



AUSTRALIA AND
NEW ZEALAND ASSOCIATION OF
EMPLOYMENT PROVIDERS OF THE
PHILIPPINES

JEPPCA
Jeppia Employment Providers of the Philippines and
Accountants Association

2 June 2020

HONORABLE BERNARD P. OLALIA
Philippines Overseas Employment Administration
Mandaluyong

Honorable Administrator Olalia:

Re: CHANGES TO THE EMPLOYMENT CONTRACT OF AN OFW

We, the representatives of the various Associations of licensed Landbased Recruitment Agencies, write to appeal for assistance in facilitating the recruitment and the placement of Overseas Filipino Workers (OFWs) during the pandemic.

The Countries of destination require individuals to undergo quarantine upon arrival and when suspected of having Covid-19. While in quarantine, OFWs are not required to perform work. Thus, they are not paid their salaries.

On 16 May 2020, the Department of Labor and Employment (DOLE) issued **Labor Advisory No. 17 series of 2020** or the *Guidelines on Employment Preservation upon the Resumption of Business Operations*. It acknowledges in part the need to provide alternative work schemes to prevent the displacement of workers and the permanent closure of businesses. More importantly, it allows the employers and the employees to modify wage-related benefits specified in their individual employment contracts.

The relevant portions of Labor Advisory No. 17 are quoted for reference:

Section 4. Alternative Work Schemes. As an alternative to termination of employment or closure of business, any combination of the following may be adopted:

1. Transfer of employees to another branch or outlet of the same employer;

2. Assignment of employees to other functions or position in the same or other branch or outlet of the same employer;
3. Reduction of normal workdays per day or week;
4. Job rotation alternately providing workers with work within the workweek or within the month;
5. Partial closure of establishment where some units or departments of the establishment are continued while other units or department are closed; and
6. Other feasible work arrangements considering specific peculiarities of different business requirements.

Flexible work arrangements provided for in previous issuances consistent with this Labor Advisory may also be adopted.

The above Alternative Work Schemes/ Flexible Work Arrangements are temporary in nature and shall be adopted for as long the Public Health Crisis exist.

Section 5. *Wages and Wage-Related Benefits.* Employers and employees may agree voluntarily and in writing to temporarily adjust employees' wage and wage-related benefits as provided for in existing employment contract, company policy or collective bargaining agreement (CBA).

The adjustments in wage and/or wage-related benefits shall not exceed six (6) months or the period agreed upon in the collective bargaining agreement (CBA), if any. After such period, employers and employees shall review their agreement and may renew the same.

In its Resolution No. 36 dated May 13, 2020, the Inter-Agency Task Force for the management of Emerging Infection Diseases (IATF-EID) specifically allowed the deployment of OFWs abroad and directed the creation of Green Lanes to enable their prompt deployment, as follows:

B. Overseas Filipino Workers (OFWs) whether land-based or sea-based shall be allowed to be deployed abroad upon the execution of a *Declaration* signifying their knowledge and understanding of the risks involved as advised by the Philippine Government.

For this purpose, recruitment and placement agencies shall be likewise allowed to operate in areas under General and Modified Enhance Community Quarantine subject to the observance of minimum health standards. Further, government offices and agencies involved in the

processing of their deployment are hereby directed to establish "Green Lanes" to enable their prompt processing and deployment. xxx

There are two pressing issues at hand that affect the deployment of OFWs, as follows:

1. Salaries during the quarantine period; and
2. Implementation of alternative work schemes, including local hiring displaced OFWs and transfer to another employer.

I. SALARIES DURING THE QUARANTINE PERIOD

We understand that the Administration cannot make a sweeping pronouncement and that each case must be determined on its own merit. In line with this, we respectfully appeal for the approval of an Addendum signed by the LRA, on behalf of the foreign employer, and the OFWs *prior* to deployment.

In the *Declaration* required by IATF-EID, the OFWs acknowledge that they are fully informed by the government authorities of the risk of exposure to the Covid-19 and that he/ she will comply with the medical and health protocols of the Country of destination. In the same vein, the OFWs and the foreign employers, through the LRAs, may enter into an agreement prior to deployment regarding the salaries during quarantine.

The 2016 POEA Revised Rules and Regulations prohibit entering into a contract with an OFW without the approval of the POEA, to wit:

Substituting or altering, to the prejudice of the worker, a POEA-approved employment contract, from the time of actual signing thereof by the parties up to and including the period of the expiration of the same, without the approval of the POLO or POEA.

The approval of the Addendum by the POEA is imperative. For the sake of uniformity, fairness and expediency, we propose the following text for the Addendum:

Quarantine.

1. The Employee will abide by the Health and Safety Policies of the Host Country.
2. The Employee is not entitled to salaries while on quarantine except when he/ she is required to work from his/ her home and/or quarantine facility.

3. The Employer shall pay the Employee his/ her salaries for the hours worked during quarantine.
4. The Employee may request his/ her employer to utilize his/ her leave credits, if available, while on quarantine.

We cannot overemphasize that requiring the foreign employers to pay the salaries while in quarantine will increase the cost of employing an OFW. Ultimately, we will lose our competitive advantage against our Asian neighbors.

There is no conflict with respect to the commencement of the employment of the OFW. At his/ her option, the employment may be deemed suspended while on quarantine and he/ she may remain employed beyond two years from his/ her departure from the Philippines.

The proposal is similar to the measure adopted by POLO Kuala Lumpur regarding the day off of OFWs. In its Advisory on May 8, 2020, POLO Kuala Lumpur informed affected OFWs that they may continue working on their rest days which would later result to a shorter employment period.

II. IMPLEMENTATION OF ALTERNATIVE WORK SCHEMES, INCLUDING LOCAL HIRING OF DISPLACED OFWS AND TRANSFER TO ANOTHER EMPLOYER

Meanwhile, in its May 2, 2020 news release, DOLE reported close to 86,000 OFWs affected by the pandemic. Among the recipients of the DOLE-AKAP financial assistance are OFWs who experienced displacement during the lockdown as a result of the closure of the businesses of the foreign employers.

The displacement of OFWs due to the pandemic is *force majeure* for which an OFW has no recourse against the foreign employer and the LRA. Similarly, certain Countries encourage the local hiring of displaced OFWs and transfer to another employer to avert permanent displacement. These arrangements are considered to be part of the peculiarities of the Countries of destination/ jobsite of OFWs.

Following the doctrine of processual presumption, there is no legal impediment in applying Labor Advisory No. 17 to the Employment Contract of an OFW. Accordingly, we respectfully appeal for the issuance of an advisory similar to Labor Advisory No. 17 for the guidance of the OFWs, LRAs and foreign employers.


The adoption of the proposed measures will ease the financial burdens of the foreign employers who are likewise impacted by the pandemic and assist us in finding employment opportunities for our OFWs. We trust that your good office will support


us as we implement measures to ensure the unhampered recruitment and placement of OFWs.

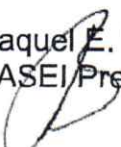
An extensive Position Paper tackling the issue of the 14-day quarantine is attached.


We thank you for your time and consideration of our above requests.

Very truly yours,


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Copy furnished:

HONORABLE SECRETARY SILVESTRE BELLO, III

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