

NATIONAL HOURLY EMPLOYMENT PROGRAM

Decree N° 230-2010 (Gaceta N° 32,358, 5/11/10)

THE NATIONAL CONGRESS,

WHEREAS: That the Constitution of the Republic guarantees, that all persons have the right to work, to choose his/her occupation freely, to resign from said work, under fair and satisfactory work conditions, as well as protection against unemployment;

WHEREAS: That the Government Plan 2010-2014, is supported by relevant policies, such as, “The Strategies for Poverty Reduction and Eradication”. Recognizing as a fundamental part of the National Plan and Vision of the Country, as an instrument for Economic Reactivation and the Creation of Employment/Work, integrated as a mechanism to activate and substantially increase the job/employment market, thereby creating opportunities, as well as better quality of employment and salaries, in order to provide decent living and working conditions for the general population and greater competitiveness for the Honduran economy:

WHEREAS: That it is imperative to promote programs and projects which permit the growth of employment opportunities; promoting the creation, expansion and improvement of employment sources; to promote solidarity of the organized sectors, as well as with those groups of the population who are unprotected and with marginal employment benefits.

WHEREAS: That the population with employment problems and the pressure of those aspiring to enter the employment (job) market for the first time, requires urgent social measures, with immediate solutions, which is, among other factors, is cause for an increase in the unemployment and sub-employment index, a tendency that as long as a national employment policy is not defined, as well as the standards of individual employment and that the economy be reactivated, continues to be an obstacle to goal that all Hondurans have access to the social benefits guaranteed by the Constitution of the Republic, Code of Labor; international agreements ratified by Honduras with the ILO (International Labor Organization); and other laws pertaining to employment and social prevision.



HENCE,

DECREES

The following:

“NATIONAL HOURLY EMPLOYMENT PROGRAM”

ARTICLE 1. FOR THE PURPOSE OF. The objective of the present Decree is to establish a special temporary emergency program, with the purpose of providing decent employment, maintaining employment opportunities and avoiding an increase in the unemployment and underemployment indexes in the country, bringing new opportunities of employment to the population during of the economic crisis cycle affecting the majority of the economies of many countries of the world.

The special emergency program shall be called, “The National Anti-crisis Solidarity Employment Plan”, which will follow the framework of the **Nation Plan and Country Vision**, in accordance with the Constitution of the Republic, Employment Legislation, Social Security, International Agreements subscribed and ratified with the International Labor Organization (ILO), as an immediate and urgent response to face the crisis.

ARTICLE 2. PROGRAM PURPOSE. The purpose of the program is:

- 1) To provide dignified and decent employment and to avoid the increase in unemployment and underemployment indexes derived from the crisis, in the formal sector of the economy and by simultaneously allowing that these employees enjoy the benefits of social security and occupational health;
- 2) To promote the education, professional training and formation of employees, as a way of facilitating their insertion into the employment market, in order to reach better levels of productivity and competitiveness which is reflected in better salaries;
- 3) To take advantage of the capacity of the productive standards, within the framework of the programs to reactivate the economy of the Private Sector as well as the Public Sector conforming to that established in the Nation Plan and Country Vision;



- 4) To stimulate investment and employment in the private and public sectors, especially in those areas of economic activity with the capacity to absorb a greater number of employees; and,
- 5) To assure that the economically active population of the country, vulnerable social groups and youths who every year enter the work force, find in the national employment market a dignified job, respecting the employees' rights and that adolescents and young people develop integrally, reducing the indexes of abuse, violence and juvenile delinquency affecting those groups which are most vulnerable and that the young people who are at a productive age do not leave the country, risking their lives and the breakdown of family ties.

MODES AND MANNER OF HIRING

ARTICLE 3. DURATION OF THE PROGRAM; MODES AND MANNER OF HIRING. The anti-crisis program is categorized as socially urgent, with a duration of thirty- six (36) months , from the moment it is approved and may be extended depending of the results of the same as well as the conditions of the economy and the employment market.

MODES AND MANNER OF HIRING

- 1) During the term of the duration of the program the parties can subscribe to employment contracts by the hour or part-time, daily or a combination or nightly or evening work hours in the following manner:
 - a) For a limited time, or
 - b) By the job or determined services

In these cases the contract should be subject to employee/workers rights and obligations established by the Program.

The employee/worker hired under this modality is protected against unjustified firing within the term established in the workers contract, subject to that defined in Article 121 of the Work/Labor Code.

Under the same terms established in the literally reformed article 120 g) of the Work/Labor Code, in that referred expressively to receive conforming to that stipulated, benefits related to the natural death of a worker, as long a s within the term of the duration of the contract and complying to the requirements set in the reform indicated



In Decree 150-2 in force as of November fifth two thousand and eight.

In any case, the minimal work day for which a worker can be hired under this program is of two (2) hours per day for the rural areas and of three (3) hours daily in the urban areas.

- 2) Also the parts, in exception, can subscribe to work contracts for half day or contracts by the hour or for full day work, in which the previous percentage of those new industries or economic activities whose type of business is based on hourly employees or full or part-time employees, such as in the case of new technological/communication activities, in the case of Call Centers or Contact Centers or others that must qualify by the Secretary of State in the Offices of Labor and Social Security.

The effective work executed outside of the limits determined as daily work load is determined as extraordinary and should be paid in accordance to the Labor/Work Code.

ARTICLE 4. SCOPE ON ENFORCEMENT. The Program has a scope nationally, in the urban as well as the rural areas, for all natural persons or legal employers, businesses of production or services, such as the special programs developed by the public sector and which require temporary employees/workers.

The productive standards/ units or of services, which are initiating operations or those that are already in operation, can hire under this program up to forty percent (40%) of the workers , percentage which shall be calculated based on the permanent employee payroll maintained.

For the effects of the aforementioned paragraph, the following will not be taken into account, in determining the percentage, the number of temporary cycle employees/workers, as is with workers or employees who are working in productive units or rendering of services at the date of the duration of the program and those who work which is not performed regularly throughout the year.

In the event of productive or service units that enter the Program and which have from one to fifteen male or female permanent wage-earners, these may hire up to an equal number of male or female workers under this Program.

In companies where a collective bargaining is in force, the workers under the mode of this Program shall enjoy the benefits of the bargaining contract which may be applicable, provided that they choose to pay contributions (quote) according to what is



set forth on Decree No. 30, which incorporates Article 60-A to the Code of Labor in force.

Up to five percent (5%) of the percentage established in this article of male and female hired workers shall correspond to vulnerable social groups, such as: the third age, people with different capacities, youths exposed to migratory risks and who have been deported, teenagers emerging from re-education processes due to breaking the law, rehabilitated youths from drug consumption and alcohol, juveniles who have abandoned *maras* or gangs, and war veterans and retired persons who receive pensions lower than the minimum wage.

Regarding productive or service units that have one (1) to fifteen (15) workers, the preference on hiring workers belonging to vulnerable sectors will be up to 10%.

ARTICLE 5.- REQUIREMENTS FOR ENTERING THE PROGRAM. Due to the nature of the Program, the productive or service units entering into the Program shall comply with the following requirements:

The productive or service units cannot hire male and female workers, under the regulation of the Program, for labor that according to the Code of Labor are considered temporary or seasonal.

- 1) The productive or service units that are incorporated to the framework of this Program cannot make reductions of permanent salary staff, unless justified causes of layoff, waiver or termination of the working contract by mutual consent. Vacancies on permanent jobs due to justified dismissal, termination of working contract by mutual consent, resignation of permanent worker or creation of new jobs, in the event that the employer decides to fill them, may be covered with staff hired under this Program, in such event the hired worker automatically acquires the status of a permanent worker, understanding that he/she begins a new labor relationship, without taking into consideration the trial period in this case. Upon coverage of the permanent position by a worker of the Program, the employer shall keep upon his discretion the right of continue hiring staff under this mode, until covering the percentage established on Article 4 of the Program.

The employer who does not comply with what is hereby stipulated shall be sanctioned by the *Secretaría de Estado en los Despachos de Trabajo y Seguridad Social* (Ministry of Labor) with a penalty equivalent to 25% percent of the salaries of his/her permanent payroll.



- 2) Full compliance should be given to the regulations and prohibitions established on international agreements and national laws on child labor and the worst manners of child labor.
- 3) The productive or service units carrying out labor, which is typical of its mercantile activity, yet they are not ongoing for being dependent on production contracts, contracted for certain amounts to be delivered on specific dates with occasional customers, in a manner such that delivery or the arrival of the foreseen date puts an end to the contracted labor, as well as that labor which intensifies on certain seasons, time or periods, and dates of the year and require temporary increase of labor, may enter the Program and hire staff under its terms; and
- 4) Other requirements set forth in the present Decree and its Regulation.

ARTICLE 6. REMUNERATION. The remuneration of hired male and female workers in the scope of this Program will be encompassed by two concepts:

- 1) A basic wage, to be established on a per hour basis and it shall not be lower than the minimum wage for each production and service sectors as established by the Law. Such salary shall be estimated dividing the amount established into the number of hours that according to each maximum ordinary working day for daily, mixed and night work as established by the Law; and
- 2) Non regular (non customary) compensation.

For the remuneration of hired male and female laborers under the scope of this Program, the following remuneration modes will be taken into account:

- a. Per Hour;
- b. Per part-time job ; and
- c. Per piecework, task, pay per item or for a specific time period.

The remuneration estimate shall be attained dividing the daily minimum wage legally established per each sector into the number of hours set by Law for the ordinary daily, mixed or night working day, the outcome will be multiplied by the number of hours worked, and this outcome will constitute the daily salary payable for each kind or mode of work.

For great clarity on the estimate for the salary payable plus the non customary compensation, an illustrative estimate chart of this Program is enclosed:



Concept	Amount
Current minimum wage	5,886.00*
Hours worked per week	44.00
Weeks per month	4.29
Hours per month	188.57
Minimum wage per hour worked	31.21
Minimum wage/hr worked plus 20%	37.46

*The example corresponds to payment according to wage authorized for the ranking of more than 20 employees.

Yearly Income		
Annual minimum wage	70,632.00	%
Thirteenth month	5,886.00	8.33 %
Fourteenth month	5,886.00	8.33 %
10-Day vacation	1,962.00	2.78 %
Total	84,366.00	19.44 % **

**An example of regular (customary) compensation estimate.

Urban Area		
Hours Worked		Income
	Per Month	Per Year
3 Hours	2,648.70	31,784.40
4 Hours	3,531.60	42,379.20
5 Hours	4,414.50	52,974.00



6 Hours	5,297.40	63,568.80
7 Hours	6,180.30	74,163.60
8 Hours	7,063.20	84,758.40

Basic Wage.

It is the salary that the employer should pay to male or female works pursuant to the working contract, which shall be effective in the legal currency of the country.

When dealing with non-qualified (non-skilled) labor, the basic wage shall not be lower than the amount of the hourly minimum wage, applicable to each sector of the economy where the hiring takes place.

The basic wage shall be agreed upon on a per hour basis in working days established between the parties, according to the special requirements of the industry or service, without exceeding forty-four (44) hours weekly on the daily work period, forty-two (42) hours weekly on the mixed and thirty-six (36) hours weekly in the night working period; with minimums of half ordinary, daily, mixed or night working periods.

When hiring is for qualified (skilled) labor, the basic wage shall be the one agreed upon between the parties, without it being in any event lower than the minimum wage that pertains according to the Law.

By qualified labor, it is understood that it applies to the one supplied by a person whose technical or professional studies and experience on the matter regarding the hiring, to ensure the outcome of the service provision in regards to productivity and quality.

On the salary that the employer shall pay in this Program, the minimum wages shall not be lower than those established for equal paying jobs performed in positions where men are predominant or that the positions are predominantly occupied by feminine labor force.

Non-regular (non-customary) compensation.

The productive or service units paying their workers under the mode of a fixed or ordinary wage in the frame of this Program, they shall pay to them a basic wage plus a non-regular compensation, which it shall be equivalent to twenty percent (20%) over



the basic wage agreed upon; this non-customary compensation is equivalent to the payment of the thirteenth month, fourteenth month and vacations, rights which temporary workers do not enjoy according to the Labor Code currently in force.

Workers hired per unit of labor (production, piecework, task, pay per item or for a specific time period) shall be paid according to the basic wage agreed upon, plus a non-regular compensation equivalent to twenty percent (20%) of the basic wage agreed upon.-These workers may only enjoy such compensation if they comply with the production goal under equal conditions that permanent workers of the same productive or service unit comply with.

For work agreed upon per commission, the income of the worker shall not be lower than the minimum wage payment established in the Law for the sector where the worker provides his/her services under this mode.

Non-customary compensation shall be paid in the same date, frequency and mode in which basic wage is paid.

For any legal purpose, such compensation does not constitute a salary and it is not applicable to hired qualified workers under this Program, provided that the salary agreed upon is greater than the legal minimum wage and the addition of the non-customary compensation; or having agreed upon the payment of compensated benefits.

The non-regular compensation herein stated and granted in this program shall not be applicable in those cases in which due to the legal mandate established in the Code of Labor or other Laws of Labor, Security and Social Prevision the compensated benefits in this mode of the program should be paid.

ARTICLE 7. RIGHTS OF THE WORKERS. The workers hired under this Program shall be only subject to what has been set forth in this program in regards to rights, duties and benefits. Without prejudice of any other benefit that the hiring parties may agree or that the employer voluntarily grants, but they will enjoy the right to be hired as permanent laborers.

It is understood that workers hired under this mode in the Program will enjoy the fundamental rights established in the Code of Labor and the eight fundamental agreements subscribed and ratified by the State of Honduras with ILO, amongst which Agreement 87 and 98 are found, ensuring free unionization and collective bargaining in accordance to what has been set forth in the Law of Internal Labor.



ARTICLE 8. LABOR PROTECTION AND OF SOCIAL SECURITY. Pertaining to health, hygiene and occupational security, professional risks, benefit due to natural death and maternity related matters, male and female hired workers under this Program, shall be protected by what has been set forth in the Law of *Instituto Hondureño de Seguridad Social, el Reglamento General de Medidas Preventivas de Accidentes de Trabajo, Enfermedades Profesionales*, and what the Code of Labor establishes on these matters, due to which the workers hired under the Program should be registered in the special list of follow-up and inscription at the respective and nearest office of *IHSS* although the service is provided by a medical doctor of the company or private clinic, under the supervision and control of the Secretariat of State in the Bureau of Labor and Social Security.

The productive or service units adhered to the Program located in areas where *IHSS* lacks coverage, and that have programs or collective insurance policies for accidents, medical services, disability, disablement, old age and death, or other social security benefits available for their permanent employees, should incorporate them, the hired workers under this Program.

The employers who are incorporated into the Program shall be subject to the payment of contributions (quotes) established by the *Ley del Instituto Nacional de Formación Profesional (INFOP)*. The percentage contributed to INFOP on behalf of the employer adhered to the Program, shall be managed via a trusteeship at the *Banco Central de Honduras* (Central Bank of Honduras), which shall be managed by a committee integrated by a representative of the *Secretaría Técnica de Planificación y Cooperación Externa (SECPLAN)*, a representative of the *Secretaría de Estado en los Despachos de Trabajo y Seguridad Social* (Ministry of Labor), a representative of the *Centro de Desarrollo de Recursos Humanos de Honduras (CADERH)*, a representative of the *Fundación de Desarrollo y Tecnología (FUNDETEC)*; and, a representative of the *Asociación de Municipios de Honduras (AMHON)*; the Follow-up Commission of the National Congress will perform as an observing party of this committee entitled to a say but without voting capacity.-The regulation of this Law shall determine the structure of the present trusteeship.

ARTICLE 9. The employees incorporated to the Program aiming to ensure the social security services of the hired workers under the Program shall subscribe to the *Instituto Hondureño de Seguridad Social*, the respective agreement to provide social security services established in the law; similarly, they may hire these services by means of agreement subscription with private clinics, business medical systems and insurance.



ARTICLE 10. PREFERRED OPTION TO ACQUIRE PERMANENT STATUS.

The male or female hired worker under this mode who receives training and/or studies his/her primary or secondary education, according to the case, he/she shall have the first option to cover a permanent position in the units that make use of this program.

ARTICLE 11. TRAINING COMPONENT. For effects of the previous article and under the framework of **the contents of Nation Plan and Country Vision**, the *Secretaría de Estado en los Despachos de Trabajo y Seguridad Social* (Ministry of Labor) jointly with the *Comité de Administración del Fideicomiso* (Committee managing the trusteeship) and other entities involved in the matter, they shall design a plan of education and training that will be executed in form and with the requisites set forth in the Program. Aiming to provide compliance to this task, the Ministry of Labor shall perform as a managing agent before the corresponding instances of SECPLAN.

This plan shall begin its execution in a time span not greater than three (3) months subsequent to the approval of the current Decree, to the end of a clear identification of the target population and to have the required financial resources available.

ARTICLE 12. SUPERVISION AND CONTROL. The Ministry of Labor by means of the *Dirección General de Empleo* (General Directorate of Employment) shall establish the procedure for monitoring this Program and its mechanisms of information-collection, supervision and control as well as eligibility criteria for the workers to be hired.

It pertains to the Ministry of Labor by means of the General Directorate of Employment and the *Inspección General del Trabajo* (General Labor Supervision) in coordination with the *Consejo Económico y Social (CES)* (Social and Economic Council), the supervision and to control the strict compliance of this Program, its Decree of creation and respective Regulation, and in particular to avoid the arising of anti-union discrimination practices.

Under the framework of the periodical evaluation of this Program, the authorities of Supervision and Control shall examine what the sectors of the population in which the Program has had its major impact are; hence, the assessment of its application and if it has implicated or not, a change in the existing inequalities of access to employment in the communities or sectors historically at a disadvantage; likewise, the corresponding statistics should be elaborated, separated per gender.

For effect of the previous paragraph, the Ministry of Labor shall quarterly report to the Social and Economic Council (CES) and to the *Consejo Nacional de Visión de País* (National Council of the Country's Vision) on the outcomes of the Program with a



report displaying the statistical data and outcomes attained by the Special Regime regulated in this Decree; the Ministry of Labor in turn shall submit this report to the National Congress with the respective documentation.

The Ministry of Labor jointly with the Social and Economic Council (CES), and with the support of the National Congress shall establish the mechanisms for a wide dissemination of the program.

ARTICLE 13. FOLLOW-UP COMMISSION. A Follow-up Commission shall be integrated by a representative from each of the three (3) Workers' Confederations legally acknowledged which integrate the Social and Economic Council (CES) and three (3) representatives designated by the *Consejo Hondureño de la Empresa Privada (COHEP)* (private enterprise sector), incorporating among them one representative from the medium and small-sized enterprise.

The Minister of Labor or his representative shall preside this Commission.

ARTICLE 14. COORDINATION RELATIONSHIPS. Aiming to ensure the efficient execution of the purpose desired by the Program as well as the adoption of standard criteria related to its application and enforcement, the Ministry of Labor shall establish mechanisms of coordination with other entities and institutions involved.

ARTICLE 15. MANNER OF HIRING. Due to the extraordinary nature of the Program, the employers will subscribe an individual labor contract according to the model contract elaborated by the Ministry of Labor, in which the rights, duties and responsibilities of the parties in the framework of the Program should be consigned; without prejudice that it should be understood as included at least, the warranties and rights granted to non permanent workers by the Constitution, the Code of Labor and other Labor Laws or those of Social Security.

Subscribed contracts should be registered at the Ministry of Labor, according to what has been set forth in the Regulation.

The completion of the work or the completion date of the hired service, must end the working relationship hired, without labor responsibility for the parties, having to communicate it by writing with fifteen (15) days in advance to the happening of the date or foreseen fact. Any of the parties may end the labor contract, before the completion of the work or completion date of the service according to what has been set forth on Article 121 of the Code of Labor in force. In cases of maternity, accident



on the job and professional hazards, it will act according to what the Law states.

ARTICLE 16. FINANCIAL RESOURCES. The *Secretaría Técnica de Planificación y Cooperación Externa (SECPLAN)* (government planning entity) and the *Secretaría de Estado en el Despacho de Finanzas* (Ministry of Finance), shall support the Ministry of Labor in fund-raising related tasks aimed for the training process of workers fostered under the present Program.

ARTICLE 17. UNFORESEEN CASES. The present Decree encompasses a Program that due to its extraordinary nature it constitutes a special emergency program ranked as a social urgency and of certain period. Any event not foreseen in the Program or its Regulation should be solved according to the principles of Labor Law, international labor agreements and the dispositions of Code of Labor in force.

ARTICLE 18. OFFICE OF INFORMATION AND DENUNCIATION AGAINST ABUSES ON THE ENFORCEMENT OF THE NATIONAL HOURLY EMPLOYMENT PROGRAM. It creates the Office of Denunciation against Abuses on the Enforcement of the National Hourly Employment Program which shall be under the responsibility of a Special Follow-up Commission of National Congress. To provide timely information, guidance and ensure to those affected a timely investigation to their denunciation or consultation, it instructs the *Comisión Nacional de Telecomunicaciones (CONATEL)* for the creation of a short code of three (3) numbers 267 and *267 without a charge to the user, to the effect of having access to every telecommunication operator, fixed and mobile. These numbers will be available to the Commission in charge of assuring the compliance of this Law and of the Office of Information and Denunciation against Abuses on the Enforcement of the National Hourly Employment Program. Every operator should install a minimum of 1 EI ISDN PRI of thirty (30) channels, or by default, on IP technology to respond to the calls of citizens.

The Office of Information and Denunciation shall proceed to submit the denunciation (complaints) to the Ministry of Labor so that by means of the General Labor Supervision it proceeds to its investigation and enforcement of sanctions where applicable.

The Ministry of Labor shall submit a report, on the outcome of the investigations and sanctions enforced, to the National Congress.

ARTICLE 19. REGULATION. The Ministry of Labor jointly with a member of the labor sector and a member of the entrepreneurial sector designated by the Social and Economic Council, shall regulate the present Decree in a time span of thirty (30) days



as of the issuing date in the official daily *La Gaceta*.

TRANSITORY NOTE

ARTICLE 20. Prior to the devising of the Regulation pointed out in Article 19 of this Program, and as of its printing in the official daily *La Gaceta*, the employers and workers incorporated to this may subscribe their labor contracts and immediately begin their activities under this mode, adjusting themselves to the regulations established in the Program and they should make the necessary adjustments during the time span of the contracts in accordance to what has been set forth in the respective regulation.

ARTICLE 21. EFFECTIVENESS.

The present Decree shall have effectiveness as of the date of its publication in the official daily *La Gaceta*.

Given in the city of Tegucigalpa, Municipality of the Central District, at the Meeting Room of the National Congress, on the fourth day of November of the year two thousand ten.

JUAN ORLANDO HERNANDEZ ALVARADO
PRESIDENT

RIGOBERTO CHANG CASTILLO
SECRETARY

GLADIS AURORA LOPEZ CALDERON
SECRETARY

To the Executive Branch.
Therefore: Execute it.
Tegucigalpa, MDC, November 5, 2010.

PORFIRIO LOBO SOSA
PRESIDENT OF THE REPUBLIC

FELICITO AVILA ORDOÑEZ
THE SECRETARIAT OF STATE IN THE BUREAU OF LABOR AND SOCIAL
SECURITY.



República de Honduras