DEPARTMENT ORDER NO. 10
(Series of 1997)

AMENDING THE RULES IMPLEMENTING BOOKS III AND VI OF THE LABOR CODE AS AMENDED

ARTICLE I. There is hereby issued a new Rule implementing Articles 106 to 109 of Book III of the Labor Code, to be known as Rule VIII-A, Book III of the Implementing Rules, as follows:

"***Rule VIII-A "Section 1. Guiding Principles***. This Rule is being issued in recognition of the following guiding principles:

(a) Contracting and subcontracting arrangements are expressly allowed by law, but may be subject to regulations consistent wit the promotion of employment, protection of workers welfare, and enhancement of industrial peace and rights of workers to self-organization and collective bargaining; for this reason, labor-only contracting as defined herein shall be prohibited.

(b) Contractors and subcontractors, as well as their employees, are entitled to all the rights and privileges, and are subject to all the duties and responsibilities which the Labor Code, as amended, attaches to every employee-employer relationship;

(c) Flexibility for the purpose of increasing efficiency and streamlining operations is essential for every business to grow in an atmosphere of free competition; however, any form of flexibility

intended to circumvent or evade workers' rights shall in no case be countenanced; and

(d) The establishment of an effective labor market information system is indispensable in the formulation of policies, strategies and programs for human resource development supportive of and responsive to the needs of workers and enterprises.

"***Section 2. Coverage***. This Rule shall apply to all parties of contracting and subcontracting arrangements where employee-employer relationship exists.

"***Section 3. Parties***. A contracting or subcontracting arrangement involves a trilateral relationship under which there is a contract for a specific job, service, or work between the principal and the contractor or subcontractor, and a contract of employment between the contractor or subcontractor and its workers. Therefore, the parties to a contracting or subcontracting arrangement shall be the principal, the contractor or subcontractor, and the workers engaged by the latter. The principal and the contractor or subcontractor may be a natural or judicial person.

"***Section 4. Definition of Terms***. As used in this Rule, the following shall mean:

(a) *"Principal"* refers to any employer who puts out or farms out a job, service, or work to a contractor or subcontractor, whether or not the arrangement is covered by a written contract.

(b) *"Contractor or subcontractor"* refers to any person or entity engaged in a legitimate contracting or subcontracting arrangement as defined in paragraph (d) hereof.

(c) *"Contractual employee"* includes one employed by a contractor or subcontractor to perform or complete a job, work or service pursuant to an arrangement

between the latter and a principal as defined in paragraph (d) hereof. The term excludes employees of the contractor or subcontractor engaged to perform a job, work or service not within the scope of the contract between the latter and a principal.

(d) *"Contracting"* or *"subcontracting"* refers to an arrangement whereby a principal agrees to put out or farm out with a contractor or subcontractor the performance or completion of a specific job, work or service within a definite or predetermined period, regardless of whether such job, work or service is to be performed or completed within or outside the premises of the principal as hereinafter qualified.

Subject to the provisions of Sections 6, 7 and 8 of this Rule, contracting or subcontracting shall be legitimate if the following circumstances concur:

i) The contractor or subcontractor carries on a distinct and independent business and undertakes to perform the job, work or service on its own account and under its own responsibility, according to its own manner and method, and free from the control and direction of the principal in all matters connected with the performance of the work except as to the results thereof;

ii) The contractor or subcontractor has substantial capital or investment; and

iii) The agreement between the principal and contractor or subcontractor assures the contractual employees entitlement to all labor and occupational safety and health standards, free exercise of the right to self-organization, security of tenure, and social and welfare benefits.

(e) *"Substantial capital or investment"* refers to the adequacy of resources actually and directly used by the contractor or subcontractor in the performance or completion of the job, work or service contracted out. It may refer to capital stocks and subscribed capitalization in the case of corporations, tools, equipment, implement, machineries, uniforms, protective gear, or safety devices actually used in the performance of the job, work or service contracted out. It likewise includes operating costs, administrative costs such as training and overhead costs, and such expenses as are necessary to enable the contractor or subcontractor to exercise control, supervision or direction over its employees in all aspects of performing or completing the job, service or work contracted out. The phrase, however, excludes all capital and investment the contractor or subcontractor may have which are not actually and directly used in the conduct of its business, or any gratuitous assistance, financial or otherwise, it may have received from the principal.

(f) *"Labor-only contracting"* prohibited under this Rule is an arrangement where the contractor or subcontractor merely recruits, supplies or places workers to perform a job, work or service for a principal and the following elements are present:

i) The contractor or subcontractor does not have substantial capital or investment to actually perform the job, work or service under its own account and responsibility; and

ii) The employees recruited, supplied or placed by such contractor or subcontractor are performing activities which are directly related to the main business of the principal.

(g) *"In-house agency"* refers to a contractor or subcontractor engaged in the supply of labor which;

i) Is owned, managed or controlled by the principal; and

ii) Operates solely for the principal owning, managing or controlling it.

(h) *"Bureau"* refers to the Bureau of Local Employment of the Department of Labor and Employment. *"Regional Office"* refers to the offices of the Department established in each of the regions.

"Section 5. Term or duration of contractual employment. Subject to the provisions of sections 6, 7 and 8 hereof, the term or duration of contractual employment shall be coextensive with the term or duration of the contract between the principal and contractor or subcontractor. However, where the contract is divisible into phases such that substantially different skills are required for each phase, the term of duration of the contractual employment may be made coextensive with each phase.

For purposes of this Rule, the phrase "substantially different skills" refers to those skills of which requires specialized knowledge or training.

"Section 6. Permissible contracting or subcontracting. Subject to the conditions set forth in Section 3 (d) and (e) and Section 5 hereof, the principal may engage the services of a contractor or subcontractor for the performance of any of the following:

(a) Works or services temporarily or occasionally needed to meet abnormal increase in the demand of products or services, provided that the normal production capacity or regular workforce of the principal cannot reasonably cope with such demands;

(b) Works or services temporarily or occasionally needed by the principal for undertakings requiring expert or

highly technical personnel to improve the management or operations of an enterprise;

(c) Services temporarily needed for the introduction or promotion of new products, only for the duration of the introductory or promotional period;

(d) Works or services not directly related or not integral to the main business or operation of the principal, including casual work, janitorial, security, landscaping, and messengerial services, and work not related to manufacturing processes in manufacturing establishments;

(e) Services involving the public display of manufacturers' products which do not involve the act of selling or issuance of receipts or invoices;

(f) Specialized works involving the use of some particular, unusual or peculiar skills, expertise, tools or equipment the performance of which is beyond the competence of the regular workforce or production capacity of the principal; and

(g) Unless a reliever system is in place among the regular workforce, substitute services for absent regular employees, provided that the period of service shall be coextensive with the period of absence and the same is made clear to the substitute employee at the time of engagement. The phrase *"absent regular employees"* includes those who are serving suspensions or other disciplinary measures not amounting to termination of employment meted out by the principal, but excludes those on strike where all the formal requisites for the legality of the strike have been prima facie complied with based on the records filed with the National Conciliation and Mediation Board.

"Section 7. Prohibitions. The following are hereby declared prohibited for being contrary to law or public policy:

(a) Labor-only contracting;

(b) Contracting out of work which will either displace employees of the principal from their jobs or reduce their regular work hours;

(c) Contracting out of work with a "cabo" as defined in Section 1 (ii), Rule I, Book V of these Rules;

(d) Taking undue advantage of the economic situation of lack of bargaining strength of the contractual employee, or undermining his security of tenure or basic rights, or circumventing the provisions of regular employment, in any of the following instances:

i) In addition to this assigned functions, requiring the contractual employee to perform functions which are currently being performed by the regular employees of the principal or of the contractor or subcontractor;

ii) Requiring him to sign, as a precondition to employment or continued employment, an antedated resignation letter; a blank payroll; a waiver of labor standards including minimum wages and social or welfare benefits; or a quitclaim releasing the principal, contractor or subcontractor from any liability as to payment of future claims; and

iii) Requiring him to sign a contract fixing the period of employment to a term shorter than the term of the contract between the principal and the contractor or subcontractor, unless the latter contract is divisible into phases for which substantially different skills are required and

this is made known to the employee at the time of engagement;

(e) Contracting out of a job, work or service through an in-house agency as defined herein;

(f) Contracting out of a job, work or service directly related to the business or operation of the principal by reason of a strike or lockout whether actual or imminent; and

(g) Contracting out of job, work or service when not justified by the exigencies of the business and the same results in the reduction or splitting of the bargaining unit.

"Section 8. Unfair Labor Practice. Contracting out of a job, work or service being performed by union members when such will interfere with, restrain or coerce employees in the exercise of their rights to self-organization shall be unlawful and shall constitute unfair labor practice.

"Section 9. Contract between contractor or subcontractor and contractual employee. Notwithstanding oral or written stipulations to the contrary, the contract between the contractor or subcontractor and the contractual employee shall include the following terms and conditions:

(a) The specific description of the job, work or service to be performed by the contractual employee;

(b) The place of work and terms and conditions of employment, including a statement of the wage rate applicable to the individual contractual employee; and

(c) The term or duration of employment, which shall be coextensive with the contract between the principal and contractor or subcontractor, or with the specific

phase for which the contractual employee is engaged, as the case may be.

The contractor or subcontractor shall inform the contractual employee of the foregoing terms and conditions on or before the first day of his employment.

"Section 10. Duty to produce copy of contract. The contractor or subcontractor shall submit a copy of its contract with the principal to the Regional Office of the Department of Labor and Employment (DOLE). It shall be accompanied by a statement of the number of employees covered by the contract and, where appropriate, a description of the phases of the contract and the number of employees covered in each phase. The contractor or subcontractor shall be under an obligation to produce the original copy of the same in the ordinary course of inspection or when directed to do so by the Regional Director or his authorized representative.

The copy of the contract between the contractual employee and the contractor or subcontractor need not be filed with DOLE. However, the contractor or subcontractor shall make the same available for inspection by the Regional Director or his authorized representative.

Further, a copy of the contract between the contractual employee and the contractor or subcontractor shall be furnished the certified bargaining agent, if there is any.

"Section 11. Rights of a contractual employee. The contractual employee shall be entitled to all the rights and privileges due a regular employee, including but not limited to the right to working conditions and standards, service incentive leave, rest days, overtimes and holidays, health, safety and social and welfare benefits, self-organization and collective bargaining and security of tenure.

In cases of termination of employment prior to the expiration of the contract between the principal and the contractor or subcontractor, the right of the contractual employee to

separation pay or other related benefits shall be governed by the applicable laws and jurisprudence on termination of employment. Where the termination results from expiration of the contract between the principal and the contractor or subcontractor, or whom the completion of the phase of the job, work or service for which the contractual employee is engaged, the latter shall not be entitled to separation pay. However, this shall be without prejudice to completion bonuses or other emoluments, including retirement pay as may be provided by law or in the contract between the principal and the contractor or subcontractor.

"Section 12. Employee-employer relationship. Except in cases provided for in Sections 13, 14, 15 and 17, the contractor or subcontractor shall be considered the employer of the contractual employee for purposes of enforcing the provisions of the Code.

"Section 13. When principal is deemed jointly and severally liable. When the contractor or subcontractor fails to pay the wages of its contractual employees, the principal shall be jointly and severally liable with the contractor or subcontractor to such contractual employees to the extent of the work performed under the contract, in the same manner and extent that the principal is liable to its direct employees.

"Section 14. When principal is deemed employer solidarity liability. The principal shall be deemed as the direct employer of the contractual employees, and therefore solidarity liable with the contractor or subcontractor for whatever monetary claims the contractual employees may have against the former, in the following cases:

(a) When the contractor or subcontractor is not enrolled in the registry of the Regional Office of the Bureau, or it has been delisted therefrom, or its contract with the principal has not been renewed;

(b) When the contractor or subcontractor is found committing any of the prohibited activities enumerated in Section 7 of this Rule;

(c) When the contractor or subcontractor is declared guilty of unfair labor practice as specified in Section 8 of this Rule; and

(d) When a violation of the relevant provisions of the Code has been established by the Regional Director in the exercise of his enforcement powers.

"Section 15. Other instances of solidarity liability. In cases not covered by the last two preceding sections, the principal shall also be deemed solidarity liable with the contractor or subcontractor to the extent of accrued claims and benefits which the latter may owe to its contractual employees in the following instances.

(a) When the certificate of registration, license or business permit of the contractor or subcontractor is cancelled, revoked or not renewed by the competent authority; or

(b) When the contract between the principal and the contractor or subcontractor is preterminated for reasons nor attributable to the fault of the contractor or subcontractor.

"Section 16. Enforcement against performance bond. In enforcing the provisions of Sections 13, 14 and 15, the Regional Director shall first proceed against the performance bond, if any has been up by the contractor of subcontractor, to the extend that such bond may cover claims of the contractual employee. In case the bond is insufficient, the Regional Director shall proceed directly against the principal.

"Nothing herein shall restrict the right of the principal from filing an action for reimbursement or damages against the contractor or subcontractor in the appropriate courts.

"Section 17. Effect of existence of labor-only contracting. In case of declaration by the competent authority that a contractual employee is covered by a labor-only contracting arrangement, he shall be considered part of the bargaining unit of the principal.

"Section 18. Effect of expiration of contract; manpower pool. Where the contract between the principal and the contractor or subcontractor has expired, and the latter remains in business as a contractor or subcontractor, the employee-employer relationship between the latter and its contractual employees shall not be automatically terminated, but shall remain suspended for a period of six months, unless a longer period is set by the contractor or subcontractor. During this period, such employees shall become part of a manpower pool of the contractor or subcontractor. If the contractor or subcontractor is unable to renew the original contract or enter into a new and similar contract requiring the skills of the employees in the pool within the six-month period, or if the contractual employee subsequently finds employment elsewhere, the employee-employer relationship shall be deemed terminated and the employee concerned shall be taken out of the pool.

The foregoing paragraph shall also apply where the contract between the contractor or subcontractor and the contractual employee has expired by reason of the completion of the phase of the contract for which the latter was engaged.

It shall be understood, however, that all rights and privileges which the employee may derived out of the employer-employee relationship shall be suspended while he is part of the pool.

"Section 19. Registry of contractors or subcontractors. There is hereby established a registry of contractors and subcontractors in the Regional Offices and in the Bureau, for purposes of establishing an effective labor market information and monitoring system on activities which are subject to contracting or subcontracting arrangements.

Registration under this section shall not be synonymous with licensing, the latter being a precondition for acquiring legal personality or engaging in business.

"Section 20. Requirements for registration. A contractor or subcontractor shall be enrolled in the registry of contractors and subcontractors upon completion of an application form to be provided by the DOLE. The application shall state:

(a) The name and business address of the applicant and the area or areas where it seeks to operation;

(b) The names and addresses of its officers, if the applicant is a corporation or partnership;

(c) The nature of the applicant's business and the industry or industries where the applicant seeks to operate;

(d) The list of actual contracts, if any; and

(e) The capitalization and other assets of the applicants which are actually and directly used in its operations.

The application shall be supported by:

(a) A certified copy of the certificate of registration of firm or business name from the Securities and Exchange Commission (SEC) or Department of Trade and Industry (DTI) or from the DOLE if the applicant is a union; and

(b) A certified copy of the license or business permit issued by the local government unit or units where the contractor or subcontractor operates.

The application shall be verified and shall include an undertaking that the contractor or subcontractor shall abide by all applicable labor laws and regulations.

"Section 21. Filing and processing of applications. The application and its supporting documents shall be filed in triplicate in the Regional Office where the applicant principally operates. No application for registration shall be accepted unless all the foregoing requirements are complied with. The contractor or subcontractor shall be deemed registered upon payment of a registration fee of one hundred pesos (P100.00) to the Regional Office.

Where all the supporting documents have been submitted, the Regional Office shall deny or approve the application within seven (7) working days after its filing. In case of inaction of the Regional Office beyond this period, the application shall be deemed provisionally approved subject, however, to the payment of the registration fee.

Upon registration, the Regional Office shall return one set of the duly-stamped application documents to the applicant, retain one set for its file, and transmit the remaining set to the Bureau. The Bureau shall devise the necessary forms for the expeditious processing of all applications for registration.

"Section 22. Annual reporting. The contractor or subcontractor shall submit in triplicate its annual report in such forms as may be prescribed by the DOLE to the appropriate Regional Office. The report shall include:

(a) A list of contracts entered into during the subject reporting period; and

(b) A certification from the Social Security System (SSS) and the Home Development Mutual Fund (HDMF) that the contractor or subcontractor has been making the monthly remittances due its contractual employees during the subject reporting period.

The obligation to submit an annual report shall coincide with the anniversary date of registration of the contractor or subcontractor. The Regional Office shall return one set of the

duly-stamped report to the contractor or subcontractor, retain one set for its file, and transmit the remaining set to the Bureau within five (5) days from receipt thereof.

"Section 23. Delisting of registered contractor or subcontractor. The Regional Director shall, upon due notice, motu proprio cancel the registration of a contractor or subcontractor if it fails to comply with the reporting requirements for three consecutive years, or upon the cessation of a business of the latter.

Subject to administrative due process, the contractor or subcontractor shall be delisted from the registry if it is found to have committed the prohibited activities or has been declared guilty of unfair labor practice as enumerated in Sections 7 and 8 hereof, or has falsified the requirements for registration it submitted to the Regional Office.

"Section 24. All existing contractors or subcontractors as defined herein shall register with the Regional Office within one hundred twenty (120) days from the effectivity of this Rule. In case of failure to register within this prescribed period, the provisions of this Rule shall apply.

"Section 25. Supersession. All rules and regulations issued by the Secretary of Labor and Employment inconsistent with the provisions of this Rule are hereby superseded. Contracting or subcontracting arrangements in the construction industry, however, shall continue to be governed by Department Order No. 19, series of 1993, as well as the applicable provisions of this Rule.

"ARTICLE II. Sections 7, 8 and 9, Rule VIII, Book III of the Implementing Rules are hereby superseded. Sections 10, 11, 12, 13 and 14 of the same Rule are hereby renumbered as Sections 7, 8, 9, 10 and 11 respectively.

ARTICLE III. Section 2, Rule I, Book VI of the Implementing Rules is hereby amended, to read as follows:

"Section 2. Security of tenure. (a) In cases of regular employment, the employer shall not terminate the services of an employee except for just of authorized causes as provided by law, and subject to the requirements of due process.

"(b) The foregoing shall also apply in cases of probationary employment; provided, however, that in such cases, termination of employment due to failure of the employee to qualify in accordance with the standards of the employer made known to the former at the time of engagement may also be a ground for termination of employment.

"(c) In cases of employment covered by contracting or subcontracting arrangements, no employee shall be dismissed prior to the expiration of the contract between the principal and contractor or subcontractor as defined in Rule VIII-A, Book III of these Rules, unless the dismissal is for just or authorized cause, or is brought about by the completion of the phase of the contract for which the employee was engaged but in any case, subject to the requirements of due process or prior notice.

"(d) In all cases of termination of employment, the following standards of due process shall be substantially observed:

"For termination of employment based on just cases as defined in Article 282 of the Labor Code:

"(i) A written notice served on the employee specifying the ground or grounds for termination, and giving said employee reasonable opportunity within which to explain his side.

"(ii) A hearing or conference during which the employee concerned, with the assistance

of counsel if he so desires is given opportunity to respond to the charge, present his evidence, or rebut the evidence presented against him.

"(iii)A written notice of termination served on the employee, indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination.

"For termination of employment as defined in Article 283 of the Labor Code, the requirement of due process shall be deemed complied with upon service of a written notice to the employee and the appropriate Regional Office of the Department of Labor and Employment at least thirty days before effectivity of the termination, specifying the grounds or grounds for termination.

"If the termination is brought about by the completion of a contract or phase thereof, or by failure of an employee to meet the standards of the employer in the case of probationary employment, it shall be sufficient that a written notice is served the employee within a reasonable time from the effective date of termination.

"ARTICLE IV. Section 5, Rule I, Book VI of the Implementing Rules the Labor Code is hereby amended, to read as follows:

"Section 5. (a) Regular employment. The provisions of written agreements to the contrary notwithstanding and regardless of the oral agreements of the parties, employment shall be deemed regular for purposes of Book VI of the Labor Code where employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking the completion or

termination of which has been determined at the time of the engagement of the employee or where the job, work or service to be performed is seasonal in nature and the employment is for the duration of the season.

"(b) Casual employment. There is casual employment where an employee is engaged to perform a job, work or service which is merely incidental to the business of the employer, and such job, work or service is for a definite period made known to the employee at the time of engagement; provided, that any employee who has rendered at least one year of service, whether such service is continuous or not, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists.

"Notwithstanding the foregoing distinctions, every employee shall be entitled to the rights and privileges, and shall be subject to the duties and obligations, as may be granted by law to regular employees during the period of their actual employment.

"ARTICLE V. Section 6, Rule I, Book VI of the Implementing Rules is hereby amended, to read as follows:

"Section 6. Probationary employment. There is probationary employment where the employee, upon his engagement, is made to undergo a trial period during which the employer determines his fitness to qualify for regular employment based on reasonable standards made known to him at the time of engagement.

"Probationary employment shall be governed by the following rules:"

(a) Where the work for which the employee has been engaged is learnable or apprenticeable in accordance with the standards prescribed by the Department of Labor and Employment, the period of probationary employment shall be limited to the authorized

learnership or apprenticeship period, which is applicable.

"(b) Where the work is neither learnable nor apprenticeable, the period of probationary employment shall not exceed six months reckoned from the date the employee actually started working.

"(c) The services of an employee who has been engaged on probationary basis may be terminated only for a just or authorized cause, when he fails to qualify as a regular employee in accordance with reasonable standards prescribed by the employer.

"(d) In all cases of probationary employment, the employer shall make known to the employee the standards under which he will qualify as a regular employee at the time of his engagement. Where no standards are made known to the employee at that time, he shall be deemed a regular employee.

"ARTICLE VI. Effectivity. These Rules shall take effect fifteen (15) days after completion of its publication in two (2) newspaper of general circular.

Manila, Philippines, 30 May 1997.

(SGD.)
LEONARDO A. QUISUMBING
Secretary