



Department of Migrant Workers
 Ortigas Avenue corner Epifanio de los Santos Avenue
 City of Mandaluyong 1550 National Capital Region



Office of the Secretary

ADMINISTRATIVE ORDER NO. 05
 Series of 2022

ALL POLOS ARE HEREBY ORDERED:

1. To submit to the Secretary within two (2) days from receipt of this order, a complete situationer on their respective office operations to include its financial situation, its personnel component, the OFWs assisted, its relations with the Foreign Service Post and the overseas Filipino community, especially the migrant workers, in its jurisdiction, and the problems encountered in these aspects. Recommendations must focus on means and courses of actions to make operations more swift and more effective in addressing the problems of our OFWs.
2. To change all its names, signages, letterheads, nomenclatures and everything identifying the Office to that of Migrant Workers Office (but to ensure that the name and address of the Embassy or Consulate is placed above that of the MWO); similarly, those with MWOFRC should now change the center's name and identity to that Migrant Workers Resource Center (MWRC).
3. Most importantly, to disregard and refuse compliance with all orders and instructions from the Department of Labor and Employment and to **abide only by the orders and instructions of the Secretary of the DMW**. All DOLE orders for changes or deployments of personnel are hereby declared illegal and invalid for having been issued after the POLOs together with six other agencies were "consolidated, merged into and constituted as the Department of Migrant Workers and their powers and functions subsumed to the Department which shall assume and perform all their powers and functions" (Section 19, RA 11641). All required reports should now be submitted to the Secretary of DMW. All requests for approval of any action should now be presented to the Secretary of DMW.
4. To abide by and execute policies consistent with the attached Position Paper on the Effects of RA 11641 When it Became Effective.

FOR STRICT COMPLIANCE.

ABDULLAH D. MAMA-O
 Secretary

CONTROLLED AND DISSEMINATED
 By DMW Central Records Division on: 05 April 2022



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Office of the Secretary

**POSITION PAPER ON
EFFECTS OF RA 11641 WHEN IT BECAME EFFECTIVE**

Everyone now agrees that RA 11641 became effective on February 03, 2022.

When said law took effect, what happened? What are the present consequences of RA 11641?

Upon effectivity, it created and constituted the Department of Migrant Workers (DMW). The Department thus began to exist and function on February 03, 2022.

For that is its purpose as shown in its Title, viz: "AN ACT CREATING THE DEPARTMENT OF MIGRANT WORKERS, DEFINING ITS POWERS AND FUNCTIONS, RATIONALIZING THE ORGANIZATION AND FUNCTIONS OF GOVERNMENT AGENCIES RELATED TO OVERSEAS EMPLOYMENT AND LABOR MIGRATION, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES"

The Sections giving effect to these clear intentions are Sections 4, 19, and 22, viz:

Section 4. Creation. – *The Philippine Overseas Employment Administration (POEA) created under Executive Order No. 247, Series of 1987, as amended, and all the entities, agencies and units enumerated in Section 19 are consolidated and merged, and hereby constituted as the Department of Migrant Workers, hereinafter referred to as "the Department". (underlining and emphasis supplied)*

Section 19. Consolidation and Merger of Agencies and Functions. – The following agencies are hereby consolidated and merged into and constituted as the Department, and their powers and functions subsumed to the Department which shall assume and perform all their powers and functions:

- (a) The POEA, as created under Executive Order No. 247 and Republic Act No. 8042, as amended;
- (b) The Office of the Undersecretary for Migrant Workers' Affairs (OUMWA) of the DFA as provided under Republic Act No. 8042, as amended;
- (c) All Philippine Overseas Labor Offices (POLO) under the DOLE;
- (d) The International Labor Affairs Bureau (ILAB) under the DOLE;
- (e) The National Reintegration Center for OFWs (NRCO) under the OWWA;
- (f) The National Maritime Polytechnic (NMP) under the DOLE; and
- (g) The Office of the Social Welfare Attaché (OSWA) under the DSWD." (underlining supplied)

“Section 22. Absorption, Separation, and Retirement from Service. – The existing employees of the transferred and subsumed agencies under this Act shall enjoy security of tenure and shall be absorbed by the Department, in accordance with the staffing patterns and the selection process as prescribed under Republic Act No. 6656 or the Government Reorganization Law.”
(underlining supplied)

These commands and peremptory prescriptions in the present tense (except for Sec. 22), are **specific** (as to which agencies are covered) and **definite** (as to what is going to happen to them).

So when RA 11641 took effect on February 03, 2022, these provisions came to life and to force, and they established and constituted the DMW on that day by consolidating, merging, and constituting all the agencies enumerated in Section 19 into the DMW, which subsumed them and began to assume and perform all their powers and functions.

Let's take note of the ordinary meanings of the words used here.

Consolidate as a verb is understood as “to combine (a number of things) into a single more effective or coherent whole” and “to make (something) physically stronger or more solid”. And it has the following synonyms: “unite, merge, integrate, amalgamate, fuse, blend, mingle, marry, synthesize, bring together, join, affiliate, federate, unify” 1/

Merge also a verb, means “to combine or cause to combine to form a single entity” as well as “to blend or cause to blend gradually into something else so as to become indistinguishable from it”. Its synonyms are: join (together), join forces, amalgamate, consolidate, integrate, unite, unify, combine, incorporate, affiliate, coalesce, meld, agglutinate, team up, link (up), band (together), ally, league, federate, bring together, join, conflate, pool, knit, yoke, mingle, blend, fuse, run/melt/fade into one another, mix, intermix, intermingle, commingle, converge, integrate, coalesce, compound, homogenize, emulsify. 2/

Constitute, on the other hand, means “to comprise or put together.” Example: that which is duly constituted is properly made up, formally correct, and valid.3/

However, despite the clarity and cogency of the ordinary meanings of the words Consolidate, Merge and Constitute, ES Medialdea insists that, based on the last Paragraph of Section 23, the creation and constitution of the DMW did not happen. Said last paragraph provides that:

“The Department shall not be constituted without an appropriation in the 2023 General Appropriations Act; an effective implementing rules and regulations; and a staffing pattern.”

He then gave his “unequivocal guidance” to the effect that the DMW can only exist and be constituted after the 2-year period mentioned in Section 23 has passed, and after the three conditions (IRR, staffing pattern, 2023 budget) are completed.

He is wrong here. **As of February 3, 2022, the DMW became duly constituted.** As the DMW began to exist on that date through the blending, fusion and unification of the seven agencies mandated by RA 11641, it now stands separate and independent.

The umbilical cords of the consolidated agencies to their mother departments have been cut and severed on that date of effectivity, and **the DMW has supervision and control over the seven merged agencies.**

This Medialdea assertion in effect says that the Congress contradicted itself in RA 11641, by having Sections 4 and 19 use "are constituted" and having the last paragraph of Section 23 use "shall not be constituted".

Congress cannot have committed logical fallacy

Logical fallacy relates to the law of contradiction, which is a principle in logic stating that "a thing cannot at the same time both **be and not be** of a specified kind (as a table and not a table) or in a specified manner (as red or not red)" 4/ "There are three laws of logic: (1) the law of contradiction, (2) the law of excluded middle (or third), and (3) the principle of identity. The three laws can be stated symbolically as follows. (1) For all propositions p , it is impossible for both p and not p to be true, or: $\sim(p \dots)$ 5/

"The requirement that law, understood as a system of norms, has to be consistent, that is to say it must lack contradictions, seems to be even stronger than the requisite of completeness. This requirement shows two directions: on the one hand, it is frequently asserted that a conflict between norms issued by a rational legislator is logically impossible since it contradicts the premise of rationality. On the other hand, it is admitted as a postulate of legal science that the system of norms must lack contradictions. Consequently, its "interpretations" must be based on that principle." 6/

It is submitted that our Congress is a "rational legislator" and that it enacted a consistent law.

Consequently there is a need to settle this apparent contradiction. We are reminded that "A term appearing in several places in a statutory text is generally read the same way each time it appears." 7/ and that "Other language canons direct that all words of a statute be given effect if possible, that a term used more than once in a statute ordinarily be given the same meaning throughout, and that specific statutory language ordinarily trumps conflicting general language". 8/

We are also guided to observe that: "In expounding a statute, we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy."9/

Looking closely at this apparent contradiction, we can see that it appears to be a stand-off between the peremptory present tense specific and definite mandates of Sections 4 and 19, against the general negative conditional future prescription of the last paragraph of Section 23, based on 3 conditions, which has the same positive meaning as "when the IRR, staffing pattern and 2023 budget are complied with, the Department shall be deemed fully operational".

Long established in our jurisdiction is the significant legal maxim that: "We must interpret not by the letter that killeth, but by the spirit that giveth life." 10/

In this case "constitute" is the critical word. Secs. 4 and 19 use "are constituted" while Sec 23 uses "shall not be constituted". According to the law of contradiction, if they really are contradictory, one of them must not be true. One giveth life and the other

killleth. Consequently, the provisions giving life to the Department tend to be seen as prevailing.

Generalia specialibus non derogant

"A special and specific provision prevails over a general provision irrespective of their relative position in the statute. *Generalia specialibus non derogant*. Where there is in the same statute a particular enactment and also a general one which in its most comprehensive sense would include what is embraced in the former, the particular enactment must be operative, and the general enactment must be taken to affect only such cases within its general language as are not within the provisions of the particular enactment." 11/

"However inclusive may be the general language of a statute, it will not be held to apply to a matter specifically dealt with in another part of the same enactment." 12/

Given that we observe the principle of *generalia specialibus non derogant* 13/ or the rule that the specific prevails over the general, if we are to use this criteria, it would appear that Sections 4 and 19 prevail over Section 23. Again, because Sections 4 and 19 are specific and definite and stated in the mandatory present tense, while the last para of Section 23 is generally stated in the negative for a conditional future.

Harmony and effectiveness of differing provisions

However, "One of the well-established rules of statutory construction enjoins that endeavor should be made to harmonize the provisions of a law or of two laws so that each shall be effective." 14/

Given this need to make both provisions effective, we can make it happen if we construe the use of "not be constituted" in Sec 23, in the context of the purposes of the Transition Committee: which are: (a) to facilitate the complete and full operation of the Department which shall not be later than two (2) years after the effectivity of this Act, and (b) to effectively implement the smooth and orderly transfer to the Department of the subsumed agencies, by promulgating the necessary implementing rules and regulations. (3rd Para, Sec 23)

Taking this sense in the third paragraph of section 23, we can understand the general negative use as referring to what the ES described, viz: "Accordingly, the DMW shall be fully operational only after the above-mentioned conditions have been complied with", meaning that **the Department is already operational albeit not yet fully.**

This is the sensible meaning we can give to this apparent contradiction: **that the DMW now exists and functions while in the process of completing the smooth and orderly subsumption of the seven agencies into the DMW:** "Since no legislature ever intends to give two simultaneous inconsistent commands, every statute must, if possible, be reduced to a single, sensible meaning before it is applied to any case". 15/

This operational fact is strongly supported by Section 26 of the Act which provides for appropriations for the department's initial implementation.

The DMW is alive, functioning and operational in the transition period, during which the Secretary can exercise his powers and functions.

There is nothing in the last paragraph of Section 23 saying that the Department duly constituted by virtue of Sections 4 and 19, has been frozen into a state of suspended animation until after two years of the Act's effectivity and/or while the 3 tasks are being worked on. As both contending norms must be given effect, it stands to reason that **the continued existence and functioning of the Department are effective, and that the deadlines for completing the three jobs are also effective.**

Moreover, there is nothing in RA 11641 that prohibits or can be interpreted as prohibiting the Secretary - the President's Alter Ego for this law - to exercise the self-executory and plenary powers of the Secretary during the transition period. So let us be clear: **during the transition period, the Secretary can and may exercise all his powers and functions!**

In *Manila Electric Company v. Public Service Commission*,^{16/} the Court held that **"what is not expressly or impliedly prohibited by law may be done, except when the act is contrary to morals, customs and public order."** Xxx In other instances, the Court has allowed or upheld actions that were not expressly prohibited by statutes when it determined that these acts were not contrary to morals, customs, and public order, or that upholding the same would lead to a more equitable solution to the controversy. However, it is the law itself - Articles 1306 and 1409(1) of the Civil Code - which prescribes that acts not contrary to morals, good customs, public order, or public policy are allowed if also not contrary to law. ^{17/}

Consequently, **all the powers and functions of the Department are now exercised by the Secretary and must go forth to the world under his signature.**

End Notes

1/ Dictionary Definitions from Oxford Languages

<https://www.google.com/search?q=consolidate+define&oq=consolidate&ags=chrome..1.69i59j0i67j0i67i131i433j0i20i263i433i512j0i131i433i512i2j46i175i199i512j0i131i433i512j46i175i199i512j0i512.5901j0j7&sourceid=chrome&ie=UTF-8>

2/ Dictionary Definitions from Oxford Languages

https://www.google.com/search?q=merge+define&sxsrf=APq-WBtbwWcGyNQnTTIBcDQINEYeU8HjXw%3A1648772649330&ei=KUZGYuTiE-mumAWO9YQQ&ved=0ahUKEwikm9DgzPH2AhVpF6YKHY46AQIQ4dUDCA4&oq=merge+define&gs_lcp=Cgdn3Mtd2l6EAwyCggAEJECEEYQ-QEyBggAEAcQHjIGCAAQBxAeMgYIABAHEB4yBggAEAcQHjIGCAAQBxAeMgYIABAHEB4yBggAEAcQHjIGCAAQBxAeMgYIABAHEB46CAgAEAcQChAeSgQIQRgASgQIRhgAUABYrQdgtStoAHABeACAAZUBiAH6A5IBAzQuMZgBAKABAcABAQ&scIent=gws-wiz

3/ West's Encyclopedia of American Law, edition 2. Copyright 2008 The Gale Group, Inc. All rights reserved.

<https://legaldictionary.thefreedictionary.com/Constitute#:~:text=To%20comprise%20or%20put%20together,provision%20to%20govern%20the%20people.>

4/ <https://www.britannica.com/topic/law-of-contradiction>

5/ <https://www.merriam-webster.com/dictionary/law%20of%20contradiction>

6/ Statutory Interpretation: General Principles and Recent Trends

<https://www.everycrsreport.com/reports/97-589.html# Toc407006256>

7/ "Contradictions in the Legal System" by Ricardo Alberto Caracciolo Cordoba, <https://www.jstor.org/stable/23679300>

8/ Statutory Interpretation: General Principles and Recent Trends, March 30, 2006 – September 24, 2014, <https://www.everycrsreport.com/reports/97-589.html>

9/ *United States v. Boisdoré's Heirs*, 49 U.S. (8 How.) 113, 122 (1850). For a modern example of examining statutory language "in place," see *Brotherhood of Locomotive Engineers v. Atchison, T. & S.F.R.R.*, 516 U.S. 152, 157 (1996) (purpose of Hours of Service Act, to promote safety by ensuring that fatigued employees do not operate trains, guides the determination of whether employees' time is "on duty").

10/ G.R. No. 100113 September 3, 1991, *Cayetano vs. Monsod, et al*

11/ G.R. No. L-41861, March 23, 1987, *Commissioner of Customs, vs. Court Of Tax Appeals, Smith Bell & Co., Inc*

12/ *Fourco Glass Co. v. Transmirra Products Corp.*, 353 U.S. 222, 228 (1957) (citations omitted). The same principle is used to resolve conflict between two statutes. See, e.g., *United States v. Estate of Romani*, 523 U.S. 517, 532 (1998) (later, more specific statute governs). See also *Morton v. Mancari*, 417 U.S. 535, 550-51 (1974) (a general statute will not be held to have repealed by implication a more specific one unless there is "clear intention otherwise"). From *Statutory Interpretation: General Principles and Recent Trends*, March 30, 2006 – September 24, 2014, <https://www.everycrsreport.com/reports/97-589.html# Toc407006243>

13/ G.R. No. L-1276, April 30, 1948, *VALERA, vs TUASON, Jr., et al*

14/ *Ibid.*

15/ Frederick J. De Sloovere, *Contextual Interpretation of Statutes*, 5 *Fordham L. Rev.* 219 (1936). <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1085&context=flr>

16/ G.R. No. 193978, February 28, 2012, citing *Velarde v. Social Justice Society*, G.R. No. 159357, April 28, 2004.

17/ G.R. No. 213948, April 25, 2017, *KNIGHTS OF RIZAL, VS. DMCI HOMES, INC., et al.*