

REVISED GUIDELINES ON THE IMPLEMENTATION OF THE 13TH MONTH PAY LAW

(November 16, 1987)

- **PRESIDENTIAL DECREE NO. 851**
 - **RULES AND REGULATIONS
IMPLEMENTING P. D. NO. 851**
 - **SUPPLEMENTARY RULES AND
REGULATIONS IMPLEMENTING P. D.
NO. 851**
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1. Removal of Salary Ceiling.

On August 13, 1986, President Corazon C. Aquino issued Memorandum Order No. 28 which provides as follows:

“Section 1 of Presidential Decree No. 851 is hereby modified to the extent that all employers are hereby required to pay all their rank-and-file employees a 13th month pay not later than December 24 of every year.”

Before its modification by the aforecited Memorandum Order, P.D. No. 851 excludes from entitlement to the 13th month pay those employees who were receiving a basic salary of more than P1,000.00 a month. With the removal of the salary ceiling of P1,000.00, all rank and file employees are now entitled to a 13th month pay regardless of the amount of basic salary that they receive in a month if their employers are not otherwise exempted from the application of P.D. No. 851. Such employees are entitled to the benefit regardless of their designation or employment status, and irrespective of the method by which their wages are paid, provided that they have worked for at least one (1) month during a calendar year.

2. Exempted Employers.

The following employers are still not covered by P.D. No. 851:

- a. The Government and any of its political subdivisions, including government-owned and controlled corporations, excepts those corporations operating essentially as private subsidiaries of the Government;
- b. Employers already paying their employees a 13th month pay or more in a calendar year or its equivalent at the time of this issuance;
- c. Employers of household helpers and persons in the personal service of another in relation to such workers; and
- d. Employers of those who are paid on purely commission, boundary, or task basis, and those who are paid a fixed amount for performing specific work, irrespective of the time consumed in the performance thereof, except where the workers are paid on piece-rate basis in which case the employer shall grant the required 13th month pay to such workers.

As used herein, workers paid on piece-rate basis shall refer to those who are paid a standard amount for every piece or unit of work produced that is more or less regularly replicated, without regard to the time spent in producing the same.

The term “its equivalent” as used on paragraph (b) hereof shall include Christmas bonus, mid-year bonus, cash bonuses and other payments amounting to not less than 1/12 of the basic salary but shall not include cash and stock dividends, cost of living allowances and all other allowances regularly enjoyed by the employee, as well as non-monetary benefits. Where an employer pays less than required 1/12th of the employees basic salary, the employer shall pay the difference.

3. *Who are Rank-and File Employees.*

The Labor Code distinguishes a rank-and-file employee from a managerial employee. It provides that a managerial employee is one who is vested with powers of prerogatives to lay down and execute management policies and/or to hire, transfer, suspend, lay-off, recall discharge, assign or discipline employees, or to effectively recommend such managerial actions. All employees not falling within this definition are considered rank-and-file employees.

The above distinction shall be used as guide for the purpose of determining who are rank-and-file employees entitled to the mandated 13th month pay.

4. *Amount and payment of 13th Month Pay*

- (a) Minimum of the Amount. — The minimum 13th month pay required by law shall not be less than one-twelfth of the total basic salary earned by an employee within a calendar year. For the year 1987, the computation of the 13th month pay shall include the cost of living allowances (COLA) integrated into the basic salary of a covered employee pursuant to Executive Order 178.

E.O. No. 178 provides, among other things, that the P9.00 of the daily COLA of P17.00 for non-agricultural workers shall be integrated into the basic pay of covered employees effective 1 May 1987, and the remaining P8.00 effective 1 October 1987. For establishments with less than 30 employees and paid-up capital of P500,000 or less, the integration of COLAs shall be as follows: P4.50 effective on 1 May 1987; P4.50 on 1 October 1987; and P8.00 effective 1 January 1988. Thus, in the computation of the 13th month pay for 1987, the COLAs integrated into the basic pay shall be included as of the date of their integration.

Where the total P17.00 daily COLA was integrated effective 1 May 1987 or earlier the inclusion of said COLA as part of the of the basic pay for the purpose of computing the 13th

month pay shall be reckoned from the date of actual integration.

The “basic salary” of an employee for the purpose of computing the 13th month pay shall include all remunerations or earnings paid by this employer for services rendered but does not include allowances and monetary benefits which are not considered or integrated as part of the regular or basic salary, such as the cash equivalent of unused vacation and sick leave credits, overtime, premium, night differential and holiday pay, and cost-of-living allowances. However, these salary-related benefits should be included as part of the basic salary in the computation of the 13th month pay if by individual or collective agreement, company practice or policy, the same are treated as part of the basic salary of the employees.

- (b) Time of Payment. — The required 13th month pay shall be paid not later than December 24 of each year. An employer, however, may give to his employees one half (1/2) of the required 13th month pay before the opening of the regular school year and the other half on before the 24th of December of every year. The frequency of payment of this monetary benefit may be the subject of agreement between the employer and the recognized/collective bargaining agent of the employees.

5. 13th Month Pay for Certain Types of Employees.

- (a) Employees Paid by Results. — Employees who are paid on piece work basis are by law entitled to the 13th month pay.

Employees who are paid a fixed or guaranteed wage plus commission are also entitled to the mandated 13th month pay, based on their total earnings during the calendar year, i.e., on both their fixed or guaranteed wage and commission.

- (b) Those with Multiple Employers. — Government employees working part time in a private enterprise, including private

educational institutions, as well as employees working in two or more private firms, whether on full or part time basis, are entitled to the required 13th month pay from all their private employers regardless of their total earnings from each or all their employers.

- (c) Private School Teachers. — Private school teachers, including faculty members of universities and colleges, are entitled to the required 13th month pay, regardless of the number of months they teach or are paid within a year, if they have rendered service for at least one (1) month within a year.

6. *13th Month Pay of Resigned or Separated Employee.*

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

The payment of the 13th month pay may be demanded by the employee upon the cessation of employer-employee relationship. This is consistent with the principle of equity that as the employer can require the employee to clear himself of all liabilities and property accountability, so can the employee demand the payment of all benefits due him upon the termination of the relationship.

7. *Non-inclusion in Regular Wage.*

The mandated 13th month pay need not be credited as part of regular wage of employees for purposes of determining overtime and premium pays, fringe benefits insurance fund, Social Security, Medicare and private retirement plans.

8. Prohibitions against reduction or elimination of benefits.

Nothing herein shall be construed to authorize any employer to eliminate, or diminish in any way, supplements, or other employee benefits or favorable practice being enjoyed by the employee at the time of promulgation of this issuance.

(SGD.)
FRANKLIN M. DRILON
Secretary

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