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(Commission on Human Rights of the Philippines)

**HUMAN RIGHTS ADVISORY
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**ON THE FULL IMPLEMENTATION OF TWENTY PERCENT
(20%) DISCOUNT OF PWDs ON DOMESTIC AIRFARE**

Introduction

As the country's national human rights institution, the Commission on Human Rights issues this advisory in relation with its mandate to promote and protect human rights of all persons, including persons with disabilities.

The 1987 Philippine Constitution, in the Declaration of Principles and State Policies, mandates that the State shall promote social justice¹ in all phases of national development. This simply means the equalization of economic, political and social opportunities with special emphasis on the duty of the State to tilt the balance of social forces by favouring the disadvantaged in life.²

Among the disadvantaged or vulnerable sectors are Persons with Disability. Persons with disabilities (PWDs) include those who have long-term physical, mental, intellectual or sensory impairments which in interacting with various barriers may hinder their full and effective participation in society on an equal basis with others.³

A barrier is anything that gets in the way of people with disabilities participating in day-to-day activities, or taking part in opportunities that are available to the public. Among them are physical or environmental barriers found in buildings and spaces that stop people from using a service or going to an event; information and communication barriers that stop people from getting information; attitudinal barriers are when people think and make decisions about disability based on incorrect information; and systemic barriers are policies, practices, or procedures that discriminate against people with disabilities.

¹ Social Justice is neither communism, nor despotism, nor atomism, nor anarchy, but the humanization of the laws and the equalization of the social and economic forces by the State so that justice in its rational and objectively secular conception may at least be approximated. [Calalang vs. Williams]

² Bernas Primer at 16 (2006 ed.)

³ Art. 1, par. 2, United Nations Convention on the Rights of Persons with Disability

People with disabilities face these barriers every day—from physical obstacles in buildings to systemic barriers in employment and civic programs.⁴

Thus, the Philippine government affirmed its commitment to the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) by ratifying it on 15 April 2008. The Convention ensures that all persons with disabilities enjoy the same human rights as everyone else and are able to lead their lives as full citizens who can make valuable contributions to society when given the same opportunities as others.

UNCRPD, Article 20 – Personal mobility provides:

“State Parties shall take effective measures to ensure personal mobility with the greatest possible independence for persons with disabilities x x x”

Relative thereto, the Congress of the Philippines enacted R.A. No. 7277, otherwise known as the Magna Carta for Disabled Persons, as amended by R.A. No. 9442, which was further amended by R.A. No. 10524.

The amendment to the Magna Carta provides certain privileges and benefits given to PWDs to promote their right to accessible transportation. Section 32, Chapter 8 of R.A. No. 9442 provides for other privileges and incentives to persons with disabilities, including:

“(f) At least twenty percent (20%) discount on fare for domestic air and sea travel for the exclusive use or enjoyment of persons with disability;

“(g) At least twenty percent (20%) discount on public railways, skyways and bus fare for the exclusive use and enjoyment of persons with disability.”

The Implementing Rules and Regulations of RA 9442 states that:

“6.5 Air and Sea Transportation Privileges – At least twenty percent (20% discounts in fare for domestic air, and sea travel based on the actual fare except promotional fare. If the promotional fare discount is higher than the twenty percent (20%) discounts privileges, the persons with disability may choose the

⁴ <http://www.ncwd-youth.info/attitudinal-barriers-for-people-with-disabilities>

promotional fare and should no longer be entitled to the twenty percent (20%) discount privileges.

6.6 Land Transportation Privileges – *At least twenty percent (20%) discounts in bus fares such as ordinary, aircon fares and on public railways such as LRT, MRT, PNR, and such other similar infrastructure that will be constructed, established and operated by public or private entity. Toll fees of skyways and expressways are likewise subject to at least twenty percent (20%) discounts, however, this privilege can be availed only by a person with disability owning the vehicle.”*

Towards this end and pursuant to the provisions of RA 9442, the Department of Transportation and Communications (DOTC) – Metrostar Express issued Office Order No. 26 on 23 October 2008, which sets forth an update procedure on the Provision of 20% discount for PWDs.

The Procedure in Availing of the 20% Discount for PWD on Domestic Air Fares:

3.1 An identification card issued by the City or Municipality Mayor or the Barangay Captain of the place where the person with disability resides;

3.2 The passport of the persons with disability concerned; or

3.3 Transportation discount identification card (ID) issued by the NCWDP. However, upon effectivity of this IRR, NCWDP will already adopt the ID issued by the Local Government Unit for the purposes of uniformity in the implementation.

X x x

4.1 The PWD shall present any proof of identification as provided herein at the time of the purchase of the ticket.

The Light Rail Transit Authority (LRTA) has also issued guidelines to be followed in the issuance of discount coupons to PWDs.⁵ The PWD must present the PWD ID Card in order to avail of the coupon. The discount coupon is non-transferrable and its issuance is limited to ten (10) coupons per transaction for Single Journey Tickets and three (3) for Stored Value Tickets. The coupon

⁵ LRTA's Public Relations Division of Discount Coupon to Senior Citizen and Person with Disability, LRTA.A.BD.PR.002

and PWD ID card must be presented to the Station Teller when buying the LRTA magnetic ticket to avail of the 20% discount.

The Philippine National Railway (PNR), likewise, issued an Office Order, providing for a fifty percent (50% discount for all types of accommodations on all long distance trains to passengers with disabilities including one (1) companion. A designated seat, preferably near the entrance or exit of the coach, will be provided to PWDs.

In addition, the LTFRB issued a memorandum circular⁶ setting forth guidelines for fare discounts. To avail of the discount, the PWD must present his/her PWD ID card. The discount covers public utility buses and jeepneys only.

In a memorandum circular⁷, MARINA has set guidelines for all owners/operators of inter-island passenger vessel water crafts for compliance with the Magna Carta and the Accessibility Law. In the said memorandum circular, the person with disability must present a valid identification card issued by the NCWDP to enjoy and/or be entitled to the privileges set forth by the Magna Carta and the Accessibility Law, unless his/her physical disability is evident.

In 2008, the Civil Aeronautics Board (CAB) issued an Ad Referendum Resolution⁸ setting forth guidelines on the grant of 20% discount on domestic air fares for PWDs in accordance with RA 9442.

Lamentably, despite the passage of several laws, including several administrative orders and issuances, PWDs continue to feel discriminated. There are persons with disabilities who could not avail of the twenty percent (20%) discount on domestic air travel sold online and/or the airlines accredited ticketing agencies as opposed to how it is extended to senior citizens.⁹

There are PWDs who are being required to physically appear in the airlines organic offices to avail of the discount as opposed to senior citizens who just need to email or fax their Identification Cards. This type of policy defeats the purpose of the discount as it is more expensive for some persons with disabilities such as those who uses wheelchair and need to travel by taxi to physically appear to the airlines organic office.¹⁰

⁶ Consolidated Guidelines of Fare Discounts to Students, Elderly/Senior Citizens, and Disabled Persons; LTFRB Memorandum Circular No. 94-001, issued on 3 January 1994.

⁷ MARINA Memorandum Circular No. 98; 16 March 1995

⁸ Civil Aeronautics Board Ad Referendum Resolution No. 2 (2008)

⁹ Resolution No. 2014-01 of the National Anti-Poverty Commission

¹⁰ Ibid.

For instance, Cebu Pacific Air's General Terms and Conditions of Carriage of Passengers and Package provides:

"5.6 PWD and Senior Citizen Discount on Fares

*5.6.1 During booking, a PWD or PRM is entitled to a twenty percent (20%) discount on regular fare for domestic air travel upon presentation of a valid Identification Card issued by the National Council on Disability Affairs (NCDA) or a local government unit. The 20% discount shall be applicable only for fares and for payment over the counter and **not applicable for online booking.**¹¹"*

This is an example of systemic barrier which constitute discrimination on the basis of disability. Discrimination on the basis of disability is any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation.

Proclamation No. 361, as amended by Administrative Order No. 35¹², was signed in 19 August 2000, calls for a weeklong celebration of the National Disability Prevention and Rehabilitation which endeavors to stimulate public awareness on disability and encourage every citizen to take active responsibility in the upliftment of the economic and social conditions of all persons with disabilities of our society. For this year's celebration, it aspires to mainstream and include disability agenda in all programs of government and non-government organizations in order to fulfill their obligations to persons with disabilities as duty bearers.

In November 2013, President Benigno S. Aquino III signed Proclamation No. 688 declaring the period of 2013-2022 as the Philippine Decade of the Incheon Strategy to "Make the Right Real" for Persons with Disabilities in support of the 3rd Asian and Pacific Decade of Persons with Disabilities.

The Incheon Strategy provides the Asian and Pacific region, and the world, with the first set of regionally agreed disability-inclusive development goals. It will enable the Asian and Pacific region to track progress towards improving the quality of life, and the

¹¹ <https://www.cebupacificair.com/Pages/terms-and-conditions-of-carriage.aspx>

¹² National Disability Prevention and Rehabilitation Week Celebration

fulfilment of the rights, of the region's 650 million persons with disabilities, most of whom live in poverty.¹³

It is worthy to note that every citizen has the right to move and travel freely within and outside the country. This was intensified under Section 6, Article III, 1987 Philippine Constitution which further provides that:

“The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court. Neither shall the right to travel be impaired except in the interest of national security, public safety, or public health, as may be provided by law.”

The PWD identification card system is already being implemented. However, unlike the Senior Citizen's Act, it is still not as widely recognized by relevant commercial establishments. The problem may be seen to lie in the general awareness regarding such provisions of the law. Some commercial establishments may only be vaguely aware of discount entitlements for persons with disabilities, and are therefore not too quick to honor said cards upon their presentment. It is therefore, also seen as a helpful addition to the efforts to promote protection of the rights of PWDs to conduct awareness drives for the commercial establishments, so that they may be able to properly and adequately respond to the availment of such discounts.¹⁴

The principle of equal protection of law provides that all persons similarly situated must be similarly treated both as to rights conferred and responsibilities imposed.

R.A. No. 9442, otherwise known as the Magna Carta for Persons with Disabilities, providing benefits and privileges to PWDs is a legitimate exercise of police power for having the two (2) tests¹⁵ concurred.

The police power or the law of overruling necessity is the power of promoting public welfare by restraining and regulating the use of liberty and property.¹⁶ It is the most pervasive, the least limitable, and the most demanding of the three inherent powers of

¹³ <http://www.unescapsdd.org/publications/incheon-strategy>

¹⁴ Manual on Access to Justice of Persons with Disabilities, UP Foundation, Inc., p. 34, funded by the American Bar Association

¹⁵ Lawful Subject – the subject of the measure is within the scope of the police power, that is, that the activity or property sought to be regulated affects the public welfare. The interest of the public, generally, as compared to a particular class requires interference by the State; and Lawful Means – the means employed are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive on individuals. Both the end and the means must be legitimate. Cited in the case of Ynot vs. IAC, G.R. No. 74457, 20 March 1987

¹⁶ Outline Reviewer in Political Law by Antonio Nachura, p. 48 (2009 ed.)

the State. It may be exercised as long as the activity or the property sought to be regulated has some relevance to the public welfare.¹⁷

The State is mindful of the right of enterprises to reasonable returns on investments, and to expansion and growth¹⁸, however, when conditions so demand, as determined by the legislature, property rights must bow to the primacy of police power because property rights, though sheltered by the due process clause, must yield to the general welfare,¹⁹ as part of the enterprises' corporate social responsibility.

The Commission on Human Rights seeks to ensure that the dignity, human rights and freedom of all persons, including persons with disabilities, are always respected, promoted and protected in a rights-based approach since PWDs have the same human rights as others, and, therefore, must be able to enjoy them on an equal basis with others.

All persons must be treated equally before the law without discrimination on the basis of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, including disability.

Hence, the Commission on Human Rights as a national human rights institution mandated under the 1987 Philippine Constitution to monitor compliance by the government of its treaty obligations hereby advises and/or call upon the Department of Transportation and Communication and other concerned agencies of the government to ensure that all domestic airlines ticketing offices amend its rules and regulations concerning benefits and privileges of PWDs consistent with international instruments and domestic laws thereby making the rights of PWDs real.

Issued this 12th day of December 2014, Quezon City, Philippines.


LORETTA ANN P. ROSALES
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¹⁷ Cruz, Constitutional Law, 2007 ed., p. 40

¹⁸ Sec. 3, Art. XIII, 1987 Philippine Constitution

¹⁹ Carlos Superdrug Corporation vs. DSWD, et al., G.R. No. 166494, 29 June 2007