

## **ILO CONVENTION 138**

### **MINIMUM AGE FOR ADMISSION TO EMPLOYMENT**

THE CONVENTION AIMS to effectively abolish child labour by setting a minimum age for admission to employment or work shall be not less than the age of completion of compulsory schooling.

The ratifying State undertakes to pursue a national policy to ensure the effective abolition of child labour to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons.

The minimum age to be specified in conformity with the Convention shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years. Developing countries may initially specify a minimum age of 14 years.

The minimum age shall not be less than 18 years-or 16 years under conditions-for any type of employment or work which is likely to jeopardise the health, safety or morals of young persons.

The Convention provides that limited categories of employment or work may be excluded from its application where special and substantial problems of application arise.

The Convention does not apply to work done in schools for general, vocational or technical education or in other training institutions. Likewise, subject to certain conditions, apprentices of more than 14 years of age are not covered by the Convention (Article 6).

Young persons of 13 to 15 years of age—or at least 15 years of age who have not finished their compulsory schooling—may be permitted to carry out light work of certain types and under certain conditions to be determined.

Exceptions may be authorized in individual cases for such purposes participation in artistic performances.

This instrument was ratified in October 1997.

This Convention is applied in the Philippines by way of the Philippine Constitution (Article II-Declaration of Principles and State Policies, Section 13; Labor Code (Book III-Conditions of Employment, Title III-Working Conditions for Special Groups of Employees, Chapter II-Employment of Minors, Articles 139-140); Presidential Decree No. 603e (Child and Prohibiting the Employment of Children Below 15 Years of Age in Public and Private Undertakings); DOLE Order No. 4 (Hazardous Occupation to Young

Workers); Occupational Safety and Health Standards Rule 1013 (Hazardous Workplaces); Republic Act No. 7610 (The Child Protection Code); and Opinion of the DOLE Secretary dated September 3, 1991.

## **Text of Convention No. 138 Convention Concerning Minimum Age for Employment**

### **Preamble**

The General Conference of the International Labor Organization,

Having been convened at Geneva by the Governing Body of the International Labor Office, and having met in its Fifty-eighth Session on 6 June 1973, and

Having decided upon the adoption of certain proposals with regard to minimum age for admission to employment, which is the fourth item on the agenda of the session, and

Noting the terms of the Minimum Age (Industry) Convention, 1919, the Minimum Age (Sea) Convention, 1920, the Minimum Age (Agriculture), 1921, the Minimum Age (Trimmers and Stokers) Convention, 1921, the Minimum Age (Non-Industrial Employment), 1932, the Minimum Age (Sea) Convention (Revised), 1936, the Minimum Age (Industry) Convention (Revised), 1937, the Minimum Age (Non-Industrial Employment) (Revised), 1937, the Minimum Age (Fishermen) Convention, 1959, the Minimum Age (Under Ground Work) Convention, 1965, and

Considering that the time has come to establish a general instrument on the subject, which would gradually replace the existing ones applicable to limited economic sectors, with a view to achieving the total abolition of child labor, and

Having determined that these proposals shall take the form of an international Convention, adopts this twenty-sixth day of June of the year one thousand nine hundred and seventy-three, the following Convention, which may be cited as the Minimum Age Convention, 1973:

### **Article 1**

Each Member for which this Convention is in force undertakes to pursue a national policy designed to ensure the effective abolition of child labor and to raise progressively the minimum age for admission to employment or work to a level consistent with the fullest physical and mental development of young persons.

### **Article 2**

1. Each Member which ratifies this Convention shall specify, in a declaration appended to its ratification, a minimum age for admission to employment or work

within its territory and on means of transport registered in its territory; subject to Articles 4 to 8 of this Convention, no one under that age shall be admitted to employment or work in any occupation.

2. Each Member which ratified this Convention may subsequently notify the Director General of the International Labor Office, by further declarations, that it specifies a minimum age higher than that previously specified.
3. The minimum age specified in pursuance of paragraph of this Article shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years.
4. Notwithstanding the provisions of paragraph 3 of this Article, a Member whose economy and educational facilities are insufficiently developed may, after consultation with the organizations of employers and workers concerned, where such exist, initially specify a minimum age of 14 years.
5. Each Member which has specified a minimum age of 14 years in pursuance of the provisions of the preceding paragraph shall include in its reports on the application of this Convention submitted under article 22 of the constitution of the International Labor Organization a statement –
  - (a) That its reason for doing so subsists; or
  - (b) That it renounces its right to avail itself of the provisions in question as from a stated date.

### **Article 3**

1. The minimum age for admission to any type of employment or work which by its nature or the circumstances in which it is carried out is likely to jeopardise the health, safety or morals of young persons shall not be less than 18 years.

1. The types of employment or work to which paragraph 1 of this Article applies shall be determined by national laws or regulations or by the competent authority, after consultation with the organizations of employers and workers concerned, where such exist.
2. Notwithstanding the provisions of paragraph 1 of this Article, national laws or regulations or the competent authority may, after consultation with the organizations of employers and workers concerned, where such exist, authorize employment or work as from the age of 16 years on condition that the health, safety and morals of the young persons have received adequate specific instruction or vocational training in the relevant branch of activity.

#### **Article 4**

1. On so far as necessary, the competent authority, after consultation with the organizations of employers and workers concerned, where such exist, may exclude from the application of this Convention limited categories of employment or work in respect of which special and substantial problems of application arise.
2. Each Member which ratifies this Convention shall list in its first report on the application of the Convention submitted under article 22 of the Constitution of the International Labour Organisation any categories which may have been excluded in pursuance of paragraph 1 of this Article, giving the reasons for such exclusion, and shall state in subsequent reports the position of its law and practice in respect of the categories excluded and the extent to which affect has been given or is proposed to be given to the Convention in respect of such categories.
3. Employment or work covered by Article 3 of this Convention shall not be excluded for the application of the Convention in pursuance of this Article.

#### **Article 5**

1. A Member whose economy and administrative facilities are insufficiently developed may, after consultation with the organisations of employers and workers concerned, where such exist, initially limit the scope of application of this Convention.
2. Each Member which avails itself of the provisions of paragraph 1 of this Article shall specify, in a declaration appended to its ratification, the branches of economic activity or types of undertakings to which it will apply the provisions of the Convention.
3. The provisions of the Convention shall be applicable as a minimum to the following: mining and quarrying; manufacturing; construction; electricity; gas and water; sanitary services; transport, storage and communication; and plantations and other agricultural undertakings mainly producing for commercial purposes, but excluding family and small-scale holdings producing for local consumption and not regularly employing hired workers.
4. Any Member which has limited the scope of application of this Convention in pursuance of this Article –
  - (a.) shall indicate in its reports under article 22 of the Constitution of the International Labour Organisation the general position as regards the employment or work of young persons and children in the branches of

activity which are excluded from the scope of application of this Convention and any progress which may have been made towards wider application of the provisions of the Convention;

- (b.) may at any time formally extend the scope of application by a declaration addressed to the Director-General of the International Labour Office.

### **Article 6**

This Convention does not apply to work done by children and young persons in schools for general, vocational or technical education or in other training institutions, or to work done by persons at least 14 years of age in undertakings, where such work is carried out in accordance with conditions prescribed by the competent authority, after consultation with the organisations of employers and workers concerned, where such exist, and is an integral part of—

- (a.) a course of education or training for which a school or training institution is primarily responsible;
- (b.) a programme of training mainly or entirely in an undertaking, which programme has been approved by the competent authority; or
- (c.) a programme of guidance or orientation designed to facilitate the choice of an occupation or of a line of training.

### **Article 7**

1. National laws or regulations may permit the employment or work of persons 13 to 15 years of age on light work which is--

- (a.) not likely to be harmful to their health or development; and
- (b.) not as to prejudice their attendance at school, their participation in vocational orientation or training programmes approved by the competent authority or their capacity to benefit from the instruction received.

2. National laws or regulations may also permit the employment or work of persons who are at least 15 years of age but not have yet completed their compulsory schooling on work which meets the requirements set fourth in sub-paragraphs (a) and (b) of paragraph 1 of this Article.

3. The competent authority shall determine the activities in which employment or work may be permitted under paragraphs 1 and 2 of this Article and shall prescribe the number of hours during which and the conditions in which such employment or work may be undertaken.

4. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, a Member which has availed itself of the provisions of paragraph 4 of Article 2 may, for as long as it continues to do so, substitute the ages 12 and 14 for the ages 13 and 15 in paragraph 1 and the age 14 for the age 15 in paragraph 2 of this Article.

### **Article 8**

1. After consultation with the organisations of employers and workers concerned, where such exist, the competent authority may, by permits granted in individual cases, allow exceptions to the prohibition of employment or work provided for in Article 2 of this Convention, for such purposes as participation in artistic performances.

2. Permits so granted shall limit the number of hours during which and prescribe the conditions in which employment or work is allowed.

### **Article 9**

1. All necessary measures, including the provision of appropriate penalties, shall be taken by the competent authority to ensure the effective enforcement of the provisions of this Convention.

2. National laws or regulations or the competent authority shall define the persons responsible for the compliance with the provisions giving effect to the Convention.

3. National laws or regulations or the competent authority shall prescribe the registers or other documents which shall be kept and made available by the employer; such registers or documents shall contain the names and ages or dates of birth, duly certified wherever possible, of persons whom he employs or who work for him and who are less than 18 years of age.

### **Article 10**

1. This Convention revises, on the terms set forth in this Article, the Minimum Age (Industry) Convention, 1919, the Minimum Age (Sea) Convention, 1920, the Minimum Age (Agriculture) Convention, 1921, the Minimum Age (Trimmers and Stokers) Convention, 1921, the Minimum Age (Non-Industrial Employment) Convention, 1932, the Minimum Age (Sea) Convention (Revised), 1936, the Minimum Age (Industry) Convention (Revised), 1937, the Minimum Age (Non-Industrial Employment)

Convention (Revised), 1937, the Minimum Age (Fisherman) Convention, 1959, and the Minimum Age (Underground Work) Convention, 1965.

2. The coming into force of this Convention shall not close the Minimum Age (Sea) Convention (Revised), 1936, the Minimum Age (Industry) Convention (Revised), 1937, the Minimum Age (Non-Industrial Employment) Convention (Revised), 1937, the Minimum Age (Fisherman) Convention, 1959, or the Minimum Age (Underground Work) Convention, 1965, to further ratification.

3. The Minimum Age (Industry) Convention, 1919, the Minimum Age (Sea) Convention, 1920, the Minimum Age (Agriculture) Convention, 1921, and the Minimum Age (Trimmers and Stokers) Convention, 1921, shall be close to further ratification when all the parties thereto have consented such closing by ratification of this Convention or by a declaration communicated to the Director-General of the International Labour Office.

4. When the obligations of this Convention are accepted—

- (a) by a Member which is a party to the Minimum Age (Industry) Convention (Revised), 1937, and a minimum age of not less than 15 years is specified in pursuance of Article 2 of this Convention, this shall *ipso jure* involve the immediate denunciation of that Convention,
- (b) in respect of non-industrial employment as defined in the Minimum Age (Non-Industrial Employment) Convention, 1932, by a Member which is a party to that Convention, this shall *ipso jure* involve the immediate denunciation of that Convention, (c) in respect of non-industrial employment as defined in the Minimum Age (Non-Industrial Employment) convention (Revised), 1937, by a Member which is a party to that Convention, and a minimum age of not less than 15 years is specified in pursuance of Article 2 of this Convention, this shall *ipso jure* involve the immediate denunciation of that Convention, (d) in respect of maritime employment, by a Member which is a party to the Minimum Age (Sea) Convention (Revised), 1936, and a minimum age of not less than 15 years is specified in pursuance of Article 2 of this Convention or the Member specifies that Article 3 of this Convention applies to maritime employment, this shall *ipso jure* involve the immediate denunciation of that Convention, (e) in respect of employment in maritime fishing, by a Member which is a party to the Minimum Age (Fisherman) Convention, 1959, and a minimum age of not less than 15 years is specified in pursuance of Article 2 of this Convention or the Member specifies that Article 3 of this Convention applies to employment in maritime fishing, this shall *ipso jure* involve the immediate denunciation of that Convention, (f) by a Member which

is a party to the Minimum Age (Underground Work) Convention, 1965, and a minimum age of not less than the age specified in pursuance of that Conventions is specified in pursuance of Article 2 of this Convention or the Member specifies that such an age applies to employment underground in mines in virtue of Article 3 of this Convention, this shall *ipso jure* involve the immediate denunciation of that Convention, if and when this Convention shall have come into force.

5. Acceptance of the obligations of this Convention-

- (a) shall involve the denunciation of the Minimum Age (Industry) Convention, 1919, in accordance with Article 12 thereof,
- (b) in respect of agriculture shall involve the denunciation of the Minimum Age (Agriculture) Convention, 1921, in accordance with Article 9 thereof,
- (c) in respect of maritime employment shall involve the denunciation of the Minimum Age (Sea) Convention, 1920, in accordance with Article 10 thereof, and of the Minimum Age (Trimmers and Stokers) Convention, 1921, in accordance with Article 12 thereof, if and when this Convention shall have come into force.