

Republic of the Philippines
DEPARTMENT OF LABOR AND EMPLOYMENT
Manila

DEPARTMENT ORDER NO. 65-04

Rules and Regulations Implementing
Republic Act No. 9231, Amending R.A. 7610, as Amended

Pursuant to Section 10 of Republic Act No. 9231 (An Act Providing for the Elimination of the Worst Forms of Child Labor and Affording Stronger Protection for the Working Child, Amending for this Purpose Republic Act No. 7610, as amended, Otherwise Known as the Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act), the following Implementing Rules and Regulations are hereby promulgated:

Chapter 1 – Preliminary Provisions

SECTION 1. Coverage – These Rules shall cover all persons and entities engaging the services of or employing children.

SECTION 2. Declaration of State Policy and Principles – The State shall provide special protection to children from all forms of abuse, neglect, cruelty, exploitation and discrimination and other conditions prejudicial to their development including child labor and its worst forms; provide sanctions for their commission and carry out a program for prevention and deterrence of, and crisis intervention in situations of child abuse, exploitation and discrimination. The State shall intervene on behalf of the child when the parent, guardian, teacher or person having care or custody of the child fails or is unable to protect the child against abuse, exploitation and discrimination or when such acts are committed by the said parent, guardian, teacher or person having care and custody of the child.

The State shall also protect and rehabilitate children gravely threatened or endangered by circumstances which affect or will affect their survival and normal development and over which they have no control.

The best interest of children shall be the paramount consideration in all actions concerning them, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, and legislative bodies, consistent with the principles of First Call for Children as enunciated in the United Nations Convention of the Rights of the Child. Every effort shall be exerted to promote the welfare of children and enhance their opportunities for a useful and happy life.

SECTION 3. Definition of Terms – As used in these Rules, the term:

- (a) “Child” refers to any person under 18 years of age.
- (b) “Child labor” refers to any work or economic activity performed by a child that subjects him/her to any form of exploitation or is harmful to his/her health and safety or physical, mental or psychosocial development.
- (c) “Working Child” refers to any child engaged as follows:
 - i. when the child is below eighteen (18) years of age, in work or economic activity that is not child labor as defined in the immediately preceding sub-paragraph, and
 - ii. when the child below fifteen (15) years of age, (i) in work where he/she is directly under the responsibility of his/her parents or legal guardian and where only members of the child’s family are employed; or (ii) in public entertainment or information.
- (d) “Parent” refers to either the biological or adoptive mother or father.
- (e) “Guardian” refers to any person who exercises substitute parental authority regardless of whether or not such parental authority over a child is bestowed by a court.

- (f) “Members of the family” refers to the child’s parents, guardian, brothers or sisters whether of full or half blood, and other ascendants and descendants or collateral relatives within the fourth civil degree of consanguinity.
- (g) “Employer” refers to any person, whether natural or juridical who, whether for valuable consideration or not, directly or indirectly procures, uses, avails itself of, contracts out or otherwise derives benefit from the work or services of a child in any occupation, undertaking, project or activity, whether for profit or not. It includes any person acting in the interest of the employer.
- (h) “Department” refers to the Department of Labor and Employment.
- (i) “Collective needs of the family” refer to such basic needs as food, shelter, light and water, clothing, education, medical, transportation and other expenditure items necessary for the survival of the family of the child.
- (j) “Work permit” refers to the permit secured by the employer, parent or guardian from the Department for any child below 15 years of age in any work allowed under Republic Act No. 9231.
- (k) “Hours of work” include (1) all time during which a child is required to be at a prescribed workplace, and (2) all time during which a child is suffered or permitted to work. Rest periods of short duration during working hours shall be counted as hours worked.
- (l) “Workplace” refers to the office, premises or worksite where a child is temporarily or habitually assigned. Where there is no fixed or definite workplace, the term shall include the place where the child actually performs work to render service or to take an assignment, to include households employing children.
- (m) “Public entertainment or information” refers to artistic, literary, and cultural performances for television show, radio program, cinema or film, theater, commercial advertisement, public relations activities or campaigns, print materials, internet, and other media.
- (n) “Formal education” refers to the institutionalized, hierarchically structured and chronologically – guided educational system running from elementary to tertiary levels.
- (o) “Non-formal education” refers to any organized, systematic educational activity conducted outside of the formal education system to provide selected type of learning.
- (p) “Alternative learning system” refers to a parallel and comparable learning system which provides a viable alternative to the existing formal education system.
- (q) “Forced labor and slavery” refers to the extraction of work or services from any person by means of enticement, violence, intimidation or threat, use of force or coercion, including deprivation of freedom, abuse of authority or moral ascendancy, debt bondage or deception.
- (r) “Child pornography” refers to any representation of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.
- (s) “Recovery and reintegration” refers to various interventions and services that facilitate the process of healing and eventual return of the child to the family and community.
- (t) “Normal development of the child” refers to the physical, emotional, mental, and spiritual growth of a child within a safe and nurturing environment where he/she is given adequate nourishment, care and protection and the opportunity to perform tasks appropriate at each stage of development.

Chapter 2 – Prohibition on the Employment of Children

SECTION 4. General Prohibition – Except as otherwise provided in these Rules, no child below 15 years of age shall be employed, permitted or suffered to work, in any public or private establishment.

SECTION 5. Prohibition on the Employment of Children in Worst Forms of Child Labor – No child shall be engaged in the worst forms of child labor. The phrase “worst forms of child labor” shall refer to any of the following:

(a) All forms of slavery, as defined under the “Anti-trafficking in Persons Act of 2003”, or practices similar to slavery such as sale and trafficking of children, debt bondage and serfdom and forced or compulsory labor, including recruitment children for use in armed conflict.

(b) The use, procuring, offering or exposing of a child for prostitution, for the production of pornography or for pornographic performances;

(c) The use, procuring or offering of a child for illegal or illicit activities, including the production or trafficking of dangerous drugs or volatile substances prohibited under existing laws; or

(d) Work which, by its nature or the circumstances in which it is carried out, is hazardous or likely to be harmful to the health, safety or morals of children, such that it:

i. Debases, degrades or demeans the intrinsic worth and dignity of a child as a human being; or

ii. Exposes the child to physical, emotional or sexual abuse, or is found to be highly stressful psychologically or may prejudice morals; or

iii. Is performed underground, underwater or at dangerous heights; or

iv. Involves the use of dangerous machinery, equipment and tools such as power-driven or explosive power-actuated tools; or

v. Exposes the child to physical danger such as, but not limited to the dangerous feats of balancing, physical strength or contortion, or which requires the manual transport of heavy loads; or

vi. Is performed in an unhealthy environment exposing the child to hazardous working conditions, elements, substances, co-agents or processes involving ionizing, radiation, fire, flammable substances, noxious components and the like, or to extreme temperatures, noise levels or vibrations; or

vii. Is performed under particularly difficult conditions; or

viii. Exposes the child to biological agents such as bacteria, fungi, viruses, protozoa, nematodes and other parasites; or

ix. Involves the manufacture or handling of explosives and other pyrotechnic products.

SECTION 6. Prohibition on the Employment of Children in Certain Advertisements – No child below 18 years of age shall be employed as a model in any advertisement directly or indirectly promoting alcoholic beverages, intoxicating drinks, tobacco and its byproducts, gambling or any form of violence or pornography.

Chapter 3 – Exceptions to the Prohibition

SECTION 7. Exceptions and Conditions – The following shall be the only exceptions to the prohibition on the employment of a child below 15 year of age:

(a) When the child works under the sole responsibility of his/her parents or guardian, provided that only members of the child’s family are employed.

(b) When the child’s employment or participation in public entertainment or information is essential, regardless of the extent of the child’s role.

Such employment shall be strictly under the following conditions:

i. The total number of hours worked shall be in accordance with Section 15 of these Rules;

ii. The employment does not endanger the child’s life, safety, health and morals, nor impair the child’s normal development;

iii. The child is provided with at least the mandatory elementary or secondary education; and

iv. The employer secures a work permit for the child in accordance with Section 8-12 of these Rules.

Chapter 4 – Requirements to Avail of Exception To Employment Prohibition

SECTION 8. Work Permit – Except as provided in Section 13, no child below 15 years of age shall be allowed to commence work without a work permit. An employer must first secure a work permit from the Regional Office of the Department having jurisdiction over the workplace of the child. In cases where the work is done in more than one workplace falling under the jurisdiction of more than one Regional Office, the application shall be made with the Regional Office having jurisdiction over the principal office of the employer. However, at least two days prior to the performance of the work, the employer shall inform the Regional Office having jurisdiction over the workplace of the activities to be undertaken involving the child.

SECTION 9. Requirements for the Issuance of Work Permit – The employer shall submit to the appropriate Regional Office the Following:

(a) A duly accomplished and verified application for work permit containing the following information:

i. Terms and conditions of employment including hours of work, number of working days, remuneration, and rest period, which shall be in accordance with law;

ii. Measures to ensure the protection, health, safety, morals, and normal development of the child, including but not limited to the following:

1. comfortable workplace and adequate quarters;
2. break or rest periods in comfortable day beds or couches;
3. clean and separate dressing rooms and toilet facilities for boys and girls;
4. provision for adequate meals and snacks and sanitary eating facility;
5. provision of all the necessary assistance to ensure the adequate and immediate medical and dental attendance and treatment to an injured or sick child in case of emergency.

(b) Except when the child is below seven years old,

i. Proof that the child is enrolled and regularly attending elementary or secondary school classes, consisting of certificate of enrolment for the current year or current school identification or report card; or

ii. If the child is not enrolled, a brief description of the program for education, training and skills acquisition for the child, in accordance with Section 19 (b) of these Rules.

(c) An authenticated copy of the child's Birth Certificate or a Certificate of late Registration of Birth issued by the NSO or the city/municipal registrar;

(d) A medical certificate issued by a licensed physician stating that he/she has personally examined the child for whom a work permit is being secured, and that the child is fit to undertake the work in which he/she is to be engaged. Such certificate must bear in print the certifying physician's full name and his/her license number;

(e) Two passport size photographs of the child;

(f) When the employer is the parent, guardian, or a family member other than the parent of the child, he/she shall present any valid document such as latest passport, latest postal/company identification card, and driver's license establishing his/her identity. A legal guardian is likewise required to present a duly authenticated proof of legal guardianship while a family member shall present any proof of relationship to the child;

(g) When the employer is in public entertainment or information, he/she shall submit a certified true copy of the employer's business permit or certificate of registration and a written employment contract to be approved by the Department. An express agreement of the child to the provisions of the contract is needed when such child is between seven and below 15 years of age.

SECTION 10. Application Fee – The employer shall pay an application fee of One Hundred Philippine Pesos (P100.00) to cover administrative costs. This amount may be reviewed and adjusted by the Secretary of Labor and Employment from time to time subject to applicable regulations.

SECTION 11. Action on the Application – Within three working days from the employer’s compliance with Section 8-10, the Regional Office shall require the appearance of the child’s parent, guardian, or employer, or the child himself or herself as may be appropriate, to validate the information indicated in the application and to educate such parent, guardian, or employer, on child labor laws and regulations.

The Regional Office, through the Regional Director, shall issue the work permit within three days from compliance with all the foregoing requirements. Non-compliance with the requirements shall automatically result in the denial of the application. In such instances, the application shall be deemed not filed and the Regional Office shall immediately return it to the applicant, indicating the requirements that were not complied with.

SECTION 12. Validity of Work Permit – The work permit shall state the period of its validity based on the employment contract of the application for work permit, as the case may be. However, the period of validity shall in no case exceed one year.

SECTION 13. Employment of Spot Extras – In public entertainment or information, the requirements for the issuance of work permit stated in Section 8-12 shall not be applicable to the employment of spot extras or those being cast outright on the day of the filming or taping. Instead, the employer shall file a notice with the Regional Office where the work is to be performed that it will undertake activities involving child work. The notice shall be in the form prescribed by the Department and shall state the approximate number of child workers to be employed, the date, place and time the work is to be performed, and an undertaking that the employment shall be in conformity with Republic Act No. 9231 and these Rules.

SECTION 14. Compliance with E-Commerce Law – The Department shall develop systems to enable parties to comply, through electronic media, with the documentary requirements set forth in these Rules. It shall also set up a database of all contracts filed and work permits issued which shall be accessible to the public, subject to reasonable rules of access which the Department may adopt.

Chapter 5 – Hours of Work

SECTION 15. Hours of Work of a Working Child – The following hours of work shall be observed for any child allowed to work under Republic Act No. 9231 and these Rules:

- (a) For a child below 15 years of age, the hours of work shall not be more than twenty (20) hours as week, provided that the work shall not be more than four hours at any given day;
- (b) For a child 15 years of age, but below 18, the hours of work shall not be more than eight hours a day, and in no case beyond 40 hours a week; and
- (c) No child below 15 year of age shall be allowed to work between eight o’clock in the evening and six o’clock in the morning of the following day and no child 15 years of age but below 18 shall be allowed to work between ten o’clock in the evening and six o’clock in the morning of the following day.

Sleeping time as well travel time of a child engaged in public entertainment or information from his/her residence to his/her workplace shall not be included as hours worked without prejudice to the application of existing rules on employees compensation.

Chapter 6 – Working Child’s Income

SECTION 16. Ownership and Use of the Working Child’s Income – The wages, salaries, earnings and other income of the working child belong to him/her in ownership and shall be set aside primarily for his/her support, education, or skills acquisition and secondarily to the collective needs of the family: Provided, That not more than twenty percent (20%) of the child’s income may be used for the collective needs of the family.

SECTION 17. Administration of the Working Child’s Income – The income of the working child and/or the property acquired through his/her work shall be administered by both parents. In the absence of , or incapacity of either of the parents, the other parent shall administer the same. In case both parents are absent or incapacitated, the order of preference on parental authority shall be in accordance with Article 216 of the Family Code, as follows:

- (a) The surviving grandparent; in case several survive, the one designated by the court taking into account all relevant considerations, especially the choice of the child over seven years of age, unless the grandparent chosen is unfit;
- (b) The oldest brother or sister, over 21 years of age, unless unfit or disqualified; and
- (c) The child's actual custodian over 21 years of age, unless unfit or disqualified.

SECTION 18. Preservation of the Working Child's Income – The income of the working child shall be deposited in a Trust Fund or Savings Account set up or opened under his/her name by the administrator of such income, subject to the conditions set forth in this Section and the Civil Code.

The administrator shall make an accounting of all wages, salaries, earnings and other income of the child. When the child's gross earnings in a year amount to at least Two Hundred Thousand Pesos (P200,000.00), the administrator shall set up a Trust Fund for the child where at least thirty percent (30%) of such amount shall be deposited.

For a child earning less than P200,000.00 a year, at least thirty percent (30%) of his/her income may be deposited in a Savings Account each time the child receives an income. The accumulated savings shall be immediately transferred to the Trust Fund for the child should his/her total gross income for a given year is at least Two Hundred Thousand Pesos (P200,000.00).

The child shall have full control over the Trust Fund upon reaching the age of majority. The administrator shall render a semi-annual accounting of the Trust Fund to the concerned Regional Office of the Department. He or she shall be required to submit, whether actual or on-line, a verified financial statement in an appropriate form prescribed by the Department.

Chapter 7 – Education, Training and Other Services

SECTION 19. Access to Education and Training for the Working Child – Every child shall have access to formal or non-formal education.

(a) No child shall be deprived of formal, non-formal or alternative learning systems of education. In all cases where the child is allowed to work, the employer shall provide the child with access to at least elementary and/or secondary education. No employer shall make a child work during his/her school hours, and hinder his/her access to education during school days.

(b) The continuing program for education and training for the working child shall be that developed by the Department of Education for formal, non-formal and alternative learning systems of education, or by the Technical Education and Skills Development Authority, whichever is applicable to the circumstances of the child.

SECTION 20. Access to Immediate Legal, Medical and Psycho-Social Services – Working children, including victims of child labor shall have the right to free legal, medical and psycho-social services to be provided by the State through agencies mandated to provide such services, as well as through networks like the National Program Against Child Labor, other existing interagency mechanisms, or those that may be established.

The Department, on its own or in collaboration with concerned institutions, shall set up a mechanism to provide free legal services for working children and their parents or guardians. Such services shall include the provision of information on the child's rights or procedures for filing complaints and claiming compensation, and on such other legal remedies available to them.

The Department shall facilitate the provision of health services to working children and victims of child labor in partnership with concerned sectors. Health services include primary or preventive, secondary or curative, and tertiary or rehabilitative services, or such services as may be necessary to address physical, psychological and social problems arising from child labor.

The Department shall refer working children and victims of child labor to appropriate agencies and organizations for psycho-social services.

The delivery of the above services shall be without prejudice to similar services provided by other agencies, conformably with their own mandates. The Department may also enlist the assistance of non-governmental organizations and other groups in the delivery of these services. In every case, the special needs and peculiar situations of working children, including victims of child labor, shall be taken into account.

Chapter 8 – Enforcement and Administration

SECTION 21. Actions of the Secretary of Labor and Employment or Regional Director – In case of violation, the Secretary of Labor and Employment or the Regional Director as his or her authorized representative, shall undertake the following actions:

(a) Order the immediate and permanent closure of the establishment if:

- i. The violation of any provision of Republic Act No. 9231 has resulted in the death, insanity or serious physical injury of a child employed in such establishment; or**
- ii. Such firm or establishment is employing a child for prostitution or obscene or lewd shows.**

The employer shall pay all employees affected by the closure their separation pay and other monetary benefits provided for by law.

(b) Order the immediate and temporary closure of the establishment if there is imminent danger to the life and limb of the child in accordance with the occupational safety and health standards. An imminent danger is a condition or practice that could reasonably be expected to cause death or serious physical harm.

In no case shall the closure be lifted unless the imminent danger has been abated. For the duration of the closure, the employer shall pay the wages of all employees affected. If, after due hearing, the closure is made permanent, the employer shall pay all employees affected their separation benefits, as provided in the immediately preceding subsection.

(c) In both cases, require the employer to:

- i. Shoulder the transportation cost of the child from the place of work to the DSWD-accredited halfway house and to the child's residence; and**
- ii. Shoulder the total actual cost of medical management, recovery and reintegration of the child, or in case of death, the child's funeral expenses;**

SECTION 22. Grounds for Suspension and Cancellation of Work Permit – The Regional Director shall suspend or cancel the work permit issued to a working child under the following instances:

- (a) If there is fraud or misrepresentation in the application for work permit or any of its supporting documents;**
- (b) If the terms and conditions set forth in the child's employment contract and/or employer's undertaking have been violated;**
- (c) If the employer fails to institute measures to ensure the protection, health, safety, morals, and normal development of the child as required in Section 7 (b)ii;**
- (d) If the employer fails to formulate and implement a program for the education, training and skills acquisition of the child; or**
- (e) If a child has been deprived access to formal, non-formal or alternative learning systems of education.**

SECTION 23. Violations Not Resulting in Death, Insanity or Injury of the Child – The Regional Director, after due notice and hearing, and without prejudice to the filing of the appropriate criminal and civil actions, shall:

- (a) In case of a first violation, issue a compliance order for immediate restitution and correction of the violation. Failure to comply with said order constitutes a second violation;**
- (b) In case of a second violation, issue a compliance order for immediate restitution and correction of the violation and prohibit the employer from hiring a child for six months commencing from date of last offense. Failure to comply with said order constitutes a third violation; and**
- (c) In case of a third violation, issue a compliance order for immediate restitution and correction of the violation. Failure to comply with said order constitutes a fourth violation justifying closure of the establishment.**

In appropriate cases, the Regional Director may file against the employer a case for indirect contempt as provided for under Rule 71 of the Revised Rules of Court.

SECTION 24. Enforcement Procedure. The proceedings arising from Sections 21, 22 and 23 shall be summary in nature. It may be initiated motu proprio by the Department or upon complaint by any interested party.

Permanent or temporary closure shall be effected upon service by the Regional Director of a notice of closure on the employer. Within 24 hours from notice, the Regional Director shall call a hearing to confirm the closure, in which the employer shall be given the opportunity to present evidence why closure is not an appropriate remedy. Within 72 hours from the last hearing, the Regional Director shall issue an order confirming or lifting the closure, as the case may be.

In the case of suspension or cancellation of work permit, the Regional Director shall serve a notice on the employer and the parent or guardian of the working child, who shall have three days from receipt of the notice to show cause why the work permit should not be cancelled or suspended. The Regional Director shall have ten days from service of notice within which to issue a revocation, suspension or dismissal order.

Any motion for reconsideration of the Regional Director's action shall be resolved by the Secretary of Labor and Employment. Upon issuance of the notice and during the pendency of the proceedings, the child concerned shall not be allowed to work.

In the event that a violation constituting a ground for cancellation or suspension of work permit is committed in a workplace outside the jurisdiction of the Regional Office which issued the work permit, the Regional Office having jurisdiction over the workplace shall immediately stop the employer from requiring the child to work. Within 24 hours thereafter, the Regional Office having jurisdiction of the workplace shall prepare a report to the Regional Office which issued the work permit, for the latter to commence appropriate cancellation or suspension proceedings.

SECTION 25. Industry Guidelines and Self-Policing Mechanisms – The Department may issue appropriate industry-specific guidelines, taking into account the peculiar circumstances of each industry, upon consultation with concerned sectors.

Establishments with at least 200 workers or those with certified collective bargaining agreements (CBAs) shall be encouraged to adopt a self-assessment mode pursuant to Section 1 (a) of Department Order No. 57-04, series of 2004 (Labor Standards Enforcement Framework).

Employers, workers and their organizations, professional organizations or business federations are encouraged to establish or adopt mechanisms to monitor their ranks and take corrective action against erring members. The Department shall provide technical assistance in setting up such mechanisms.

SECTION 26. Administration of Trust Fund from Fines and Penalties – The finest imposed by the court upon any violator of Republic Act No. 9231 shall, subject to existing government accounting and auditing rules and regulations, including the provision on trust funds under the General Appropriations Act, accrue to the DOLE-office of the Secretary Trust Fund for Working Children. This trust fund shall be administered by the Department and disbursed exclusively for programs and projects preventing child labor and mitigating its effects.

Within two months after the date of effectivity of these Rules, the Department shall set up the Trust Fund for Working Children in accordance with existing government accounting, auditing, and Department of Budget and Management requirements. The Department shall:

- (a) Draw up the procedures for the use and disbursement of the Trust Fund;
- (b) Formulate and supervise the implementation of programs for qualified beneficiaries of the Trust Fund; and
- (c) Monitor, through the Regional Offices of the Department, the status of child labor cases that may involve the award of fines under Republic Act No. 9231.

Chapter 9 – Miscellaneous Provisions

SECTION 27. Filing of Complaints – Complaints on violations specified under Republic Act No. 9231 and these Rules which fall under the jurisdiction of the regular courts shall be filed by persons identified in said law, and in accordance with the Rules of Court.

SECTION 28. Disposition of Investigation Report - The investigation report of the Department on violations that may constitute a criminal offense under Republic Act No. 9231, together with other relevant documents and evidence, shall be immediately forwarded to the provincial or city prosecutor concerned who shall determine the filing of the appropriate criminal charge.

SECTION 29. Effects on Other Issuances – These Rules supersede Department Order No. 18, series of 1994 or the Rules and Regulations Implementing Republic Act No. 7658. All other Issuances of the Department inconsistent with the provisions of these Rules are deemed modified accordingly.

SECTION 30. Effects on Existing Contracts – These Rules shall not be interpreted to impair contracts executed prior to its effectivity. All other general rules on non-impairment of contracts shall apply.

SECTION 31. Separability Clause – If any of the provisions of these Rules is declared invalid or unconstitutional, the validity of the remaining provisions hereof shall remain in full force and effect.

SECTION 32. Effectivity – These Rules shall take effect 15 days from the date of its complete publication in two national newspapers of general circulation.

Manila, Philippines, 26 July 2004.

PATRICIA A. STO. TOMAS
Secretary