

TITLE 80: DEPARTMENT OF LABOR

SUBCHAPTER 80-20.3

MORATORIUM ON HIRING NON-RESIDENT WORKERS RULES AND REGULATIONS

Part 001 [Reserved.]	General Provisions	§ 80-20.3-110	Major Development and Exemptions	New Critical Services
Part 100 Public Law 11-6	Implementation of	§ 80-20.3-115	Transfers	
§ 80-20.3-101	Renewals	§ 80-20.3-120	Hiring Who Have an Authorization to Seek a Temporary Employer	Workers
§ 80-20.3-105	Replacement Workers	§ 80-20.3-125	Pending Applications	

Subchapter Authority: 3 CMC § 4606.

Subchapter History: Amdts Emergency and Proposed 24 Com. Reg. 19392 and 19415 (July 29, 2002) (effective for 120 days from June 26, 2002);* Adopted 20 Com. Reg. 16260 (Oct. 15, 1998); Emergency and Proposed 20 Com. Reg. 15970 (July 15, 1998) (effective for 120 days from June 16, 1998).

*A notice of adoption for the July 2002 proposed amendments has not been published.

Commission Comment: Under the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States (Covenant, Pub. L. No. 94-241, § 301, 90 Stat. 263), the CNMI government retained nearly exclusive control over immigration. After the enactment of the Consolidated Natural Resources Act of 2008 (CNRA, Pub. L. No. 110-229, 122 Stat. 754) on May 8, 2008, federal immigration law became applicable to the CNMI beginning on November 28, 2009. Under CNRA § 702(a), the CNRA made the Immigration and Nationality Act (8 U.S.C. 1101(a)(17)) applicable to the CNMI. The CNRA further amended the Covenant to state that the “immigration laws,” as well as the amendments to the Covenant, “shall ... supersede and replace all laws, provisions, or programs of the Commonwealth relating to the admission of aliens and the removal of aliens from the Commonwealth.” On March 22, 2010, the Governor of the CNMI signed P.L. 17-1 into law, which effectively removed all references to immigration and deportation functions from the Commonwealth Code, and on April 15, 2010, the Office of the Attorney General, Division of Immigration, repealed the Division of Immigration Rules and Regulations (NMIAC Title 5, Chapter 40). The CNMI Department of Labor’s regulations relating to the admission of aliens in this subchapter were not specifically repealed, and therefore, remain.

For a complete history of the authority of the Department of Labor, see the commission comment to NMIAC subchapters 80-10.1 and 80-20.1.

PL 11-6, codified as amended at 3 CMC §§ 4601-4607, took effect March 27, 1998. PL 11-6 § 2 imposes a moratorium on the hiring of nonresident workers in the Commonwealth, except according to its provisions. See 3 CMC § 4601. 3 CMC § 4606 authorizes the Department of Labor and Immigration (now the Department of Labor) to enforce the act and to promulgate the necessary regulations to implement the act.

Part 001 - General Provisions

[Reserved.]

Part 100 - Implementation of Public Law 11-6

§ 80-20.3-101 Renewals

A renewal application should be filed with the Division of Labor 30 days prior to the expiration of the worker's current contract. If the employer does not intend to renew the employee, the employer should give the employee 30 days notice of its intent not to renew in order to enable the employee to seek alternate employment pursuant to § 3(b) of Public Law 11-6 [3 CMC § 4602(b)].

History: Adopted 20 Com. Reg. 16260 (Oct. 15, 1998); Emergency and Proposed 20 Com. Reg. 15970 (July 15, 1998) (effective for 120 days from June 16, 1998).

§ 80-20.3-105 Replacement Workers

(a) "Replacement" refers to potential employees who are not currently residing in the CNMI. An employee in possession of a valid temporary work authorization or an employee who transfers to an employer either consensually during the contractual period or at the expiration of the contract period is not a "replacement" worker for the purposes of Public Law 11-6.

(b) Prior to submission of an application for a replacement worker, an employer must check with the Division of Employment Services to determine if "there is a nonresident worker already lawfully in the Commonwealth, seeking employment, and eligible and qualified for the position." Public Law 11-6 § 4 [3 CMC § 4603]. The Division of Employment Services will maintain a list of nonresident workers who are lawfully in the Commonwealth and seeking employment, as categorized by job classification and other skills. All nonresident workers on the list will be considered eligible for unskilled positions. An employer must make a good-faith effort to contact any individual deemed "eligible and qualified for the position" and determine if that individual suits the employer's needs. If a match on the Employment Services' list is found, the burden is on the employer to inform Employment Services if the employee is not "eligible and qualified for the position" or cannot be located. Once the employer provides this information to Employment Services, Employment Services will certify that the employer may hire a replacement worker.

(c) To submit an application for a replacement worker under Public Law 11-6, the employer must submit the original labor and immigration identification system (LIIDS) card and a verification of departure of the employee who is being replaced. Under exceptional circumstances and upon approval by the Director of Labor or his or her designee, a notarized affidavit explaining the absence of the original LIIDS card with a copy of the LIIDS card attached will be accepted by the processing section in lieu of the original card.

(d) The employer may bring the application to the Division of Labor ("Labor") for review prior to submission of the verification of departure to ensure that the application is complete. However, the application fee shall not be remitted to the Treasury nor will the

TITLE 80: DEPARTMENT OF LABOR

application be accepted by Labor prior to submission of the LIIDS card and verification of departure.

(e) A worker may be considered a “replacement” for another worker if the prospective employee’s application is submitted to the Division of Labor within 90 days from the date of the previous worker’s expiration of entry permit. An employer may employ only one replacement worker for each worker that departs. Note that the law requires that the replacement worker be hired for the same position as that of the employee who has departed.

Modified, 1 CMC § 3806(f).

History: Adopted 20 Com. Reg. 16260 (Oct. 15, 1998); Emergency and Proposed 20 Com. Reg. 15970 (July 15, 1998) (effective for 120 days from June 16, 1998).

§ 80-20.3-110 Major New Development and Critical Services Exemptions

(a) Only the Governor may approve an exemption under PL 11-6 § 2(d) and (e) [3 CMC § 4601(d) and (e)]. Any request for these exemptions should be put in writing and forwarded, with the supporting documentation to substantiate the exemption criteria, to the Office of the Governor for review.

(b) The burden is on the employer to provide sufficient documentation to substantiate its claim that it meets the exemption criteria. If the documentation is insufficient, the Governor or his or her designee may request additional support or may deny the request. Note that meeting the exemption criteria does not automatically entitle the employer to the exemption; the discretion lies with the Governor.

History: Amdts Emergency and Proposed 24 Com. Reg. 19392 and 19415 (July 29, 2002)(effective for 120 days from June 26, 2002); Adopted 20 Com. Reg. 16260 (Oct. 15, 1998); Emergency and Proposed 20 Com. Reg. 15970 (July 15, 1998) (effective for 120 days from June 16, 1998).

Commission Comment: The July 2002 amendments proposed to repeal and re-enact this section in its entirety, amend subsection (a), add new subsections (b) and (c), and re-designate and amend subsection (b). A notice of adoption was never published and, therefore, the Commission has not incorporated the proposed changes.

§ 80-20.3-115 Transfers

(a) This section amends section VI(F)(10)(d) of the Alien Labor Rules and Regulations.

(b) In General

(1) Under Public Law 11-6, there are three kinds of transfer: consensual, after expiration of a contract, and through an administrative order issued by the hearing office.

(2) An employer must comply with all the provisions of the Nonresident Workers Act, 3 CMC §§ 4411, et seq., including advertising.

TITLE 80: DEPARTMENT OF LABOR

(3) An employee may change job class or wage rate by going through the transfer process, including the advertising of the position.

(c) Consensual

(1) Transfers are permitted during the contract period with the permission of all parties.

(2) Before commencing the consensual transfer procedure, the employer should advertise the position in accordance with the Nonresident Workers Act, 3 CMC § 4432.

(3) In order to effectuate a consensual transfer, the new employer must provide the designee of the Director of Labor with the following documentation:

(i) Three copies of the consensual transfer form;

(ii) A copy of the employee's work and entry permit (i.e., the LIIDS card);

(iii) A copy of the new employer's business license;

(iv) A two year work certification form (experience) if the employee is changing job categories;

(v) A bond; and

(vi) Any additional documentation deemed necessary by the Director of Labor or his or her designee.

(4) After the Director's designee receives the documentation enumerated above, he or she shall set an appointment for an interview with the current employer, the prospective employer, and the employee.

(5) The consensual transfer must be approved by the Director of Labor or his or her designee prior to submission of the new application for a work and entry permit. The completed application must be submitted within 45 days from the date of approval by the Director of Labor or his or her designee. However, as soon as the consensual transfer is approved by the Director of Labor or his or her designee, the accepting employer becomes responsible for all costs associated with the non-resident worker, including but not limited to medical and repatriation costs.

(6) For transfers during the initial contract period, the original employer may have his or her recruitment and hiring costs reimbursed by the prospective employer. The right of reimbursement belongs to the original employer; therefore the original employer may waive reimbursement during the initial contract period if he or she chooses.

(d) After Expiration of a Contract

(1) Employees may transfer from one employer to another after the expiration of a contract. Neither the prospective employer nor the employee needs to reimburse the original employer for recruitment or hiring costs.

(2) An employee has 45 days from the date of expiration of a contract to find a new employer. The 45 days runs from the date of expiration of the previous contract to the date of submission of a completed application. An application that is facially deficient upon review by a member of the processing staff will not be accepted. If an application is accepted and then is discovered to have deficiencies, the employer will have 10 days to rectify the deficiencies. Failure to correct the deficiencies within the prescribed period will result in rejection of the application. That application can only be resubmitted or a new application with a different employer processed if the initial 45 day period has not yet run.

Modified, 1 CMC § 3806(e), (f).

History: Adopted 20 Com. Reg. 16260 (Oct. 15, 1998); Emergency and Proposed 20 Com. Reg. 15970 (July 15, 1998) (effective for 120 days from June 16, 1998).

Commission Comment: The first paragraph was not designated. The Commission designated it subsection (a).

The Alien Labor Rules and Regulations, codified at NMIAC subchapter 80-20.1, were substantially revised in 2004. See 26 Com. Reg. 22866 (July 26, 2004); 26 Com. Reg. 22676 (June 24, 2004). Subsection (a) cites a provision of the Alien Labor Rules and Regulations that no longer exists.

§ 80-20.3-120 Hiring Workers Who Have an Authorization to Seek a Temporary Employer

An employee who is authorized to seek a temporary employer pursuant to the filing of a labor complaint may work for any bona fide employer whether or not that employee is replacing another worker who has exited the CNMI.

History: Adopted 20 Com. Reg. 16260 (Oct. 15, 1998); Emergency and Proposed 20 Com. Reg. 15970 (July 15, 1998) (effective for 120 days from June 16, 1998).

§ 80-20.3-125 Pending Applications

For purposes of § 6 of Public Law 11-6 [3 CMC § 4605], an application is “pending” on the date a job vacancy announcement (JVA) is submitted to the Department for approval to advertise, as evidenced by the “received” stamp on the face of the document, not on the date of certification on the back of the JVA.

Modified, 1 CMC § 3806(f).

History: Adopted 20 Com. Reg. 16260 (Oct. 15, 1998); Emergency and Proposed 20 Com. Reg. 15970 (July 15, 1998) (effective for 120 days from June 16, 1998).