



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
OFFICE OF THE SECRETARY

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GIL M. SAN NICOLAS
Secretary

CINTA M. KAIPAT
Deputy Secretary

TO: Evelyn C. Fleming, House Clerk
Dolores S. Bermudes, Senate Clerk

FROM: Cinta M. Kaipat, Deputy Secretary of Labor /cmk

DATE: May 18, 2009

SUBJECT: Proposed Changes to Labor Regulations

I am transmitting herewith proposed changes to the Labor Rules and Regulations.

/cmk

Attachments

PUBLIC NOTICE

OF PROPOSED RULES AND REGULATIONS

WHICH ARE AMENDMENTS TO
THE EMPLOYMENT RULES AND REGULATIONS
ISSUED BY THE SECRETARY OF LABOR

INTENDED ACTION TO ADOPT THESE PROPOSED RULES AND REGULATIONS: The Commonwealth of the Northern Mariana Islands, Secretary of Labor, intends to adopt as permanent regulations the attached Proposed Regulations, pursuant to the procedures of the Administrative Procedure Act, 1 CMC § 9104(a). The Regulations would become effective 10 days after adoption. (1 CMC § 9105(b))

AUTHORITY: The Secretary of Labor is authorized to promulgate regulations pertaining to employment of citizens, permanent residents, and foreign national workers pursuant to PL 15-108 §§ 4530, 4606, 4961, 4971, and 4972.

THE TERMS AND SUBSTANCE: The proposed revisions are to provide additional opportunities for the employment of U.S. citizens, to advance the phase-out of the moratorium, to suspend the provisions for periodic exit until the uncertainties of the federalization law are resolved, and to decrease the Department's paperwork burdens and make certain other administrative changes.

A SUMMARY OF THE SUBJECTS AND ISSUES INVOLVED:

These rules and regulations are promulgated:

1. To broaden the requirement to post job vacancy announcements on the Department's free website so that job opportunities are made known within the community and to increase the requirements for an exemption from the workforce participation requirement of 20% U.S. citizens in order to promote the employment of U.S. citizens;
2. To advance the phase-out of the moratorium to July 1, 2009 in order to increase flexibility for local businesses under the current adverse economic circumstances and to suspend the provisions for periodic exit until the uncertainties of the federalization law are resolved so that local businesses are not faced with potentially conflicting requirements;

Filed and

Recorded by:

/s/ _____

ESTHER SAN NICOLAS

Date

Commonwealth Register

Pursuant to 1 CMC § 2153(e) (AG approval of regulations to be promulgated as to form) and 1 CMC § 9104(a)(3) (obtain AG approval) the proposed regulations attached hereto have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General and shall be published, 1 CMC § 2153(f) (publication of rules and regulations).

Dated the ____ day of May, 2009

/s/ _____

GREGORY BAKA

Acting Attorney General

PROPOSED CHANGES IN THE LABOR REGULATIONS

SUBCHAPTER 80-20 DEPARTMENT OF LABOR

Section 80-20.1 Delegation of authority. The Secretary of Labor hereby delegates authority under the Commonwealth Employment Act of 2007, PL 15-108; the Minimum Wage and Hour Act as amended; and Public Laws No. 11-6, 12-11, and 12-58 to the Director of Employment Services, the Director of Labor, and the hearing officers in the Administrative Hearing Office. Written delegation of authority previously issued shall remain in full force and effect until rescinded, altered, or modified as circumstances require. A delegation of the Secretary's authority to the Deputy Secretary shall occur whenever the Secretary is off-island.

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SUBCHAPTER 80-30 EMPLOYMENT OF CITIZENS AND PERMANENT RESIDENTS

Section 30.2 Private sector employment preferences

Section 30.2-400 Job referral

§ 30.2-445 No waivers. There are no waivers available with respect to the publication requirement.

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§30.2-450 Publication filing. When a job vacancy announcement is published on the Department's website, no filing of proof of publication is required. If the job vacancy announcement is published elsewhere to fulfill the requirements of §30.2-440(a), the employer must file with Employment Services, no later than thirty (30) days from last publication, a statement or invoice from the provider of publication services showing the dates on which the job vacancy announcement was published.

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§30.2-460 Cancellation of the job vacancy announcement. Employment Services may cancel a job vacancy announcement or deny certification if insufficient reasons are stated for failure to hire or if no statement is received within 14 days. A denial may be appealed to the Administrative Hearing Office within fifteen (15) days after the date of the denial. (See Section 80-50.4-155.)

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§30.2-480 Workforce plan.

(b) Employers covered. Every employer, unless exempted, is required to have a workforce plan.

* * *

(g) Loss of exemption. An employer against whom two or more judgments in labor cases or consolidated agency cases are entered in Department proceedings within any two year period automatically loses any applicable exemption and a plan must be filed with Employment Services within 30 days of the entry of the second judgment. No administrative proceeding is required to remove the exemption. A "judgment" for purposes of this subsection is a final action, which includes a decision of a hearing officer that has not been appealed within the time allowed, or a decision of the Secretary on a matter that has been appealed within the time allowed, provided however that a stay of the removal of the exemption may be provided by a court of competent jurisdiction. The exemption automatically becomes unavailable on the date on which the second judgment is entered. The term "two judgments" includes judgments in two separate actions or cases bearing two separate case numbers, and also includes judgments with respect to two complainants in the same action or a case bearing only one case number. "Within a two-year period" for purposes of this section is any 24-month period. This period does not relate to a calendar year.

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Section 80-30.2-600 Workforce participation by citizens and permanent residents

§30.2-620 No waivers. There are no waivers available with respect to the participation requirement.

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Section 80-30.2-700 Exemptions

§30.2-705 Employers with fewer than five employees. The provisions of Section 4525 of PL 15-108 do not apply to employers with fewer than five employees except as provided in this section and, with respect to this section, do not apply to owner-operated businesses with no employees other than owners. For purposes of this section, all full-time employees are counted. All retail establishments that handle food stamps shall have at least employee who is a citizen or permanent resident after June 30, 2008. All employers with fewer than five employees shall have at least one employee who is a citizen or permanent resident after October 1, 2009. All such employers are subject to the job vacancy announcement requirements for all job vacancies.

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§30.2-715 Incentive exemption. An incentive exemption with respect to Section 4521 (job preference) but not with respect to Section 4525 (workforce participation by citizens) or Section 4522-23 (job vacancy announcements and referrals) shall be available if the citizen and permanent resident employees in the full-time workforce of an employer in that O-NET classification exceeds substantially thirty (30) percent of the employer's total full-time workforce in these positions. The incentive benchmark is fifty (50) percent for the employer's total full-time work force in the A-List and B-List jobs , however all job vacancies must be advertised. (See Section 80-30.2-205).

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§30.2-725 Loss of exemption. An employer against whom two or more judgments in labor cases or consolidated agency cases are entered in Department proceedings within any two year period automatically loses any applicable exemption and all provisions of PL 15-108 automatically become applicable. No administrative proceeding is required to remove the exemption. A "judgment" for purposes of this section is a final action, which includes a decision of a hearing officer that has not been appealed within the time allowed, or a decision of the Secretary on a matter that has been appealed within the time allowed, provided however that a stay of the removal of the exemption may be provided by a court of competent jurisdiction. The exemption automatically becomes unavailable on the date on which the second judgment is entered. The term "two judgments" includes judgments in two separate actions or cases bearing two separate case numbers, and also includes judgments with respect to two complainants in the same action or a case bearing only one case number. "Within a two-year period" for purposes of this section is any 24-month period. This period does not relate to a calendar year.

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SUBCHAPTER 80-40 MORATORIUM

Section 80-40.1 Moratorium phase-out. The previously legislated moratorium on the hiring of foreign national workers is phased out as follows:

Section 40.1-100 Visitor industry. As of January 1, 2008, the moratorium does not apply to the visitor industry. The visitor industry includes hotels, airlines, aircraft services, tour packagers, tour guides, tourist transportation, and tourist sports, charters, and recreation services.

Section 40.1-200 Services industry. As of January 1, 2009, the moratorium does not apply to the services industry. The services industry includes accountants, lawyers, banks and financial services, medical and health care services, maintenance and repair and rental services, restaurants and catering services, retail and wholesale sales and services, bakeries with retail outlets, freight and shipping services, appraisal and surveying services, and education services.

Section 40.1-300 Agricultural. As of July 1, 2009, the moratorium does not apply to agricultural, fishing and fisheries, forestry, and groundskeeping positions.

Section 40.1-400 All other. As of July 1, 2009, the moratorium expires with respect to all remaining positions.

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SUBCHAPTER 80-50 EMPLOYMENT OF FOREIGN NATIONAL WORKERS

Section 80-50.2 Entry into the Commonwealth

Section 50.2-200 Approved employment contract

§50.2-205 Application. An application for approval of an employment contract must be signed by a director, officer, or manager of a corporation or other business organization and must be submitted to the Director of Labor on a standard form provided by the Department in person by an employee of a corporation or other business organization who shall present sufficient identification and proof of status. An application must be signed and submitted in person by a non-business employer. No person who is an agent and no person holding a power of attorney may sign or submit an application. The Director shall review the application to ascertain if it is complete. An incomplete application will not be accepted. The Director shall take action on a complete application as soon as practicable after receipt, depending primarily on the time required for investigation, if any, of representations made in the application. The Director may approve or deny the application. Approval of the application is an agreement or contract between the Director and the employer as to the terms under which the employer will operate. A denial shall be on a standard form. No other documentation with respect to a denial is required. A denial may be appealed to the Administrative Hearing Office within fifteen (15) days after the date of the denial. (See Section 80-50.4-155.)

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Section 80-50.3 Standards for Employment

Section 50.3-100 Standard conditions of employment

§50.3-105(c)(iii): Hiring for part-time. An employer may employ a foreign national worker part-time for no more than 32 hours a month. An employer who has signed an approved employment contract with a foreign national worker may not hire that foreign national worker for part-time work.

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§50.3-140(c): Deductions for employer-supplied food, transportation, and other purposes.

Allowable deductions for employer-supplied food, transportation to and from the worksite, utilities for the personal use of a foreign national worker, and other benefits or purposes may be

Deleted: ¶

no more than the expenses actually incurred by the employer in providing such benefits or \$100 per month for non-business employers.

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§50.3-155 Contract extension, contract amendment and reduction in hours.

- (a) An extension to an existing approved employment contract for up to six months may be agreed by the parties at any time during the term of the contract and filed with the Department on the standard form provided by the Department for that purpose.
- (b) A change (amendment) to an existing approved employment contract may be implemented or performed only with prior agreement of both parties to the contract and with prior submission on a standard form provided by the Department, provided however that hours may not be reduced below thirty-two (32) per week.
- (c) A contract extension or amendment does not require prior approval of the Director of Labor, but may be denied by the Director of Labor. A denial by the Director may be appealed to the Administrative Hearing Office within fifteen (15) days after the date of the denial. (See Section 80-50.4-155.)

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Section 50.3-300 Contract renewal, non-renewal, and termination

§50.3-305(d): Documents. A request for renewal shall be accompanied by copies of an approved employment contract, an approved health insurance contract (after the date on which the Secretary of Public Health publishes final regulations in that regard), and an approved security contract covering the foreign national worker to be renewed. An employer may submit a new employment contract with new terms as necessary. A request for renewal may be submitted and approved without an accompanying health certificate, but the health certificate must be submitted within sixty (60) days of approval or the renewal is subject to revocation. A request for renewal may be submitted and approved if the Job Vacancy Announcement is on file (on line), but the JVA must be certified within sixty (60) days of approval or the renewal is subject to revocation.

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Section 50.3-400 Transfer by administrative order.

§50.3-420. Extension of time. Extensions of time within which to locate an employer may be granted by the Administrative Hearing Office upon application submitted within ten (10) days

after expiration of the initial period of time within which to locate an employer and assumption of full responsibility by the foreign national worker for medical and other expenses with an appropriate guarantee under terms acceptable to the hearing officer and payment of a fee.

§50.3-422. Objections to proposed transfer. The Director of Employment Services shall circulate to all Sections within the Department each request for permission to transfer received by Employment Services. If no objection is received, a hearing officer may issue an order granting permission to transfer. If an objection is received, a hearing officer shall conduct a hearing on the objection and the burden of proof is on the objecting officer of the Department.

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Section 50.3-500 Reductions in force

§50.3-540 Limitations on new hires of foreign national workers.

- (a) On-island hires. An employer who has laid off citizens, permanent residents, or foreign national workers shall be barred for a period of 90 days from the effective date of termination. from hiring any new foreign national workers to work in the O-NET job classifications held by laid-off workers
- (b) Off-island hires. An employer who has laid off citizens, permanent residents, or foreign national workers shall be barred for a period of six months following the effective date of termination from hiring foreign national workers from off-island to work in the O-NET job classifications held by laid-off workers.

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§50.3-545 Pending applications for approved employment contracts. Upon receipt of notice from an employer of a reduction in force, downsizing or partial closure, the Director shall immediately deny all pending applications filed by the employer to hire foreign national workers from off-island.

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Section 50.4 Adjudication of disputes

Section 50.4-700 Orders and relief

§50.4-725 Whistleblower relief. In order to promote the public interest in securing compliance with Commonwealth law, a foreign national worker who provides the Department with information on the basis of which a compliance agency case is brought may be granted a transfer by a hearing officer even if not qualified under Section 80-50.4-720 above.

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Section 50.4-900 Judicial review. Judicial review of a final action of the Secretary is authorized after exhaustion of all administrative remedies. Appeal from a final action by the Secretary shall be directly to the Commonwealth Superior Court and shall be initiated within thirty (30) days of the final action.

Except as otherwise required by a rule of the Commonwealth Superior Court, the pleading initiating judicial review shall be a Petition for Judicial Review. The Petition shall identify the order of the Secretary being appealed and the order of the Administrative Hearing Office that was appealed to the Secretary and shall attach copies of both. The Petition shall set out each ground for appeal in summary form in a separate numbered paragraph, and shall state that the requirements of the Commonwealth Employment Act with respect to appeals of final orders of the Secretary have been met.

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SUBCHAPTER 80-60 OTHER PROVISIONS

Section 60.8 Fees. The following fees shall be collected by the Department. All fees are nonrefundable and nontransferable unless otherwise provided in these regulations.

6. Application for part time employment	\$40.00	
13. Penalty fee for untimely renewal (limit <u>60</u> days)	\$5.00/day	Deleted: 15
14. Processing a temporary work authorization <u>(6 months)</u>	\$150.00	
15. Renewal of temporary work authorization <u>(per month)</u>	<u>\$25.00</u>	Deleted: 50
16. Mediation of labor disputes	No fee	
17. Filing a labor complaint <u>(per person)</u>	\$20.00	Deleted: .
18. Filing an appeal to the Secretary <u>(per person, except in agency cases)</u>	\$40.00	
19. <u>Appeal to the Hearing Office (per person)</u>	<u>\$25.00</u>	
27. <u>Contract extensions (up to six months)</u>	<u>\$35/month</u>	Deleted: <u>25</u>

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Section 60.9 Statistical data

Section 60.9-200 Standard data sets. The Department will publish on its website and provide to the Department of Commerce quarterly statistics with respect to the number of permit transactions within industry categories.

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Section 60.12 Transition

Section 60.12-335 Effect of PL 110-229. In order to promote recovery from severely adverse economic conditions, to accommodate the uncertainties with respect to implementation of PL 110-229 (the federalization law), to minimize costs imposed on businesses, and to allow the labor department to function efficiently under a substantially reduced budget, the requirements of the periodic exit have been suspended until further publication of regulations.

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