

Labor's Position Paper Seeking to Repeal Section 8 of the BMBE Law which Exempts BMBEs from Coverage of the Minimum Wage Law

1. The Barangay Micro Business Enterprise Act (R.A.9178), in Section 8, Exemption from the Coverage of the Minimum Wage Law, mandated that the BMBEs shall be exempt from the coverage of the Minimum Wage Law: Provided, That all employees covered under this Act shall be entitled to the same benefits given to any regular employee such as social security and healthcare benefits.

BMBEs are entities or enterprises whose total assets including those from loans but exclusive of the land on which the particular entity's office, plant and equipment are situated, are not more than P3 million. The definition is subject to review and upward adjustment by the SMED Council.

2. The law's Section 8, unfair as it is, has given rise to confusion.

It is not clear what the phrase "exempt from the coverage of the Minimum Wage Law" means.

3. This confusion serves to authorize wages much lower than now exist, and opens up wholesale exploitation of workers.
4. Labor views wholesale exemption of BMBEs from coverage of the minimum wage law as a violation of the Constitution, as it is tantamount to withdrawing protection from workers.

The Constitution, in Article XIII, Section 3, speaks of the protection of workers by the State, entitlement of workers to security of tenure, a living wage and that the State must regulate the relations between workers and employers.

The minimum wage, which is a safety net for workers, is the State's expression of its protection of workers. The BMBE law has taken this away.

5. The BMBE law's Section 8 legitimizes massive exploitation of workers who precisely need protection.

Wage rates cannot be left to the dictates of the market in a labor-surplus economy like the Philippines. "There is danger that the wage rates would be set lower than what is considered decent and the workers would not be protected." Minimum wages, particularly for these kinds of enterprises, are still necessary at this time considering the very real risks of exploitation.

6. Labor points out that a general law (i.e., the BMBE Act granting incentives) unfairly encroaches on a specific law (R.A 6727 on Minimum Wage). It is unfortunate that the government has decided to sacrifice the welfare of workers as an incentive to entrepreneurs.

Labor supports incentives to needy employers, but not in the form of exemption from the minimum wage, which is already a safety net.

7. The law violates the principle of non-diminution of benefits for the workers. That a new entrant worker may be paid lesser than that of an existing employee violates the principle of equal pay for work of equal value.

8. Labor considers Section 8 of the BMBE law as a violation of ILO Conventions No. 144 on Tripartite Consultations To Promote the Implementation of International Labor Standards (1991), and No. 95 on Protection of Wages (1953).

The labor sector was not consulted on RA 9178. This is contrary to tripartism and what the Philippines stands for as an equitable society.

It seems that even the House Labor Committee was not involved in the process, when Section 8 properly falls under its area of competence and jurisdiction.

Failure to consult the tripartite sectors in changing labor and wage policies is a violation of ILO Convention No. 144 which the Philippines has ratified and is duty-bound to observe.

9. The Act's intent, to encourage and assist entrepreneurs to start up business, are already covered by other incentives specified in the Act and in other applicable laws and by other government programs.

The BMBE law liberalizes regulations for micro businesses so that they are encouraged to emerge from the underground economy. In fact, the government assists BMBEs in terms of technical and financial assistance that would eventually enable these micro businesses to graduate into small or even medium enterprises.

10. DOLE assures that its programs, including the new DOLE inspection framework, help micro businesses improve their operations, comply with labor standards and eventually move to a higher level of capitalization and productivity. In effect, the programs of DOLE, among many government programs, have been implementing what the BMBE Law is seeking to achieve.
11. Section 8's non-coverage by minimum wages is a misplaced incentive.
12. Labor insists on the repeal of Section 8 of the BMBE law.

In the interim, pending repeal of offending Section 8 of the BMBE law, labor proposes a protection formula for workers of BMBE enterprises given that they are not covered by the Minimum Wage Law.

Labor supports DOLE's proposed alternative guidelines that would define minimum protection: apprenticeship wage or 75% of mandated minimum wage; or the use of the lowest rate in the region; or the poverty threshold.

Any of these would be equitable, compared to the BMBE law's Section 8 provision which assaults workers' rights and sensibilities.