



Republic of the Philippines
DEPARTMENT OF LABOR AND EMPLOYMENT
Intramuros, Manila



DEPARTMENT OF LABOR AND EMPLOYMENT
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DEPARTMENT ORDER NO. 167
Series of 2016

**IMPLEMENTING RULES AND REGULATIONS OF REPUBLIC ACT NO. 10757
ENTITLED "AN ACT REDUCING THE RETIREMENT AGE OF SURFACE MINE
WORKERS FROM SIXTY (60) TO FIFTY (50) YEARS, AMENDING FOR THE
PURPOSE ARTICLE 302 OF PRESIDENTIAL DECREE NO. 442, AS AMENDED,
OTHERWISE KNOWN AS THE "LABOR CODE OF THE PHILIPPINES"**

Pursuant to Section 4 of Republic Act No. 10757 or An Act Reducing the Retirement Age of Surface Mine Workers from Sixty (60) to Fifty (50) Years, Amending for the Purpose Article 302 of Presidential Decree No. 442, as amended, otherwise known as the "Labor Code of the Philippines", the following implementing rules and regulations are hereby issued:

Section 1. Coverage. – This Rule shall apply to surface mine workers as contemplated under Republic Act No. 10757.

For this purpose, surface mine workers shall only include mill plant workers, electrical, mechanical and tailings pond personnel.

The DENR-MGB may recommend to include, subject to tripartite consultations, other similarly situated surface mine workers.

Section 2. Optional Retirement and Compulsory Retirement. – **2.1. Optional Retirement.** – In the absence of a retirement plan or other applicable agreement providing for more beneficial retirement benefits of surface mine employees in the establishment, any such employee may retire upon reaching the age of fifty (50) years or more if he/she has served for at least five (5) years as surface mine employee.

2.2. Compulsory Retirement – Where there is no such plan or agreement referred to in the immediately preceding subsection, a surface mine employee shall be mandatorily retired upon reaching the age of sixty (60) years.

2.3. 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, holidays, and mandatory fulfillment of a military or civic duty.

Section 3. Retirement under CBA/contract. – **3.1.** Any surface mine 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 4 hereof on the payment of retirement benefits.

3.2. In case of retirement under this Section, the surface mine employee shall be entitled to receive such retirement benefits as he/she may have earned under existing laws and any collective bargaining agreement and other agreements; provided, however, that the

said employee's retirement benefits under any collective bargaining and other agreement 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 employer 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. Retirement Benefits. – 4.1. In the absence of an applicable employment contract, a surface mine employee who retires pursuant to the law 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.

4.2. 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 the following:

- (a) Fifteen (15) days salary of the employee based on his/her latest salary rate. As used herein, the term "salary" includes all remuneration paid by employer to his employees for services rendered during the 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 payment and other monetary benefits which are not considered a 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 to 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.

4.3. 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 of 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) month reckoned from the date of their retirement, divided by the number of actual working days in that particular period.

4.4. Entitlement to Retirement Benefits under the SSS. – A member of the SSS who is a surface mine worker who retires pursuant to the law shall be entitled to the retirement benefits provided for under Section 12 in relation to Section 12-A and Section 12-B of the SS law, subject to the following:



- (a) Has been employed and certified as surface mine worker by his employer, who must be duly registered with the Mines and Geosciences Bureau as a mining contractor, permittee or permit holder. The certification must be properly supported by the worker's job description.
- (b) Has been working as surface mine worker for at least five years prior to semester of retirement, either five years continuous and/or accumulated immediately prior to or earlier than the semester of retirement, but whose actual date of retirement is not earlier than April 27, 2016.

All benefit payments made by the SSS are exempt from all kinds of taxes, fees or charges, and not liable to attachments, garnishments, levy or seizure by or under any legal or equitable process whatsoever. Either before or after receipt by the person or persons entitled thereto as provided for under Section 16 of the SS Law.

Section 5. Exemption from Tax. – The retirement pay provided herein shall be exempt from income tax subject to the conditions set under the National Internal Revenue Code of 1997, as amended, and other relevant issuance of the Bureau of Internal Revenue.

Section 6. Rules on Retirement Age for Underground Workers. – Underground mine workers shall be governed by Department Order No. 09, Series of 1998 or the Rules Prescribing the Retirement Age for Underground Mine Employees pursuant to Republic Act No. 8558.

Section 7. Penal Provision. – It shall be unlawful for any person or entity to circumvent or render ineffective the provisions provided under Article 303 of the Labor Code of the Philippines, as amended.

Section 8. Relation to Agreement 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 agreement, or employment practices or policies.

All rules and regulations, policy issuances or orders contrary to or inconsistent with this Rule are hereby repealed or modified accordingly.

Section 9. Effectivity. – This Rule took effect on April 27, 2016 when RA 10757 went into force.

Manila, Philippines, 19 DECEMBER, 2016.


SILVESTRE H. BELLO III
Secretary

Dept. of Labor & Employment
Office of the Secretary



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