFITS

ARTICLE 196. **Relationship and dependency**. — All questions of relationship and dependency shall be determined as of the time of death.

ARTICLE 197. **Delinquent contributions**. — (a) An employer who is delinquent in his contributions shall be liable to the System for the benefits which may have been paid by the System to his employees or their dependents and any benefit and expenses to which such employer is liable shall constitute a lien on all his property, real or personal, which is hereby declared to be preferred to any credit except taxes. The payment by the employer of the lump sum equivalent of such liability shall absolve him from the payment of the delinquent contribution and penalty thereon with respect to the employee concerned.

(b) Failure or refusal of the employer to pay or remit the contributions herein prescribed shall not prejudice the right of the employee or his dependents to the benefits under this Title. If the sickness, injury, disability or death occurs before the System receives any report of the name of his employee, the employer shall be liable to the System for the lump sum equivalent of the benefits to which such employee or his dependents may be entitled.

ARTICLE 198. **Second injuries**. — If any employee under permanent partial disability suffers another injury which results in a compensable disability greater than the previous injury, the State Insurance Fund shall be liable for the income benefit of the new disability: *Provided*, That if the new disability is related to the previous disability, the System shall be liable only for the difference in income benefits.

ARTICLE 199. **Assignment of benefits**. — No claim for compensation under this Title is transferable, or liable to tax, attachment, garnishment, levy or seizure by or under any

legal process whatsoever, either before or after receipt by the person or persons entitled thereto, except to pay any debt of the employee to the System.

ARTICLE 200. **Earned benefits.** — Income benefits shall, with respect to any period of disability, be payable in accordance with this Title to an employee who is entitled to receive wages, salaries or allowances for holidays, vacation or sick leaves, and any award or benefit under a collective bargaining or other agreement.

ARTICLE 201. **Safety devices.** — In case the employee's injury or death was due to the failure of the employer to comply with any law, or to install and maintain safety devices, or take other precautions for the prevention of injury, said employer shall pay to the State Insurance Fund a penalty of 25 per cent of the lump sum equivalent of the income benefit payable by the System to the employee. All employers, especially those who should have been paying a rate of contribution higher than that required of them under this Title, are enjoined to undertake and strengthen measures for the occupational health and safety of their employees.

ARTICLE 202. **Prescriptive Period.** - No claim shall be given due course unless said claim is filed with the System within ten (10) years from the time the cause of action accrued. (Art. 201-a)

ARTICLE 203. **Erroneous payment.** — (a) If the System in good faith pays income benefit to a dependent who is inferior in right to another dependent or with whom another dependent is entitled to share, such payments shall discharge the System from liability, unless and until such other dependent notifies the System of his claim prior to the payments.

(b) In case of doubt as to the respective rights of rival claimants, the System is hereby empowered to determine as to whom payment should be made in accordance with such regulations as the Commission may approve. If the money is payable to a minor or incompetent, payment shall be made by the System to such person or persons as it may consider to be best qualified to take care and dispose of the minor's or incompetent's property for his benefit.

ARTICLE 204. **Prohibition.** — No agent, attorney or other person pursuing or in charge of the preparation or filing of any claim for benefit under this Title shall demand or charge for his services any fee, and any stipulation to the contrary shall be null and void. The retention or deduction of any amount from any benefit granted under this Title for the payment of fees of such services is prohibited. Violation of any provision of this Article shall be punished by a fine of not less than five hundred pesos nor more than five thousand pesos, or imprisonment for not less than six months nor more than one year, or both, at the discretion of the court.

ARTICLE 205. **Exemption from levy, tax, etc.** — All laws to the contrary notwithstanding, the State Insurance Fund and all its assets shall be exempt from any tax, fee, charge, levy or customs or import duty, and no law hereafter enacted shall apply to the State Insurance Fund unless it is provided therein that the same is applicable by expressly stating its name.

TITLE II

EMPLOYEES' COMPENSATION AND STATE INSURANCE FUND

CHAPTER IX

RECORDS, REPORTS AND PENAL PROVISIONS

ARTICLE 206. **Records of death or disability.** — (a) All employers shall keep a logbook to record chronologically the sickness, injury or death of their employees, setting forth therein their names, dates and places of the contingency, nature of the contingency and absences. Entries in the logbook shall be made within five days from notice or knowledge of the occurrence of the contingency. Within five days after the entry in the logbook, the employer shall report to the System only those contingencies it deems to be work connected.

(b) All entries in the employer's logbook shall be made by the employer or any of his authorized official after verification of the contingencies or the employee's absences for a period of a day or more. Upon request by the System, the employer shall furnish the necessary certificate regarding information about any contingency appearing in the logbook, citing the entry number, page number and date. Such logbook shall be made available for inspection to the duly authorized representative of the System.

(c) Should any employer fail to record in the logbook an actual sickness, injury or death of any of his employees within the period prescribed herein, give false information or withhold material information already in his possession, he shall be held liable for 50 per cent of the lump sum equivalent of the income benefit to which the employee may be found to be entitled, the payment of which shall accrue to the State Insurance Fund.

(d) In case of payment of benefits for any claim which is later determined to be fraudulent and the employer is found to be a party to the fraud, such employer shall reimburse the System the full amount of the compensation paid.

ARTICLE 207. **Notice of sickness, injury or death.** — Notice of sickness, injury or death shall be given to the employer by the employee or by his dependents or anybody on his behalf within five days from the occurrence of the contingency. No notice to the employer shall be required if the contingency is known to the employer or his agents or representatives.

ARTICLE 208. **Penal provisions.** — (a) The penal provisions of Republic Act numbered eleven hundred sixty-one, as amended, and Commonwealth Act numbered one hundred eighty-six, as amended, with regard to the funds as are thereunder being paid to, collected or disbursed by the System, shall be applicable to the collection, administration and disbursement of the funds under this Title. The penal provisions on coverage shall also be applicable.

(b) Any person, who for the purpose of securing entitlement to any benefit or payment under this Title or the issuance of any certificate or document for any purpose connected with this Title, whether for him or for some other person, commits fraud, collusion, falsification, misrepresentation of facts or any other kind of anomaly shall be punished with a fine of not less than five hundred pesos nor more than five hundred thousand pesos and an imprisonment for not less than six months nor more than one year, at the discretion of the court.

(c) If the act penalized by this Article is committed by any person who has been or is employed by the Commission or System, or a recidivist, the imprisonment shall not be less than one year; if committed by a lawyer, physician or other professional, he shall in addition to the penalty prescribed herein be disqualified from the practice of his profession; and if committed by any official, employee or personnel of the Commission, System or any government agency, he shall in addition to the penalty prescribed herein be dismissed with prejudice to reemployment in the government service.

ARTICLE. 209. **Applicability. - Settlement of employees' compensation claims** – All employees' claims for medical and related benefits and for income benefits shall be processed, determined and settled in accordance with such laws, rules and regulations existing at the time their cause of action accrued. (Art.208-a)

ARTICLE 210. **Implementing rules and regulations.** - The rules and regulations to implement the provisions of this Title shall be adopted and promulgated by the Commission not later than three (3) months after the approval of this Act.

TITLE III

PHILHEALTH

ARTICLE 211. **Medical Care.** — The Philippine Medical Care Plan shall be implemented as provided under Republic Act numbered sixty-one hundred eleven, as amended.

TITLE IV

ADULT EDUCATION

ARTICLE 212. **Adult education.** — Every employer shall render assistance in the establishment and operation of adult education programs for their workers and employees as prescribed by regulations approved by the Technical Education and Skills Development Authority (TESDA). (Art.210-a)

BOOK FIVE

LABOR RELATIONS

TITLE I

POLICY AND DEFINITIONS

CHAPTER I

POLICY

ARTICLE 213. **Declaration of policy:** a. The State shall ensure the fullest possible exercise of the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law.

b. All workers shall participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.

c. The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.

No labor dispute arising from employer-employee relationship shall be under the jurisdiction of the National Labor Relations Commission until all the efforts to resolve such labor dispute at the work place by the grievance machinery or by conciliation in accordance with the rules and regulations promulgated by the Secretary of Labor and Employment have failed.

d. To encourage a truly democratic method of regulating the relations between the employers and employees by means of agreements freely entered into through collective bargaining, no court or administrative agency or official shall have the power to set or fix wages,

rates of pay, hours of work or other terms and conditions of employment, except as otherwise provided under this Code. (Art.211-a)

ARTICLE 214. **Tripartism and tripartite conferences** -- (a) Tripartism in labor relations is hereby declared a State policy. Towards this end, workers and employers shall, as far as practicable, be represented in decision and policy-making bodies of the government.

(b) The Secretary of Labor and Employment or his duly authorized representatives may from time to time call a national, regional, or industrial tripartite conference of representatives of government, workers and employers for the consideration and adoption of voluntary codes of principles designed to promote industrial peace based on social justice or to align labor movement relations with established priorities in economic and social development. In calling such conference, the Secretary of Labor and Employment may consult with accredited representatives of workers and employers. (Art.275-a)

TITLE I

POLICY AND DEFINITIONS

CHAPTER II

DEFINITIONS

ARTICLE 215. Definitions. —

(a) "Department" means the Department of Labor and Employment. "Secretary" refers to the Head of the Department.

(b) "Commission" means the National Labor Relations Commission or any of its divisions.

(c) "Bureau" means the Bureau of Labor Relations and/or the Labor Relations Divisions in the regional offices of the Department.

(d) "Board" means the National Conciliation and Mediation Board established under Executive Order No. 126.

(e) "Council" means the Tripartite Voluntary Arbitration Advisory Council established under Executive Order No. 126, as amended.

(f) "Code" means the New Labor Code of the Philippines.

(g) "Employer" includes any person acting in the interest of an employer, directly or indirectly. The term shall not include any labor organization or any of its officers or agents except when acting as employer.

(h) "Employee" includes any person in the employ of an employer. The term shall not be limited to the employees of a particular employer, unless this Code so explicitly states. It shall include any individual whose work has ceased as a result of or in connection with any current labor dispute or because of any unfair labor practice if he has not obtained any other substantially equivalent and regular employment.

(i) "Labor Organization" means any union or association of employees which exists in whole or in part for the purpose of collective bargaining or for dealing with employers concerning terms and conditions of employment.

(j) "Legitimate Labor Organization" means any labor organization defined under letter (i) hereof which is duly registered with the Department. The term includes a local/chapter directly chartered by a federation or national union which has been duly reported to the Department.

(k) "Workers Association" means any association of workers organized for the mutual aid and protection of its members or for any legitimate purpose other than collective bargaining.

(l) "Independent Union" means any labor organization operating at the enterprise level whose legal personality is derived through an independent action for registration prescribed under Article 234 of the Code. An independent union may be affiliated with a federation, national or industry union, in which case it may also be referred to as an affiliate.

(m) "Local Union/Chapter" means any labor organization operating at the enterprise level whose legal personality is derived through the issuance of a charter by a duly registered federation or national union.

(n) "National Union/Federation" means any labor organization with locals/ chapters or affiliates each of which is a duly recognized or certified collective bargaining agent.

(o) "Legitimate Workers' Association" means any workers association defined under letter (K) hereof which is duly registered with the Department.

(p) "Industry Union" means any group of legitimate labor organizations operating within an identified industry organized for collective bargaining or for dealing with employers concerning terms and conditions of employment within an industry, or for participating in the formulation of social and employment policies, standards and programs in such industry, which is duly registered with the Department.

(q) "Trade Union Center" means any group of registered national unions or federations organized for the mutual aid and protection of its members, for assisting such members in collective bargaining, or for participating in the formulation of social and employment policies, standards and programs, which is duly registered with the Department.

(r) "Company union" means any labor organization whose formation, function or administration has been assisted by any act defined as unfair labor practice by this Code.

(s) "Bargaining Unit" refers to a group of employees sharing mutual interest within a given employer unit, comprised of all or less than all of the entire body of employees in the employer unit or any specific occupational or geographical grouping within such employer unit.

(t) "Exclusive Bargaining Representative" means any legitimate labor organization duly recognized or certified as the sole and exclusive bargaining agent of all the employees in a bargaining unit.

(u)"Unfair labor practice" means any unfair labor practice as expressly defined by this Code.

(v) "Labor or industrial dispute" includes any controversy or matter concerning terms or conditions of employment or the association or representation of persons in negotiating,

fixing, maintaining, changing or arranging the terms and conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(w) "Managerial employee" is one who is vested with powers or prerogatives to lay down and execute management policies and/or to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees. Supervisory employees are those who, in the interest of the employer, effectively recommend such managerial actions if the exercise of such authority is not merely routinary or clerical in nature but requires the use of independent judgment. All employees not falling within any of the definitions of managerial or supervisory employee are considered rank-and-file employees for purposes of this Book.

(x) "Voluntary Arbitrator" means any person accredited by the Board as such, or any person named or designated in the Collective Bargaining Agreement by the parties to act as their Voluntary Arbitrator, or one chosen, with or without the assistance of the Board, pursuant to a selection procedure agreed upon in the collective bargaining agreement.

(y) "Strike" means any temporary stoppage of work by the concerted action of employees as a result of an industrial or labor dispute.

(z) "Lockout" means the temporary refusal of an employer to furnish work as a result of an industrial or labor dispute.

(aa) "Intra union dispute" refers to any conflict between and among union members and includes all disputes or grievances arising from any violation of or disagreement over any provision of the constitution and by-laws of a union, including cases arising from chartering or affiliation of labor organizations or from any violation of the rights and conditions of union membership provided for in this Code.

(bb) "Inter-Union Dispute" refers to any conflict between and among legitimate labor organizations involving questions of representation for purposes of collective bargaining. It also includes all other conflicts which legitimate labor organizations may have against each other based on any violations of their rights as labor organizations.

(cc) "Strike breaker" means any person who obstructs, impedes, or interferes with by force, violence, coercion, threats or intimidation any peaceful picketing by employees during any labor controversy affecting wages, hours or conditions of work or in the exercise of the right of self-organization or collective bargaining.

(dd) "Strike area" means the establishment, warehouses, depots, plants or offices, including the sites or premises used as run-away shops, of the employer struck against, as well as the immediate vicinity actually used by picketing strikers in moving to and fro before all points of entrance to and exit from said establishment. (Art.212-a)

TITLE II

NATIONAL LABOR RELATIONS COMMISSION

CHAPTER I

CREATION AND COMPOSITION

ARTICLE 216. **National Labor Relations Commission.** — There shall be a National Labor Relations Commission which shall be attached to the Department of Labor and Employment for program and policy coordination only, composed of a Chairman and twenty three (23) members.

Eight (8) members each shall be chosen equally from among the nominees of the workers and employers organizations. The Chairman and the seven (7) remaining members shall come from the public sector, with the latter to be chosen preferably from among the incumbent Labor Arbiters as recommended by the Secretary of Labor and Employment.

Upon assumption into office, the members nominated by the workers and employers organizations shall divest themselves of any affiliation with or interest in the federation or association to which they belong.

The Commission may sit *en banc* or in eight (8) divisions, each composed of three (3) members. The Commission shall sit *en banc* only for purposes of promulgating rules and regulations governing the hearing and disposition of cases before any of its divisions and regional branches and formulating policies affecting its administration and operations. The Commission shall exercise its adjudicatory and all other powers, functions, and duties through its divisions. Of the eight (8) divisions, the first, second, third, fourth, fifth and sixth divisions shall handle cases coming from the National Capital Region and other parts of Luzon and the seventh and eighth divisions, cases from the Visayas and Mindanao, respectively: *Provided*, That the Commission sitting en banc may, on temporary and emergency basis, allow cases within the jurisdiction of any division to be heard and decided by any other division whose docket allows the additional workload and such transfer will not expose litigants to unnecessary additional expense. The divisions of the Commission shall have exclusive appellate jurisdiction over cases within their respective territorial jurisdiction.

The concurrence of two (2) Commissioners of a division shall be necessary for the pronouncement of a judgment or resolution. Whenever the required membership in a division is not complete and the concurrence of two (2) Commissioners to arrive at a judgment or resolution cannot be obtained, the Chairman shall designate such number of additional Commissioners from the other divisions as may be necessary.

The conclusions of a division on any case submitted to it for decision shall be reached in consultation before the case is assigned to a member for the writing of the opinion. It shall be mandatory for the division to meet for purposes of the consultation ordained therein. A certification to this effect signed by the Presiding Commissioner of the division shall be issued, and a copy thereof attached to the record of the case and served upon the parties.

The Chairman shall be the Presiding Commissioner of the first division, and the seven (7) other members from the public sector shall be the Presiding Commissioners of the second, third, fourth, fifth, sixth, seventh and eighth divisions, respectively. In case of the effective absence or incapacity of the Chairman, the Presiding Commissioner of the second division shall be the Acting Chairman.

The Chairman, aided by the Executive Clerk of the Commission, shall have administrative supervision over the Commission and its regional branches and all its personnel, including the Labor Arbiters.

The Commission, when sitting *en banc*, shall be assisted by the same Executive Clerk, and, when acting thru its divisions, by said Executive Clerk for its first division and seven (7) other Deputy Executive Clerks for the second, third, fourth, fifth, sixth, seventh and eighth divisions, respectively, in the performance of such similar or equivalent functions and duties as are discharged by the Clerk of Court and Deputy Clerks of Court of the Court of Appeals.

The Commission and its eight (8) divisions shall be assisted by the Commission Attorneys in its appellate and adjudicatory functions whose term shall be co-terminus with the Commissioners with whom they are assigned. The Commission Attorneys shall be members of the Philippine Bar with at least one (1) year experience or exposure in the field of labor-

management relations. They shall receive annual salaries and shall be entitled to the same allowances and benefits as those falling under salary grade of twenty six (SG 26). There shall be as many Commission Attorneys as may be necessary for the effective and efficient operation of the Commission but in no case less than two (2) assigned to the Office of the Chairman and each Commissioner. (Art.213-a)

ARTICLE 217. **Headquarters, branches and provincial extension units.** — The Commission and its first, second, third, fourth, fifth and sixth divisions shall have their main offices in Metropolitan Manila, and the seventh and eighth divisions in the cities of Cebu and Cagayan de Oro, respectively. The Commission shall establish as many regional branches as there are regional offices of the Department of Labor and Employment, sub-regional branches or provincial extension units. There shall be as many labor Arbiters as may be necessary for the effective and efficient operation of the Commission. (Art.214-a)

ARTICLE 218. **Appointment and qualifications.** — The Chairman and other Commissioners shall be members of the Philippine Bar and must have been engaged in the practice of law in the Philippines for at least fifteen (15) years, with at least five (5) years experience or exposure in the field of labor-management relations, and shall preferably be residents of the region where they are to hold office. The Labor Arbiters shall likewise be members of the Philippine Bar and must have been engaged in the practice of law in the Philippines for at least ten (10) years, with at least three (3) years experience or exposure in the field of labor-management relations, *Provided, however,* that incumbent Executive Labor Arbiters and Labor Arbiters who have been engaged in the practice of law for at least five (5) years may be considered as already qualified for purposes of reappointment as such under this Act.

The Chairman, the other Commissioners, and Labor Arbiters shall hold office during good behavior until they reach the age of sixty-five (65) years, unless sooner removed for cause as provided by law or become incapacitated to discharge the duties of their office.

The Chairman, the Division Presiding Commissioners and other Commissioners shall all be appointed by the President. Appointment to any vacancy shall come from the nominees of the sector which nominated the predecessor. The Labor Arbiters shall also be appointed by the President, upon recommendation of the Secretary of Labor and Employment, to specific Arbitration Branches preferably in the regions where they are residing and shall be subject to the Civil Service Law, rules and regulations. *Provided*, however, that the incumbent Executive Labor Arbiters and Labor Arbiters who are presently holding office in the regions where they are residents shall be given preference to be appointed thereat.

The Secretary of Labor and Employment shall, in consultation with the Chairman of the Commission, appoint the staff and employees of the Commission, and its regional branches as the needs of the service may require, subject to the Civil Service Law, rules and regulations, and upgrade their current salaries, benefits and other emoluments in accordance with law. (Art.215-a)

ARTICLE 219. **Ranks, salaries, benefits and other emoluments.** — The Chairman and members of the Commission shall have the same rank , receive an annual salary equivalent to, and be entitled to the same allowances, retirement and other benefits and privileges as those of the Presiding Justice and Associate Justices of the Court of Appeals, respectively. The Labor Arbiters shall have the same rank, receive an annual salary equivalent to and shall be entitled to the same allowances, retirement and other benefits and privileges as that of a Judge of the Regional Trial Court In no case, however, shall the provision of this Article result in the diminution of existing salaries, allowances and benefits of the aforementioned officials. (Art.216-a)

TITLE II

NATIONAL LABOR RELATIONS COMMISSION

CHAPTER II

POWERS AND DUTIES

ARTICLE 220. **Jurisdiction of Labor Arbiters and the Commission.** — (a) Except as otherwise provided under this Code, the Labor Arbiters shall have original and exclusive jurisdiction to hear and decide, within thirty (30) calendar days after the submission of the case by the parties for decision without extension, even in the absence of stenographic notes, the following cases involving all workers, whether agricultural or non-agricultural:

(1) Unfair labor practice cases;

(2) Termination disputes except those in organized establishments which shall be subject to the grievance machinery and voluntary arbitration;

(3) If accompanied with a claim for reinstatement, those cases that workers may file involving wages, rate of pay, hours of work and other terms and conditions of employment;

(4) Claims for actual, moral, exemplary and other forms of damages arising from the employer-employee relations;

(5) Cases arising from any violation of Article 272 of this Code, including questions involving the legality of strikes and lockouts;

(6) Inter-union disputes; and

(7) Except claims for Employees Compensation, Social Security, Medicare and maternity benefits, all other claims arising from employer-employee relations, including those of persons in domestic or household service, involving an amount exceeding fifty thousand pesos (₱50,000.00), whether or not accompanied with a claim for reinstatement.

(b) The Commission shall have exclusive appellate jurisdiction over all cases decided by Labor Arbiters.

(c) Cases arising from the interpretation or implementation of collective bargaining agreements and those arising from the interpretation or enforcement of company personnel policies shall be disposed of by the Labor Arbiter by referring the same to the grievance machinery and voluntary arbitration as may be provided in said agreements. (Art.217-a)

ARTICLE 221. **Powers of the Commission.** — The Commission shall have the power and authority:

(a) To promulgate rules and regulations governing the hearing and disposition of cases before it and its regional branches, as well as those pertaining to its internal functions and such rules and regulations as may be necessary to carry out the purposes of this Code;

(b) To administer oaths, summon the parties to a controversy, issue subpoenas requiring the attendance and testimony of witnesses or the production of such books, papers, contracts, records, statements of accounts, agreements, and others as may be material to a just determination of the matter under investigation, and to testify in any investigation or hearing conducted in pursuance of this Code;

(c) To conduct investigation for the determination of a question, matter or controversy within its jurisdiction, proceed to hear and determine the disputes in the absence of any party thereto who has been summoned or served with notice to appear, adjourn its hearings to any time and place, refer technical matters or accounts to an expert and to accept his report as evidence after hearing of the parties upon due notice, direct parties to be joined in or excluded from the proceedings, correct, amend, or waive any error, defect or irregularity, whether in substance or in form, give all such directions as it may deem necessary or expedient in the determination of the dispute before it, and dismiss any matter or refrain from further hearing or from determining the dispute or part thereof, where it is trivial or where further proceedings by the Commission are not necessary or desirable; and

(d) To hold any person in contempt direct or indirectly and impose appropriate penalties therefor in accordance with law.

A person guilty of misbehavior in the presence of or so near the Chairman or any member of the Commission or any Labor Arbiter as to obstruct or interrupt the proceedings before the same, including disrespect toward said officials, offensive personalities toward others, or refusal to be sworn or to answer as a witness, or to subscribe an affidavit or deposition when lawfully required to do so, may summarily adjudged in direct contempt by said officials and punished by fine not exceeding five hundred pesos (₱500) or imprisonment not exceeding five (5) days, or both if it be the Commission or a member thereof, or by a fine not exceeding one hundred pesos (₱100) or imprisonment not exceeding one (1) day, or both if it be a Labor Arbiter.

The person adjudged in direct contempt by a Labor Arbiter may appeal to the Commission and the execution of the judgment shall be suspended pending the resolution of the appeal upon the filing of subject person of a bond on condition that he will abide by and perform the judgment of the Commission should the appeal be decided against him. Judgment of the Commission on direct contempt is immediately executory and unappealable. Indirect contempt shall be dealt with by the Commission or Labor Arbiter in the manner prescribed under Rule 71 of the Revised Rules of Court. (A, Art.218 (e))

ARTICLE 222. **Ocular Inspection.** — The Chairman, any Commissioner, Labor Arbiter or their duly authorized representatives may at any time during working hours conduct an ocular inspection on any establishment, building, ship or vessel, place or premises, including any work, material, implement, machinery, appliance or any object therein, and ask any employee, laborer or any person as the case may be for any information or data concerning any matter or question relative to the object of the investigation.

ARTICLE 223. **Technical rules not binding and prior resort to amicable settlement.** — In any proceeding before the Commission or any of the Labor Arbiters, the rules of evidence prevailing in courts of law or equity shall not be controlling, and it is the spirit and intention of this Code that the Commission and its members and the Labor Arbiters shall use every and all reasonable means to ascertain the facts in each case speedily and objectively, without regard to technicalities of law or procedure, all in the interest of due process. In any proceeding before the Commission or any Labor Arbiter, the parties may be represented by legal counsel but it shall be the duty of the Chairman, any Presiding Commissioner or Commissioner or any Labor Arbiter to exercise complete control of the proceedings at all stages.

Any provision of law to the contrary notwithstanding, the Labor Arbiter shall exert all efforts towards the amicable settlement of a labor dispute within his jurisdiction on or before the first hearing. The same rule shall apply to the Commission in the exercise of its original jurisdiction.

ARTICLE 224. **Appearances and fees.** — (a) Non-lawyers may appear before the Commissioner or any Labor Arbiter only:

1. If they represent themselves; or
2. If they represent their organization or members thereof.

(b) No attorney's fees, negotiation fees or similar charges of any kind arising from any collective bargaining negotiations or conclusion of the collective agreement shall be imposed on any individual member of the contracting union: *Provided*, however, That attorney's fees may be charged against union funds in an amount to be agreed upon by the parties. Any contract, agreement or arrangement of any sort to the contrary shall be null and void.

(c) No docket fee shall be assessed in labor standards disputes. In all other disputes, docket fees may be assessed against the filing party, provided that in bargaining deadlocks, such fees shall be shared equally by the negotiating parties. (Art.277(d))

TITLE II

NATIONAL LABOR RELATIONS COMMISSION

CHAPTER III

APPEAL

ARTICLE 225. **Appeal.** — Decisions, awards, or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders. Such appeal may be entertained only on any of the following grounds:

(a) If there is prima facie evidence of abuse of discretion on the part of the Labor Arbiter;

(b) If the decision, order or award was secured through fraud or coercion, including graft and corruption;

(c) If made purely on questions of law; and

(d) If serious errors in the findings of facts are raised which would cause grave or irreparable damage or injury to the appellant.

In case of a judgment involving a monetary award, an appeal by the employer may be perfected only upon the posting of a cash or surety bond issued by a reputable bonding company duly accredited by the Commission in the amount equivalent to the monetary award in the judgment appealed from.

In any event, the decision of the Labor Arbiter reinstating a dismissed or separated employee, insofar as the reinstatement aspect is concerned, shall immediately be executory, even pending appeal. The employee shall either be admitted back to work under the same terms and conditions prevailing prior to his dismissal or separation or, at the option of the employer, merely reinstated in the payroll. The posting of a bond by the employer shall not stay the execution for reinstatement provided herein.

To discourage frivolous or dilatory appeals, the Commission or the Labor Arbiter shall impose reasonable penalty, including fines or censures, upon the erring parties.

In all cases, the appellant shall furnish a copy of the memorandum of appeal to the other party who shall file an answer not later than ten (10) calendar days from receipt thereof.

The Commission shall decide all cases within twenty (20) calendar days from receipt of the answer of the appellee. The decision of the Commission shall be final and executory after ten (10) calendar days from receipt thereof by the parties.

Any law enforcement agency may be deputized by the Secretary of Labor and Employment or the Commission in the enforcement of decisions, awards, or orders.

To ensure speedy labor justice, the periods provided in this Code within which decisions or resolutions of labor relations cases or matters should be rendered shall be mandatory. For this purpose, a case or matter shall be deemed submitted for decision or resolution upon the filing of the last pleading or memorandum required by the rules of the Commission or by the Commission itself, or the Labor Arbiter or the Director of the Bureau of Labor Relations or Med-Arbiter, or the Regional Director.

Upon expiration of the corresponding period, a certification stating why a decision or resolution has not been rendered within the said period shall be issued forthwith by the Chairman of the Commission, the Executive Labor Arbiter, or the Director of the Bureau of Labor Relations or Med-Arbiter, or the Regional Director, as the case may be, and a copy thereof served upon the parties.

Despite the expiration of the applicable mandatory period, the aforesaid officials shall, without prejudice to any liability which may have been incurred as a consequence thereof, see to it that the case or matter shall be decided or resolved without any further delay. (Art.223 added 277(i)-a)

ARTICLE 226. **Execution of decisions, orders, or awards.** — (a) The Secretary of Labor and Employment or any Regional Director, the Commission or any Labor Arbiter or the voluntary arbitrator or panel of voluntary arbitrators may, *motu propio* or on motion of any interested party, issue a writ of execution on a judgment within five (5) years from the date it becomes final and executory, requiring a sheriff or a duly deputized officer to execute or enforce final decisions, orders or awards of the Secretary of Labor and Employment or Regional Director, the Commission, or the Labor Arbiter or voluntary arbitrator or panel of voluntary arbitrators. In any case, it shall be the duty of the responsible officer to separately furnish immediately the counsel of record and the parties with copies of said decisions, orders or awards. Failure to comply with the duty prescribed herein shall subject such responsible officer to appropriate administrative sanctions.

(b) The Secretary of Labor and Employment, and the Chairman of the Commission may designate special sheriffs and take any measure under existing laws to ensure compliance with their decisions, orders or awards and those of Labor Arbiters and voluntary arbitrators or panel of voluntary arbitrators, including the imposition of administrative fines which shall not be less than five hundred pesos (₱500.00) nor more than ten thousand pesos (₱10,000.00).

ARTICLE 227. **Contempt powers of the Secretary of Labor and Employment.** — In the exercise of his powers under this Code, the Secretary of Labor and Employment may hold any person in direct or indirect contempt and impose the appropriate penalties therefor.

TITLE III

BUREAU OF LABOR RELATIONS

ARTICLE 228. **Bureau of Labor Relations.** — The Bureau of Labor Relations and the Labor Relations Divisions in the regional offices of the Department of Labor and Employment shall have original and exclusive authority to act, at their own initiative or upon request of an interested party, on all intra-union conflicts.

Employment shall have original and exclusive authority to act, at their own initiative or upon request of an interested party, on all ultra-union conflicts.

The Bureau shall have fifteen (15) calendar days to act on labor cases before it, subject to extension by agreement of the parties. (Art.226-a)

ARTICLE 229. **Conciliation and compromise agreements**. – The National Conciliation and Mediation Board shall implement the preferential use of voluntary modes of settling labor disputes through conciliation in accordance with such rules and regulations as the Secretary of Labor and Employment may promulgate. Any compromise settlement, including those involving labor standard laws, voluntarily agreed upon by the parties with the assistance of the Board and its Regional Branches, shall be final and binding upon the parties. The National Labor Relations Commission or any court shall not assume jurisdiction over issues involved therein except in case of non-compliance thereof or if there is prima facie evidence that the settlement was obtained through fraud, misrepresentation, or coercion. (Art.227-a)

ARTICLE 230. **Issuance of subpoenas**. — The Bureau shall have the power to require the appearance of any person or the production of any paper, document or matter relevant to a labor dispute under its jurisdiction either at the request of any interested party or at its own initiative.

ARTICLE 231. **Registry of unions**. - The Bureau shall keep a registry of legitimate labor organizations. (Art.231-a)

ARTICLE 232. **Registry of collective bargaining agreements** - The Board shall maintain a registry of all collective bargaining agreements and other related agreements and records of the compromise settlements of labor disputes, and copies of orders, and decisions of voluntary arbitrators or panel or voluntary arbitrators. The file shall be open and accessible to interested parties under conditions prescribed by the Secretary of Labor and Employment, *Provided* that no specific information submitted in confidence shall be disclosed unless authorized by the Secretary, or when it is at issue in any judicial litigation or when public interest or national security so requires.

Within thirty (30) days from the execution of a collective bargaining agreement, the parties shall submit copies of the same directly to the Board for registration accompanied with verified proofs of its posting in two conspicuous places in the place of work and ratification by the majority of all the workers in the bargaining unit. The Board shall act upon the application for registration of such collective bargaining agreement within five (5) calendar days from receipt thereof.

The Board shall assess the employer for every collective bargaining agreement a registration fee of not less than two thousand pesos (P2,000.00) or in any other amount as may be deemed appropriate and necessary by the Secretary of Labor and Employment for the effective and efficient administration of the voluntary arbitration program. Any amount collected under this provision shall accrue to the Special Voluntary Arbitration Program. (A, Art.231-A)

ARTICLE 233. **Privileged communication**. — Information and statements made at conciliation proceedings shall be treated as privileged communication and shall not be used as evidence in the Commission. Conciliators and similar officials shall not testify in any court or body regarding any matters taken up at conciliation proceedings conducted by them.

TITLE IV

LABOR ORGANIZATIONS

CHAPTER I

REGISTRATION AND CANCELLATION

ARTICLE 234. Types of labor organizations; requirements of registration. - A labor organization may consist of workers employed by a particular employer, or of employees in an appropriate occupational grouping of workers organized for mutual aid and protection. It includes an organization operating at the enterprise level or in an appropriate bargaining unit within an enterprise, as well as a national or industry union, federation confederation or trade union center.

Any applicant labor organization, a federation, national union or industry or trade union center or an independent union shall acquire legal personality and shall be entitled to the rights and privileges granted by law to legitimate labor organizations upon compliance with the following requirements:

(a) The names of its officers, their addresses, and the principal address of the labor organization

(b) In case the applicant is an independent union, the names of all its members comprising at least twenty percent (20%) of all the employees in the bargaining unit where it seeks to operate,

(c) Four copies of its constitution and by-laws as the rules promulgated by the Secretary of Labor and Employment may require;

(d) A verified statement by the head of the organization concerned that all the facts and proceedings in the foregoing documents are true and correct, and that the constitution and by-laws of the organization has been deliberated upon and ratified by the members in the appropriate organizational or general membership meeting; and

(e) Payment of registration fee to be prescribed by the Secretary of Labor and Employment from time to time, but which shall only be in an amount necessary to cover the costs of processing and maintaining the documents submitted.

Upon submission of all the foregoing documents, the Bureau shall issue in favor of the labor organization concerned a certificate of registration evidencing its inclusion in the roster of legitimate labor organizations, which shall be kept by the Bureau. (Art.234-a)

ARTICLE 235. Chartering and creation of a local chapter. – A duly registered federation or national union may directly create a local chapter by issuing a charter certificate indicating the establishment of the local chapter. The chapter shall acquire legal personality only for purposes of filing a request for certification election from the date it was issued a charter certificate.

The chapter shall be entitled to all other rights and privileges of a legitimate labor organization only upon the submission of the following documents in addition to its charter certificate:

(a) The names of the chapter's officers, their addresses, and the principal office of the chapter; and

(b) The chapter's constitution and by-laws: Provided, that where the chapter's constitution and by-laws is the same as that of the federation or the national union, this fact shall be indicated accordingly.

The additional supporting requirements shall be certified under oath by the secretary or treasurer of the chapter and attested to by its President.

Any form of misrepresentation, false statement or fraud committed by individual officers or members shall not be a ground for cancellation but shall subject the erring officers or members to suspension, expulsion from membership, or any other appropriate penalty. (n)

ARTICLE 236. **Action on application.** — The Bureau shall act on all applications for registration within ten (10) days from filing. If no action is taken by the Bureau within that period after complete submission of the requirements, the labor organization is deemed registered.

All requisite documents and papers shall be certified under oath by the secretary or the treasurer of the organization, as the case may be, and attested to by its president. (Art.235-a)

ARTICLE 237. **Denial of registration; appeal.** — The decision of the Labor Relations Division in the regional office denying registration may be appealed by the applicant union to the Bureau within ten days from receipt of notice thereof.

ARTICLE 238. **Additional requirements for federations or national unions.** — If the applicant for registration is a federation or a national union, it shall, in addition to the requirements of the preceding Articles, submit the following:

(a) Proof of the affiliation of at least ten locals or chapters, each of which must be a duly recognized collective bargaining agent supporting the registration of such applicant federation or national union;

(b) The names and addresses of the companies where the locals or chapters operate and the list of all the members in each company involved. (Art.237-a)

ARTICLE. 239. **Cancellation of registration.** - The certificate of registration of any legitimate labor organization may be cancelled by the Bureau after due hearing only on the grounds specified in Article 242 hereof. (Art.238-a)

ARTICLE 240. **Effect of a petition for cancellation of registration.** – A petition for cancellation of union registration shall not suspend the proceedings for certification election nor shall it prevent the filing of a petition for certification election.

In case of cancellation, nothing herein shall restrict the right of the union to seek just and equitable remedies in the appropriate courts. (n)

ARTICLE 241. **Effect of inclusion as members of employees outside the bargaining unit.** – The inclusion as union members of employees outside the bargaining unit shall not be a ground for the cancellation of the registration of the union. Said employees are automatically deemed removed from the list of membership of said union. (n)

ARTICLE 242. **Grounds for cancellation of union registration.** - (a) Failure to comply with reporting requirements. Every legitimate labor organization shall submit periodic reports to the Bureau, as follows:

(1) A copy of its amended constitution and by-laws and proof of its ratification, within 30 days from such ratification;

(2) An updated list of its officers, their addresses, and their terms of office, within 30 days from their assumption of office;

(3) An annual financial report prepared by its accountable officers, including a statement indicating the number of its current members, locals, chapters or affiliates as the case may be, within 30 days after the close of its fiscal year; and

(4) In the case of federations, national or industry unions; confederations or trade union centers, an updated list of the employers, including their addresses, with which such organizations have existing collective bargaining agreements.

(b) Misrepresentation, false statement or fraud vitiating the consent or free choice of the members in forming the labor organization; *Provided*, that any other form of misrepresentation, false statement or fraud committed by individual officers or members shall not be a ground for cancellation but shall subject the erring officers or members to suspension, expulsion from membership, or any appropriate penalty as may be imposed by the organization's constitution and by-laws, or as the membership may decide.

(c) Using the union as a guise to engage in any activity prohibited by law, such as but not limited to:

(1) Acting as a labor contractor or engaging in the "cabo" system, or otherwise engaging in any activity prohibited by law;

(2) Entering into collective bargaining agreements which provide terms and conditions of employment below minimum standard established by law;

(3) Asking for or accepting Attorney's fees or negotiation fees from employers;

(4) Other than for mandatory activities under this code, checking off special assessments or any other fees without duly signed individual written authorizations of the members;

(d) De facto or voluntary dissolution by the members.

In case of cancellation, nothing herein shall restrict the right of the organization to seek redress in the appropriate courts. (Art.239-a)

TITLE IV

LABOR ORGANIZATIONS

CHAPTER II

RIGHTS AND CONDITIONS OF MEMBERSHIP

ARTICLE 243. **Rights and conditions of membership in a labor organization.** — The following are the rights and conditions of membership in a labor organization:

(a) No arbitrary or excessive initiation fees shall be required of the members of a legitimate labor organization nor shall arbitrary, excessive or oppressive fine and forfeiture be imposed;

(b) The members shall be entitled to full and detailed reports from their officers and representatives of all financial transactions as provided for in the constitution and by-laws of the organization;

(c) The members shall elect their officers by secret ballot at intervals of not more than three (3) years. The election shall be done directly unless circumstances otherwise require and as provided for in the constitution and by-laws of the organization. No qualification requirement for candidacy to any position shall be imposed other than membership in good standing in subject labor organization. The Secretary or any other responsible union officer shall furnish the Secretary of Labor and Employment with a list of the newly-elected officers, together with the appointive officers or agents who are entrusted with the handling of funds within thirty (30) calendar days after the election of officers or from the occurrence of any change in the list of officers of the labor organization.

(d) The members shall determine by secret ballot, after due deliberation, any question of major policy affecting the entire membership of the organization, unless the nature of the organization or *force majeure* renders such secret balloting impractical, in which case the board of directors of the organization may make the decision in behalf of the general membership.

(e) No labor organization shall knowingly admit as member or continue in membership any individual who belongs to a subversive organization or who is engaged directly or indirectly in any subversive activity;

(f) No person who has been convicted of a crime involving moral turpitude shall be eligible for election as a union officer or for appointment to any position in the union;

(g) No officer, agent or member of a labor organization shall collect any fees, dues, or other contributions in its behalf or make any disbursement of its moneys or funds unless he is duly authorized pursuant to its constitution and by-laws;

(h) Every payment of fees, dues or other contributions by a member shall be evidenced by a receipt signed by the officer or agent making the collection and entered into the record of the organization to be kept and maintained for the purpose;

(i) The funds of the organization shall not be applied for any purpose or object other than those expressly provided by its constitution and by-laws or those expressly authorized by written resolution adopted by the majority of the members at a general meeting duly called for the purpose;

(j) Every income or revenue of the organization shall be evidenced by a record showing its source, and every expenditure of its funds shall be evidenced by a receipt from the person to whom the payment is made, which shall state the date, place and purpose of such payment. Such record or receipt shall form part of the financial records of the organization.

Any action involving the funds of the organization shall prescribe three (3) years from the date of submission of the annual financial report to the Department of Labor and Employment or from the date the same should have been submitted, whichever comes earlier.

(k) The officers of any labor organization shall not be paid any compensation other than the salaries and expenses due to their positions as specifically provided for in its constitution and by-laws or in a written resolution duly authorized by a majority of all the members at a general membership meeting duly called for the purpose. The minutes of the meeting and the list of participants and ballots cast shall be subject to inspection by the Secretary of Labor and Employment or his duly authorized representatives. Any irregularities in the

approval of the resolutions shall be a ground for impeachment or expulsion from the organization;

(l) The treasurer of any labor organization and every officer thereof who is responsible for the accounts of such organization or for the collection, management, disbursement, custody or control of the funds, moneys and other properties of the organization, shall render to the organization and to its members a true and correct account of all moneys received and paid by him since he assumed office or since the last date on which he rendered such account and of the balance remaining in his hands at the time of rendering such account, and of all bonds, securities and other properties of the organization entrusted to his custody or under his control. The rendering of such account shall be made:

(1) At least once a year within thirty (30) days after the close of its fiscal year;

(2) At such other times as may be required by a resolution of the majority of the members of the organization; and

(3) Upon vacating his office.

The account shall be duly audited and verified by affidavit and a copy thereof shall be furnished the Secretary of Labor and Employment;

(m) The books of accounts and other records of the financial activities of any labor organization shall be opened to inspection by any officer or member thereof during office hours;

(n) No special assessment or other extraordinary fees may be levied upon the members of a labor organization unless authorized by a written resolution of a majority of all the members at a general membership meeting duly called for the purpose. The secretary of the organization shall record the minutes of the meeting including the list of all members present, the votes cast, the purpose of the special assessment or fees and the recipient of such assessment or fees. The record shall be attested to by the president;

(o) Other than for mandatory activities under the Code, no special assessment, attorney's fees, negotiation fees or any other extraordinary fees may be checked off from any amount due an employee without an individual written authorization duly signed by the employee. The authorization should specifically state the amount, purpose and beneficiary of the deduction; and

(p) It shall be the duty of any labor organization and its officers to inform its members on the provisions of its constitution and by-laws, collective bargaining agreement, the prevailing labor relations system and all their rights and obligations under existing labor laws.

For this purpose, registered labor organizations may assess reasonable dues to finance labor relations seminars and other labor education activities.

Any violation of the rights and conditions of membership shall be a ground for subjecting the erring officer or member to suspension, expulsion or other, disciplinary action in accordance with the organization's constitution and by-laws. A member may file with the Bureau a complaint based on violations of the rights and conditions of membership only if there is no appropriate internal administrative mechanism in the organization's constitution and by-laws, or if such mechanism exists but the remedies therein have been exhausted or rendered inavailing to the member through no fault of his or her own. In such case, the Bureau shall have the power to hear and decide any reported violation and to mete the appropriate penalty, *Provided* that the penalty of suspension or expulsion may not be imposed unless approved by a majority vote of the membership.

Criminal and civil liabilities arising from violations of above rights and conditions of membership shall continue to be under the jurisdiction of ordinary courts. (Art.241-a)

The Secretary of Labor and Employment or his duly authorized representative is hereby empowered to inquire into the financial activities of legitimate labor organizations upon the filing of a complainant under oath and duly supported by the written consent of at least twenty percent (20%) of the total membership of the labor organization concerned and to examine their books of accounts and other records to determine compliance or non-compliance with the law and to prosecute any violations of the law and the union constitution and by-laws: *Provided*, That such inquiry or examination shall not be conducted during the sixty (60) day freedom period nor within thirty (30) days immediately preceding the date of election of union officials. (Art.274-a)

TITLE IV

LABOR ORGANIZATIONS

CHAPTER III

RIGHTS OF LEGITIMATE LABOR ORGANIZATIONS

ARTICLE 244. **Rights of legitimate labor organizations.** — A legitimate labor organization shall have the right:

(a) To act as the representative of its members for the purpose of collective bargaining or for mutual aid and protection;

(b) To be certified as the exclusive representative of all the employees in an appropriate collective bargaining unit for purposes of collective bargaining;

(c) To be furnished by the employer, upon written request, with his annual audited financial statements, including the balance sheet and the profit and loss statement, within thirty (30) calendar days from the date of receipt of the request, after the union has been duly recognized by the employer or certified as the sole and exclusive bargaining representative of the employees in the bargaining unit, or within sixty (60) calendar days before the expiration of the existing collective bargaining agreement, or during the collective bargaining negotiation;

(d) To own property, real or personal, for the use and benefit of the labor organization and its members;

(e) To sue and be sued in its registered name; and

(f) To undertake all other activities designed to benefit the organization and its members, including cooperative, housing welfare and other projects not contrary to law.

Notwithstanding any provision of a general or special law to the contrary, the income, and the properties of legitimate labor organizations, including grants, endowments, gifts, donations and contributions they may receive from fraternal and similar organizations, local or foreign, which are actually, directly and exclusively used for their lawful purposes, shall be free from taxes, duties, and other assessments. The exemptions provided herein may be withdrawn only by a special law expressly repealing this provision. (Art.242-a)

All unions are authorized to collect reasonable membership fees, union dues, assessments and fines and other contributions for labor education and research, mutual death and

hospitalization benefits, welfare fund, strike fund and credit and cooperative undertakings. (A, Art.277 (a))

TITLE V

COVERAGE

RIGHT TO SELF-ORGANIZATION

ARTICLE 245. **Coverage and employees' right to self-organization.** — All Employees shall have the right to self-organization and to form, join or assist labor organizations of their own choosing for purposes of collective bargaining. (Art.243-a)

ARTICLE 246. **Workers associations.** - Ambulant, intermittent and itinerant workers, self-employed people, rural workers and those without any definite employers may form workers associations for the purpose of enhancing and defending their interests and for their mutual aid and protection. (A, Art.243)

Any employee, whether employed for a definite period or not, shall, beginning on his first day of service, be considered an employee for purposes of membership in any labor union. (A, Art.277 (c))

ARTICLE 247. **Right of employees of government owned and controlled corporations** - Employees of government owned and controlled corporations established under the Corporation Code shall have the right to organize and to bargain collectively with their respective employers. Under this Code the employees of all branches, subdivisions, instrumentalities and agencies of the government, including government owned and controlled corporation with original charters shall have the right to organize and to have collective negotiation in accordance with civil service law, rules and regulations. (Art.244-a)

ARTICLE 248. ***Ineligibility of managerial employees to join any labor organization; right of supervisory employees.*** — Managerial employees are not eligible to join, assist or form any labor organization. Supervisory employees shall not be eligible for membership in collective bargaining units of the rank-and-file employees but may join, assist or form separate collective bargaining units and/or legitimate labor organizations of their own. The rank-and-file union and the supervisors' union may join the same federation or national union. (Art.245-a)

ARTICLE 249. **Non-abridgement of right to self-organization.** — It shall be unlawful for any person to restrain, coerce, discriminate against or unduly interfere with employees and workers in their exercise of the right to self-organization. Such right shall include the right to form, join, or assist labor organizations for the purpose of collective bargaining through representatives of their own choosing and to engage in lawful aid and protection, subject to the provisions of this Code. (A, Art.246)

TITLE VI

UNFAIR LABOR PRACTICES

CHAPTER I

CONCEPT

ARTICLE 250. **Concept of unfair labor practice and procedure for prosecution thereof .** — Unfair labor practices violate the constitutional right of workers and employees to self-organization, are inimical to the legitimate interests of both labor and management, including their right to bargain collectively and otherwise deal with each other in an atmosphere of freedom and mutual respect, disrupt industrial peace and hinder the promotion of healthy and stable labor-management relations.

Consequently, unfair labor practices are not only violations of the civil rights of both labor and management but are also criminal offenses against the State, which shall be subject to prosecution and punishment as herein provided.

Subject to the exercise by the President or by the Secretary of Labor and Employment of the powers vested in them by Articles 271 and 272 of this Code, the civil aspects of all cases involving unfair labor practices, which may include claims for actual, moral, exemplary and other forms of damages, attorney's fees and other affirmative relief, shall be under the jurisdiction of the Labor Arbiters. The Labor Arbiters shall give utmost priority to the hearing and resolution of all cases involving unfair labor practices. They shall resolve such cases within thirty (30) calendar days from the time they are submitted for decision.

Recovery of civil liability in the administrative proceedings shall bar recovery under the Civil Code.

No criminal prosecution under this Title may be instituted without a final judgment, finding that an unfair labor practice was committed, having been first obtained in the administrative proceeding referred to in the preceding paragraph. During the pendency of such administrative proceeding, the running of the period of prescription of the criminal offense herein penalized shall be considered interrupted: *Provided*, however, That the final judgment in the administrative proceedings shall not be binding in the criminal case nor be considered as evidence of guilt but merely as proof of compliance with the requirements herein set forth.

Notwithstanding the provision of the immediately preceding paragraph, any employer, including any person acting in the interest of an employer who unjustly dismisses union officers duly elected in accordance with the constitution and by-laws which constitutes union busting where the existence of the union is threatened commits not only an unfair labor practice but also a criminal offense which may be the subject of an immediate criminal prosecution. (Art.247-a)

TITLE VI

UNFAIR LABOR PRACTICES

CHAPTER II

UNFAIR LABOR PRACTICES OF EMPLOYERS

ARTICLE 251. **Unfair labor practices of employers.** — It shall be unlawful for an employer to commit any of the following unfair labor practices:

(a) To interfere with, restrain or coerce employees in the exercise of their right to self-organization;

(b) To require as a condition of employment that a person or an employee shall not join a labor organization or shall withdraw from one to which he belongs;

(c) To contract out services or functions being performed by union members when such will interfere with, restrain or coerce employees in the exercise of their right to self-organization;

(d) To initiate, dominate, assist or otherwise interfere with the formation or administration of any labor organization, including the giving of financial or other support to it or its organizers or officers;

(e) To discriminate in regard to wages, hours of work, and other terms and conditions of employment in order to encourage or discourage membership in any labor organization. Nothing in this Code or in any other law shall stop the parties from requiring membership in a recognized collective bargaining agent as a condition for employment, except of those employees who are already members of another union at the time of the signing of the collective bargaining agreement. Employees of an appropriate collective bargaining unit who are not members of the recognized collective bargaining agent may be assessed a reasonable fee equivalent to the dues and other fees paid by members of the recognized collective bargaining agent, if such non-union members accept the benefits under the collective agreement: Provided, That the individual authorization required under Article 244, paragraph (c), of this Code shall not apply to the non-members of the recognized collective bargaining agent;

(f) To dismiss, discharge or otherwise prejudice or discriminate against an employee for having given or being about to give testimony under this Code;

(g) To violate the duty to bargain collectively as prescribed by this Code;

(h) To pay negotiation or attorney's fees to the union or its officers or agents as part of the settlement of any issue in collective bargaining or any other dispute; or

(i) To violate a collective bargaining agreement.

The provision of the preceding paragraph notwithstanding, only the officers and agents of corporations, associations, or partnerships who have actually participated in, authorized or ratified unfair labor practices shall be held criminally or civilly liable. (Art.248-a)

TITLE VI

UNFAIR LABOR PRACTICES

CHAPTER III

UNFAIR LABOR PRACTICES OF LABOR ORGANIZATIONS

ARTICLE 252. **Unfair labor practices of labor organizations.** — It shall be unfair labor practice for a labor organization, its officers, agents, or representatives:

(a) To restrain or coerce employees in the exercise of their right to self-organization. However, a labor organization shall have the right to prescribe its own rules with respect to the acquisition or retention of membership;

(b) To cause or attempt to cause an employer to discriminate against an employee, including discrimination against an employee with respect to whom membership in such organization has been denied or to terminate an employee on any ground other than the usual terms and conditions under which membership or continuation of membership is made available to other members;

(c) To violate the duty or refuse to bargain collectively with the employer, provided that it is the representative of the employees;

(d) To cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other things of value, in the nature of an exaction, for services which are not performed or not to be performed, including the demand for a fee for union negotiations;

(e) To ask for or accept negotiation or attorney's fees from employers as part of the settlement of any issue in collective bargaining or any other dispute; or

(f) To violate a collective bargaining agreement.

(g) To violate the duty of fair representation, including entering into collective bargaining agreements which provide terms and conditions of employment below minimum standards established by law.

The provision of the preceding paragraph notwithstanding, only the officers, members of governing boards, representatives or agents or members of labor associations or organizations who have actually participated in, authorized or ratified unfair labor practices shall be held criminally or civilly liable. (Art.249-a)

TITLE VII

COLLECTIVE BARGAINING AND ADMINISTRATION OF AGREEMENTS

ARTICLE 253. **Procedure in collective bargaining.** — The following procedures shall be observed in collective bargaining:

(a) When a party desires to negotiate an agreement, it shall serve a written notice upon the other party with a statement of its proposals. The other party shall make a reply thereto not later than ten (10) calendar days from receipt of such notice;

(b) Should differences arise on the basis of such notice and reply, either party may request for a conference which shall begin not later than ten (10) calendar days from the date of request;

(c) If the dispute is not settled, the Board shall intervene upon request of either or both parties or at its own initiative and immediately call the parties to conciliation meetings. The Board shall have the power to issue subpoenas requiring the attendance of the parties to such meetings. It shall be the duty of the parties to participate fully and promptly in the conciliation meetings the Board may call;

(d) During the conciliation proceedings in the Board, the parties are prohibited from doing any act which may disrupt or impede the early settlement of the disputes; and

(e) The Board shall exert all efforts to settle disputes amicably and encourage the parties to submit their case to a voluntary arbitrator.

ARTICLE 254. **Duty to bargain collectively in the absence of collective bargaining agreements.** — In the absence of an agreement or other voluntary arrangement providing for a more expeditious manner of collective bargaining, it shall be the duty of the employer and the representatives of the employees to bargain collectively in accordance with the provisions of this Code.

ARTICLE 255. **Meaning of duty to bargain collectively.** — The duty to bargain collectively means the performance of a mutual obligation to meet and convene promptly and

expeditiously in good faith for the purpose of negotiating an agreement with respect to wages, hours of work and all other terms and conditions of employment including proposals for adjusting any grievances or questions arising under such agreement and executing a contract incorporating such agreements if requested by either party, but such duty does not compel any party to agree to a proposal or to make any concession.

ARTICLE 256. **Duty to bargain collectively when there exists a collective bargaining agreement.** — When there is a collective bargaining agreement, the duty to bargain collectively shall also mean that neither party shall terminate or modify such agreement during its lifetime. However, either party can serve a written notice to terminate or modify the agreement at least sixty (60) days prior to its expiration date. It shall be the duty of both parties to keep the status quo and to continue in full force and effect the term and conditions of the existing agreement during the 60-day period and/or until a new agreement is reached by the parties.

ARTICLE 257. **Terms of a collective bargaining agreement.** — Any collective bargaining agreement that the parties may enter into shall be for a term of three (3) years. The majority status of the incumbent bargaining agent shall not be questioned and no certification election shall be conducted by the Bureau outside of the sixty-day period immediately before the date of expiry of such three year term of the collective bargaining agreement. Any subsequent collective bargaining agreement entered into by the parties shall retroact to the date of expiration of the previous collective bargaining agreement. (Art.253-a)

ARTICLE 258. **Injunction prohibited.** — No temporary or permanent injunction or restraining order in any case involving or growing out of labor disputes shall be issued by any court or other entity, except as otherwise provided in Articles 221 and 272 of this Code.

ARTICLE 259. **Exclusive bargaining representation and workers' participation in policy and decision-making.** — The labor organization designated or selected by the majority of the employees in an appropriate collective bargaining unit shall be the exclusive representative of the employee in such unit for the purpose of collective bargaining. However, an individual employee or group of employees shall have the right at any time to present grievances to their employer.

Any provision of law to the contrary notwithstanding, workers shall have the right, subject to such rules and regulations as the Secretary of Labor and Employment may promulgate, to participate in policy and decision-making processes of the establishment where they are employed insofar as said processes will directly affect their rights, benefits and welfare. For this purpose, workers and employers may form labor-management councils: Provided, That the representatives of the workers in such labor-management councils shall be elected by at least the majority of all employees in said establishment.

ARTICLE 260. **Representation issue in an organized establishment.** — In an organized establishment when any legitimate labor organization including a national union or federation which has already issued a charter certificate to its local chapter participating in the certification election or a local chapter which has been issued a charter certificate by the national union or federation questions the majority status of the incumbent bargaining agent within the sixty-day period before the expiration of a collective bargaining agreement, the former may

request the Bureau to conduct a certification election as long as the request is supported by the written consent of at least twenty-five percent (25%) of all the employees in the appropriate bargaining unit. To have a valid election, at least a majority of all eligible voters in the unit must have cast their votes. The labor union receiving the majority of the valid votes cast shall be certified as the exclusive bargaining agent of all the workers in the unit. When an election which provides for three or more choices results in no choice receiving a majority of the valid votes cast, a run-off election shall be conducted between the labor unions receiving the two highest number of votes: *Provided*, That the total number of votes for all contending unions is at least fifty percent (50%) of the number of votes cast. In cases where the request was filed by a national union or federation, it shall not be required to disclose the names of the local chapter's officers and members.

At the expiration of the freedom period, the employer shall continue to recognize the majority status of the incumbent bargaining agent where no request by any legitimate labor organization or a national union or federation for a certification election has been duly made. (Art.256-a)

ARTICLE 261. **Representation issue in an unorganized establishment.** - (a) In any establishment where there is no bargaining agent, a legitimate labor organization which is the only legitimate labor organization in said establishment may voluntarily be recognized by the employer as the bargaining representative of the employees in a bargaining unit of the establishment. If the employer does not extend said recognition, the legitimate labor organization may request the Bureau to conduct a certification election to determine if the legitimate labor organization shall be certified as the bargaining representative because it has the support of a majority of the employees of the bargaining unit. (Art.257-a)

ARTICLE 262. **Representation issue where there is a bargaining agent but no collective bargaining agreement.** – Any legitimate labor organization, national union or federation may question the status of a bargaining agent if there is still no collective bargaining agreement after one year from the date the bargaining unit was recognized or certified, in which case, the former may request the Bureau to conduct a certification election as long as the request is supported by the written consent of at least twenty-five percent (25%) of all employees in the appropriate bargaining unit. (n)

ARTICLE 263. **Action on request for certification election.** — After receipt of a proper request the Bureau shall conduct the requested certification election within 15 days in accordance with the rules and regulations prescribed by the Secretary of Labor and Employment. (Art.258-a)

ARTICLE 264. **Employer as by-stander.** – in all cases, whether the request for certification election is filed by an employer or a legitimate labor organization, national union or federation, the employer shall not be considered a party thereto with a concomitant right to oppose a request for certification election. The employer's participation in such proceedings shall be limited to: (1) being notified or informed of requests of such nature, and (2) submitting the list of employees during the pre-election conference should the med-arbiter act favorable on the request. (n)

ARTICLE 265. **Appeal of certification election results** — Any legitimate labor organization which is a party to a certification election may appeal the results of the election to the Bureau on the ground that the rules and regulations or parts thereof established by the Secretary of Labor and Employment for the conduct of the election have been violated. Such appeal shall be decided within fifteen (15) calendar days. The decision of the Bureau shall be final and executory. (Art.259-a)

TITLE VII-A

GRIEVANCE MACHINERY AND VOLUNTARY ARBITRATION

ARTICLE 266. **Grievance machinery and voluntary arbitration.** — The parties to a collective bargaining agreement shall include therein provisions that will ensure the mutual observance of its terms and conditions. They shall establish a machinery for the adjustment and resolution of grievances arising from the interpretation or implementation of their collective bargaining agreement and those arising from the interpretation or enforcement of company personnel policies.

All grievances submitted to the grievance machinery which are not settled within seven (7) calendar days from the date of its submission shall automatically be referred to voluntary arbitration prescribed in the collective bargaining agreement.

For this purpose, parties to a collective bargaining agreement shall name and designate in advance a voluntary arbitrator or panel of voluntary arbitrators, or include in the agreement a procedure for the selection of such voluntary arbitrator or panel of voluntary arbitrators, preferably from the listing of qualified Voluntary Arbitrators duly accredited by the Board. In case the parties fail to select a Voluntary Arbitrator or panel of Voluntary Arbitrators, the Board shall designate the Voluntary Arbitrator or panel of Voluntary Arbitrators, as may be necessary, pursuant to the selection procedure agreed upon in the collective bargaining agreement, which shall act with the same force and effect as if the voluntary arbitrator or panel of voluntary arbitrators have been selected by the parties as described above.

ARTICLE 267. **Jurisdiction of voluntary arbitrators and panel of voluntary arbitrators.** — The Voluntary Arbitrator or panel of Voluntary Arbitrators shall have original and exclusive jurisdiction to hear and decide all unresolved grievances arising from the interpretation or implementation of the Collective Bargaining Agreement and those arising from the interpretation or enforcement of company personnel policies referred to in the immediately preceding Article. Accordingly, violations of a Collective Bargaining Agreement, except those which are gross in character, shall no longer be treated as unfair labor practice and shall be resolved as grievances under the Collective Bargaining Agreement. For purposes of this Article, gross violations of a Collective Bargaining Agreement shall mean flagrant and/or malicious refusal to comply with the economic provisions of such agreement.

The Commission, its Regional Offices and the Regional Directors of the Department of Labor and Employment shall not entertain disputes, grievances or matters under the exclusive and original jurisdiction of the voluntary arbitrator or panel of voluntary arbitrators and shall immediately dispose and refer the same to the grievance machinery or voluntary arbitration provided in the collective bargaining agreement. (n)

ARTICLE 268. **Jurisdiction over other labor disputes.** — The voluntary arbitrator or panel of voluntary arbitrators, upon agreement of the parties, shall also hear and decide all other labor disputes including unfair labor practices and bargaining deadlocks.

ARTICLE 269. **Procedures.** — The voluntary arbitrator or panel of voluntary arbitrators shall have the power to hold hearings, receive evidences and take whatever action is necessary to resolve the issue or issues subject of the dispute, including efforts to effect a voluntary settlement between parties.

All parties to the dispute shall be entitled to attend the arbitration proceedings. The attendance of any third party or the exclusion of any witness from the proceedings shall be determined by the voluntary arbitrator or panel of voluntary arbitrators. Hearings may be adjourned for cause or upon agreement by the parties.

Unless the parties agree otherwise, it shall be mandatory for the voluntary arbitrator or panel of voluntary arbitrators to render an award or decision within twenty (20) calendar days from the date of submission of the dispute to voluntary arbitration.

The award or decision of the Voluntary Arbitrator or panel of Voluntary Arbitrators shall contain the facts and the law on which it is based. It shall be final and executory after ten (10) calendar days from receipt of the copy of the award or decision by the parties.

Upon motion of any interested party, the voluntary arbitrator or panel of voluntary arbitrators or the Labor Arbiter in the region where the movant resides, in case of the absence or incapacity of the voluntary arbitrator or panel of voluntary arbitrators for any reason, may issue a writ of execution requiring either the sheriff of the Commission or regular courts or any public official whom the parties may designate in the submission agreement to execute the final decision, order or award.

ARTICLE 270. **Cost of Voluntary Arbitration and Voluntary Arbitrator's fee.** — The cost of Voluntary Arbitration including the Voluntary Arbitrator's fee shall be borne by the special voluntary arbitration fund to be supplemented by the appropriations of the budget of the Board, if necessary. The fixing of the fee of Voluntary Arbitrators or panel of Voluntary Arbitrators, to be determined by the Board shall take into account the following factors:

(a) Nature of the case;

(b) Time consumed in hearing the case;

(c) Professional standing of the voluntary arbitrator; and

(d) Fees provided for in the Revised Rules of Court. (A, Art.262-B)

TITLE VIII

STRIKES AND LOCKOUTS AND FOREIGN INVOLVEMENT IN TRADE UNION ACTIVITIES

CHAPTER I

STRIKES AND LOCKOUTS

ARTICLE 271. **Strikes, picketing and lockouts.** — (a) It is the policy of the State to encourage free trade unionism and free collective bargaining.

(b) Workers shall have the right to engage in concerted activities for purposes of collective bargaining or for their mutual benefit and protection. The right of legitimate labor organizations to strike and picket and of employers to lockout, consistent with the national interest, shall continue to be recognized and respected. However, no labor union may strike and no employer may declare a lockout on grounds involving inter-union and intra-union disputes.

(c) In cases of bargaining deadlocks, the duly certified or recognized bargaining agent may file a notice of strike or the employer may file a notice of lockout with the Department at least thirty (30) days before the intended date thereof. In cases of unfair labor practice, the period of notice shall be fifteen (15) days and in the absence of a duly certified or recognized bargaining agent, the notice of strike may be filed by any

legitimate labor organization in behalf of its members. However, in case of dismissal from employment of union officers duly elected in accordance with the union constitution and by-laws, which may constitute union busting where the existence of the union is threatened, the 15-day cooling-off period shall not apply and the union may take action immediately.

(d) The notice must be in accordance with such implementing rules and regulations as the Secretary of Labor and Employment may promulgate.

(e) During the cooling-off period, it shall be the duty of the Department to exert all efforts at mediation and conciliation to effect a voluntary settlement. Should the dispute remain unsettled until the lapse of the requisite number of days from the mandatory filing of the notice, the labor union may strike or the employer may declare a lockout.

(f) A decision to declare a strike must be approved by a majority of the total union membership in the bargaining unit concerned, obtained by secret ballot in meetings or referenda called for that purpose. A decision to declare a lockout must be approved by majority of the board of directors of the corporation or association or of the partners in a partnership, obtained by secret ballot in a meeting called for that purpose. The decision shall be valid for the duration of the dispute based on substantially the same grounds considered when the strike or lockout vote was taken. The Department may, at its own initiative or upon the request of any affected party, supervise the conduct of the secret balloting. In every case, the union or the employer shall furnish the Department the results of the voting at least seven days before the intended strike or lockout, subject to the cooling-off period herein provided.

(g) When there exists a labor dispute causing or likely to cause a strike or lockout in an enterprise engaged in providing essential services such as, hospital, electrical services, water supply and communication and transportation, the Secretary of Labor and Employment may assume jurisdiction over the dispute and decide it or certify the same to the Commission for compulsory arbitration. Such assumption or certification shall have the effect of automatically enjoining the intended or impending strike or lockout as specified in the assumption or certification order. If one has already taken place at the time of assumption or certification, all striking or locked out employees shall immediately return to work and the employer shall immediately resume operations and readmit all workers under the same terms and conditions prevailing before the strike or lockout. The Secretary of Labor and Employment or the Commission may seek the assistance of law enforcement agencies to ensure compliance with this provision as well as with such orders as he may issue to enforce the same.

In line with the national concern for and the highest respect accorded to the right of patients to life and health, strikes and lockouts in hospitals, clinics and similar medical institutions shall, to every extent possible, be avoided, and all serious efforts, not only by labor and management but government as well, be exhausted to substantially minimize, if not prevent, their adverse effects on such life and health, through the exercise, however legitimate, by labor of its right to strike and by management to lockout. In labor disputes adversely affecting the continued operation of such hospitals, clinics or medical institutions, it shall be the duty of the striking union or locking-out employer to provide and maintain an effective skeletal workforce of medical and other health personnel, whose movement and services shall be unhampered and unrestricted, as are necessary to insure the proper and adequate protection of the life and health of its patients, most especially emergency cases, for the duration of the strike or lockout. In such cases, therefore, the Secretary of Labor and Employment may immediately assume, within twenty four (24) hours from knowledge of the occurrence of such a strike or lockout,

jurisdiction over the same or certify it to the Commission for compulsory arbitration. For this purpose, the contending parties are strictly enjoined to comply with such orders, prohibitions and/or injunctions as are issued by the Secretary of Labor and Employment or the Commission, under pain of immediate disciplinary action, including dismissal or loss of employment status or payment by the locking-out employer of backwages, damages and other affirmative relief, even criminal prosecution against either or both of them.

The foregoing notwithstanding, the President of the Philippines shall not be precluded from determining the enterprises that, in his opinion, are engaged in providing essential services and from intervening at any time and assuming jurisdiction over any labor dispute in such enterprises in order to settle or terminate the same.

(h) Before or at any stage of the compulsory arbitration process, the parties may opt to submit their dispute to voluntary arbitration. At the instance of a union or an employer who has taken all the required steps for the declaration of a strike or a lockout respectively, in lieu of said union actually going on strike or such employer actually declaring a lockout, either party may request the Secretary of labor and Employment to assume jurisdiction over the labor dispute.

(i) The Secretary of Labor and Employment, the Commission or the voluntary arbitrator or panel of voluntary arbitrators shall decide or resolve the dispute within thirty (30) calendar days from the date of the assumption of jurisdiction or the certification or submission of the dispute, as the case may be. The decision of the President, the Secretary of Labor and Employment, the Commission or the voluntary arbitrator or panel of voluntary arbitrators shall be final and executory ten (10) calendar days after receipt thereof by the parties. (Art.263-a)

ARTICLE 272. **Prohibited activities.** — (a) No labor organization or employer shall declare a strike or lockout without first having bargained collectively in accordance with Title VII of this Book or without first having filed the notice required in the preceding Article or without the necessary strike or lockout vote first having been obtained and reported to the Department.

No strike or lockout shall be declared after assumption of jurisdiction by the President or the Secretary or after certification or submission of the dispute to compulsory or voluntary arbitration or during the pendency of cases involving the same grounds for the strike or lockout.

Any worker whose employment has been terminated as a consequence of an unlawful lockout shall be entitled to reinstatement with full backwages. Any union officer who knowingly participates in an illegal strike and any worker or union officer who knowingly participates in the commission of illegal acts during a strike may be declared to have lost his employment right: Provided, That mere participation of a worker in a lawful strike shall not constitute sufficient ground for termination of his employment, even if a replacement had been hired by the employer during such lawful strike.

(b) No person shall obstruct, impede or interfere with by force, violence, coercion, threats or intimidation any peaceful picketing by employees during any labor controversy or in the exercise of the right of self-organization or collective bargaining or shall aid or abet such obstruction or interference.

(c) No employer shall use or employ any strike-breaker nor shall any person be employed as a strike-breaker.

(d) No public official or employee, including officers and personnel of the New Armed Forces of the Philippines or the Integrated National Police, or armed persons, shall bring in, introduce or escort in any manner, any individual who seeks to replace strikers in entering or leaving the premises of a strike area, or work in place of the strikers. The police force shall keep out of the picket lines unless actual violence or other criminal acts occur therein: Provided, That nothing herein shall be interpreted to prevent any public officers from taking any measure necessary to maintain peace and order, protect life and property, and/or enforce the law and legal order.

(e) No person engaged in picketing shall commit any act of violence, coercion or intimidation or obstruct the free ingress to or egress from the employer's premises for lawful purposes, or obstruct public thoroughfares. Provided, however, that the exercise of free ingress to or egress from the employers' premises shall not be used to take out company's products, machineries and equipment or to bring in new employees for the operation of the company.

(f) The National Labor Relations Commission shall have the power to enjoin or restrain any actual or threatened commission of any or all prohibited or unlawful acts or to require the performance of a particular act in any labor dispute which, if not restrained or performed forthwith, may cause grave or irreparable damage to any party: *Provided*, That no temporary or permanent injunction in any case involving or growing out of a labor dispute as defined in this Code shall be issued except after hearing the testimony of witnesses, with opportunity for cross-examination, in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and only after a finding of fact by the Commission, to the effect:

(1) That prohibited or unlawful acts have been threatened and will be committed and will be continued unless restrained, or have been committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat, prohibited or unlawful act, except against the person or persons, association or organization making the threat or committing the prohibited or unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;

(2) That substantial and irreparable injury to complainant's property will follow;

(3) That, as to each item of relief to be granted, greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;

(4) That complainant has no adequate remedy at law; and

(5) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection.

Such hearing shall be held after due and personal notice thereof has been served, in such manner as the Commission shall direct, to all known persons against whom relief is sought, and also to the Chief Executive and other public officials of the province or city within which the unlawful acts have been threatened or committed charged with the duty to protect complainant's property: Provided, however, That if a complainant shall also allege that, unless a temporary restraining order shall be issued without notice, a substantial and irreparable injury to complainant's property will be unavoidable, such a temporary restraining order may be issued upon testimony under oath, sufficient, if sustained, to justify the Commission in issuing a temporary injunction upon hearing after notice. Such a temporary restraining order shall be effective for no longer than twenty (20) days and shall become void at the expiration of said twenty (20) days. No such temporary restraining order or temporary injunction shall be issued except on condition that complainant shall first file an undertaking with adequate security in an amount to be fixed by the Commission sufficient to recompense those enjoined for any loss, expense or damage caused by the improvident or erroneous issuance of such order or injunction,

including all reasonable costs, together with a reasonable attorney's fee, and expense of defense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the Commission.

The undertaking herein mentioned shall be understood to constitute an agreement entered into by the complainant and the surety upon which an order may be rendered in the same suit or proceeding against said complainant and surety, upon a hearing to assess damages, of which hearing complainant and surety shall have reasonable notice, the said complainant and surety submitting themselves to the jurisdiction of the Commission for that purpose. But nothing herein contained shall deprive any party having a claim or cause of action under or upon such undertaking from electing to pursue his ordinary remedy by suit at law or in equity: Provided, further, That the reception of evidence for the application of a writ of injunction may be delegated by the Commission to any of its Labor Arbiters who shall conduct such hearings in such places as he may determine to be accessible to the parties and their witnesses and shall submit thereafter his recommendation to the Commission. (Art.264-a)

ARTICLE 273. **Improved offer balloting.** — In an effort to settle a strike, the Department of Labor and Employment shall conduct a referendum by secret balloting on the improved offer of the employer on or before the 15th day of the strike. When at least a majority of the union members vote to accept the improved offer, the striking workers shall immediately return to work and the employer shall thereupon readmit them upon the signing of the agreement.

In case of a lockout, the Department of Labor and Employment shall also conduct a referendum by secret balloting on the reduced offer of the union on or before the 30th day of the lockout. When at least a majority of the board of directors or trustees or the partners holding the controlling interest in the case of a partnership vote to accept the reduced offer, the workers shall immediately return to work and the employer shall thereupon readmit them upon the signing of the agreement.

TITLE VIII

STRIKES AND LOCKOUTS AND FOREIGN INVOLVEMENT IN TRADE UNION ACTIVITIES

CHAPTER II

ASSISTANCE TO LABOR ORGANIZATIONS

ARTICLE 274. **Assistance by the Department of Labor and Employment.** — The Department of Labor and Employment, at the initiative of the Secretary of Labor and Employment, shall extend special assistance to the organization for purposes of collective bargaining of the most underprivileged workers who, for reasons of occupation, organizational structure or insufficient incomes are not normally covered by major labor organizations or federations.

ARTICLE 275. **Assistance by the Institute for Labor and Manpower Studies.** — The Institute for Labor and Manpower Studies shall render technical and other forms of assistance to labor organizations and employer organizations in the field of labor education, especially pertaining to collective bargaining, arbitration, labor standards and the Labor Code of the Philippines in general. (Section 20 of E.O.126-a)

TITLE VIII

STRIKES AND LOCKOUTS AND FOREIGN INVOLVEMENT IN TRADE UNION ACTIVITIES

CHAPTER III

FOREIGN ACTIVITIES

ARTICLE 276. **Prohibition against aliens; exceptions.** — All alien, natural or juridical, as well as all foreign organizations are strictly prohibited from engaging directly or indirectly *in all forms of* trade union activities without prejudice to normal contacts between Philippine labor unions and recognized international labor centers: Provided, however, That aliens working in the country with valid permits issued by the Department of Labor and Employment may exercise the right to self-organization and join or assist labor organizations of their own choosing for purposes of collective bargaining: Provided, further, That said aliens are nationals of a country which grants the same or similar rights to Filipino workers.

ARTICLE 277. **Regulation of foreign assistance.** — (a) No foreign individual, organization or entity may give any donations, grants or other forms of assistance, in cash or in kind, directly or indirectly, to any labor organization, group of workers or any auxiliary thereof, such as cooperatives, credit unions and institutions engaged in research, education or communication, in relation to trade union activities without prior permission by the Secretary of Labor and Employment.

"Trade union activities" shall mean:

(1) organization, formation and administration of labor organizations;

(2) negotiation and administration of collective bargaining agreements;

(3) all forms of concerted union action;

(4) organizing, managing or assisting union conventions, meetings, rallies, referenda, teach-ins, seminars, conferences and institutes;

(5) any form of participation or involvement in representation proceedings, representation elections, consent elections, union elections; and

(6) other activities or actions analogous to the foregoing.

(b) This prohibition shall equally apply to foreign donations, grants or other forms of assistance, in cash or in kind, given directly or indirectly to any employer or employer's organization to support any activity or activities affecting trade unions.

(c) The Secretary of Labor and Employment shall promulgate rules and regulations to regulate and control the giving and receiving of such donations, grants, or other forms of assistance, including the mandatory reporting of amounts of donations or grants, the specific recipients thereof, the projects or activities proposed to be supported and their duration.

ARTICLE 278. **Applicability to farm tenants and rural workers** --- The provisions of this Title pertaining to foreign organizations and activities shall be deemed applicable to all organizations of farm tenants, rural workers and the like, provided that in appropriate cases the Secretary of Agrarian Reform shall exercise the powers and responsibilities vested by this Title in the Secretary of Labor and Employment.

TITLE VIII

STRIKES AND LOCKOUTS AND FOREIGN INVOLVEMENT IN TRADE UNION ACTIVITIES

CHAPTER IV

PENALTIES FOR VIOLATION

ARTICLE 279. **Penalties.** — (a) Any person violating any of the provisions of Article 264 of this Code shall be punished by a fine of not less than ten thousand pesos (₱10, 000.00) nor more than one hundred thousand pesos (₱100, 000.00) and/or imprisonment for not less than three (3) years nor more than six (6) years, or both such fine and imprisonment, at the discretion of the court. Prosecution under this provision shall preclude prosecution for the same act under the Revised Penal Code, and vice versa.

(b) Upon the recommendation of the Secretary of Labor and Employment and the Secretary of National Defense, foreigners who violate the provisions of this Title shall be subject to immediate and summary deportation by the Commission on Immigration and Deportation and shall be permanently barred from re-entering the country without the special permission of the President of the Philippines.

TITLE IX

SPECIAL PROVISIONS

ARTICLE 280. **Study of labor-management relations.** — The Secretary of Labor and Employment shall have the power and it shall be his duty to inquire into:

(a) The existing relations between employers and employees in the Philippines;

(b) The growth of associations of employees and the effect of such associations upon employer-employee relations;

(c) The extent and results of the methods of collective bargaining in the determination of terms and conditions of employment;

(d) The methods, which have been tried by employers and associations of employees for maintaining mutually satisfactory relations;

(e) Desirable industrial practices which have been developed through collective bargaining for settling differences;

(f) The possible ways of increasing the usefulness and efficiency of collective bargaining for settling differences;

(g) The possibilities for the adoption of practical and effective methods of labor-management cooperation;

(h) Any other aspects of employer-employee relations concerning the promotion of harmony and understanding between the parties; and

(i) The relevance of labor laws and labor relations to national development.

The Secretary of Labor and Employment shall also inquire into the causes of industrial unrest and take all the necessary steps within his powers as may be prescribed by law to alleviate the same, and shall from time to time recommend the enactment of such remedial legislation as in his judgment may be desirable for the maintenance and promotion of industrial peace.

ARTICLE 281. **Miscellaneous provisions.** — (a) The Secretary of Labor and Employment and the Secretary of the Budget shall cause to be created or reclassified in accordance with law such positions as may be necessary to carry out the objectives of this Code and cause the upgrading of the salaries of the personnel involved in the Labor Relations System of the Department. Funds needed for this purpose shall be provided out of the Special Activities Fund appropriated by Batas Pambansa Blg. 80 and from annual appropriation thereafter.

(b) A Special Voluntary Arbitration Fund is hereby established in the Board to subsidize the cost of voluntary arbitration in cases involving the interpretation and implementation of the Collective Bargaining Agreement, including the Arbitrator's fees, and for such other related purposes to promote and develop voluntary arbitration. The Board shall administer the Special Voluntary Arbitration Fund in accordance with the guidelines it may adopt upon the recommendation of the Council, which guidelines shall be subject to the approval of the Secretary of Labor and Employment. Continuing funds needed for this purpose in the initial yearly amount of fifteen million pesos (₱15, 000,000.00) shall be provided in the 1989 and subsequent annual General Appropriations Acts.

The amount of subsidy in appropriate cases shall be determined by the Board in accordance with established guidelines issued by it upon the recommendation of the Council.

The Fund shall also be utilized for the operation of the Council, the training and education of Voluntary Arbitrators, and the Voluntary Arbitration Program.

(c) The Department of Labor and Employment shall help promote and gradually develop, with the agreement of labor organizations and employers, labor-management cooperation programs at appropriate levels of the enterprise based on shared responsibility and mutual respect in order to ensure industrial peace and improvement in productivity, working conditions and the quality of working life.

(d) In establishments where no legitimate labor organization exists, labor-management committees may be formed voluntarily by workers and employers for the purpose of promoting industrial peace. The Department of Labor and Employment shall endeavor to enlighten and educate the workers and employees on their rights and responsibilities through labor education with emphasis on the policy thrusts of this Code. (Art.277-a)

SECTION 7. **BOOK SIX**

POST EMPLOYMENT

TITLE I

TERMINATION OF EMPLOYMENT

ARTICLE 282. **Coverage.** — The provisions of this Title shall apply to all establishments or undertakings, whether for profit or not.

ARTICLE 283. **Security of Tenure.** -- No employer shall terminate the services of an employee except for a just cause or when authorized by this Title. A regular employee who is dismissed from work without just or authorized cause shall be entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement. If the employee illegally dismissed is temporary, he shall be entitled to a full salary for the unexpired portion of the agreed period and unpaid benefits. In every case of illegal dismissal or termination the employer is liable for damages and litigation costs.

The term "employer" includes a contractor or subcontractor. (Art.279-a)

ARTICLE 284. **Regular and Temporary Employment.** -- The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular or for an indefinite period where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer.

Employment is temporary or for a definite period and may be terminated at the end of the period, where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee; where the work or services to be performed is seasonal in nature and the employment is for the duration of the season; or where both the employer and the employee freely and knowingly enter into a term employment contract in view of the temporary nature of the task or job.

The requirements of law intended to protect security of tenure and the exercise of the right to self-organization are applicable to regular as well as temporary employees for the duration of their employment. (Art.280-a)

ARTICLE. 285. **Probationary employment.** -- Regardless of the nature of the work to be performed, probationary employment shall not exceed six (6) months from the first day of service for all workers, including teachers in both the public and private schools. Any stipulation to the contrary shall be void. The services of an employee who has been engaged on a probationary basis may be terminated for a just cause or when he fails to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of his engagement. An employee who is allowed to work after a probationary period whether broken or not shall be considered a regular employee. (Art.281-a)

ARTICLE 286. **Termination by employer.**-- An employer may terminate an employment for any of the following causes:

(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

(b) Gross and habitual neglect by the employee of his duties;

(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and

Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just and authorized cause and without prejudice to the requirement of notice under Article 287 of this Code the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires in accordance with company rules and regulations promulgated pursuant to guidelines set by the Department of Labor and Employment. Any decision taken by the employer shall be without prejudice to the right of the worker to contest the validity or legality of his dismissal by filing a complaint with the regional branch of the National Labor Relations Commission. The burden of proving that the termination was for a valid or authorized cause shall rest on the employer. The Secretary of the Department of Labor and Employment may suspend the effects of the termination pending resolution of the dispute in the event of a prima facie finding by the appropriate official of the Department of Labor and Employment before whom such dispute is pending that the termination may cause a serious labor dispute or is in implementation of a mass lay-off. (Art.282-A)

ARTICLE 287. **Closure of establishment and reduction of personnel.** -- The employer may also terminate the employment of any employee due to the installation of labor saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Department of Labor and Employment at least two (2) months before the intended date thereof. In any of these cases, the worker affected thereby shall be entitled to a separation pay equivalent to at least one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to a minimum of one (1) month pay for every year of service. A fraction of at least six (6) months shall be considered one (1) whole year.

Retrenchment requires proof of actual losses or declining revenues of substantial proportion. (Art.283-a)

ARTICLE. 288. **Disease as ground for termination.** – An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees, as certified to by the company physician or a physician of the Employee's Compensation Commission or the Social Security System; *Provided*, That he is paid separation pay equivalent to at least one (1) month salary or to one-half (1/2) month salary for every year of service, whichever is greater, a fraction of at least six (6) months being considered as one (1) whole year. (Art.284-a)

ARTICLE 289. **Termination by employee.** — (a) An employee may terminate without just cause the employee-employer relationship by serving a written notice on the employer at least one month in advance. The employer upon whom no such notice was served may hold the employee liable for damages.

(b) An employee may put an end to the relationship without serving any notice on the employer for any of the following just causes:

(1) Serious insult by the employer or his representative on the honor and person of the employee;

(2) Inhuman and unbearable treatment accorded the employee by the employer or his representative;

(3) Commission of a crime or offense by the employer or his representative against the person of the employee or any of the immediate members of his family; and

(4) Other causes analogous to any of the foregoing.

ARTICLE 290. **When employment not deemed terminated.** — The bona fide suspension of the operation of a business or undertaking for a period not exceeding six months, or the fulfillment by the employee of a military or civic duty shall not terminate employment. In all such cases, the employer shall reinstate the employee to his former position without loss of seniority rights if he indicates his desire to resume his work not later than one month from the resumption of operations of his employer or from his relief from the military or civic duty.

ARTICLE 291. **Merger or consolidation of employer corporations.** - Where two (2) or more corporations merge or consolidate into a single corporation, the surviving or consolidated corporation shall be responsible for all the liabilities and obligations of each of the constituent corporations in the same manner as if such surviving or consolidated corporation had itself incurred such liabilities or obligations. Any pending claim, action or proceeding brought by the employees against any of such constituent corporations may be prosecuted against the surviving or consolidated corporation. The rights of employees, including those arising from collective bargaining agreements, their security of tenure and seniority rights, or any of such constituent corporations shall continue to be respected by the surviving or consolidated corporation, and not be impaired by such merger or consolidation.

In the case of a merger of corporations, each of which has an exclusive bargaining agent, the exclusive bargaining agent of the surviving corporation shall be the exclusive bargaining agent of all the employees of the merged bargaining units. In the case of a consolidation of corporations, each of which has an exclusive bargaining agent, the exclusive bargaining agent at the consolidated bargaining units shall be determined by certification elections. (n)

TITLE II

RETIREMENT FROM THE SERVICE

ARTICLE 292. **Retirement.** — Any employee may be retired upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contract.

In case of retirement, the employee shall be entitled to receive such retirement benefits as he may have earned under existing laws and any collective bargaining or other agreements: *Provided*, however, That an employee's retirement benefits under any collective bargaining and other agreements shall not be less than those provided herein.

In the absence of a retirement plan or agreement providing for retirement benefits of employees in the establishment, an employee upon reaching the age of sixty (60) years or more, but not beyond sixty-five (65) years which is hereby declared the compulsory retirement age, who has served at least five (5) years in the said establishment, may retire and shall be entitled to retirement pay equivalent to at least one-half (1/2) month salary for every year of service, a fraction of at least six (6) months being considered as one whole year.

Unless the parties provide for broader inclusions, the term "one half (1/2) month" salary shall mean fifteen (15) days plus one-twelfth (1/12) of the 13th month pay and the cash equivalent of not more than five (5) days of service incentive leaves.

Retail, service and agricultural establishments or operations employing not more than ten (10) employees or workers are exempted from the coverage of this provision.

Violation of this provision is hereby declared unlawful and subject to the penal provisions under Article 293 of this Code.

SECTION 8. **BOOK SEVEN**

Transitory and Final Provisions

TITLE I

Penal Provisions and Liabilities

ARTICLE 293. **Penalties.** — Except as otherwise provided in this Code, or unless the act complained of hinges on a question of interpretation or implementation of ambiguous provisions of an existing collective bargaining agreement any violation of the provisions of this Code declared to be unlawful or penal in nature shall be punished with a fine of not less than One Thousand Pesos (₱1,000.00) nor more than Ten Thousand Pesos (₱10,000.00), or imprisonment of not less than three months nor more than three years, or both such fine and imprisonment at the discretion of the court.

In addition to such penalty, any alien found guilty shall be summarily deported upon completion of service of sentence.

Any provision of law to the contrary notwithstanding, any criminal offense punished in this Code shall be under the concurrent jurisdiction of the Municipal or Regional Trial Court.

ARTICLE 294. **Who are liable when committed by other than natural person.** — If the offense is committed by a corporation, trust, firm, partnership, association or any other entity, the penalty shall be imposed upon the guilty officer or officers of such corporation, trust, firm, partnership, association or entity.

TITLE II

Prescription of Offenses and Claims

ARTICLE 295. **Offenses.** — Offenses penalized under this Code and the rules and regulations issued pursuant thereto shall prescribe in three years.

All unfair labor practices arising from Book V shall be filed with the appropriate agency within one year from accrual of such unfair labor practice; otherwise, they shall be forever barred.

ARTICLE. 296. **Money Claims.** - All money claims arising from employer-employee relations shall be filed within five (5) years from the time the cause of action accrued, otherwise they shall forever be barred.

Employee dismissal actions shall prescribe in four (4) years. (Art.291-a)

ARTICLE 297. **Institution of money claims.** — Money claims specified in the immediately preceding Article shall be filed before the appropriate entity independently of the criminal action that may be instituted in the proper courts.

Pending the final determination of the merits of money claims filed with the appropriate entity, no civil action arising from the same cause of action shall be filed with any court. This provision shall not apply to employees' compensation cases, which shall be processed and determined strictly in accordance with the pertinent provisions of this Code.

TITLE III

Transitory and Final Provisions

ARTICLE 298. **Application of law enacted prior to this Code.** — All actions or claims accruing prior to the effectivity of this Code shall be determined in accordance with the laws in force at the time of their accrual.

SECTION 9. **Authority to Issue Rules** -- The Department of Labor and Employment shall promulgate the necessary rules and regulations to implement the provisions of this Code.

SECTION 10. **Separability clause** --- If any provision or part thereof, or the application thereof to any person or circumstances, is held invalid, the remainder, or the application of such provision or part to other persons or circumstances, shall not be affected thereby.

SECTION 11. **Repealing clause** --- Presidential Decree No. 442, otherwise known as the Labor Code of the Philippines is hereby repealed. All provisions of existing laws, executive orders, decrees, rules and regulations or any part thereof, which are contrary to or inconsistent with the provisions of this Code are hereby repealed, amended or modified accordingly.

Approved.