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**GUIDELINES ON THE COMPUTATION OF SALARY DIFFERENTIAL
OF FEMALE WORKERS DURING HER MATERNITY LEAVE AND ITS CRITERIA
FOR EXEMPTION PURSUANT TO REPUBLIC ACT NO. 11210
AND ITS IMPLEMENTING RULES AND REGULATIONS**

I. PURPOSE

This Guidelines is issued to guide all concerned on the computation of salary differential of female workers during maternity leave and its criteria for exemption pursuant to Republic Act No. 11210 otherwise known as the "105-Day Expanded Maternity Leave Law" and its Implementing Rules and Regulations.

II. COMPUTATION OF SALARY DIFFERENTIAL

The employer shall pay the salary differential between the full salary of female worker during her maternity leave and the actual cash benefits received from the Social Security System (SSS) which shall be computed as follows:

1. Compute the amount of full pay:

$$\text{Full pay}^{[1]} = \text{monthly salary}^{[2][3]} \times \text{maternity period in months}^{[4]}$$

2. Ascertain the employee's premium contribution share for SSS, Philippine Health Insurance Corporation (PhilHealth), and Home Development Mutual Fund (Pag-IBIG) covering the maternity period.
3. Determine the amount of SSS maternity leave benefit of the female worker based on the prescribed formula and computation by the SSS.
4. Deduct from the amount of full pay the total amount of employee's premium contribution share and SSS maternity leave benefit.

¹ Full pay, as defined in Section 1(j), Rule II of the IRR of RA 11210, refers to actual remuneration or earnings paid by an employer to a worker for services rendered on normal working days and hours not lower than the wage rate fixed by the Regional Tripartite Wages and Productivity Board (RTWPB) including allowances provided for under existing company policy or collective bargaining agreement, if any.

² Equivalent monthly rate may be computed as follows: (daily rate x factor) / 12.

³ If female worker is not uniformly paid whereby daily rate or monthly rate cannot be determined, the average of her monthly salary for the last twelve-month period shall be adopted.

⁴ As provided in Article 13 of the Civil Code of the Philippines, a month shall be understood as thirty (30) days.

To illustrate, below is a sample computation:

Monthly salary	Expanded maternity leave (105 days or 3.5 months)			Salary differential ^[5]
	Full pay	Social welfare premium contributions	SSS maternity benefit	
Php14,006.75	Php49,023.63	Php2,984.07	Php49,000.00	-Php2,960.45
Php31,300.00	Php109,550.00	Php4,656.31	Php70,000.00	Php34,893.69

III. COVERAGE FROM INCOME TAX OF THE SALARY DIFFERENTIAL

The amount of salary differential shall be treated as taxable income of the female worker subject to the rules and regulations of the Bureau of Internal Revenue.

IV. EFFECT ON THE COMPUTATION OF THIRTEENTH (13TH) MONTH PAY

The salary differential shall be included as part of the basic salary for purposes of computation of the 13th month pay of the rank-and-file employee.

V. CRITERIA FOR EXEMPTION OF PAYMENT OF SALARY DIFFERENTIAL

Establishments in the private sector mentioned in Section 5, Rule VI of the Implementing Rules and Regulations of RA 11210, may be exempted from paying the salary differential by submitting within the first semester of every calendar year, in duplicate copies, at the DOLE Regional/Provincial/Field/Satellite Office where the applicant principally operates, all of the following requirements:

- a. DOLE-prescribed Application Form,
- b. Copy of Certificate of Registration issued by the Department of Trade and Industry or the Securities and Exchange Commission or the Cooperative Development Authority, as the case may be, and
- c. Copy of the latest Business Permit issued by the Local Government Unit.

Additional requirements, as applicable, for the following:

- I. Distressed establishments

⁵ Other deductions in salary such as loans, may be deducted from the salary differential as may be agreed upon by the employer and the female worker.

- a. Audited Financial Statement/s^[6] duly received by the Bureau of Internal Revenue and/or the Securities Exchange Commission or the Cooperative Development Authority or
 - b. Certification from the Bangko Sentral ng Pilipinas that it is under receivership or liquidation.
- II. Retail/service establishments and other enterprises regularly employing not more than ten (10) workers
- Owner or President's Affidavit as to the number of employees for the twelve-month period preceding the date of application.
- III. Micro enterprises whose total assets are not more than Three Million Pesos (Php3,000,000.00)
- Barangay Micro Business Enterprise Certification.
- IV. Establishments already providing similar or more than the benefits provided in RA 11210 and its IRR
- a. Certified True Copy of existing Collective Bargaining Agreement or policy; or
 - b. Employer and Workers Representative's Certification of existing company practice.

The Certificate of Exemption shall be valid for one year from the date of issuance thereof. However, if an establishment was issued already a Certificate of Exemption by the Regional Tripartite Wage and Productivity Board (RTWPB) from payment of minimum wage for a certain year, the same Certificate shall also carry with it an exemption from payment of salary differential for the same year and no separate application shall be required in this case.

VI. APPLICATION PROCESS

The application for exemption from payment of salary differential shall be filed in duplicate copies at the DOLE Regional/Provincial/Field/Satellite Office where the applicant principally operates. No application for exemption shall be accepted unless all the requirements in the preceding Section are complied with.

The DOLE Regional Director or his/her authorized representative shall conduct an inspection, if necessary, to verify the number of workers, nature of business, and other relevant information, within five (5) working days from receipt of the application.

⁶ Where the exemption being sought is for a particular project/branch/division, the consolidated Audited Financial Statements of the establishment shall be used as basis for determining its distressed condition. A corporation/cooperative shall submit their Audited Financial Statement for the last accounting period immediately preceding the application, while a sole proprietorship or partnership shall submit their Audited Financial Statement for the last two (2) full accounting periods immediately preceding the application.

The DOLE Regional EML Committee shall evaluate all applications for exemption and/or results of inspection within five (5) working days. It shall submit its recommendation to the DOLE Regional Director or his/her authorized representative for approval within five (5) working days from receipt thereof.

VII. REVOCATION OF CERTIFICATE OF EXEMPTION

The DOLE Regional Director or his/her duly authorized representative shall revoke the Certificate of Exemption issued to the establishment after due process, based on any of the following grounds:

- a. Misrepresentation of facts in the application;
- b. Submission of falsified or tampered application or supporting documents;
- c. Non-compliance with labor standards and working conditions;
- d. Non-compliance with rules and regulations of the Social Security System, Home Development Mutual Fund, Philippine Health Insurance Corporation, or Employers' Compensation Commission;
- e. Collecting any fees not authorized by law and other applicable rules and regulations; or
- f. Violation of any provision of the Labor Code of the Philippines.

The DOLE Regional Director or his/her duly authorized representative may conduct a clarificatory hearing within seven (7) working days from receipt of complaint. The proceedings shall be summary in nature.

The conduct of hearings shall be terminated within ten (10) working days from the first scheduled clarificatory hearing. The DOLE Regional Director or his/her duly authorized representative shall resolve the case within ten (10) working days from the date of the last hearing. The Order shall be final and not appealable.

Manila, Philippines, 9 July 2019


SILVESTRE H. BELLO III
Secretary

Dept. of Labor & Employment
Office of the Secretary



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APPLICATION FORM

EXEMPTION FROM PAYMENT OF SALARY DIFFERENTIAL

Please supply all required information. Misrepresentation, false statement or fraud in this application or in any supporting document is ground for denial of application or revocation of certificate.

I. TYPE OF APPLICATION:		<input type="checkbox"/> New	<input type="checkbox"/> Renewal
II. BUSINESS INFORMATION			
a. Type of business organization			
<input type="checkbox"/> Sole proprietorship	<input type="checkbox"/> Corporation	<input type="checkbox"/> Barangay Micro Business Enterprise (BMBE)	
<input type="checkbox"/> Partnership	<input type="checkbox"/> Cooperative		
b. Name of establishment			
c. Address			
d. Contact number			
e. E-mail address			
f. Nature of business			
g. Number of employees	Female	Male	
h. Description of business operation:			
III. CRITERIA ON AVAILMENT OF EXEMPTION <i>(Please check item VII for list of requirements)</i>			
<input type="checkbox"/> Distressed establishment			
<input type="checkbox"/> Sole proprietorship or partnership	<input type="checkbox"/> Non-stock, non-profit organization		
<input type="checkbox"/> Corporation or cooperative	<input type="checkbox"/> Bank or quasi-bank		
<input type="checkbox"/> Regularly employing not more than ten (10) workers			
<input type="checkbox"/> Retail	<input type="checkbox"/> Service	<input type="checkbox"/> Other enterprise	
<input type="checkbox"/> Micro-business enterprise engaged in the production, processing, or manufacturing of products or commodities including agro-processing, trading, and services, whose total assets are not more than Three Million Pesos (P3,000,000.00) in accordance with the Barangay Micro Business Enterprises (BMBE's) Act of 2002			
<input type="checkbox"/> Already providing similar or more than the benefits required under RA 11210 and its IRR pursuant to:			
<input type="checkbox"/> Collective bargaining agreement (CBA)	<input type="checkbox"/> Company practice	<input type="checkbox"/> Company policy	
IV. UNDERTAKING			
I, <u>(name of owner or authorized representative)</u> , declare that the statements made in this application and its supporting documents are true and correct to the best of my knowledge and that the same was made known to all workers of the establishment.			
Name and signature of owner or authorized representative		Date	
V. ATTESTATION			
I, <u>(name of workers' representative)</u> , attest that the application was made known to all workers without any intention of circumventing the law and that the details provided herein and its supporting documents are true and correct to the best of my knowledge.			
Name and signature of workers' representative		Date	
VI. AUTHORIZED CONTACT PERSON			
a. Name			
b. Designation			
c. Contact number			
d. E-mail address			

VII. REQUIREMENTS

All of the following:

- Two (2) copies of DOLE-prescribed Application Form and all other applicable requirements,
- Copy of Certificate of Registration from:
 - Department of Trade and Industry (DTI),
 - Securities and Exchange Commission (SEC), if applicable, or
 - Cooperative Development Authority (CDA), if applicable, and
- Copy of the latest Business Permit issued by the Local Government Unit.

Additional requirements, as applicable, for the following:

Distressed establishments

- Audited Financial Statement/s duly received by the Bureau of Internal Revenue and/or the Securities Exchange Commission or the Cooperative Development Authority
 - One (1) full accounting period if corporation or cooperative, or
 - Two (2) full accounting periods if sole proprietorship or partnership; or
- Certification from the Bangko Sentral ng Pilipinas that it is under receivership or liquidation.

Retail/service establishments and other enterprises regularly employing not more than ten (10) workers

- Owner or President's Affidavit as to the number of employees for a calendar year

Micro enterprises whose total assets are not more than Three Million Pesos (Php3,000,000.00)

- Barangay Micro Business Enterprise Certification

Establishments already providing similar or more than the benefits provided in RA 11210 and its IRR

- Certified True Copy of existing Collective Bargaining Agreement or policy or
- Employer and Workers Representative's Certification of existing company practice



This

CERTIFICATE OF EXEMPTION

Numbered RO(No.)-(Area)-EML-([MMDDYY])-(Seq. no.)
is issued to

(Company Name)

With company address located at **(complete address)**

And Tax Identification No. (TIN) **(Number)**

For having complied with the requirements as provided for under Republic Act No. 11210, otherwise known as the 105-Day Expanded Maternity Leave Law, its Implementing Rules and Regulations (IRR), and other supplemental issuances. This Certificate of Exemption is being issued on the basis that the company is **(criteria of exemption)**.

In witness whereof, and by authority vested in me, I have hereunto set my hand and affixed the Official Seal of the Department of Labor and Employment (DOLE) Regional Office No. **(No.)** located at **(DOLE RO address)** on this **(day)** of **(month)** **(year)**.

This Certificate of Exemption shall be valid until **(day)** of **(month)** **(year)** subject for annual justification and re-issuance based on Section 5 (c) of Republic Act No. 11210 and Section 5, Rule VI of its IRR, unless sooner revoked by the Head of the issuing DOLE Regional Office.

(Name of Regional Director)

Regional Director

NOT VALID AS EXEMPTION FROM PAYMENT OF MINIMUM WAGE