

CHANROBLES PUBLISHING COMPANY

REPUBLIC ACT NO. 7641

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- *RULES IMPLEMENTING THE NEW RETIREMENT LAW*
 - *GUIDELINES FOR THE EFFECTIVE IMPLEMENTATION OF R.A. 7641, THE RETIREMENT PAY LAW*
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AN ACT AMENDING ARTICLE 287 OF PRESIDENTIAL DECREE NO. 442, AS AMENDED, OTHERWISE KNOWN AS THE LABOR CODE OF THE PHILIPPINES, BY PROVIDING FOR RETIREMENT PAY TO QUALIFIED PRIVATE SECTOR EMPLOYEES IN THE ABSENCE OF ANY RETIREMENT PLAN IN THE ESTABLISHMENT

SECTION 1. Article 287 of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines, is hereby amended to read as follows:

“Art. 287. Retirement. — Any employee may be retired upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contract.

“In case of retirement, 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 herein.

“In the absence of a retirement plan or agreement providing for retirement benefits of employees in the establishment, an employee upon reaching the age of sixty (60) years or more, but not beyond sixty-five (65) years which is hereby declared the compulsory retirement age, who has served at least five (5) years in the said establishment, may retire and 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.

“Unless the parties provide for broader inclusions, the term one-half (1/2) month salary shall mean fifteen (15) days plus one-twelfth (1/12) of the 13th month pay and the cash equivalent of not more than five (5) days of service incentive leaves.

“Retail, service and agricultural establishments or operations employing not more than (10) employees or workers are exempted from the coverage of this provision.

“Violation of this provision is hereby declared unlawful and subject to the penal provisions provided under Article 288 of this Code.”

SECTION 2. Nothing in this Act shall deprive any employee of benefits to which he may be entitled under existing laws or company policies or practices.

SECTION 3. This Act shall take effect fifteen (15) days after its complete publication in the Official Gazette or in at least two (2) national newspapers of general circulation, whichever comes earlier.

Approved: December 9, 1992

**RULES IMPLEMENTING THE NEW
RETIREMENT LAW**
(April 1, 1993)

➤ *REPUBLIC ACT No. 7641*
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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 and/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. (Deleted by Department Order No. 20 issued by Secretary Ma. Nieves R. Confessor on May 31, 1994.)

2.3 Employees of retail, service and agricultural establishment 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 sale 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/operations” 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 incident to or in conjunction with such farming operations, but does not include the manufacture and/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 or retirement plan 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 or individual agreement or retirement plan.

3.3 Where both the employer and the employee contribute to a retirement fund in accordance with an individual or collective 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 subsection, 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 in an establishment or with an employer 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 agreement or retirement plan, an employee who retires pursuant to the Act shall be entitled to retirement pay equivalent to at least one-half ($\frac{1}{2}$) 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 ($\frac{1}{2}$) 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 of 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 not more than five (5) days of service incentive leave;
- (c) One-twelfth of the 13th month pay due the employee.
- (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. — The 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, except the following:

- (1) Retirement benefits 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 of age 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 are 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

**GUIDELINES FOR THE EFFECTIVE
IMPLEMENTATION OF R.A. 7641, THE
RETIREMENT PAY LAW**

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- *REPUBLIC ACT No. 7641*
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A. Coverage

Republic Act No. 7641 or the Retirement Pay Law 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. They shall include part-time employees, employees of service and other job contractors and domestic helpers or persons in the Personal service of another.

The law does not cover employees of retail, service and agricultural establishments or operations employing not more than ten (10) employees or workers and employees of the National Government and its political subdivisions, including Government-owned and/or controlled corporations, if they are covered by the Civil Service Law and its regulations.

B. Computation of Retirement Pay

A covered employee who retires pursuant to RA 7641 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.

The law is explicit that “one-half month salary shall mean fifteen (15) days plus one-twelfth (1/12) of the 13th month pay and the cash equivalent of not more than five (5) days service incentive leaves” unless the parties provide for broader inclusions. Evidently, the law expanded the concept of “one-half month salary” from the usual one-month salary divided by two.

In reckoning the length of service, the period of employment with the same employer before the effectivity date of the law on January 7, 1993 should be included.

C. Substitute Retirement Plan

Qualified workers shall be entitled to the retirement benefit under RA 7641 in the absence of any individual or collective agreement, company policy or practice. In case there is such an agreement, policy or practice providing retirement benefit which is equal or superior to that which is provided in the Act, said agreement, policy or practice will prevail.

As provided in RA 7742, a private employer shall have the option to treat the coverage of the PAG-IBIG Fund as a substitute retirement benefit for the employee concerned within the purview of the Labor Code as amended; provided, such option does not in any way contravene an existing collective bargaining agreement or other employment agreement. Thus, the PAG-IBIG Fund can be considered as a substitute retirement plan of the company for its employees provided that such scheme offers benefits which are more than or at least equal to the benefits under RA 7641. If said scheme provides less than what the employee is entitled to under RA 7641, the employer is liable to pay the difference.

If both the employee and the employer contribute to a retirement plan, only the employer’s contribution and its increments shall be considered for full or partial compliance with the benefit under RA 7641. On the other

hand, where the employee is the lone contributor to the PAG-IBIG Fund, the employer being exempted from its coverage, the employer is under obligation to give his employee retirement benefits under the Act.

Adopted: 24 October 1996

(SGD.)
LEONARDO A. QUISUMBING
Secretary

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