

# CHANROBLES PUBLISHING COMPANY

## **RULE II, BOOK VI OF THE RULES IMPLEMENTING THE LABOR CODE (RETIREMENT BENEFITS FOR EMPLOYEES IN THE PRIVATE SECTOR)**

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Pursuant to the provisions of Article 287 of the Labor Code as amended by Republic Act No. 7641, in relation to Article 5 of the same Code, Rule II of Book VI of the Rules Implementing the Labor Code is hereby issued, the full text of which shall read as follows:

### **RULE II *Retirement Benefits***

**SECTION 1.** General Statement on Coverage — This Rule shall apply to all employees in the private sector, regardless of their position, designation, or status and irrespective of the method by which their wages are paid, except to those specifically exempted under Section 2 hereof. As used herein, the term Act shall refer to Republic Act No. 7641, which took effect on January 7, 1993.

**SECTION 2.** Exemptions — This Rule shall not apply to the following employees:

2.1 Employees of the National Government and its political subdivisions, including Government-owned or controlled corporations, if they are covered by the Civil Service Law and its regulations.

2.2 Domestic helpers and persons in the personal service of another.

2.3 Employees of retail, service, and agricultural establishments or operations regularly employing not more than ten (10) employees. As used in this sub-section:

a. Retail establishment is one principally engaged in the sale of goods to end-users for personal or household use. It shall lose its retail character qualified for exemption if it is engaged in both retail and wholesale of goods.

b. Service establishment is one principally engaged in the sale of service to individuals for their own or household use and is generally recognized as such.

c. Agricultural establishment/operation refers to an employer which is engaged in agriculture. This term refers to all farming activities in all its branches and includes, among others, the cultivation and tillage of the soil, production, cultivation, growing and harvesting of any agricultural or horticultural commodities, dairying, raising of livestock or poultry, the culture of fish and other aquatic products in farms or ponds, and any activities performed by a farmer or on a farm as an incident to or in conjunction with such farming operations, but does not include the manufacture or processing of sugar, coconut, abaca, tobacco, pineapple, aquatic, or other farm products.

SECTION 3. Retirement Under CBA/Contract — 3.1 Any employee may retire or be retired by his employer upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contract, subject to the provisions of Section 5 hereof on the payment of retirement benefits.

3.2 In case of retirement under this Section, the employee shall be entitled to receive such retirement benefits as he may have earned under existing laws and any collective bargaining agreement and other agreements; provided, however, that an employee's retirement benefits under any collective bargaining and other agreements shall not be less than those provided under this Rule; and provided further

that if such benefits are less, the employer shall pay the difference between the amount due the employee under this Rule and that provided under the collective bargaining agreement or other applicable employment contract.

3.3 Where both the employer and the employee contribute to a retirement fund in accordance with a collective bargaining agreement or other applicable employment contract, the employer's total contribution thereto shall not be less than the total retirement benefits to which the employee would have been entitled had there been no such retirement fund. In case the employer's contribution is less than the retirement benefits provided under this Rule, the employer shall pay the deficiency.

SECTION 4. Optional/Compulsory Retirement — 4.1 Optional Retirement — In the absence of a retirement plan or other applicable agreement providing for retirement benefits of employees in an establishment, an employee may retire upon reaching the age of sixty (60) years or more if he has served for at least five (5) years in said establishment.

4.2 Compulsory Retirement — Where there is no such plan or agreement referred to in the immediately preceding sub-section, an employee shall be retired upon reaching the age of sixty-five (65) years.

4.3 Upon retirement of an employee, whether optional or compulsory, his services may be continued or extended on a case to case basis upon agreement of the employer and employee.

4.4 Service Requirement — The minimum length of service of at least five (5) years required for entitlement to retirement pay shall include authorized absences and vacations, regular holidays, and mandatory fulfillment of a military or civic duty.

SECTION 5. Retirement Benefits — 5.1 In the absence of an applicable employment contract, an employee who retires pursuant to the Act 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.

**5.2 Components of One-half (1/2) Month Salary** — For the purpose of determining the minimum retirement pay due an employee under this Rule, the term one-half month salary shall include all of the following:

- a. Fifteen (15) days salary of the employee based on his latest salary rate. As used herein, the term salary includes all remunerations paid by an employer to his employees for services rendered during normal working days and hours, whether such payments are fixed or ascertained on a time, task, piece, or commission basis, or other method of calculating the same, and includes the fair and reasonable value, as determined by the Secretary of Labor and Employment, of food, lodging, or other facilities customarily furnished by the employer to his employees. The term does not include cost of living allowances, profit-sharing payments and other monetary benefits which are not considered as part of or integrated into the regular salary of the employees;
- b. The cash equivalent of five (5) days of service incentive leave;
- c. One-twelfth of the 13th month pay due the employee; and
- d. All other benefits that the employer and employee may agree upon that should be included in the computation of the employee's retirement pay.

**5.3 One-half Month Salary of Employees Who Are Paid by Results** — For covered workers who are paid by results and do not have a fixed monthly rate, the basis for determination of the salary for fifteen days shall be their average daily salary (ADS), subject to the provisions of Rule VII-A, Book III of the rules implementing the Labor Code on the payment of wages of workers who are paid by results. The ADS is the average salary for the last twelve (12) months reckoned from the date of their retirement, divided by the number of actual working days in that particular period.

SECTION 6. Exemption from Tax — Retirement pay provided in the Act may be exempted from tax if the requirements set by the Bureau of Internal Revenue under Sec. 2 (b), item (1) of Revenue Regulations No. 12-86 dated August 1, 1986 are met, to wit:

“Pensions, retirement and separation pay — Pensions, retirement, and separation pay constitute compensation subject to withholding tax, except the following:

1. Retirement benefit received by officials and employees of private firms under a reasonable private benefit plan maintained by the employer, if the following requirements are met:

(i) The benefit plan must be approved by the Bureau of Internal Revenue;

(ii) The retiring official or employee must have been in the service of the same employer for at least ten (10) years and is not less than Fifty (50) years at the time of retirement; and

(iii) The retiring official or employee shall not have previously availed of the privilege under the retirement benefit plan of the same or another employer”.

SECTION 7. Penal Provision — It shall be unlawful for any person or entity to circumvent or render ineffective the provisions of the Act. Violations thereof shall be subject to the penal provisions provided under Article 288 of the Labor Code of the Philippines.

SECTION 8. Relation to Agreements and Regulations — Nothing in this Rule shall justify an employer from withdrawing or reducing any benefits, supplements, or payments as provided in existing laws, individual or collective agreements, or employment practices or policies. All rules and regulations, policy issuances, or orders contrary to or inconsistent with these rules hereby repealed or modified accordingly.

**SECTION 9. Effectivity – This Rule took effect on January 7, 1993 when the Act went into force.**

**(SGD.)**  
**MA. NIEVES R. CONFESOR**  
***Secretary***

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