



DEPARTMENT ORDER NO. 159
(SERIES OF 2016)

GUIDELINES FOR THE EMPLOYMENT OF MIGRATORY SUGARCANE WORKERS (MSWs)

Part I. Preliminary Provisions

Pursuant to the policy provision of Republic Act No. 6982 otherwise known as the Sugar Amelioration Act of 1991 and to ensure rational and developmental approach in the employment of Migratory Sugarcane Workers (MSWs), the following guidelines are hereby issued for the guidance of all concerned.

Section 1. Objectives

- a. To integrate relevant provisions of DO-7, 7A, 7-B (series of 1976), DO 18-A (series of 2011) and DO 141-14 (series of 2014) in the employment of MSWs;
- b. To ensure the rights of MSWs as mandated by the constitution and other applicable laws, rules and regulations; and
- c. To provide protection during employment both to the employer and workers.

Section 2. Definition of Terms

- a. **“Adequate Temporary Dwelling Facility”** – refers to the temporary housing for the MSWs which passed the evaluation of the DOLE Regional Office based on the evaluation checklist or parameters for the temporary dwelling facility.
- b. **“Authority to Recruit”** – refers to a document issued by the Secretary through the Regional Director authorizing a person to conduct recruitment activities for local employment on behalf of a private employment agency.
- c. **“Authority to Transport”** – refers to a certificate issued by the Regional Director of the Sending Office after compliance on the requirements provided under Section 4 of these guidelines.
- d. **“Authorized Representative”** - refers to a person, or group of persons, who after complying with the provisions and requirements provided in these

guidelines are authorized to hire migratory sugarcane workers for and in behalf of a Planter

It also refers to a person acting as an agent of a Private Employment Agency (PEA) duly registered with the DOLE Regional Office and granted Authority to Recruit.

- e. **“Bond”** – refers to the bond under Article 108 of the Labor Code that the principal may require from the contractor to be posted equal to the cost of labor under contract. The same way also refer to the security or guarantee posted by the principal for the payment of the services of the contractors under Service Agreements.
- f. **“Cash Bonus Fund or CBF”** – refers to the eighty percent (80%) share of the lien given as social amelioration bonus to the covered sugar workers, including any and all incomes or interests derived therefrom.
- g. **“Legitimate Contracting”** - refers to an arrangement whereby the Principal agrees to put out or farm out with a DOLE registered Contractor the performance or completion of a specific job, work or service within a definite or pre-determined period, regardless of whether such job, work or service is to be performed or completed within or outside the premises of the principal.
- h. **“Contractor”** - refers to any person or entity, including cooperative, engaged in a legitimate contracting or sub-contracting arrangement providing either services, skilled workers, temporary workers, or a combination of services to a principal under a Service Agreement.
- i. **“DOLE”** - refers to the Department of Labor and Employment
- j. **“Employer”**- refers to any person , partnership, corporation or entity engaging the services of a worker through the private employment agency, and who is party to the employment contract.

It also refers to the Planter who is a party in the Employment Contract in case of Direct Hire.
- k. **“Employment Contract”** - refers to the individual written agreement between the employer and the worker stating clearly the terms and conditions of employment in a language known and understood by the worker.
- l. **“Mill”** - refers to the sugar mill or central using sugarcane as feedstock.
- m. **“Migratory Sugarcane Worker or MSW”** –refers to *sacada* or migrant and seasonal sugarcane worker who is employed and transported to another place, from one province to province, or region to another region , to perform agricultural service or work in sugarcane farms; and cannot return to his permanent residence on the same working day due to geographic distance of their worksite.

- n. **“Planter”**– refers to any natural or juridical person who is a sugarcane farm owner, lessee, operator or administrator who produces sugarcane.
- o. **“Planters Association or Cooperative”** – refers to the organization of sugarcane planters in a particular mill district
- p. **“Principal”**- refers to any person or entity, including government agencies and government-owned and controlled-corporations, who/which puts out or farms out a job, service or work to a contractor.
- q. **“Private Employment Agency or PEA”** – refers to any person, partnership or corporation engaged in the legitimate recruitment and placement of workers for local employment.
- r. **“Receiving Office or RO”** - refers to the DOLE Regional/Provincial/Field Office having jurisdiction over the place where the job, work or service of MSWs shall be performed.
- s. **“Recruitment Contract”** – refers to the agreement entered between a private employment agency or its representative and a recruit stating the terms and conditions of the recruitment in a language known and understood by the recruit.
- t. **“Service Agreement”** – refers to the contract between the principal and the contractor containing the terms and conditions governing the performance or completion of specific job, work or service being farmed out for a definite or predetermined period.
- u. **“Service Contract”** – refers to the agreement entered into between the employer and the private employment agency stating clearly the terms and conditions of the service.
- v. **“Sending Office or SO”** - refers to the DOLE Regional/Provincial/Field Office having jurisdiction over the place where the MSWs originally reside or were hired.

It also refers to the DOLE Regional/Provincial/Field Office who will issue the Authority to Transport of the MSWs after compliance of the required documents provided in these guidelines.

- w. **“Sugar Tripartite Council or STC”** – refers to the National Tripartite Council in the Sugar Industry created under Republic Act 6982.
- x. **“Sugarcane Worker”** – refers to the one who works in the sugarcane farm or sugar mill.
- y. **“Sugarcane Workers’ Union/ Association/ Cooperative”**– refers to any workers’ association, union or cooperative solely composed of sugarcane

workers duly registered under DOLE, Cooperative Development Authority or any registering government agencies.

Part II. Modes and Requirement in the Employment of Migratory Sugar Workers

Section 1. Modes of Employment of MSW

- a. Direct Hiring by the Planter or by his/her Authorized Representative;
- b. Hiring by legitimate Contractor who meets the requirements provided under D.O 18-A, series of 2011 and provides services to the planter.

The Contractor shall be considered the employer of the MSWs for purposes of enforcing the provisions of Article 106 and 109 of the Labor Code and other social legislations. The Principal, however, shall be solidarily liable with the Contractor for any violation of the Labor Code as amended and these guidelines; and

- c. Hiring by Planter through PEA who has met the requirements provided under Department Order No. 141-14, series of 2014.

Section 2. Requirements to be submitted to the Receiving Office for the Issuance of Authority to Hire

- a. The Principal or his/her/its Authorized Representative, Contractor and PEA Authorized Representative shall submit to the RO a request for job order validation and issuance of certificate of job availability, labor law compliance, compliance to RA 6982 and/or RA9367 CBF distribution and liquidation, and certificate of adequate temporary dwelling facility, together with the following supporting documents:
 1. Employer's Information Sheet with 2 x 2 picture;
 2. Job Order (JO) to hire MSWs coming from the planter to be verified/validated by the RO;
 3. Barangay Clearance from the residence and/or from the place of business of the planter issued within the year; and
 4. Certificate of Attendance to the Orientation Seminar for MSW Employers issued by DOLE.
- b. In case of direct hiring through authorized representative, the following additional requirements shall be submitted:

1. A Special Power of Attorney issued by the Planter authorizing the representative to hire MSWs; and
2. Any government issued identification cards of the authorized representative.

c. In case of a Contractor, the following additional requirements shall be submitted:

1. Certified True Copy of the DOLE Certificate of Registration under DO No. 18-A of the Contractor and Written Service Agreement duly signed by the contracting parties. The Service Agreement shall stipulate among others the following:

- 1.1 A statement that the MSW shall be paid not less than the applicable minimum wage where the MSWs will be working and provided with other benefits under the Labor Code (Book III) as amended, and other existing laws and these guidelines;
- 1.2 An escalation clause to immediately effect the common provision in the wage order that the prescribed increase in the wage rate of the workers shall be borne by the Principal and the contract shall be deemed amended accordingly for any mandated wage increase; and
- 1.3 The schedule of payment of 13th month pay pursuant to P. D. 851.

2. Bond Certificate for the Contractors

The amount of bond coverage shall be equal to the total estimated wages and benefits to be received by the hired MSWs during the period of their employment. The bond shall be secured from reputable bonding company as determined by DOLE.

In case the MSWs will be deployed to several Regions, the abovementioned requirements of the Contractor shall be submitted to the RO/s having jurisdiction over the area of deployment of MSWs. If the Contractor will only deploy the MSWs to several areas in the same Region, the following requirements shall be submitted to the concerned RO for validation:

1. Job Order/s coming from the Planter/s;
2. Barangay Clearance from the residence and/or from the place of business of the planter/s issued within the year; and
3. Written Service Agreement/s duly signed by the contracting parties.

d. In case of hiring through PEA, the following requirements shall be submitted by owner or authorized representative:

1. Certified True Copy of License issued by DOLE Regional/Field Office;
2. Authority to Recruit issued by DOLE Regional/Field Office having jurisdiction over the place where the main office of the applicant is located; and
3. Service Contract as defined in Part I Section 2 (s) of these guidelines.

Section 3. Action by the Receiving Office

a. The RO shall:

1. Verify the documents submitted;
2. Verify from its records if:
 - 2.1 The Contractor is Labor Law Compliant pursuant to D.O. 131 series of 2013 as evidenced by Certificate of Compliance issued by the concerned DOLE-RO;
 - 2.2 The Planter is compliant as to the distribution and liquidation of the CBF as provided under Rule VII and VIII of DO 114-11 of RA 6982 and Section 10 of Rule V of DO100-10 of RA 9367 as evidenced by submission of Cash Bonus Special Payroll and remittance of unclaimed / undistributed CBF; and
 - 2.3 Conduct field verification on the adequacy of temporary dwelling facility which shall be provided by the Principal or Planter to the MSWs. If found satisfactory, the RO shall issue a Certificate of Adequate Temporary Dwelling Facility.

b. Within ten (10) working days after receipt of the required documents and confirming authenticity of complete documentary requirements, verifying/determining adequacy of the temporary dwelling facility and that the Employer is compliant to labor law, the RO shall issue the Authority to Hire together with the following DOLE validated documents:

1. Job Order;
2. Special Power of Attorney of the authorized representative of the Principal;
3. Service Agreement in case of the Contractor as provided in D.O. 18- A, Annex B; and
4. Valid license, Authority to Recruit and Service Contract in case of PEA.

c. The RO shall notify the SO on the issuance of the Authority to Hire.

Section 4. Requirements to be submitted to the Sending Office (SO) for the issuance of Authority to Transport

a. The Principal (or his/her/its Authorized Representative), Contractor and PEA Authorized Representative shall submit to the SO the documents issued by the RO/s together with the following additional documents to obtain from the SO an Authority to Transport MSWs prior to the hiring of MSWs to work in a particular sugarcane farm:

1. List of MSWs to be hired indicating the complete names, ages, and addresses in four (4) copies and supported by the following documents:

- 1.1 Birth Certificate from the Local Civil Registrar or National Statistics Office;
- 1.2 Pre-employment Medical Certificate issued by a government physical or by a reputable private medical practitioner certifying workers are fit to work; and
- 1.3 The duly accomplished Workers' registration Forms with ID Picture.

In the absence of birth certificate, the SO must require Form 137 or any other legal document, such as Affidavit of Two (2) Disinterested Persons to prove the age of the MSW.

2. Employment Contract as defined in Part I Section 2 (i) of these guidelines stipulating the following:

- 2.1 The specific description of the job, work or service to be performed by the employee;
- 2.2 The wages, benefits and place/s of work and other terms and conditions of employment of MSWs as defined under Part III and Part IV of these guidelines.

b. In case of PEA, the following additional requirements shall be submitted by the owner or authorized representative as provided under Section 40 of DO 141-14:

1. Notarized Recruitment Contract as defined in Part I Section 2 (q.); and
2. Original Copy of Barangay Clearance issued by the Barangay Chairman who has jurisdiction over the place of residence of the recruits.

c. In case the Contractor fails to secure the Authority to Transport for multiple worksites in various Regions from the originating Region, the RO shall become the SO that shall issue the Authority to Transport, provided the Contractor shall submit to the following documents:

1. Validated Job Order;
2. Service Agreement;

3. List of MSWs to be hired indicating the complete names, ages, and addresses in four (4) copies; and
4. Employment Contract.

Section 5. Action by the Sending Office (SO)

a. The SO shall:

1. Review and evaluate the documents as to the completeness, contents and legality of the documents;
 2. Prepare the Authority to Transport if the application and its supporting documents are found complete and acceptable;
 3. Prior to the release of Authority to Transport, the SO shall conduct briefing to orient the concerned Planter or his/her duly authorized representative, Contractors, PEA or its authorized representatives on their respective responsibilities and their role in the maintenance of the Individual Worker's Employment Record.
- b. Prior to deployment of the MSWs, the SO shall conduct Pre-Employment Orientation Seminar (PEOS) for the newly hired and re-contracted MSWs to provide them with structured information to prepare them for living and working, though for a limited period, in other sugar producing provinces or regions. The Bureau of Workers with Special Concerns shall formulate the appropriate module to be used in conducting PEOS.
- c. At the end of the orientation the concerned MSWs shall accomplish Individual Worker's Employment Record (IWER). The IWER shall serve as the employment record of the MSWs in the sugarcane industry and shall be used as basis in granting benefits as provided under RA 6982 and other similar benefits.

Section 6. Authority to Transport MSW

- a. The Authority to Transport under the different modes in the employment of MSWs shall contain the following information:
1. Directly Hired by the Planter
 - 1.1 Name of requesting Planter;
 - 1.2 Period of employment of MSWs;
 - 1.3 Number of workers hired and to be transported; and
 - 1.4 Place of work.

2. Hired by a Contractor

- 2.1 Name of Principal/s indicated in the Service Agreement;**
- 2.2 Name of Contractor;**
- 2.3 Period of employment of MSWs;**
- 2.4 Number of workers hired and to be transported; and**
- 2.5 Area/s of deployment.**

3. Hired through PEA

- 3.1 Name of the Employer indicated in the Service Contract Agreement and Employment Contract;**
- 3.2 Name of the PEA;**
- 3.3 Period of employment of MSWs specified in the Employment Contract; and**
- 3.4 Place of work.**

- b. The SO shall immediately notify the concerned RO/s on the issuance of Authority to Transport, and shall coordinate with the concerned PESO/Local Government Units, Marine Police/Coast Guard/ Philippine National Police, Philippine Ports Authority/ and other concerned authorities having jurisdiction over the place of origin and destination.**
- c. In case of PEA, the Authority to Transport will serve as Certification that the recruitment activity is in accordance with the rules as provided under Section 40 (g) of DO 141-14.**

Section 7. Validity of the Authority to Hire and Transport

The validity of the Authority to Transport shall be co-terminus with the validity of Authority to Hire which will only be valid for one (1) crop year unless such authority is cancelled or revoked for violation of the Labor Code, as amended and other related laws, rules and regulations.

Part III: Terms and Conditions of Employment of Migratory Sugarcane Workers

Section 1. Wages

The MSW shall be paid not less than the mandated minimum wage rate for agriculture sector prevailing at place of work or RTWPB approved piece rate.

Section 2. Deductions from Wages

No deduction shall be made from the wages of the MSWs, except those that are authorized by law.

The principal or planter may request for fair and reasonable value of facilities as determined by the Secretary of Labor and Employment. Deductions for advances must be made every payday but not to exceed 20% of wages earned for a specific period.

Section 3. Frequency of Payment

Wages shall be paid directly to the MSWs in legal tender, at least weekly or twice a month at interval not exceeding 16 days.

Section 4. Social Protection and Welfare Benefits

The Employer shall provide all benefits provided by Law, including but not limited to the following:

- a. SSS, PhilHealth and Pag-IBIG benefits;
- b. Applicable Labor Standards Benefits;
- c. Occupational Safety and Health protection (e.g. Personal Protective Equipment, Safe drinking water, First Aid Kit, etc.);
- d. Adequate Temporary Dwelling Facility; and
- e. 13th Month Pay pursuant to P.D. 851.

Section 5. Termination of Employment

a. Effect of termination of employment

The termination of employment of the MSW prior to the expiration of the employment contract shall be governed by Articles 282,283 and 284 of the Labor Code.

1. Termination of employment due to the expiration of contract or from the completion of the phase of the job work or service.

The MSW shall be paid with separation benefits as may be provided by law or employment contract without prejudice to his/her entitlement to the completion bonuses or other emoluments, including retirement benefits whenever applicable.

2. Termination of employment shall be in accordance with existing law and jurisprudence.

b. Report Submission

The Employers shall:

1. Submit a report of all pre-terminated employment contract to the RO having jurisdiction over the workplace within five (5) calendar days after termination

of contract using the prescribed forms and indicating all information as required by DOLE for policy and statistical purposes; and

2. Submit report of illness and injury sustained by MSWs after thirty (30) days of the milling season. A report on fatality of MSWs should be reported immediately after the incident to concerned DOLE Regional/ Provincial/Field Office.

Section 6. Security of Tenure

The MSWs shall enjoy security of tenure for the duration of the employment contract. The employer shall not terminate the services of any MSW except for a just cause or when authorized by the Labor Code and after due process.

Section 7. Right to Self-Organization

The MSWs shall have the right to self-organization and to form or join Unions or workers' association or other form of associations not contrary to Law for mutual aid and protection of its members or for other legitimate purposes.

Section 8. Settling of Controversies

Any controversy arising from the employer and employee relationship shall be settled in accordance with the existing rules on dispute settlement.

Part IV. Responsibilities of the Employer

Section 1. Responsibility of the Employer

The employment of the MSWs shall commence on the date of deployment to the area. The Employer shall be responsible for the welfare and safe transport of the MSWs from the place of residence.

In case the MSW left the custody of the employer without justifiable reasons known to the Employer, the Employer, within twenty-four (24) hours shall report to the nearest police station or Barangay Office that the MSW is missing. The Employer shall notify in writing the nearest RO about the incident copy furnish the SO for appropriate action. The Employer shall also notify the family of the missing MSW.

Section 2. Obligations of the Employer

a. The Employer shall grant to the MSWs all the benefits prescribed by the law which shall include the following, but not limited to:

1. Free transportation from the point of residence of MSWs to the site of employment and back to the same;
2. Free and adequate dwelling facilities;

3. Minimum wage depending on the locality as prescribed by the RTWPB.
4. 13th Month pay according to PD 851;
5. Emergency allowance pursuant to PD 1751;
6. Legal holiday pay pursuant to PD 928; and
7. Social amelioration bonus pursuant to RA 6982 and RA 9367. The Principal shall be responsible in the preparation of a separate SAP Cash Bonus Special Payrolls for MSWs as prescribed under RA 6982 and RA 809 (if applicable), subject to verification and audit by the Receiving Office.

b. Prohibition Against Child Labor

Employment of Children below eighteen (18) years of age is prohibited as provided under Republic Act 9231 and other applicable laws and issuances.

c. Liabilities of the Employer under Contracting Arrangement shall be consistent with D.O. 18-A.

d. Prohibition Against Labor-Only Contracting

If the Contractor is found to be engaged in labor-only-contracting, the Principal shall be the direct employer of the employees of the Contractor, pursuant to Article 109 of the Labor Code, as amended.

Part V. Enforcement of Labor Standards and Working Conditions

Consistent with Article 128 (Visitorial and Enforcement Power) of the Labor Code, as amended, all DOLE Regional Offices shall enforce and monitor compliance with this Order for the protection and welfare of MSWs. They shall document violations of the law and the rules and shall take appropriate action against the erring party or parties.

Part VI. Monitoring and Reporting

Section 1. Establishment of Management Information System

A. The SO shall establish a database of hired MSWs based on the List of Hired MSWs submitted by the Planter or his/her authorized representative, Contractor and PEA authorized representative.

a. The SO shall prepare a Master List of Hired MSWs and provide copies to the following:

1. The RO, for notation and inspection; and
2. Bureau of Workers with Special Concerns (BWSC) for the development of the national database of hired MSWs. The Master List of Hired MSWs shall be supported by the accomplished Workers' Registration Forms.

b. A summary report will be submitted to the following for labor market information:

1. Bureau of Labor Employment (BLE); and
2. The SO shall coordinate with the local Public Employment Service Office (PESO).

Section 2. Monitoring

- a. The RO shall conduct worksite inspection on compliance by the Employer on the mandated minimum wage, working conditions, living facilities, and other applicable labor standards.
- b. The RO shall submit to the Bureau of Working Conditions (BWC) an inspection report on a quarterly basis, copy furnished the BWSC.
- c. The RO shall also submit to BWSC a summary of report of the injury and illnesses of MSWs during their employment period.
- d. At the end of the milling season, the Employer shall submit to the RO a copy of the regular payroll and cash bonus special payroll as basis for granting benefits under RA 6982 and RA 9367.
- e. The Contractor shall submit a regular payroll to the Principal Planter as basis for granting benefits under RA 6982 and RA 9367.

Section 3. Compliance Monitoring

- a. The SO and RO shall maintain an active coordination network in the enforcement of the provisions as provided herein, while the concerned DOLE Bureaus, in consultation with the Regional Offices, shall continuously review the existing policies and programs that aim to protect the employment and working conditions of MSWs.
- b. A coordination mechanism between and among the concerned DOLE Regional Offices and Bureaus shall therefore be established for monitoring compliance with this Department Order and for policy and program improvement. LGU and other concerned enforcement agencies, including private networks like shipping lines and transport terminals shall also be coordinated.

Part VII. Miscellaneous Provisions

Section 1. Penal Provisions

The applicable penal provisions under the Social benefits laws (SSS, ECC, PhilHealth, and Pag-IBIG), Labor Code, as amended, Republic Act (R.A.) No. 8188, and R.A. 9208, as amended by R.A. No. 10364 shall apply.

Section 2. Sanctions

Any person found violating these guidelines shall also be subject to the following sanctions:

- a. First Offense – Violators shall be required to attend again necessary Lecture/ Orientation on the employment of MSWs.
- b. Second Offense- Suspension of Registration or License of the Contractor and PEA for one (1) year; Non-Issuance of Authority to Hire to Planter or his/her Authorized Representative for one (1) year in case of direct Hire.
- c. Third Offense- Cancellation of Registration or License of the Contractor and PEA; Prohibition from hiring MSWs and shall not be issued of Authority to Hire to Planter or his/her Authorized Representative.

Section 3. Separability Clause

If any of the provisions of these Guidelines are declared void or unconstitutional, the remaining portions or provisions hereof shall be valid and effective.

Section 4. Repealing Clause

All existing administrative orders, rules and regulations, circulars and instructions inconsistent with the provision of this order are hereby **repealed**, amended or modified accordingly

Section 5. Effectivity

This order shall be effective fifteen (15) working days after its publication in at least one (1) newspaper of general circulation.

Manila, Philippines, 22 JUN 2016


ROSALINDA DIMAPILIS-BALDOZ

Secretary

Dept. of Labor & Employment
Office of the Secretary



021760