



Legal Opinion (LO) No.:	2022-10
Date:	05 April 2022

ATTY. JAMES BRYAN O. AGUSTIN
J.B. Agustin Law Office
6th Floor Cyber One Building
11 Eastwood Avenue
Eastwood City Cyberpark
Bagumbayan, Quezon City
admin@agustinlawoffice.com

Subject: **Clarification on Section 1(f), Guideline VII
of the Insurance Guidelines on Rule XVI of
the Omnibus Rules and Regulations
Implementing Republic Act 8042**

Dear **Atty. Agustin**:

This refers to your request for clarification, on behalf of Blazing Star International Manpower Services, a licensed private recruitment agency, with respect to Section 1(f), Guideline VII of the Insurance Guidelines on Rule XVI of the Omnibus Rules and Regulations Implementing Republic Act 8042 (“the Insurance Guidelines”), as amended. Section 1(f), Guideline VII of the Insurance Guidelines provides as follows:

“Section 1. Minimum Benefits

The minimum insurance benefits contemplated herein shall include the following: x x x

(f) Money claims arising from the employer’s liability which may be awarded or given to the worker in a judgment or settlement of his/her case in the NLRC. **The insurance coverage for money claims shall be equivalent to at least three (3) months salaries for every year of the migrant worker’s employment contract, the maximum amount per month of which is One Thousand**

United States Dollars (US\$1,000.00) or the amount of salary under the employment contract, whichever is lower. In case the amount of insurance coverage is insufficient to satisfy the amount adjudged or agreed upon, the recruitment/manning agency is liable to pay the balance thereof.”

More specifically, you sought the following clarifications:

“We are requesting for clarification of the above emphasized provision on the mathematical formula for computing the money claims arising from foreign employer’s liability (non-payment of salaries and the unexpired portion of the contract).

In addition thereto, we also request for the clarification of the phrase “the maximum amount per month of which is One Thousand United States Dollars (US\$1,000.00) or the amount of salary under the employment contract” whether the said \$1,000 pertains to the maximum salary per month (the word “which” referring to the salary per month of the OFW) or the \$1,000.00 is set as a limit to the maximum liability of the insurance company in cases money claims arising from foreign employer’s liability?”

Upon careful consideration of your request, the Insurance Commission’s findings are as follows:

I. Computation of amount of money claims

Insofar as the computation of money claims arising from the foreign employer’s liability is concerned, the same shall be equivalent to the migrant worker’s salary for the unexpired portion of the employment contract. However, it must be emphasized that the money claims arising from the foreign employer’s liability and the insurer’s liability under the insurance contract are two different matters and may not necessarily coincide.

With respect to money claims arising from the foreign employer’s liability, the recruitment or placement agency shall be solidarily liable with the foreign employer for the migrant worker’s salary for the unexpired portion of the employment contract. This is in relation to the Supreme Court’s ruling in *Sameer Overseas Placement Agency, Inc. vs. Cabiles*, G.R. No. 170139, August 5, 2014, declaring the reinstated clause in Section 7 of Republic Act No. 10022 unconstitutional. Section 7 of R.A. No. 10022 provides:

“**Section 7.** Section 10 of Republic Act No. 8042, as amended, is hereby amended to read as follows:

SEC. 10. Money Claims. – x x x The liability of the principal/employer and the recruitment/placement agency for any

and all claims under this section shall be joint and several. This provision shall be incorporated in the contract for overseas employment and shall be a condition precedent for its approval. x x x

In case of termination of overseas employment without just, valid or authorized cause as defined by law or contract, or any unauthorized deductions from the migrant worker's salary, the worker shall be entitled to the full reimbursement of his placement fee and the deductions made with interest at twelve percent (12%) per annum, plus his salaries for the unexpired portion of his employment contract **or for three (3) months for every year of the unexpired term, whichever is less.** x x x" (Emphasis supplied.)

In striking down the subject clause on the amount of money claims for being unconstitutional, the Supreme Court ruled as follows:

"We reiterate our finding in *Serrano v. Gallant Maritime* that limiting wages that should be recovered by an illegally dismissed overseas worker to three months is both a violation of due process and the equal protection clauses of the Constitution.

x x x

Putting a cap on the money claims of certain overseas workers does not increase the standard of protection afforded to them. On the other hand, foreign employers are more incentivized by the reinstated clause to enter into contract of at least a year because it gives them more flexibility to violate our overseas workers' rights. Their liability for arbitrarily terminating overseas workers is decreased at the expense of the workers whose rights they violated. Meanwhile, these overseas workers who are impressed with an expectation of a stable job overseas for the longer contract period disregard other opportunities only to be terminated earlier. They are left with claims that are less than what others in the same situation would receive. The reinstated clause, therefore, creates a situation where the law meant to protect them makes violation of rights easier and simply benign to the violator."

Hence, in *Sameer*, the Supreme Court ruled that Respondent Joy Cabiles is entitled to her salary for the entire unexpired portion of her contract.

The foregoing considered, the rule, therefore, is that in the case of termination of overseas employment without just, valid or authorized cause as defined by law or contract, the migrant worker shall be entitled to their salary for the entire unexpired portion of their contract, and not merely to the lower amount between

the unexpired portion of the employment contract and three (3) months for every year of the unexpired term.

The foregoing notwithstanding, please note that the insurer's liability, as provided under Section 1(f), Guideline VII of the Insurance Guidelines, is limited to the amount set forth in the insurance contract, which is only required to be at least three (3) months salaries for every year of the migrant worker's employment contract, such salary not exceeding US\$1,000.00 per month. As expressly provided in Section 1(f), Guideline VII of the Insurance Guidelines, however, in case the amount of insurance coverage is insufficient to satisfy the amount adjudged or agreed upon, the recruitment or manning agency shall be liable to pay the balance thereof.

II. Interpretation of One Thousand Dollar-Limit for Money Claims

As to your second query, please note that the Insurance Guidelines merely set forth the terms and minimum benefits of the compulsory insurance contract required to be secured in favor of migrant workers, and does not govern the terms of the employment contract between the foreign employer and the migrant worker. This being the case, **the US\$1,000.00-limit provided under Section 1(f), Guideline VII of the Insurance Guidelines pertains to the maximum liability of the insurance company in case of money claims arising from the foreign employer's liability, and not to the maximum monthly salary that may be set forth under the employment contract.**

Please note that the above opinion rendered by this Commission is based solely on the particular facts disclosed in the query and relevant solely to the particular issues raised therein and shall not be used, in any manner, in the nature of a standing rule binding upon the Commission in other cases whether for similar or dissimilar circumstances.

For your information and guidance.

Very truly yours,

DENNIS B. FUNA
Insurance Commissioner

