

Commonwealth of Puerto Rico
DEPARTMENT OF LABOR AND HUMAN RESOURCES
MINIMUM WAGE BOARD
Prudencio Rivera Martínez Building
505 Muñoz Rivera Ave.
Hato Rey, Puerto Rico 00918

MANDATORY DECREE NO. 35

SEVENTH REVISION (1992)

APPLICABLE TO THE
NEEDLEWORK PRODUCTS MANUFACTURING INDUSTRY

Article I - Definition of the Industry

This mandatory decree shall be applicable to the Needle-
work Products Manufacturing Industry, as defined below:

The Needlework Products Manufacturing Industry shall comprise: every work or service, including homework, necessary or related to the manufacture of pillows, cushions, tops of motor vehicles, mops, apparel, furnishings and accessories as well as any other product made by sewing, knitting, crocheting or embroidering or by similar processes, from cloth or any other material. Likewise, it shall comprise the transportation, distribution and industrial sales carried out by any manufacturer of the products included in the industry.

The industry includes, but not as a limitation, the following products: pillows, including those filled with or made of foam rubber, cushions of all kinds, quilts, men's, women's and children's underwear and outerwear, infant's wear, uniforms, neckties, hats, caps, gloves, mitts, except those made of leather or imitation of leather, handkerchiefs, suspenders, garters, gowns, pajamas, nightgowns, raincoats, parasols, house furnishings such as bedspreads, sheets, pillowcases, mosquito nets, curtains, tablecloths, and napkins, except those made of paper, and other needlework products such as tents, cloth tops, and mops.

This definition includes the local trade activities as well as the activities covered by the Fair Labor Standards Act of 1938, as amended.

The minimum wages and other working conditions of this industry are applicable to an employee of the same considering his occupational activity together with the industrial activity of the enterprise or employer who has employed him except in cases, where the Minimum Wage Board expressly provides or has provided differently.

The minimum wages and other working conditions established in other mandatory decrees for the occupational groups of other industries shall not be applicable either by interpretation or in any other way to the employees who work in the Needlework Products Manufacturing Industry.

Establishments engaged in activities or services to which any mandatory decree of the Minimum Wage Board of Puerto Rico is currently applicable or may be applicable in the future are excluded from this definition.

Bona Fide travelling salesmen are excluded from the definition insofar as minimum wage is concerned.

The definition shall not comprise the following industries which are covered by the following mandatory decrees:

- 1- Leather, Leather Goods, and Related Products
Mandatory Decree No. 76
- 2- Corsets, Brassieres and Related Products
Mandatory Decree No. 75
- 3- Lumber and Wood Products, Metal Furniture, Doors and Windows, and Straw, Hair and Related Products
Mandatory Decree No. 25
- 4- Textile and Textile Products
Mandatory Decree No. 77
- 5- Button, Jewelry, Lapidary Work, Artificial Flower, Decoration, and Party Favor
Mandatory Decree No. 78
- 6- Shoe and Related Products
Mandatory Decree No. 84
- 7- Plastic Products
Mandatory Decree No. 80
- 8- Paper, Paper Products, Printing and Publishing
Mandatory Decree No. 83

Article II - Minimum Wage 1/

Every employer shall pay the employees covered by this decree an hourly wage not lower than the ones provided hereinafter:

1/ For piecework please refer to the Order Regulating Piecework in the Needlework Products Manufacturing Industry of the Minimum Wage Board.

Classifications and Subclassifications	Minimum Wage Per Hour
I- Enterprises not covered by the Fair Labor Standards Act of 1938, amended	
All Workers	\$3.50
II- Enterprises covered by the Fair Labor Standards Act of 1938, amended	
1- Men's and Boys' Underwear and Nightwear	
All Workers	4.25
2- Men's and Boys' Shirts except Work Shirts, Separate Trousers and Slacks; Women's, Children's and Infants's Underwear and Allied Garments; Canvas Curtains, Other Canvas or of Similar Material Products. Any other activity included in the Definition, Classified in Tier 2 by the Standard Industrial Classification Manual	
All Workers	3.90
3- Suits, Jackets and Similar Garments; Men's and Boys' Clothing not elsewhere classified; Children's Garments and Allied Products; Blouses and Skirts; Women's Suits and Allied Garments; Handkerchiefs, Shawls, Table Linen; any other activity included in the Definition, classified in Tier 3 by the Standard Industrial Classification Manual	
All Workers	3.80

Article III - Vacation Leave and Absences Due to Illness

A- Enterprises not Covered by the Fair Labor Standards Act of 1938, amended:

Vacation Leave

Every employee, except those engaged in home-work, shall be entitled to vacation leave with full pay, to be effective when he begins to enjoy the same at a rate of one (1) day for each month in which he has had at least one hundred and ten (110) hours of work.

Vacation leave shall be taken consecutively and shall be granted annually in such a way as not to interfere with the normal operation of the company, to which end the employer shall establish the corresponding schedule. The employee shall not demand his right to vacation leave until he has accumulated the same for a year.

Through written agreement between employer and employee, vacation leave may accrue for more than one year but never for more than two. In case the employee ceases in his work, the employer shall pay him the total thus far accumulated, even for less than a year. If vacation leave shall exceed the maximum of two (2) years herein authorized, the employer shall in addition pay him twice the corresponding wage for the period in excess of said two years.

The wage corresponding to each day of vacation leave shall be computed multiplying by eight (8) the highest regular wage rate the employee has received in at least one hundred and ten (110) hours of work during the year to which the vacation corresponds. At the employee's choice, vacation leave may or may not include the non-working days comprised within the period covered by the same.

Any contract by which an employee waives, for money or other cause, his right to actually enjoy his vacation shall be null and void, unless he has a written permit from the Secretary of the Department of Labor and Human Resources or his representative.

The employer who fails to grant any of his employees the vacation leave he is entitled to after accumulating the same for more than two years,

shall grant him the total thus far accumulated and shall pay him twice (2) the wage corresponding to the period in excess of said two years.

Absences Due to Illness

The employee shall be entitled to have the absences due to illness discounted from the number of days he has accumulated as vacation leave.

Except in cases of Acts of God, the employee shall notify the employer about his illness the same day of his absence.

B- Enterprises Covered by the Fair Labor Standards Act of 1938, amended

Vacation Leave

Every employee, except those engaged in home-work, shall be entitled to vacation leave with full pay, as follows:

Years of Service	Working Days Per Month	Working Days Per Year
Less than one (1) Year	1/2	6
One (1) year or over	3/4	9

The employee, excepting those engaged in home-work, shall be entitled to the above-mentioned vacation days for each month in which he has worked at least one hundred and ten (110) hours.

Vacation leave shall be taken consecutively and shall be granted annually in such a way as not to interfere with the normal operation of the company, to which end the employer shall establish the corresponding schedule. The employee shall not demand his right to vacation leave until he has accumulated the same for a year.

Through written agreement between employer and employee, vacation leave may accrue for more than

one year but never for more than two. In case the employee ceases in his work, the employer shall pay him the total thus far accumulated, even for less than a year. If vacation leave shall exceed the maximum of two (2) years herein authorized, the employer shall in addition pay him twice the corresponding wage for the period in excess of said two years.

The wage corresponding to each day of vacation leave shall be computed multiplying by eight (8) the highest regular wage rate the employee has received in at least one hundred and ten (110) hours of work during the year to which the vacation corresponds. At the employee's choice, vacation leave may or may not include the non-working days comprised within the period covered by the same. Any contract by which an employee waives, for money or other cause, his right to actually enjoy his vacation shall be null and void, unless he has a written permit from the Secretary of the Department of Labor and Human Resources or his representative.

The employer who fails to grant any of his employees the vacation leave he is entitled to after accumulating the same for more than two years, shall grant him the total thus far accumulated and shall pay him twice (2) the wage corresponding to the period in excess of said two years.

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Effectiveness:

Approved by the Minimum Wage Board on April 8, 1992.

The Notice of its Approval was published on April 15, 1992 on the newspaper El Vocero.

It shall become effective on April 30, 1992.

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In order to aid in the comprehension and interpretation of the decree, the coverage given by the Board to the definition of the industry is transcribed below.

Coverage of the Definition

The preceding definition is similar to the one contained in Mandatory Decree No. 35 - Sixth Revision (1987) applicable to the Needlework Products Manufacturing Industry.

This definition, as the previous one, includes the activities of the industry covered by the Fair Labor Standards Act of 1938, as amended.

The manufacture of mattresses without springs and the manufacture of corsets, girdles and brassieres is excluded. The manufacture of mattresses without springs and the kind of mattress used with the commonly called folding beds is covered by Mandatory Decree No. 25 - applicable to the Lumber and Wood Products, Metal Furniture, Doors and Windows and Straw, Hair, and Related Products Industry. This same Industry covers the manufacture of spring mattresses. However, the manufacture of quilts continues to be covered by the definition that is now approved for the Needlework Products Manufacturing Industry.

Those establishments engaged principally in rendering services of clothing alterations or repairs are excluded from this definition. These activities are covered by Mandatory Decree No. 88, applicable to the Personal Services Industry.

The definition of the Needlework Products Manufacturing Industry does not include the manufacture of corsets, brassieres, brassiere pads, girdles, foundation garments, sanitary belts, surgical or abdominal supports, and all similar body-supporting garments. It is also the Board's intention to exclude the activities of employers engaged individually in the manufacture of straps, hooks and eyes, stays, cups,

bows, and any other article that will become part of the brassieres, girdles and other products included in the definition of the Corsets, Brassieres, and Related Products Industry.

This industry is covered by Mandatory Decree No. 75.

The definition does not include the manufacture of gloves and mittens made of leather or imitation of leather. These activities are covered by Mandatory Decree No. 76 - applicable to the Leather, Leather Goods, and Related Products Industry. The manufacture of belts made of leather, artificial leather, plastic, paper or cardboard is covered by Mandatory Decree No. 76, however, belts made of fabric are included in the definition now approved.

The definition does not cover the manufacture and processing of all kinds of hosiery for men, women and children, including elastic and surgical hosiery, anklets, footlets, hose reaching to the waist in the general nature of tights, and combination of panties and hosiery. These activities are covered by Mandatory Decree No. 77, applicable to the Textile and Textile Products Industry. However, the manufacture of slipper socks, mukluks, baby's bootees and other similar kinds of footwear made by a crocheting or knitting process is included in this definition.

The tablecloths and napkins made of paper are included in Mandatory Decree No. 83, applicable to the Paper, Paper Products, Printing, and Publishing Industry.

Products such as women's raincoats, aprons, shampoo caps made of rubber sheets or rubber cloth, cut and sewed are included in the definition now approved. Likewise, men's raincoats and rubberpants for babies made by cutting and sewing are included.

The definition does not include the manufacture of items made principally of felt, straw, sisal, maguey or raffia.

The definition includes the manufacture of blankets, fabric bags and sacs, jute sacs, quilts, and pillows. It also includes flowers made of cloth or ribbon to be used in ladies' underwear except those to be used as part of brassieres, girdles and products included in the Corset, Brassiere, and Related Products Industry.

We wish to state that the manufacture of cushions which is included in the definition is that which is not closely related to the manufacture of furniture, that is, when an employer manufactures furniture and at the same time cushions which will complete the furniture manufactured, this type of cushions is not included in the definition inasmuch as its manufacture pertains to the furniture industry. The cushions to be considered included in the definition are those made from any material and which are manufactured for purposes other than the finishing of a piece of furniture, thus, for example, cushions of the kind which motor vehicle drivers place on their seats, and those which are used for ornamental purposes in homes.

Inasmuch as there are some enterprises engaged in the production of mops and of tops for motor vehicles made of cloth or other textile products, we have expressly included these activities in order that no doubts will remain as to the applicability to them of the decree in force in this industry.

By "work which is necessary or related to the manufacture of articles of needlework", comprised by the definition, we mean the manufacture itself as well as the work or service of employees in the office or performing work of repair, alteration, conservation or maintenance of machinery, buildings or structures used by the employer in the course of his industrial activities; or employees who carry out any other activities related or necessary to the industrial activities of the employer.

The definition includes the "transportation and distribution" carried out by the same manufacturer. With this it is meant that those employees engaged in the transportation and distribution of articles manufactured by the employer will be covered by the provisions of the mandatory decree approved finally for this industry and not by the provisions of the mandatory decree applicable to the transportation industry.

The phrase "sales carried out by the same manufacturer" includes only industrial sales and not commercial sales, that is, those sales which are necessarily carried out by the manufacturer in order to have his product reach the market where it will later be sold either by wholesale or by retail by employers other than the manufacturing employer. When a manufacturer of needlework products is also engaged in selling his products by wholesale or by retail, carrying out these selling activities in other establishments other than the industrial plant (factory or workshop) and as separate and independent activities from the industrial sales mentioned above, such activities shall be covered by the mandatory decrees of the Minimum Wage Board applicable to them.

The delivery activities conducted by the manufacturer in his own establishment or in his warehouses located with the premises of the industrial plant or outside of its premises should be considered as industrial sales activities, unless other activities in such places provide a reason to consider that wholesale or retail selling activities are being carried on therein which activities will then be covered by the applicable mandatory decrees.

To determine whether a sale is an "industrial sale" or not, the following elements should be considered:

- 1- The proportion between sales made directly to clients (in their establishments and in their central offices) and sales made in the warehouse or branch.

- 2- The place where records are kept, from which bills are sent, payroll is paid and where funds are kept to pay expenses.
- 3- Who supervises, administers and formulates the standards, rules and regulations for the operation of the warehouses.
- 4- Who hires and discharges employees.
- 5- Who directs employee-employer relations.

The "travelling salesmen" which are excluded from the definition are those who carry on sales in the name of their employers, without intervening personally in the distribution or delivery of the articles sold. Normally, these employees perform their services outside of the central establishment; do not return daily to the central office; their activities are not supervised by anybody once they go out to sell; use their discretion as to the time and effort to invest in their selling activities; and the very nature of their work prevents an effective and accurate determination of the hours worked by them every day.

The Board wishes to state that when the definition states that the minimum wages and other working conditions of this industry are applicable to an employee of the same considering his occupational activity together with the industrial activity of the enterprise or employer who has employed him, it is intended to mean that in order to determine the minimum wage of an employee, his occupation, simultaneously with the industrial activity of the enterprise, has to be considered except in cases which the Minimum Wage Board provides or has provided differently.

Therefore, the minimum wages the Minimum Wage Board approves -as previously recommended by the Minimum Wage Committee appointed for that purpose- for each occupational group of the Mandatory Decree for said industry shall be applicable to all workers and employees of this industry.

The minimum wages that are established for the employees of this industry shall be based on the economic and financial conditions shown in the economic reports prepared on the industry and shall depend, therefore, on the economic ability of the industry to pay the same.

Hence, it would not be proper to make applicable to the employees of this industry the minimum wages fixed in other decrees for similar occupations in or for other industries.

Neither the minimum wages, vacation and sick leave nor any other working condition (if any), provided in other mandatory decrees for the workers of other industries which have been approved by the Minimum Wage Board after considering the financial conditions and economic ability of said other industries to pay the same, shall be applicable to the employees of this industry.

Moreover, it has always been the policy of the Minimum Wage Board that as far as it is feasible, each industry be covered by only one mandatory decree in order to avoid confusion, differences, damages and other undesirable conditions in the employee-employer relations which can be prevented.