



**Department of Labor and Employment
PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION**

In the past two (2) weeks, questions have been asked and issues raised about POEA MEMORANDUM CIRCULAR NO. 4, SERIES OF 2007. To clear the air on what the MEMORANDUM CIRCULAR is all about, DOLE-POEA has issued this bulletin on question-and-answer format.

**QUESTIONS AND ANSWERS ON
POEA MEMORANDUM CIRCULAR NO. 04, SERIES OF 2007
ON GUIDELINES ON DIRECT HIRING OF OVERSEAS
FILIPINO WORKERS**

1. What is POEA Memorandum Circular No. 04, Series of 2007?

MC No. 4 is a POEA issuance that contains the guidelines for the implementation of POEA Governing Board Resolution No. 4, Series of 2007 which requires the prior approval by the Secretary of Labor before processing of workers hired directly by foreign employers.

2. What is the legal basis of POEA Memorandum Circular No. 04 and POEA Governing Board Resolution No. 4?

POEA MC No. 04 and POEA GB Resolution No. 4 implement Article 18 of the Labor Code of the Philippines which provides that no employer may hire Filipino workers for overseas employment except through the POEA and recruitment agencies licensed by the POEA. **This is the general rule in the deployment of Filipino for work overseas.**

Direct hiring may be allowed as an exception for the following:

- a. Members of the diplomatic corps
- b. International organizations
- c. Other employers as may be allowed by the Secretary

Article 18 of the Labor Code is an old provision of law and constitutes the basic policy on how OFWs are deployed. Hence, there is nothing new in the policy that MC No. 4 implements.

3. Under current law, how is hiring of OFWs undertaken?

An OFW may be hired only through licensed private recruitment agencies and through the government placement facility of the POEA.

Those hired through the licensed agencies are covered by the undertaking issued by the agency at the time of application for license to assume jointly and severally with the foreign employer all responsibilities and liabilities for the proper implementation of all the provisions of the contract of employment. Such contractual responsibilities include the obligation of the foreign employer to repatriate the worker after completion of employment or upon its termination for causes not attributable to the worker, or in the event of death of the worker.

The assumption of responsibilities by the licensed agency is guaranteed by a cash bond deposited under escrow account in favor of the POEA and Surety Bond issued by a reputable bonding company.

4. What is the purpose of MC No. 04, series of 2007?

The purpose of MC 04 is to provide OFWs hired by “other employers allowed by the Secretary” and without the participation of any licensed agency the same measure of protection and guarantee for compliance by the employer with the employment contract, including the obligation to repatriate the worker upon expiry of the contract, or its termination for causes not attributable to the worker, or in the event of his death.

This is in line with the Government’s primary policy of giving utmost protection to OFWs.

5. What protection is provided to the worker by MC No. 4, series of 2007?

MC No. 04 protects the worker by requiring the foreign employer to:

- a. Undergo verification process by the Philippine Overseas Labor Office (POLO), to pre-examine the employer and determine his capability to act as employer;
- b. Post a repatriation bond in the amount of US\$5,000 to cover the expenses for bringing home the worker upon expiry of the employment contract or its termination for causes not attributed to the worker, or the cost of repatriating the worker’s remains in the event of his death at the worksite;
- c. Post a performance bond to guarantee the payment of the salary of the worker for the duration of the employment. The amount of the bond shall not be less than the cost of the salary of the worker for 3 months;
- d. Provide a medical insurance for the worker at an amount equivalent to those provided to nationals of the host country.

The bonds may be secured from a Philippine surety company accredited by the Insurance Commission. The premium of the surety bonds shall be paid for by the foreign employer and shall in no case be charged to the worker. The medical insurance shall be issued by a health care provider at the destination country.

6. Does the employer have to post the repatriation bond and performance bond in cash to the POEA or the POLO?

No. The employer can secure a security bond and pay only the corresponding premium for the US\$5000 repatriation bond and the premium for the performance bond. If the bond is issued by a Philippine bonding company, the employer’s cost can be as low as US\$55 for a 2-year repatriation bond, depending on the issuing company.

7. Who are the employers allowed to secure direct hires under MC No. 04?

- a. Members of the diplomatic corps and international organizations;
- b. Other employers as may be allowed by the Secretary of Labor, which may include:
 - i. Immediate members of the royal family and heads of State or government;
 - ii. Ministers, Deputy Ministers and other senior government officials of the host country;
 - iii. Employers residing in countries where foreign placement agencies do not operate;
 - iv. Filipino expatriates and residents with capacity to hire Filipino workers;
 - v. Employers who are hiring on a one-time basis;
 - vi. Employers who need workers immediately and have submitted an undertaking to tie-up with licensed Philippine agencies for its next recruitment.

8. Who are not allowed to undertake direct hiring?

- a. Foreign employers who are registered / accredited with licensed Philippine recruitment agencies;
- b. Recruitment agencies in the Philippines and foreign placement agencies.

9. What is the procedure for the processing of direct hires under MC No. 04?

Employers requesting to directly hire OFWs should be pre-qualified by the Philippine Overseas Labor Office (POLO) prior to the endorsement by the POLO to the POEA and the Secretary of Labor for approval. Upon approval by the Secretary, the employment contract of the worker is verified by the POLO and thereafter processed by the POEA.

10. When did the regulation take effect?

MC 04 took effect on 15 January 2008. All direct hires whose employment contracts or visas were processed prior to this date are processed under the old procedure for processing name hires.

11. What are the top countries of destinations of direct hires?

- a. For household service workers, the top countries are Italy (6,100 in 2007 and 1,035 in 2006), Canada (5,488 in 2007 and 3,551 in 2006), Spain (1,950 in 2007 and 1,042 in 2006), Hong Kong (506 in 2007 and 556 in 2006), and Bahrain (207 in 2006 and 292 in 2007). The direct hires (also called "name hires") are predominant in Italy, Canada and Spain because these countries are hired through the intercession of relatives already working there.
The big volume of direct hires for Hong Kong is the result of HSW transfer to new employers.
- b. For non-household service workers the top destination in terms of regional destination is the Middle East (5,576 in 2007 and 4,804 in 2006), followed by Americas (3,448 in 2007 and 1,985 in 2006), Asia (3,297 in 2007 and 3,138 in 2006, Europe (1,328 in 2007 and 1,111 in 2006), and Oceania (889 in 2007 and 685 in 2006). The big volume of direct hire non-household workers bound for the Middle East is due to referrals by relatives.

12. What is the percentage of direct hires against total annual processed workers?

POEA processed about 31,000 name hires in 2007. This is equivalent to about 8 percent of total landbased new hires in 2007 or about 4 percent of total landbased workers processed in 2007 (new hires and re-hires). It is 2.6 percent of total OFWs processed in 2007 (landbased and seabased).

13. Does MC 04 apply to a worker who is renewing his contract with the same employer?

No, if the employer is represented by a licensed recruitment agency.

14. Does MC 04 apply to an irregular worker (undocumented at POEA) who returns to the Philippines and requests for processing at POEA as returning worker to go back to the same employer to finish his existing contract?

Yes.

15. Does MC 04 apply to a worker who is transferring to a new employer?

Yes.

16. Who are not covered by the repatriation and performance bond requirements?

1. The following employers are not covered:

- a. Employers who are exempt from the ban on direct hiring under the law and existing rules and regulations, such as:
 - i. Members of the diplomatic corps;
 - ii. International organizations;
 - iii. Immediate members of royal family and heads of State or Government;
 - iv. Ministers, Deputy Ministers and other senior government officials of the host country.
- b. Other employers as may be approved by the Secretary of Labor, where the following conditions obtain:
 - i. The employer's national laws and regulations provide ample protection to foreign workers such as a provision imposing on the employer the obligation to repatriate the foreign worker or his remains in the event of death to his country of origin, or to provide a guarantee for the performance of such obligation;
 - ii. Such obligation is stipulated in the employment contract;
 - iii. The employer's national law or rules and regulations provide for relief in the event of non-compliance by the employer of the worker's employment contract;
 - iv. There is an effective mechanism to enforce the above laws, rules and regulations, and contract.