

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
SAIPAN, TINIAN, ROTA and NORTHERN ISLANDS



COMMONWEALTH REGISTER

VOLUME 42
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COMMONWEALTH REGISTER

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Commonwealth of the Northern Mariana Islands
Office of the Governor
DEPARTMENT OF PUBLIC LANDS



**NOTICE OF ADOPTION OF REGULATIONS
FOR THE DEPARTMENT OF PUBLIC LANDS**

PRIOR PUBLICATION IN THE COMMONWEALTH REGISTER
AS PROPOSED REGULATIONS

Volume 42, Number 06, pp 043642-043648, of JUNE 28, 2020

ACTION TO ADOPT PROPOSED REGULATIONS: The Department of Public Lands (the “Department”) HEREBY ADOPTS AS PERMANENT REGULATIONS the Proposed Regulations which were published in the Commonwealth Register at the above referenced pages, pursuant to the procedures of the Administrative Procedure Act, 1 CMC § 9104(a). The Department announced that it intended to adopt them as permanent, and now does so. (Id.) I also certify by signature below that: as published, such adopted regulations are a true, complete and correct copy of the referenced Proposed Regulations and that they are being adopted without modifications described below.

PRIOR PUBLICATION: The prior publication was as stated above.

THE TERMS AND SUBSTANCE: The attached regulation amendment proposes to change the administrative processing fee for public land lease applicants.

THE SUBJECTS AND ISSUES INVOLVED: The amendment to §145-70-110 Lease Agreement Requirements includes the following:

1. To increase the administrative processing deposit fee for lease applicants from the greater of \$2,500 or 0.25% of the estimated value of the subject property to the greater of \$5,000 or 0.5%.

AUTHORITY: The Department has the inherent authority to adopt rules and regulations in furtherance of its duties and responsibilities pursuant to Article IX of the Commonwealth Constitution and 1 CMC § 2801 et. seq.

DIRECTIONS FOR FILING AND PUBLICATION: These Regulations shall be published in the Commonwealth Register in the section on proposed and newly adopted regulations (1 CMC § 9102(a)(1)) and posted in convenient places in the civic center and in local government offices in each senatorial, both in English and in principal vernacular.

EFFECTIVE DATE: These Regulations were proposed in June 2020 and are hereby being adopted as Permanent Regulations of the Department of Public Lands pursuant to 1 CMC § 9104. They will become permanent ten (10) days after publication in the July 2020 Commonwealth Register.

COMMENTS AND AGENCY CONCISE STATEMENT: Pursuant to the APA, 1 CMC § 9104(a)(2), the agency has considered fully all written submissions respecting the proposed regulations. Upon this adoption of the regulations, the agency, if requested to do so by an interested person, either prior to adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and

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against its adoption, incorporating therein its reasons for overruling the considerations urged against its adoption.

ATTORNEY GENERAL APPROVAL: The adopted regulations to increase the administrative processing deposit fee for lease applicants were approved for promulgation by the Attorney General in the above-cited pages of the Commonwealth Register, pursuant to 1 CMC § 2153(e) (to review and approve, as to form and legal sufficiency, all rules and regulations to be promulgated by any department, agency or instrumentality of the Commonwealth government, including corporations, except as otherwise provided by law).

I DECLARE under penalty of perjury that the foregoing is the true and correct copy and that this declaration was executed on the ____ day _____, 2020, at Saipan, Commonwealth of the Northern Mariana Islands.

Submitted by:



IRENE TORRES
Acting Secretary, Department of Public Lands

08/03/2020
Date

Filed and Recorded by:



ESTHER SN NESBITT
Commonwealth Registrar

08.18.2020
Date



CDA
Commonwealth Development Authority

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**PUBLIC NOTICE OF CERTIFICATION AND ADOPTION
OF REGULATIONS OF
COMMONWEALTH DEVELOPMENT AUTHORITY**

**PRIOR PUBLICATION IN THE COMMONWEALTH REGISTER
AS PROPOSED REGULATIONS
Volume 42, Number 3, pp 043423 - 043508, of March 28, 2020**

**Regulations of the Commonwealth Development Authority: Chapter 25-40
Personnel Regulations**

ACTION TO ADOPT PROPOSED REGULATIONS: The Commonwealth Development Authority ("CDA"), HEREBY ADOPTS AS PERMANENT regulations the Proposed Regulations which were published in the Commonwealth Register at the above-referenced pages, pursuant to the procedures of the Administrative Procedure Act, 1 CMC § 9104(a). The CDA announced that it intended to adopt them as permanent, and now does so. *Id.* A true copy is attached. I also certify by signature below that:

as published, such adopted regulations are a true, complete, and correct copy of the referenced Proposed Regulations,

and that they are being adopted with modification or amendment.

PRIOR PUBLICATION: The prior publication was as stated above. The Board adopted the regulations as final at its meeting of July 23, 2020.

MODIFICATIONS FROM PROPOSED REGULATIONS, IF ANY: Sections 25-40-236 and 25-40-840, published in the Commonwealth Register Volume 42, Number 03, in pp 043430, 043431, 043453, and 043502-043503"(03/28/2020)" shall be stricken in its entirety.

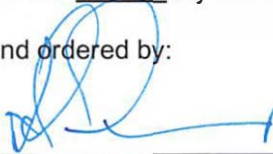
AUTHORITY: The CDA is required by the Legislature to adopt rules and regulations regarding those matters over which the CDA has jurisdiction, including its regulation of personnel. PL 20-87 (2 CMC § 4433(s), eff. February 5, 2019).

EFFECTIVE DATE: Pursuant to the APA, 1 CMC § 9105(b), these adopted regulations are effective 10 days after compliance with the APA, 1 CMC §§ 9102 and 9104(a) or (b), which, in this instance, is 10 days after this publication in the Commonwealth Register.

COMMENTS AND AGENCY CONCISE STATEMENT: Pursuant to the APA, 1 CMC sec. 9104(a)(2), the agency has considered fully all written and oral submissions respecting the proposed regulations. Upon this adoption of the regulations, the agency, if requested to do so by an interested person, either prior to adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the considerations urged against its adoption. Please see the following pages for this agency's concise statement, if there are any, in response to filed comments.

I DECLARE under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on the _____ day of August, 2020, at Saipan, Commonwealth of the Northern Mariana Islands.

Certified and ordered by:



IGNACIO L. PEREZ
Chairman, CDA Board of Directors

8/18/20

Date

Pursuant to 1 CMC § 2153(e) and 1 CMC § 9104(a)(3) the certified final regulations, modified as indicated above from the cited proposed regulations, have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General, and shall be published (1 CMC § 2153(f)).

Dated the 18 day of August, 2020.



EDWARD MANIBUSAN
Attorney General

Filed and
Recorded by:



ESTHER SN. NESBITT
Commonwealth Registrar

08.18.2020

Date

TITLE 25: COMMONWEALTH DEVELOPMENT AUTHORITY

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COMMONWEALTH DEVELOPMENT AUTHORITY
PERSONNEL REGULATIONS**

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TITLE 25: COMMONWEALTH DEVELOPMENT AUTHORITY

Part 001 INTRODUCTION

Subpart A- Purpose and Scope

§ 25-40-001 Purpose

These regulations implement Section 3 of Public Law 20-87 which authorize the Commonwealth Development Authority (CDA) to establish rules and regulations governing the personnel policies and processes of CDA that will establish a positive and fair work environment to further the accomplishment of CDA's mission.

§ 25-40-005 CDA Mission Statement

CDA has established the following mission statement to guide it in its efforts on behalf of the Commonwealth: To provide appropriate financial and technical assistance to facilitate the start-up or expansion of private and public enterprise for their success, CDA the benefit of the Commonwealth's economic welfare, and the long term sustainability of.

§ 25-40-010 Policy

- (a) It is hereby declared that these regulations establish a system of personnel administration within CDA that is based on merit principles and generally accepted management methods to govern the employment actions and processes for the employees of CDA.
- (b) It is also declared to be the purpose of these regulations to develop a personnel management which will attract, select, and retain the best-qualified employees on merit, who shall hold their positions free from coercion, discrimination, reprisal, or political influences, with incentives in the form of genuine opportunities for promotion within CDA, and to provide competent and loyal personnel to render impartial service to the public at all times.
- (c) In order to achieve this purpose, it is declared to be the policy of CDA that the personnel management hereby established be applied and administered in accordance with the following merit principles:
- (1) Equal opportunity for all, regardless of race, creed, color, ancestry, membership in a labor organization, political affiliation, place of origin, disability, sex, religion, age, sexual orientation, veterans status or similar matters not related to individual merit and fitness;
 - (2) Impartial selection of the most able person for government service by means of selection processes which are fair, objective, and practical;
 - (3) Just opportunity for competent employees to be promoted within CDA;
 - (4) Reasonable job security for the competent employee;
 - (5) Systematic classification of all positions and personnel through adequate job descriptions and periodic performance evaluations;
 - (6) Fair and practical grievance and complaint procedures for all employees; and

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- (7) Flexibility in employer-employee relations to achieve and maintain a well-trained, productive, and happy work force.

§ 25-40-015 Coverage

- (a) These regulations apply to all employees and positions now or hereafter established in CDA except for board and contracted appointments.
- (b) The executive director shall determine the applicability of this section to specific positions not expressly covered by this section.

§ 25-40-020 Scope

These regulations cover nearly all aspects of personnel management and administration, and include but are not limited to development and promulgation of personnel policy, staffing, position classification, employee relations, employee development and training, employee benefits and services, incentives and awards, performance evaluation, employee health service, employee safety and accident prevention, labor-management relations, personnel management program evaluation, and records and reports. Each of the foregoing elements is presented in detail in subsequent parts of these regulations.

Subpart B- CDA Personnel Management Responsibilities

§ 25-40-030 Personnel Management

- (a) Personnel management is the responsibility of all CDA executives, managers, and supervisors who direct the work of others.
- (b) The executive director, with the assistance of CDA office manager, has the specific responsibility to plan, develop, and implement programs and procedures which give effect and meaning to the laws of the Commonwealth, vis-a-vis CDA workforce, giving due consideration to the changing needs of CDA's programs and personnel needs.
- (c) It is the policy of CDA to continuously promote improved management-employee relations, human relations and communications, and satisfying work conditions in order to provide all employees the opportunity to satisfy their needs for recognition, a sense of personal worth, and personal achievement.

§ 25-40-035 The Executive Director

The provisions of this regulation shall govern the administration of CDA personnel management system. Subject to this regulation and both federal and Commonwealth employment-related laws, the executive director shall:

- (a) Be appointed by and serve at the pleasure of the Board of Directors;

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- (b) Receive such salary and benefits as approved by the Board of Directors and otherwise authorized by statute;
- (c) Direct and supervise all administrative and technical personnel activities of CDA;
- (d) Oversee the administration of the system of personnel administration for CDA;
- (e) Act for the Board of Directors in the exercise of its appointing authority under Public Law 4-49;
- (f) Advise the Board of Directors on all matters concerning personnel management, and employee training;
- (g) Formulate and recommend to the Board policies and regulations needed to carry out CDA's personnel management responsibilities;
- (h) Encourage and exercise leadership in the development of effective personnel administration practices within CDA;
- (i) Perform other tasks and duties required by the position or as assigned by the Board.

§ 25-40-040 CDA Office Manager

CDA office manager will provide the administrative and personnel support to management staff and employees of CDA. The office manager will:

- (a) Foster and develop, in cooperation with management officials, programs to promote effective personnel management, improve employee efficiency, and increase employee productivity;
- (b) Develop and maintain an adequate position classification and compensation plan;
- (c) Administer recruitment and selection programs and determine when employees meet specific job qualification requirements;
- (d) Provide advice and assistance to management on matters of employee discipline and grievance and appeal procedures;
- (e) Assist employees and management in the resolution of employee-management issues;
- (f) Develop or arrange training programs to elevate employee skills and increase employee productivity;
- (g) Establish and maintain records of all CDA personnel, maintaining archived records for former personnel;
- (h) Interpret and administer this regulation; and

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- (i) Perform any other activities deemed necessary to assure effective implementation of CDA personnel management system.

§ 25-40-045 CDA Board of Directors

CDA Board of Directors represents the fair and objective interests of both CDA and its employees in matters concerning CDA personnel management system. Subject to the provisions of this regulation and applicable federal and Commonwealth employment laws, the Board shall:

- (a) Ensure the establishment and maintenance of a comprehensive personnel management plan and personnel regulations for the smooth and effective operation of CDA;
- (b) Provide advice and assistance on personnel management issues referred by the executive director;
- (c) Hold hearings and decide appeals of employees for disciplinary actions, suspensions of more than three working days, demotions, and dismissals from CDA. The Board may utilize the services of qualified hearing officers or other professionals where such services are deemed essential by the Board. Hearings shall be public except when the appealing employee requests a closed hearing;
- (d) Require the presence of witnesses and/or documents in any matter pending before the Board; and
- (e) Perform any other lawful act(s) required by law or this regulation or deemed by the Board to be necessary to carry out its duties.

PART 100 STAFFING

Subpart A- Application and Selection Processes

§ 25-40-101 Introduction

This part covers the staffing elements necessary to acquire, maintain, reassign, promote, and release employees of CDA. The subparts treat specifically and in detail the regulations which govern in the execution of the respective functions. Merit principles, open competition and, in specific application, employee seniority, shall underlie all considerations in implementing these staffing functions.

§ 25-40-102 Order of Priority for Filling a Job Vacancy

The following order shall be followed in the filling of job vacancies:

- (a) Internal promotion or transfer of current CDA employees;

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- (b) Applicants obtained through open competitive job vacancy announcements.

§ 25-40-103 Selected Announcement and Internal Posting of Job Vacancy

All vacant positions will be filled through transfer or promotion of internal CDA applicants before opening the vacancy announcement unless otherwise determined by the Board of Directors.

- (a) The vacancy will be announced internally for five working days.
- (b) All internal applicants must meet the qualifications for the vacant position and meet standards of suitability that may be established by the executive director. If none of the internal applicants meet the qualifications or standards of suitability, the vacancy shall be filled through competitive hiring.

§ 25-40-104 Competitive Hiring

All hiring shall be competitive and open to the public, except where specifically exempted by the Board. Candidates responding to a vacancy announcement will submit to CDA, by the designated time, their records of education, training, experience, and such other information as requested in the announcement, to be evaluated and rated by CDA office manager or other designated evaluator.

§ 25-40-106 Vacancy Announcements

Vacancy announcements shall contain, as a minimum, the following information:

- (a) Class title, pay and pay level of the position;
- (b) Brief description of the duties and responsibilities;
- (c) Geographical and organizational location of the position;
- (d) Minimum bona fide occupational qualifications for the position to include general experience, specialized experience, and such qualitative evaluation elements as may be deemed appropriate and necessary;
- (e) Instructions on how to apply for the vacancy, including place or mailing address to apply, form of application required, and documentary support required; and
- (f) Period of the announcement. All announcements shall initially be for 15 calendar days. This period may be extended by the executive director, if the response has been inadequate, by re-announcing the vacancy in the same manner as the original announcement.

§ 25-40-107 Publicity

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Optimum publicity shall be given to vacancy announcements through posting in CDA office, on CDA website, on the CNMI Department of Labor job vacancy website, and at such other places as may be selected by the office manager (e.g., official bulletin boards in offices or work places, or public announcements through the news media).

§ 25-40-108 Applications for Vacancies

- (a) Applications for vacancies shall be made on forms prescribed by CDA. Proper completion of applications and submission of supplemental information shall be accomplished in accordance with the instructions on the vacancy announcement and established procedures.
- (b) Applications shall be signed and such signature shall certify to the truth of all statements contained therein. A knowingly false answer or statement shall be grounds for denying consideration or for disciplinary action if the applicant is a current CDA employee.
- (c) Applications for specific positions shall be accepted only during the period specified on the examination announcement. Applications submitted by mail shall be postmarked no later than the announced closing date. Late applications will not be accepted unless approved by the executive director because of unusual circumstances.

§ 25-40-109 Disqualification of Applicants

The office manager may deny consideration of an applicant for failure to meet the requirements for the position. Applicants who do not meet the minimum qualifications shall be notified as soon as practical. If an applicant is disqualified following initial designation as eligible, the applicant's name shall be removed from the list of eligible applicants.

§ 25-40-110 Establishment of List of Eligible Applicants

- (a) Following the closing of a vacancy announcement, the office manager shall review all applicants based upon their qualifications relative to the requirements of the announced position. Those applicants who meet the minimum qualifications for the position shall be rated based upon their qualifications and ranked according to their relative standing.
- (b) In the event a list of eligible applicants for any position contains less than five names and the executive director deems the range of choice to be inadequate, the office manager shall re-announce the vacancy.
- (c) An open competitive list of eligible applicants shall be created only after it has been determined that no qualified and suitable internal candidate is available.

§ 25-40-111 Removal of Names from Lists of Eligible Applicants

The office manager may remove the name of any person who has been disqualified under any provision of part 100. The name of any person may also be removed if:

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- (a) The eligible applicant fails to respond within ten calendar days from the mailing or e-mailing date of an inquiry as to availability for employment, or from the date of actual personal contact, provided that the name may be restored for reasons deemed sufficient by the executive director.
- (b) The eligible applicant voluntarily withdraws.
- (c) There is evidence of physical or mental inability to perform the duties of the position, as indicated by appropriate medical examination.
- (d) The eligible applicant is found to be no longer qualified to perform the duties required of the class of position.
- (e) Intentional false statements, deception, or fraud is determined to have occurred in the application or in the interview process by the applicant or any other person involved in the application or selection process.

§ 25-40-112 Selection from Eligible Applicant Lists

- (a) Appointments and promotions in CDA shall be made from certified eligible lists resulting from open competitive vacancy announcement, except as otherwise provided by part 100. The list of certified eligible candidates will be prepared for the executive director by the office manager from among the highest rated applicants in precise numerical order, highest rate first. Where the number of eligible applicants exceeds five names, only the top five names shall be certified. The executive director shall be provided a certified list of the top five eligible applicants for each vacancy. However, when less than five persons comprise a list of eligible applicants, the executive director may accept such lesser number or request the vacancy be re-announced in order to obtain at least five eligible applicants. If more than one position of the same classification must be filled, the number of certified applicants on the list shall be increased by one eligible for each additional position to be filled, where possible.
- (b) Where the position has a special requirement which is not a general qualification requirement for that class of position, the office manager will certify only those eligible applicants who meet that specific requirement.
- (c) Only the top five certified applicants will be eligible for job interviews, except in those cases where additional applicants are added to the list of certified eligible applicants.
- (d) The executive director shall justify, in writing, for CDA's administrative records, the non-selection of any eligible with a higher rating than the candidate selected. Such requirement creates no special standing for the applicant(s) with a higher rating.
- (e) If no applicant on the list of certified eligible applicants is determined by the executive director to be suitable for the position, the executive director will justify the non-selection and a second listing of the next five highest ranked applicants will be provided for job interviews. If necessary, the vacancy will be re-announced.

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- (f) The selected applicant will be notified in writing of his or her selection and when to report for work. All employment will be contingent upon the receipt of a negative pre-employment drug screening result that will be arranged by the office manager and paid by the selected applicant.
- (g) No person shall report to work or receive a salary unless an appropriate personnel action has been approved by the executive director.
- (h) The job offer will be withdrawn if the selected applicant fails to report for duty within the time prescribed by the executive director.
- (i) All non-selected applicants, whether on the certified listing of eligible applicants or not, will be notified of their non-selection.

§ 25-40-113 Duration of Lists of Eligible Applicants

- (a) The validity of a certified list of eligible applicants expires upon the hiring of the selected applicant. All applications and supporting documents will be maintained for one year from the date of hiring. This retention is required by various federal laws. Any original documents provided by the applicant may be returned upon request with a copy retained.
- (b) CDA has no obligation to place any applicant on any subsequent list of eligible applicants without the applicant reapplying and meeting all requirements for application.

§ 25-40-114 Pre-employment Condition Standards

- (a) All persons appointed to positions in CDA must be mentally and physically capable of performing the duties of the position. Medical examinations or disability-related questions such as a medical questionnaire cannot be utilized until after a conditional job offer has been made to an applicant. A medical exam is defined as a procedure or test that seeks information about an individual's physical or mental impairments or health. Employment can be conditioned on the results of post-offer medical exams or disability-related questions if the criteria examined relate directly to the employee's capability of performing the essential functions of the position. If medical exams or disability-related questions are required, they must be required of all entering employees in the same job class. Exams cannot be required, or medical-related inquiries made, of some applicants and not others.
- (b) Persons offered positions within CDA must submit to a pre-employment drug screening. Pre-employment drug screening are not considered to be medical examinations as defined in this section.

§ 25-40-115 Administration of Medical Examinations

Medical examinations and pre-employment drug screening shall be administered by medical personnel authorized by CDA to conduct such examinations for employment purposes and shall

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be recorded on forms prescribed by CDA. Pre-employment drug screening for candidates shall be conducted in accordance with established Commonwealth government procedures.

§ 25-40-116 Prohibited Actions

(a) Employment of any person without an approved personnel action is prohibited. Supervisors or management officials who permit an employee to report to work without an appropriate and formally approved personnel action shall be held personally liable for any claim for compensation resulting from such improper appointment.

§ 25-40-117 Orientation

New employees shall receive a standardized orientation to CDA as soon as is practical after being appointed, and at least within one week of the first day of work.

Subpart B- Positions and Appointments

§ 25-40-120 Types of Positions

All positions within CDA shall be identified by one of the following designations and as defined herein.

§ 25-40-121 Permanent Position

A permanent position is a full-time or part-time position which is established based upon the continuing need of CDA and which is authorized to continue longer than one year.

§ 25-40-123 Types of Appointments

Appointments are categories of employment in the classes defined in the following that will fill established permanent or temporary positions:

(a) **Board of Directors Appointment.** The executive director, comptroller, and the executive assistant of CDA will be appointed by and serve at the pleasure of the Board. Benefits and conditions of employment will be as approved by the Board and as otherwise authorized or limited by statute. The policies, processes, and protections afforded by these regulations do not apply to a Board appointed position.

(b) **Contracted Appointment.** Key positions classified as professional will be employed on contracts not to exceed two (2) years in duration. Benefits and conditions of employment will be as provided in the contracted terms and conditions of employment and as otherwise authorized or limited by statute. The policies, processes, and protections afforded by these regulations do not apply to contracted appointees except as included in the contracted terms and conditions of employment.

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(c) Probationary Appointment. This is an appointment in which the appointee is selected from a list of eligible applicants resulting from an open vacancy announcement to fill a permanent position. The appointee shall serve a period of not less than six and not more than 12 months from the beginning of the probationary appointment and shall demonstrate a minimum of 26 consecutive weeks of satisfactory performance before being eligible for conversion to a permanent appointment. Separations during a probationary appointment do not require adverse action procedures.

(d) Permanent Appointment. An employee who has been appointed to a permanent position and who has satisfactorily completed a probationary period is entitled to the full benefits of this regulation. Permanent appointments may be made to part-time positions with defined regular work schedules.

(e) “Acting” Appointment.

(1) An “acting” appointment is the official written designation that an employee will act for a period of up to 30 days in place of a higher-level position. When the absence exceeds the initial 30-day period, a new designation shall be made for an additional 30 days. The thirty-day renewal of an “acting” assignment may be repeated until the incumbent returns to the position.

(2) Whenever the “acting” assignment exceeds 90 days, the employee shall be temporarily promoted or appointed to the position if the employee meets the qualifications standards of the position. See section 25-40-330.

Subpart C- Separation, Suspensions, and Demotions

§ 25-40-130 General

This subpart applies to separations, suspensions, furloughs, and demotions not resulting from reduction-in-force (RIF).

§ 25-40-131 Separations Not Involving Personal Cause

(a) Resignation.

(1) Resignations shall be in writing and shall be submitted to their managers at least 14 calendar days in advance of the effective date. Management employees should provide a minimum of 30 days notice.

(2) The manager shall submit a copy of the written resignation to the office manager for processing of the action.

(3) Withdrawal of a resignation may be permitted provided:

(i) The employee’s wishes are made known, in writing, prior to the effective date; and

(ii) The executive director agrees to the proposed withdrawal.

(b) Retirement. An employee may be separated for the purpose of retirement, provided the employee meets the eligibility standards for age and service covered under the Settlement Fund or Social Security. A retirement shall follow the same notification process as a resignation.

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(c) **Exit Interview.** An exit interview shall be scheduled and conducted during working hours by the executive director or his/her designee for employees upon notice of resignation or retirement. Such interview shall include questions on the reasons for separation and counseling on benefits. The office manager shall not process exit documents until the interview is completed. If circumstances make such interview impractical, an employee may ask the executive director to waive this requirement.

(d) **Termination for Medical Reasons.**

(1) When an employee becomes mentally incapacitated or permanently physically disabled and is unable to satisfactorily perform the essential duties of the position to which assigned, the executive director may terminate the employment, provided:

- (i) No reasonable accommodation can be made within CDA to which the employee is assigned;
- (ii) Medical examination fitness-for-duty procedures have been conducted; and
- (iii) All adverse action procedures have been followed.

(2) In all cases of termination for reasons of mental incapacity or physical disability, all provisions of the Americans with Disabilities Act will be followed.

(3) An employee whose services are terminated under this part may be eligible for disability retirement under the Settlement Fund or Social Security. The responsibility for applying for disability retirement rests with the employee, although it is the responsibility of the office manager to ensure that the employee is aware of such an opportunity.

(e) **Voluntary Demotion.** An employee may volunteer for demotion to a lower class of position at a lower pay level. The approval of such a request by the executive director must be contingent upon the following factors:

- (1) A vacant position in the class and pay level must be available within CDA.
- (2) The employee must meet the qualifications for the position at the level sought and be capable of fulfilling the duties required of the position.
- (3) No additional cost shall accrue to CDA as a result of or incident to the demotion action.
- (4) The salary of the demoted employee in the lower level position shall be set at the same numerical step in the lower level position as the employee received in the higher position.

§ 25-40-132 Disciplinary Actions for Reasons of Personal Cause (Adverse Actions)

CDA will utilize management measures to prevent ethical misbehavior and misconduct. Employees, at all levels, will be held accountable for their actions, and disciplinary actions will be used as deterrent and corrective measures to assist in attainment and maintenance of the high standards of ethical and conduct behavior set by CDA. Disciplinary actions will be categorized as adverse action, where a tangible change to employment status occurs, and non-adverse action, where no tangible change occurs.

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- (a) **Authority to Take Adverse Action Disciplinary Measures.** Unless specified by law, the authority to hire is followed by the authority to effect adverse actions. For this purpose, the designated official will be the executive director.
- (b) **Authority to Take Disciplinary Measures.** Unless otherwise restricted by the executive director, managers and supervisors are authorized to effect non-adverse action disciplinary measures and to recommend adverse action disciplinary actions. Managers and supervisors will keep the executive director advised of performance and conduct problems.
- (c) **Employee Coverage.** This part applies to all permanent employees of CDA but does not apply to Board-appointed or probationary employees, except where stated elsewhere in this regulation.
- (d) **Merit of Disciplinary Action.** An action against an employee should only be taken under this part for “such cause as will promote the efficiency and the mandates of CDA.”

§ 25-40-133 Non-Adverse Action Disciplinary Measures

- (a) **Verbal Admonishment.** A verbal admonishment, in the form of a counseling or warning, is an informal disciplinary measure. A manager or supervisor may discuss at any time minor deficiencies in performance or conduct with the objective of improving an employee’s effectiveness. Verbal admonishments shall not be made a matter of record in the employee’s official personnel file (OPF).
- (b) **Written Admonishment.** A written admonishment, in the form of a counseling or warning, is also an informal disciplinary measure that normally occurs when minor deficiencies in performance or conduct reoccur after a verbal admonishment or for a more serious deficiency or incident. Written admonishments will be maintained as a matter of record in the employee’s OPF.
- (c) **Reprimand.** A reprimand is a formal means of calling to an employee’s attention minor deficiencies in performance or conduct which, if continued, may result in further disciplinary measures. It is the first formal step in the disciplinary process. Reprimands are always in writing and should contain specific references to performance deficiencies, citations of instances of misconduct, and a warning that more stern disciplinary measures may be taken if the employee’s performance or conduct is not improved. A copy of the reprimand becomes a part of the employee’s OPF as a matter of record. There is no recourse to formal appeal processes as a result of a reprimand; however, an employee who feels a reprimand is not justified may resort to the grievance procedure.
- (d) **Suspension**
 - (1) A suspension is an action placing an employee in a non-duty and non-pay status for disciplinary reasons for a period not to exceed three working days. There is no formal appeal from such a suspension, although the employee may resort to the grievance procedure if the employee feels the suspension is improper or not justified.

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(2) A suspension without pay for periods less than five working days shall only be imposed in respect to an employee who is covered by the overtime provisions of the Fair Labor Standards Act (FLSA). An exempt employee must receive suspensions without pay for attendance or performance matters in periods of a full five working days, except in situations of misconduct, defined by the FLSA as serious safety or work rule infractions, where a lesser period may be permitted by the FLSA.

§ 25-40-134 Adverse Action Disciplinary Measures

Adverse action disciplinary measures require the use of the adverse action notification and resolution procedure.

- (a) **Suspension for More than Three Working Days.** A suspension is an action placing an employee in a non-duty and non-pay status for disciplinary reasons. The executive director may suspend an employee for such cause, provided all adverse action procedures are followed.
- (b) **Removals.** Appointing authorities may take removal action against an employee for just cause provided all adverse action procedures are followed.
- (c) **Removal for Abandonment of Job.**
- (1) An employee absent without leave (AWOL) without valid reason, for a combined total of ten working days in any 12 month period may be terminated from employment for job abandonment, provided all adverse action procedures are followed.
- (2) An employee absent without leave without valid reason, for ten consecutive working days may be considered, in effect, a resignation. Adverse action procedures will not be required. The executive director may elect not to effect such termination, however, if it is determined that circumstances warrant such cancellation. Nothing in this section shall preclude the executive director from taking other disciplinary action against an employee for absence without leave.
- (d) **Separation during Probation**
- (1) If it becomes evident during the probationary period that the employee lacks the ability, attitude, or desire to become an efficient and productive employee in the position to which appointed, or there is lack of funds or work to be done, that employee shall be separated from the service. However, if the probationary employee claims that the apparent lack of ability, attitude, or desire is due to a disability under the Americans with Disabilities Act, the provisions of that act shall be followed, as applicable.
- (2) The executive director shall provide the employee with not less than 14 calendar days' notice, in writing, specifying the reasons for the separation.

§ 25-40-135 Procedure for Taking Adverse Actions

- (a) The executive director must observe certain procedural requirements when processing adverse actions covered in this subpart. Procedures for removal and suspension for more than three working days are as follows:

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- (1) The executive director must give the employee at least 30 days advance written notice of the proposed action.
- (2) The notice must state, with specificity and in detail, any and all reasons for the proposed action.
- (3) The employee has the right to answer in writing. The employee shall be allowed not more than twenty days to answer the notice of proposed action. Three workdays within the allotted twenty days shall be official time.
- (4) If the employee answers, the executive director must consider that answer.
- (5) If at all practicable, the employee must be kept on active duty in the regular position during the notice period. Based upon the circumstances, however, the employee may be suspended during the notice period and placed on leave without pay or, with the employee's consent, carried on annual leave. An employee, whose adverse action is drug-related as prohibited by part 40, subpart C, of this chapter, will not be permitted to perform any safety-sensitive functions during the notice period.
- (6) Management must give the employee a written decision before the adverse action is effected. The decision must state which of the reasons in the notice of proposed action have been found sustained and which have been found not sustained.
- (7) The decision must tell the employee of appeal rights.
- (8) Advance written notice and opportunity to answer are not necessary if the employee is furloughed due to unforeseeable circumstances, such as sudden breakdowns in equipment, acts of God, or emergencies requiring curtailment of activities.

(b) In the event that criminal charges are filed against an employee, the employee may be immediately suspended without pay, reassigned, allowed to take annual leave, or be subject to such other action, including those which trigger the adverse action procedures, as management may deem necessary. In the event the charges are dismissed or the employee is found not guilty, the employee may be reinstated with benefits and pay but will not receive retroactive payment or reimbursement for any leave taken. Employee will not be eligible for reinstatement with benefits and pay if the employee was terminated.

§ 25-40-136 Summary of Steps for Taking Adverse Actions

- (a) Misconduct triggering use of the adverse action procedures
- (b) Executive director's notice letter of proposed adverse action
- (c) Employee's answer and/or presentation of evidence
- (d) Executive director's letter of decision
- (e) Employee's written appeal to the Board of Directors
- (f) Board of Directors hearing (if requested)
- (g) Board of Directors' decision (administrative remedies exhausted at this point)

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- (h) Legal recourse

PART 200 POSITION CLASSIFICATION AND COMPENSATION

Subpart A- Position Classification

§ 25-40-201 General

All positions subject to the provisions of CDA Personnel Management System shall be classified in accordance with the approved CDA Position Classification Plan.

§ 25-40-202 Definitions

- (a) “Position Classification”: the process by which employment positions in an organization are identified, described and defined according to their duties and responsibilities, with like positions segregated into groups called “classes.” A systematic record is made of the classes found and a listing is made of the particular positions found to be of each class.
- (b) “Class”.
 - (1) “Class” means one position or a group of positions sufficiently similar in respect to their duties, responsibilities, and authority that the same title may be used with clarity to designate each position allocated to the said class. The same standard qualifications may be required of all incumbents, the same test of fitness may be used to choose qualified employees, and the same schedule of compensation may be applied with equity under the same or substantially the same employment conditions of a given class; although sufficiently dissimilar from any position or any other group of positions to warrant exclusion from those groups of positions.
 - (2) The class title assigned to a position in accordance with the Position Classification Plan shall be the official title and will be used for all personnel, budgetary, and financial purposes, and should be used for all position organization charts.
- (c) “Position”: the work, consisting of duties and responsibilities assigned by competent authority for performance by an employee.
- (d) “Position Classification Plan”: classes of positions arranged in a systematic order to reflect all of the kinds and levels of work utilized in CDA Personnel Management System.
- (e) “Allocation”: the assignment of a position to its appropriate class on the basis of analysis of the duties and responsibilities of the position.
- (f) “Reallocation”: a position change resulting from a change of duties and responsibilities over a period of time, not a result of planned management decision and action.
- (g) “Reclassification”: change of a position or group of positions to a different class as a result of a change in assigned duties and responsibilities, classification standards, or as a result of correcting a classification error.

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(h) “Class Specification”: an official position classification plan document description of the general characteristics of a class, and includes the official class title, a detailed description of the scope of duties and responsibilities of the class, specific examples of work or typical duties performed, and a statement of the qualifications required to perform the work of the class.

(i) “Occupational Group”: a major subdivision of a position classification plan, generally embracing several series of classes of positions in associated or related work specialties, professions or related activities. (For example, “Clerical and Machine Operation” and “Administrative, Management, and Allied” are occupational groups.)

(j) “Series of Classes”: classes closely related as to occupational specialty but differing in level of difficulty, responsibility, and qualifications required. (For example, the three classes of Marketing Specialist I, Marketing Specialist II, and Marketing Specialist III taken together make up a series of classes.)

(k) “Position Description”: a formal, official written statement by management which documents the description, assignment, or arrangement of the duties and responsibilities of a position. The description should define the duties, knowledge, skills, abilities, education, and experience requirements of the position

(l) “Desk Audit”: a formal review of a position to determine if the duties being performed are consistent with the job description and grade level assigned.

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§ 25-40-204 Principles and Policy

(a) The basic principles underlying the position classification system are:

- (1) Equal pay for equal level of responsibilities, qualification requirements, and difficulty in differing position’s assigned duties; and
- (2) Variations in pay in proportion to differences in difficulty, responsibility, and qualification requirements of the work.

(b) CDA Personnel Management System’s position classification program applies these principles in response to management’s expressed needs and in support of mission accomplishments. Changes in classification shall not be made for the purpose of raising or reducing pay, but only to reflect clear and significant changes in duties and responsibilities. Supervisors and managers are expected to organize the work of their organizations and structure the positions so that vacancies can be filled at the lowest level at which qualified applicants can be obtained.

§ 25-40-206 Responsibilities

(a) The Executive Director

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- (1) Ensures the development of a classification program which supports management's objectives, meets legal and regulatory requirements, and promotes participation by operating officials in the classification process.
 - (2) Provides advice and assistance to management on the classification aspects of position structure needed to carry out CDA mission.
 - (3) Ensures the conduct of periodic reviews to evaluate the effectiveness of the classification program and directs corrective action where appropriate.
 - (4) Approves new classification standards, revises existing standards as needed, seeks the advice and counsel of an experienced desk auditor, as needed.
 - (5) Groups positions into classes on the basis of their similarities in duties, responsibilities, and other significant factors.
 - (6) Assigns a title to each class which shall apply to all positions in the class; prescribes the characteristics of each class; and sets the standards for employment in any position in the class subsequent to consultation with the personnel committee and the appropriate management officials.
 - (7) Changes a position from one class to another where substantial changes have occurred in the duties and responsibilities.
 - (8) Determines the status of occupants of positions which have been changed from one class to another.
 - (9) Delegates authority to the degree the executive director deems appropriate, including to CDA office manager and other CDA management staff, to review and modify position descriptions which have been approved and allocated within the classification plan.
- (b) The Department Managers
- (1) Plan, organize, develop, and assign duties and responsibilities to positions, whether occupied or vacant;
 - (2) Consider the mission of the organization and structure positions for accomplishment of requirements in the most effective and economical manner possible;
 - (3) Ensure that assigned duties and responsibilities do not duplicate or overlap those of other positions;
 - (4) Assure that duties and responsibilities assigned to positions are completely and accurately described in position descriptions in full and sufficient detail for position classification and all related purposes;
 - (5) Assist employees to accomplish the foregoing.
- (c) The Office Manager
- (1) Develops, prepares, maintains, and submits to the executive director, as required, factual and up-to-date functional statements and organizational position charts which clearly depict such information as assigned organizational and/or supervisory responsibility, organizational segment identification,
 - (2) Develops and maintains listings of positions, employee names with official class titles and pay levels for the positions to which assigned, the title and pay levels of vacant positions which are funded and approved, and other similar essential details.

§ 25-40-208 Position Planning

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Managers and supervisors are responsible for position planning. The supervisor analyzes the work to be accomplished, decides on work or production methods, and determines the requirements for supervision, special technical support, qualitative and quantitative controls, and review and evaluation. A well-defined position has clearly defined operation, tasks, duties, authorities, responsibilities, and supervisory relationships.

Subpart B- Compensation

§ 25-40-210 General

All employees of CDA shall be compensated in accordance with applicable Commonwealth laws. CDA compensation plan shall follow the base salary schedule utilized by the executive branch of the Commonwealth government unless CDA develops a separate salary schedule, which is submitted to and approved by the board.

§ 25-40-212 Compensation Plan

The classes in the position classification plan, when assigned to appropriate pay levels of the base salary schedule as established, shall constitute the basic compensation plan. The executive director shall assign all classes in the position classification plan to appropriate pay levels in the base salary schedule in accordance with the following:

- (a) Kind and level of work;
- (b) Degree of difficulty and responsibility;
- (c) Kind, quality, and level of qualification requirements;
- (d) Relationship to other classes in its occupational group and of its occupational group to other occupational groups.

§ 25-40-214 Periodic Review of Compensation Plan

The executive director shall periodically ensure the conduct of necessary and appropriate studies of rates of compensation and compensation practices in the Commonwealth and recommend to the board any changes to CDA Compensation Plan.

§ 25-40-216 Establishing Salary upon Appointment

- (a) Salary shall be fixed at the first step of the appropriate pay level upon initial appointment. Should a higher rate be deemed necessary to recruit, and is appropriate to the qualifications of the applicant, the salary may be fixed at any succeeding step not to exceed step 8. An initial salary above step 1 of the pay level must be approved by the executive director. An initial salary above step 8 of the pay level must be approved by CDA Board of Directors with the recommendation of the executive director.

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(b) When a person is reemployed after a break in service into a position in a class and pay level lower than the highest class and pay level previously held, the salary may be set in the lower grade at the highest previous step held.

(c) When a person is reemployed after a break in service into a position in a class and pay level higher than the highest class and pay level previously held, the salary may be set in the higher grade at a step-level equivalent to two steps higher than the highest previous step held.

(d) All initial salaries are contingent upon budgeted and available funding and may be limited accordingly, notwithstanding (b) and (c) above.

§ 25-40-218 Promotions

An employee who is promoted from a position in one class to an existing position in a higher class shall be compensated at the lowest step in the new pay level which at least equals the amount of a two-step increase in the old pay level. The rate of compensation must not exceed the rate of the maximum step in the higher pay level. The effective date of the promotion shall be the new service anniversary date for the promoted employee. Retroactive promotions shall not be made except when directed by a decision of the board pursuant to an employee's appeal.

§ 25-40-220 Temporary Promotions

A temporary promotion is utilized when it is anticipated that an employee will temporarily occupy a position for a period in excess of two calendar days. An employee can be temporarily promoted only if such employee meets the qualifications standards of the new position. The employee temporarily promoted shall be compensated at the step in the new pay level which is at least equal to an increase of two steps at the current pay level. The employee must be informed in advance and agree, in writing, that at the expiration of the temporary promotion, the employee will be returned to the former salary (level and step) that s/he would be receiving had the employee remained in the former position. No temporary promotion shall exceed a period of one year.

§ 25-40-222 "Acting" Assignment

(a) An "acting" assignment is the designation, in writing, that an employee will act for a period of up to thirty calendar days in place of a supervisor. When the supervisor's absence exceeds the initial 30-day period, a new designation shall be made for an additional thirty days. This 30-day renewal of the acting assignment is repeated until the supervisor returns to the position. Whenever the acting assignment exceeds ninety days, the employee shall be temporarily promoted if the employee meets the qualifications standards of the position. If the acting assignment exceeds ninety days and the employee does not meet the qualifications standards of the position, the employee shall be compensated with two steps in the current pay level, but may not exceed the maximum step.

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(b) When an employee in permanent status is designated for an acting assignment to a contracted position, the employee shall be required to resign from permanent status in order to accept the said acting assignment. While in the acting assignment, the employee shall be entitled to receive a salary equivalent to the salary received by the previous incumbent of the position if the employee meets the qualifications for the contracted position, or a two-step temporary increase if the employee does not.

(c) Upon expiration of the acting assignment, the employee will be reinstated to the former position and salary (level and step) that the employee would be receiving had the employee remained in the former position.

§ 25-40-224 Demotion

(a) An employee demoted because of abolishment of position or reallocation of position to a lower pay level, except at the employee's own request, shall be compensated at the salary rate which does not exceed the employee's current pay rate. Where the employee's current rate exceeds the rate of the maximum step of the lower pay level, the employee shall be compensated at such maximum step. An employee demoted as a disciplinary measure shall have his/her compensation reduced to the corresponding step of the lower pay level.

(b) An employee demoted at his/her own request shall have pay set at the step in the lower pay level which corresponds to the step held in the higher level.

§ 25-40-226 Transfer

An employee who is transferred to a different position within CDA at the same pay level shall receive no change in compensation.

§ 25-40-228 Effect on Service Anniversary Date

An employee's service anniversary date will not be affected by a transfer, acting assignment, or temporary promotion.

§ 25-40-230 Reallocation/Reclassification of Position to Higher Pay

An employee whose position is reallocated/reclassified to a higher class shall be compensated at the lowest step in the higher pay level which at least equals the amount of a two-step increase in the lower pay level. The rate of compensation cannot exceed the rate of the maximum step in the higher pay level. The anniversary date of the new reallocation/reclassification shall become the employee's new anniversary date for within-grade increases and other purposes.

§ 25-40-232 Effective Date of Position Changes

The effective date of all position changes shall be the beginning of the first pay period immediately following the approval of the action by the Chairman of the CDA Board. Exceptions to this rule may be made by the executive director only for such reasons as will expedite CDA's business and not result in an inequitable situation.

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§ 25-40-234 Within-grade Increases

- (a) Within-grade increases may be granted to permanent employees upon completion of 52 consecutive calendar weeks of satisfactory performance.
- (b) Permanent employees who are assigned to work part-time will be eligible for a within-grade increase only at such time as the cumulative total of all hours worked equates to a standard work year of 2,080 hours and such work has been satisfactory. Employees who are employed on an intermittent basis are not eligible to receive within-grade increases.
- (c) The effective date of a within-grade step increase shall be the first day of the first pay period following completion of the required waiting period.
- (d) For all positions, approved leave in a non-pay status (LWOP) and/or unapproved leave (AWOL) not to exceed 80 hours, is creditable toward the waiting period for a within-grade increase. Unapproved leave (AWOL) and leave without pay (LWOP) of more than 80 hours will extend the waiting period by at least one pay period or by the amount of time such AWOL or LWOP exceeds the 80 hours, whichever is greater.
- (e) A former employee reemployed with a break in service begins a new waiting period for a within-grade increase from the date of rehire.
- (f) Employees holding temporary promotions will be eligible for any within-grade increase due to their permanent position.

§ 25-40-238 Overtime Compensation

- (a) **Compensatory Time and Control.** Any employee who exceeds 40 hours actually worked in an established one-week pay period shall be compensated for the hours in excess of 40 at the rate of one and one-half times the regular rate of pay, except as provided below.
- (b) **Exceptions.** Bona fide executive, administrative, and professional employees are exempt from overtime compensation. These terms shall have the meanings given them in the Federal Fair Labor Standards Act of 1938, as amended (FLSA).

Every personnel action or request therefore to appoint, promote, or transfer an individual to a position shall be endorsed by the office manager as either "FLSA covered" or "FLSA exempt," and the latter term shall only apply to bona fide executive, administrative, or professional employees. The criteria used in justifying such exemptions must be documented in the employees' job descriptions. Every examination announcement, promotional opportunity announcement, or other vacancy announcement for a position that is FLSA exempt shall indicate that the holder of that position is not eligible for payment for overtime. If changes in a job description effectively change an employee's coverage or exemption under the FLSA, a special personnel action shall be prepared to document such change. In addition to the above exceptions, no employee shall be eligible

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to receive overtime pay for any hour for which the typhoon emergency differential is paid.

(c) **Hours Actually Worked.** Overtime compensation will only be paid for hours actually worked in excess of 40 hours a week. Paid leave, annual or sick, or holidays shall not be included in the computation of hours actually worked, except for administrative leave allowed to serve on government boards and commissions. Time during which an employee is required to remain at a prescribed workplace shall be included in the hours actually worked, even if no work is performed.

(d) **Payments Included in Determining Regular Rate of Pay.** The regular rate of pay shall include consideration of the following compensation for employment:

- (1) Basic pay (one-eightieth of biweekly salary) for the first forty hours actually worked in the workweek, including work on a holiday (but not the amount also paid for holiday leave), and including basic pay for work during a typhoon emergency (but not the amount also paid for administrative leave), regardless of whether actual compensation during such emergency is higher because any such work was performed outside of regular duty hours; and
- (2) Any hazardous work differential earned during the workweek; and
- (3) Any night work differential (which can only be earned during regular scheduled shifts and duty hours); and
- (4) Any premium earned for remaining on call for duty during a regularly scheduled period in excess of a forty hour week; and
- (5) Payment for housing or transportation to and from work that is paid to the employee or the fair value of those benefits, if they are provided directly by the government, pro-rated to determine the amount for that workweek. The fair value shall be the amount specified for tax purposes.

(e) **Compensatory Time-Off.** If funds are not available for overtime compensation, compensatory time-off may be granted at the rate of one and one-half hours for each hour actually worked of overtime, provided that:

- (1) The employee signs a statement agreeing to compensatory time-off in place of overtime; and
- (2) The maximum authorized accumulation of compensatory time-off is 240 hours (160 hours of work time at one and one-half times). When an employee has accumulated 240 hours of compensatory time off, all overtime must be paid in cash; and
- (3) An employee's request to use compensatory time-off must be granted within a reasonable time unless the responsible official determines that time off would be unduly disruptive to operation of the activity; and
- (4) Accrued balances of compensatory time-off at the termination of employment must be paid at the average basic pay of the employee over the last three years of employment or the final basic pay, whichever is higher.
- (5) Compensatory time-off cannot be carried "off the books" through any in-house agreement or arrangement. All time work shall be officially recorded.
- (6) Appointed, contracted, and overtime exempt positions are exempt from accruing compensatory time.

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(f) **Reduction and Control of Overtime.** Intelligent and responsible control of overtime is a continuing management function and certain steps are to be taken by all appointing authorities and supervisors to reduce overtime. Overtime work should be directed to a specific objective or goal and should not be work that can be completed during the regular workday or postponed to the following day or days. Avoid use of compensatory time-off. Excessive use of compensatory time-off will take employees away from the workplace in the future and create a need for more overtime.

(g) **Approval of Overtime.** Overtime must be approved, in advance, by the executive director on forms prescribed by CDA.

(1) An employee who is suffered or permitted to work overtime without authorization shall be paid, because the time represents an obligation of CDA.

(2) The responsible management official has an obligation to discourage overtime which is not approved, and must take disciplinary action, when appropriate, against an employee who works overtime without authorization.

(3) As a general policy, an employee who has taken annual or sick leave or who plans to take annual or sick leave within the same work week will not be scheduled to work overtime.

(h) **Supervisors Working Overtime.** As a general policy, management officials should refrain from directing supervisory personnel to work overtime. In the event three or more employees are directed to work overtime, a supervisor must be present to ensure proper utilization of the overtime period.

§ 25-40-240 Standard Work Week

The standard work week commences on Monday at 7:30 a.m. and ends on Friday at 4:30 p.m. of each week. Section managers shall have discretion to require employees to work a flexible schedule so that the hours worked does not exceed 40 hours in a standard work week. For FLSA purposes, including the computation of overtime pay, the workweek is the 168-hour period beginning at 12:01 a.m. on Sunday, unless a different FLSA workweek is specified for a particular position.

§ 25-40-242 Holidays

All CDA employees shall receive leave with pay on each legal holiday.

An employee required to work on a legal holiday shall be compensated at the base salary rate or the adjusted base salary rate for the hours actually worked and shall also be paid for the holiday leave with pay.

§ 25-40-244 Merit Award

(a) An employee achieving an overall exceptional performance rating (scale range of 4.2 to 5) may additionally be granted a merit award (a one-time payment of \$250.00) upon completion

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of 52 consecutive calendar weeks of sustained superior work performance corresponding to the employee's anniversary year. Such additional merit award shall not alter the waiting period required for qualifying for the next within-grade step increase.

(b) A recommendation for a merit award is prepared and signed by the manager, and then forwarded to the executive director for review and final approval.

§ 25-40-246 Premium Pay

(a) On-call. Employees who are required to remain on-call to duty outside of their regular working hours shall be fit to report for duty while on call and shall be paid a premium of one dollar and fifty cents per hour they are scheduled to be on-call, provided that:

- (1) Employees shall be compensated for hours actually worked instead of receiving an on-call premium for all hours in which they are required to be at a prescribed work place; and
- (2) Hours of on-call duty must be for a regularly scheduled period of time in excess of the regular 40-hour work week. On-call schedules must be submitted to the timekeeper before the beginning of the work week involved; and
- (3) There is a bona fide reason for the employee to be on call; and
- (4) Eligibility to be placed on-call is for a period of one year and may be renewed for additional one-year periods.

(b) Typhoon Emergency. Employees who are required by CDA to work in a location and during a period of time in which a typhoon or tropical storm emergency has been declared by the Governor shall be compensated as follows:

- (1) For the employee's regularly scheduled work hours during which other CDA employees are released from work as a result of the emergency, the employee shall receive pay for administrative leave, and shall also receive pay for the actual hours worked; and
- (2) For all other hours such employees are required to work while such declaration of emergency shall remain in force, compensation shall be at the rate of two and one-half times the base salary rate. Employees being paid typhoon emergency differential are not eligible to receive any other premium pay or overtime pay for the same time period.

§ 25-40-248 Approval of Premium Pay or Differentials

Proposals to either begin or discontinue premium pay differentials shall be submitted on a request for personnel action to the executive director for review and approval. The request must be accompanied by a letter of justification addressing each of the criteria required to support the particular differential. Discontinuance of differentials does not constitute a "reduction in pay" and does not require a formal adverse action.

§ 25-40-250 Bar to Dual Compensation or Dual Employment

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- (a) No employee shall receive compensation for two positions or two appointments in the CNMI government service. When an employee is engaged in government work other than in the employee's regular position with CDA, such employee shall be
- (1) Placed in LWOP from the regular position, or
 - (2) Continue CDA salary and reject the salary for the second position, whichever is to the employee's personal advantage.
- (b) Exception: When an employee is engaged as a classroom teacher outside the employee's regular workday to teach adult basic education or classes for the Northern Marianas College, such employee shall be paid for work as a teacher at the prevailing rate. Other exceptions may be made upon proper justification with the specific written approval of the executive director.

§ 25-40-252 Severance Pay

- (a) Employees who are separated from employment with CDA by reduction-in-force (RIF) and are not eligible to receive immediate retirement pay, are entitled severance pay computed as follows:
- (1) For each full year of creditable service with the government (total employment with CDA and other agencies), the employee is entitled to one-half of the employee's biweekly pay rate in effect upon separation by RIF.
 - (2) For each full three months of service beyond the total full years of service, the employee is entitled to 25 percent of the pay for a biweekly period at the rate in effect upon separation by RIF. Not more than 75 percent of the pay for one biweekly period shall be paid under this part-year provision.
 - (3) If the employee is reemployed by CDA and is again separated by a RIF, this time will not be counted toward any future severance pay.
- (b) Severance pay is paid at the regular biweekly sequences until the entitlement is exhausted. If an employee separated by RIF is reemployed by the government in any capacity before the allowable severance pay liability is satisfied, the employee sacrifices the unpaid balance upon return to duty. If the employee's total creditable service is less than one full year, there is no entitlement to severance pay.

§ 25-40-254 Timekeepers

It is essential that CDA have available accurate data concerning the time and attendance of employees. This information assists forecasting of future personnel needs and analysis of current practices. To provide the needed information, it is necessary that competent timekeepers be appointed and certified.

- (a) Appointment and Certification of Timekeeper. The executive director shall appoint not less than two timekeepers from among CDA employees on Saipan and one each for Rota and Tinian. Upon the appointment, each timekeeper will undertake a course of instruction in timekeeping procedures as provided by the Executive Branch Office of Personnel Management. No person may perform the duties of timekeeper without certification.

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(b) Duty of the Timekeeper.

(1) Each timekeeper will be responsible for recording and certifying time and attendance records of the assigned employees. Timekeeping duties shall be accomplished during regular working hours. Overtime shall not be authorized for timekeeping. The timekeeper will also record and certify leave time taken by any assigned employee. The method of recording and certifying time, attendance, and leave shall be as prescribed by the Office of Personnel Management training.

(2) Time and attendance records, kept by the timekeeper, are subject to audit by the executive director or his designee at least once a year. Noncompliance to the timekeeping procedures taught in the certification training may subject the timekeeper to immediate decertification and appropriate disciplinary action(s).

(c) Protection of Timekeeper. It is essential that timekeepers be able to fulfill their duties without harassment. No person may attempt to coerce, threaten, or otherwise attempt to hinder the timekeeper. Any person violating this provision shall be reported promptly by the timekeeper to the executive director. Any person violating this provision may be subject to disciplinary and/or criminal sanctions.

(d) Employees' Rights to Challenge Timekeeping Records. Any employee who wishes to challenge the accuracy of any timekeeper's records may institute an employee appeal under the grievance procedure.

PART 300 EMPLOYEE BENEFITS AND SERVICES

§ 25-40-301 Policy

CDA will provide benefits and services to its employees in keeping with the general practices of the CNMI government and private enterprise and as limited or prescribed by law. This part delineates those benefits and services which include:

(a) Leaves of absence; and

(b) Insurance, such as group life and health insurance, dental insurance, and worker's compensation coverage.

(c) Retirement

Subpart A- Leaves of Absence

§ 25-40-305 Purpose

Leaves of absence from work are for the mutual benefit of the employee and employer. When leaves of absence are granted, they will be approved based upon legitimate reasons as presented by the employee for such times as will not be detrimental to CDA and its responsibilities.

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§ 25-40-310 Types of Government Service that Qualify for Leave Accrual Purposes

Prior service in the following government activities will count in the determination of CDA leave accrual rate:

- (a) Employment within the departments of the executive branch.
- (b) Employment within the judicial branch.
- (c) Employment within the legislative branch.
- (d) Employment within government corporations, agencies, commissions, and instrumentalities.
- (e) Employment within the offices of the mayors and the municipal councils.
- (f) Prior service employment within the Trust Territories government, as defined and recognized by the Commonwealth government's civil service regulations.

§ 25-40-315 Kinds of Leaves

Broadly characterized, leaves of absence are either with pay or without pay.

§ 25-40-320 Leaves with Pay

- (a) Annual Leave.
 - (1) Annual leave, or vacation, shall be granted for the purpose of rest and relaxation. Annual leave requests must be made at least three work days in advance on a leave request form. All annual leave requests must be approved by the employee's section manager and concurred by the executive director. A denial of request for annual leave is subject to employees' grievance rights.
 - (2) CDA employees who have less than three years of creditable service shall earn annual leave at the rate of four hours per pay period; except that newly appointed employees shall undergo a waiting period of 90 calendar days before being credited with annual leave. Employees with three but less than six years of creditable service shall earn annual leave at the rate of six hours per pay period. Employees who have six or more years of creditable service shall earn annual leave at the rate of eight hours per pay period.
 - (3) Maximum Accumulation. The maximum accumulation of annual leave for CDA employees shall be 360 hours. Accrued annual leave in excess of 360 hours remaining at the end of each calendar leave year shall be converted to sick leave.
- (b) Sick Leave.
 - (1) Sick leave shall be allowed whenever the employee is to be absent from duty because of illness or injury or because of medically required quarantine of the family and/or residence. Use of sick leave is appropriate for medical, dental, optometric or

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mental health counseling or other necessary treatment which the employee personally must undergo.

(2) If an employee is absent because of illness, injury, or quarantine in excess of three days, the employee may be required to furnish a certification as to the incapacity from the attending physician. The executive director may require certification for such other period(s) of illness as is determined appropriate due to suspected abuse of the sick leave benefit.

(3) If the required certification is not furnished, all absence which would have been covered by such certification shall be indicated on the time and attendance record and the payroll as absent without leave (AWOL).

(4) Sick leave may be accumulated and carried over to succeeding leave years without limitation. A report showing the accrued sick leave balance will be provided the employee each pay period.

(5) The generality of the foregoing is subject to the following special provisions:

(i) Falsification of an illness report shall be considered sufficient cause for disciplinary action, including dismissal from employment.

(ii) Sick leave with pay shall be allowed during leaves of absence or vacations; provided, however, that any sick leave taken by an employee while on vacation must be supported by a certified medical statement issued by the attending physician. No employee shall be allowed to undertake gainful employment while on sick leave status.

(iii) Sick leave with pay may be granted in advance of earning sick leave as provided under subsection (d). If an employee is separated from the service without having earned all of the sick leave allowed and taken, there shall be deducted from any money due the employee at the time of separation an amount equal to salary for the period of unearned sick leave allowed and taken.

(6) Sick leave accrued for service with the government in any branch or agency shall vest in the employee upon accrual and shall remain vested so long as the individual is employed by the government, provided that if such employee is separated from government service (other than through retirement) for a period longer than three years, the employee shall be divested of accumulated sick leave.

(c) Family Sick Leave. It should be noted that this leave, while it may be counted as Family and Medical Leave Act (FMLA) leave, is authorized by Commonwealth law and should not be confused with the federal FMLA.

(1) An employee may apply for leave to attend to an immediate family member who is sick. For leave in excess of two consecutive days, such request shall be supported by a certified medical statement. Leave taken for this purpose shall be deducted from the employee's earned sick leave.

(2) Per Public Law No. 15-116 the following definitions apply for family sick leave:

(i) "Certified medical statement" means a statement from an attending physician that a Commonwealth government employee is needed to care for an immediate family member;

(ii) "Immediate family member" means a legal spouse; child, whether natural or adopted, or parent.

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(3) Employees are authorized to use up to 80 hours of earned sick leave hours per 12-month period. The executive director may approve an additional 80 hours in cases of severe illness or injury, or the need to accompany a qualified sick immediate family member for off-island treatment.

(4) Only one family member, as designated in a medical referral statement, may use this benefit to accompany a qualified sick immediate family member for off-island treatment.

(d) Leave Advance.

(1) Where, for good reason, an employee requires additional annual or sick leave in addition to the amounts accrued, the executive director, with recommendation of the employee's section manager, may grant advance leave. For permanent employees the advance leave will be limited to a maximum of one-half of the total earnable leave credits for which the employee is eligible for one year from the date the application is received. In the case of probationary employees, advance leave can be approved up to a maximum of one-half of the total earnable leave credits for which the employee is eligible during the remainder of the employment term, whichever is shorter. Subsequent accrued leave earnings shall serve to replace the amount of advance leave granted and taken. Requests for leave advance must be in writing from the employee with a recommendation from the section manager.

(2) Leave advance granted and taken:

(i) Constitutes a legal contract between the employee and CDA; and

(ii) Must be repaid, even if the employee separates or transfers from CDA.

Recovery of advance leave that is unpaid may be through CDA's assumption of employee's accrued unused leave, payroll deductions, matched reduction of service time, and/or recourse to the courts.

(e) Compassionate Leave. Employees may be granted compassionate leave with pay of no more than five consecutive workdays in cases of death in the immediate family of the employee. For the purpose of this subpart, the term "immediate family" shall be defined as an employee's mother, father, brother, sister, spouse, immediate off-spring (natural and culturally or legally adopted), grandfather, grandmother, grandchild, mother-in-law, or father-in-law. Compassionate leave must be taken within 18 days after the death of the immediate family member. The executive director will be responsible for approving compassionate leave requests.

(f) Administrative Leaves. An absence from duty administratively authorized, without loss of pay and without charge to accrued leave, is administrative leave. CDA board may grant administrative leave as the Governor may approve for the executive branch. The following are the three general classes into which administrative leaves fall:

(1) Administrative leave may be authorized under emergency conditions beyond the control of management, e.g., typhoons, or for participation in civic activities of interest to the government, or for such reasons as the Governor may determine (such as a shortened work day on Christmas Eve).

(2) Administrative leaves may be authorized relative to disciplinary actions. The executive director may place an employee in non-working status with pay for up to three

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work days pending an investigation or preparation of a notice of proposed suspension for up to thirty calendar days or termination of employment.

(3) Administrative leave may be granted to employees serving on government boards and commissions, provided such employees do not receive compensation from the boards and commissions.

(g) Court Leave. CDA encourages its employees to fulfill their obligations as citizens of the Commonwealth. Thus, employees who are called upon to serve as jurors may, at their option, be granted court leave for such period as the jury may be impaneled. Employees who are called to jury duty shall present their juror summons to their section manager together with a completed request for leave for the executive director's approval. Employees who serve as jurors using court leave to cover the period of absence shall turn over to the Commonwealth Treasurer such jury fees (as distinct from expense allowances) as they receive from a Commonwealth court. Expense allowances paid the employee for whatever purpose may be retained by the employee to defray the expenses for which granted. The employee may retain any jury fee paid by the federal court. An employee subpoenaed as witness, except as a government witness, shall charge such absence to annual leave or leave without pay. Court leave shall be granted to an employee subpoenaed in litigation in which the government has no interest, to serve as a witness in the employee's present or past official capacity as a government employee and who may be required to present government records in testimony. Such employee must inform the executive director of the required testimony as soon as possible after being subpoenaed.

(h) Military Leave. Military leaves of absence with pay, not to exceed 15 working days in any calendar year, regardless of the number of training periods in the year, may be granted by the executive director to employees who are members of the United States National Guard and reserve components of the United States Armed Forces, when directed under orders issued by proper military authority. Administrative leave will not be granted in order to extend leave time for any additional training days.

(i) Maternity Leave. Maternity leave shall be granted to a female employee who is absent from work because of childbirth. The executive director shall have the responsibility for approving maternity leave requests. Such maternity leave shall not exceed 15 work days, shall be in addition to any accumulated sick leave, and shall be any 15 work days encompassing the date of childbirth. Any additional leave taken for such childbirth purposes shall be charged against accumulated sick leave. This benefit will not be granted in cases of adoption. All leave time related to the birth of a child will be counted as family and medical leave.

(j) Paternity Leave. Paternity leave shall be granted to a male employee on who is absent from work because of his wife's confinement for childbirth. Such paternity leave shall not exceed two workdays encompassing the date of childbirth. The executive director shall have the responsibility for approving paternity leave requests.

(k) Sick Leave Bank Leave.

(1) All CDA employees are eligible to participate in and utilize the Commonwealth's Sick Leave Bank established by Public Law No. 8-25, as amended by Public Law No. 15-69.

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- (2) The Sick Leave Bank serves as a depository into which participating employees may donate accrued sick leave time for allocation to other Commonwealth employees who have personally suffered, or have an immediate family member who has suffered, a catastrophic illness or injury, and who have exhausted their compensatory time, sick leave, and annual leave balances.
- (3) Employees are eligible for up to 160 hours of Sick Leave Bank hours once during their employment, unless the loaned hours are repaid. The terms and conditions of this benefit are provided in the Sick Leave Bank Regulations [NMIAC, title 10, chapter 50].
- (4) CDA office manager will provide access to this regulation and will assist employees in submitting applications for this benefit.

§ 25-40-325 Leaves without Pay

- (a) **Leave Without Pay for Personal Reasons.** An employee may be granted leave without pay not to exceed 90 consecutive workdays if the executive director considers it justified. Leave without pay may be extended up to 90 additional consecutive workdays only with the approval of CDA board, upon recommendation by the executive director. Such leave without pay may be granted to permit the employee to attend to important family affairs, or for justifiable personal or business reasons.
- (b) **Leave Without Pay in Extension of Annual or Sick Leave.** An employee may be granted leave without pay (LWOP) for the purpose of extending annual or sick leave. When sick leave is so extended, the attending physician must provide medical certification as to the necessity of the extension. The executive director is responsible for approving or disapproving requests for leave without pay, upon recommendation by the section manager.
- (c) **Tardiness.**
 - (1) At the end of each pay period accumulated tardiness in excess of 15 minutes shall be charged to leave without pay (LWOP) or absence without leave (AWOL). In respect to each incident of tardiness,
 - (i) If the period of lateness is less than one hour it will be charged to LWOP or annual leave at the employee's election.
 - (ii) If the period of lateness is more than one hour the executive director will review the justification for absence to determine whether annual leave can be used in lieu of leave without pay.
 - (2) The period of tardiness shall be calculated in the same manner as hours worked are calculated for time keeping purposes.
- (d) **Extended Military Leave.** The federal Uniformed Services Employment and Reemployment Act (USERRA) generally requires the Commonwealth government to provide extended military leave for its career employees, regardless of whether the service is voluntary or involuntary. The cumulative length of all absences due to military leave and extended military leave shall not exceed five years, unless extended for good reason documented in writing by the executive director. The employee must give advance notice to the executive director, unless military necessity or circumstances make this impossible or unreasonable. In most cases, the employee is guaranteed reinstatement rights and certain seniority rights upon return from leave.

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The employee must also comply with requests for documentation and with the requirements of this subchapter regarding the timing of applications for reemployment. For details, employees and managers should contact the U.S. Department of Labor.

- (e) Family and Medical Leave Act (FMLA) Leave.
 - (1) The federal Family and Medical Leave Act of 1993 (FMLA), as amended, entitles employees who have worked for the Commonwealth for at least one year and who worked at least 1,250 hours over the previous 12 months to take up to 12 weeks of LWOP for any of the following reasons:
 - (i) To care for the employee's child after birth or placement for adoption or foster care;
 - (ii) To care for the employee's spouse, son or daughter, or parent, who has a serious health condition;
 - (iii) For a serious health condition that makes the employee unable to perform the employee's job; or
 - (iv) For specified situations relating to family members in military service.
 - (2) Annual leave, sick leave, maternity leave, or paternity leave may be substituted for LWOP for FMLA purposes. All leave qualifying under the FMLA shall be documented as FMLA leave either before it is taken or promptly thereafter. CDA can designate a leave as a FMLA leave.
 - (3) Participation in the government group health insurance program shall continue during FMLA leave.
 - (4) The definitions, benefit eligibility, and limits and notification procedures comply with the federal Family and Medical Leave Act (FMLA) of 1973 as amended.

§ 25-40-330 Basis for Accrual

- (a) Employees shall accrue annual leave and sick leave for each biweekly pay period in which they are in pay status for the entire ten days. Pay status will include paid annual or sick leave, holidays, administrative leave, and overtime work hours. No annual leave will be earned if the pay period includes unpaid periods where the total time worked is less than 80 hours per pay period. If the work week is shortened due to the needs of CDA, the shortened work week will then be the basis for leave accrual.
- (b) Provided, however, employees serving on government boards and commissions who elect to take leave without pay (LWOP) during such performance shall accrue leave for that service time.
- (c) Part-time employees with work schedules of 40 to 70 hours during a biweekly pay period will accrue annual and sick leave at one-half the rate of full-time employees and will be eligible for other paid leaves, as provided in § 620 at this rate.
- (d) Part-time employees with work schedules of than 40 hours during a biweekly pay period will not accrue annual or sick leave benefits or be eligible for the other paid leave benefits.

§ 25-40-335 Unauthorized Leave

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Unauthorized leave (absent without leave, AWOL) is absence from duty without appropriate authorization. Employees who are absent from duty without prior approval, except in bona fide emergencies, shall be charged as being AWOL. Employees who are AWOL are subject to loss of pay and possible disciplinary action.

§ 25-40-340 Disposition of Leave upon Separation

(a) Annual Leave.

(1) An employee separated from CDA for any reason shall receive a lump-sum payment of up to 360 hours of unused annual leave at the time of separation. If the employee returns to duty in any capacity with the government before the accumulated term of leave would have expired, had it been liquidated in the normal course of employment, the employee must return to the government the gross value of such unused leave and have those hours of leave re-credited to the employee's annual leave account. For example:

If an employee has 360 hours annual leave to his credit upon separation that represents 45 days of annual leave. If the employee returns to government employment before the passage of 45 workdays, the employee is required to make a refund for the unexpired term of leave remaining. To calculate the amount of repayment, subtract the number of workdays (exclusive of holidays or other paid days off) from the annual leave amount paid to the employee.

(2) Repayment may be through lump-sum cash prior to resuming duty status, payroll deduction, or assigning to the government all annual leave accrued subsequent to returning to duty until the repayment is completed.

(b) Sick Leave. An employee separated from CDA for any reason shall have all sick leave accrued to the employee's account held in the leave records for three years. Should the person be reemployed in any government agency at any time during that three-year period, the sick leave balance shall be recredited to the employee's sick leave account and available for use from the first day of reemployment. Provided, however, that an employee separated from CDA for retirement purposes, and whose unused sick leave has been converted to service time to determine eligibility in the retirement program, shall not be recredited for such sick leave balance.

§ 25-40-345 Administration of the System

(a) Leave Year. For administrative convenience, leave accumulations and usages are based upon the leave year. A "leave year" is that period of 52 consecutive weeks (26 pay periods) which begins on the first day of the first full pay period of the calendar year and ends on the last day of the last pay period which begins in that calendar year.

(b) Employee's Right to Annual Leave. Employees have a legal right to accumulate annual leave, but the right to use that leave is contingent upon management's requirements. Thus, it is incumbent upon managers and employees to agree mutually as to the duration of annual leave and the period of taking. A manager is wholly within managerial rights to deny an employee's

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request for annual leave if that denial is based upon demands of CDA. The manager is obligated, in event of a denial, to suggest to the employee a more appropriate time for taking annual leave.

(c) **Vacation Scheduling.** CDA urges and encourages employees to use annual leave for the purpose for which it is intended. That is for rest and relaxation. CDA considers that a “vacation” of not less than two consecutive weeks of annual leave meets the basic intent of annual leave provisions. To avoid internal dissension, managers are urged to schedule vacation periods for their employees, bearing in mind employees’ preferences, needs, and desires, so that CDA will not be unduly affected by employee absences.

(d) **Lump Sum Leave Payment upon Separation.** When an employee is separated from CDA, the employee is entitled to the payment of unused annual leave up to 360 hours in a lump sum. However, lump-sum leave payment shall not be processed for an employee who has not completed CDA’s separation requirements.

Subpart B- Insurance

§ 25-40-350 General

It is the policy of CDA to provide certain insurance benefits to all its employees, whatever their appointive status. These are defined in the section which follows.

§ 25-40-355 Nature of Coverage

(a) In the event of an on-the-job work-related injury or illness, the employee may be entitled to benefits under the Commonwealth's Workers' Compensation Insurance program.

(b) CDA will pay part of the cost of group health and group life insurance coverage and the employee may pay his/her share through payroll. CDA does not pay any share of the group dental insurance.

(c) Employees have the option to waive dental, health/medical, and life insurance.

(d) Managers and supervisors are responsible to know the provisions of the several plans for coverage of the employees under their supervision and the procedures necessary to present claims.

(e) Employees are responsible to familiarize themselves with reporting procedures so that they may be assured of proper coverage in event of injury or illness.

Subpart C- Retirement

§ 25-40-360 Retirement Program

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The NMI Public Employees' Defined Contribution Retirement Plan is the single retirement program offered by the Commonwealth for all employees whose first time CNMI government employment commences on or after January 1, 2007.

PART 400 EMPLOYEE MANAGEMENT PROCESSES

Subpart A– Communications

§ 25-40-401 General

CDA is committed to the policy of participative management. This means that employee views and opinions shall be actively sought. Managers and supervisors shall not take any steps, either covertly or overtly, which will diminish participation by employees in the management process through communication of ideas, comments, and suggestions to their supervisors and superiors. To this end, supervisors and managers shall make positive and continuing efforts to communicate with the employees in the following ways:

- (a) Formally, through:
 - (1) The annual employee review system and the performance evaluation process;
 - (2) Staff meetings or other assemblies called for the purpose of informing subordinates concerning the status of work and programs and discussion of current matters of mutual interest;
 - (3) Such other devices as may be initiated by managers and supervisors to enhance communications.

- (b) Informally, through:
 - (1) Frequent contact with employees at their work site to exchange comments concerning progress of work;
 - (2) Maintaining an “open door” policy which encourages employees to bring to the attention of supervisors and managers those problems of mutual concern;
 - (3) Adopting a helpful and supportive attitude toward the incentive awards program, especially the beneficial suggestion program;
 - (4) Passing along, promptly, to higher levels of management, complaints and concerns of employees which cannot be resolved or corrected at the lower levels of supervision;
 - (5) Resolving promptly those matters which fall within the authority of the supervisor;
 - (6) Encouraging morale and esprit de corps by:
 - (i) Occasional brief group meetings to recognize events and communicate plans of mutual interest to the employees in that office; and
 - (ii) Occasional social gatherings of employees and their families for picnics or holiday celebrations to promote better understanding and cooperation.

§ 25-40-402 Role of the Executive Director

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The Executive Director shall:

- (a) Monitor and guide managers and supervisors in the above listed actions to facilitate good intra-CDA communications;
- (b) Designate CDA office manager to monitor employee relations through advising managers and supervisors in such areas as:
 - (1) Advising supervisors and managers concerning effect and import of regulations concerning employees' rights and privileges, management's rights, employee conduct and performance appeals, grievances and communications;
 - (2) Advising and counseling employees concerning benefits to include the group life insurance, the group health insurance, and the worker's compensation;
 - (3) Advising all employees on the impact of law and regulations concerning the personnel management function; and
 - (4) Advising all employees concerning conflict of interest as denounced in this subchapter.

Subpart B - Emotional and Mental Health

§ 25-40-404 General

(a) This subpart deals with employee conduct and performance when outside influences, other than substance abuse, adversely affect employees' effectiveness. These influences include, but are not limited to, the following:

Politics	Family problems
Employee-supervisor conflict	Divorce
Employee-employee conflict	Legal concerns
Perceived personal crisis	Financial problems
Retirement crisis	Death in family

(b) Early recognition of deteriorating performance or conduct is a vital first step in CDA's program to help troubled employees retain or resume their place as productive members of the work force. Early recognition is also an integral part of supervision. Because the immediate supervisor must assume such a key role in helping troubled employees, this subpart is prepared to help the supervisor:

- (1) Recognize early signs indicative of personal problems;
- (2) Deal in an appropriate manner with employees whose work is suffering because of personal problems; and
- (3) Make employees aware of sources of help within the organization and community.

(c) This subpart does not deal with substance abuse. See subpart C, for CDA's policy on creating an alcohol and drug free workplace.

§ 25-40-406 Policy on Emotional and Mental Health

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- (a) As employer, CDA is concerned with any person or social situation which interferes with the individual employee's mental and physical well-being, or interferes with the efficient and safe performance of assigned duties, reduces dependability, or reflects discredit on CDA.
- (b) It is CDA policy to offer assistance through confidential counseling and referral guidance when indicated. This assistance includes but is not limited to such areas as emotional problems, family and marital problems, indebtedness, interpersonal conflicts (employee-supervisor, employee-employee) and crisis situations, where it is determined by the employee or management that these problems adversely affect employee health and performance.
- (c) Supervisor must take care not to make decisions for employees or give guidance beyond their professional capabilities. For non-work-related situations, the supervisor should guide the employee to seek professional assistance.
- (d) Assistance available to employees voluntarily seeking help for substance abuse problems is described in subpart C. Sick leave, annual leave, or leave without pay may be granted for approved programs of treatment, counseling, or rehabilitation. The confidential nature of records in these cases will be maintained in the same manner as medical records.

§ 25-40-408 Action by Supervisors and Managers

- (a) Supervisors and managers must be alert to indications of deteriorating performance on the part of employees under their supervision. Some of the indications which may occur are:
- (1) A marked change in behavior. This may show up as emotional outbursts, chronic irritability, excessive fatigue, or rule violations.
 - (2) Frequent short-term absences, notably the afternoon of pay day or the following Monday;
 - (3) Repeated incidents leading to work-related accidents or damages;
 - (4) Frequent complaints related to health;
 - (5) Chronic inability to get along with fellow employees; or
 - (6) Excessive problem drinking.
- (b) Upon identification of presumed problems, the supervisor should approach the employee to determine the cause of performance change. Should such an approach be rebuffed, which is likely, the supervisor should continue observation of the employee's performance, recording occurrences which tend to support the supervisor's feeling that the employee is troubled. If the conduct continues for a lengthy period, the supervisor must again counsel with the employee and, if the employee is unresponsive, refer the matter to the executive director.

§ 25-40-410 Action by the Executive Director

Upon referral of a case to the executive director by a supervisor, the executive director should contact the Community Guidance Center or other appropriate agency for assistance. Once arrangements for assistance have been made, the executive director should seek out the employee and counsel the employee to seek appropriate help. If the employee is agreeable, the executive director should notify the supervisor concerned so that arrangements can be made for the

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employee to seek help. If the employee is not agreeable, the executive director should advise the employee that he or she is responsible for the consequences of their actions and if the unsatisfactory performance continues, disciplinary action may result. Actions taken should be properly documented and maintained in the official personnel folder or the confidential medical file, as appropriate.

§ 25-40-412 Further Actions

Should an employee's conduct and performance continue to deteriorate and the supervisor is convinced beyond a reasonable doubt that the cause is other than alcohol abuse or drug dependence, the supervisor should consult again with the executive director. The executive director should then seek assistance from an appropriate practitioner at the Community Guidance Center, the Commonwealth Health Center or other appropriate agency.

Subpart C- Alcohol and Drug-Free Workplace

§ 25-40-414 General Policy

(a) As an employer, CDA recognizes it has a responsibility to its employees and the public it serves to take reasonable steps to assure safety in the workplace and in the community. Furthermore, CDA is concerned about the adverse effect that alcohol and drug abuse have on safe and productive job performance. It also recognizes that any employee, whose ability to perform safely and productively is affected by the use of alcohol and other drugs, jeopardizes the integrity of the workplace and the achievement of CDA's mission. To the end of maintaining an alcohol and drug free workplace, employees shall not be under the influence of alcohol, illegal drugs, or controlled substances during business hours, whether or not consumed on CDA premises and whether or not consumed out of or during working hours.

(b) CDA realizes that alcoholism, problem drinking, and drug addiction are treatable illnesses. CDA, therefore, encourages employees who have problems with drugs or alcohol to utilize all available resources to resolve their problems before those problems affect their job performance.

§ 25-40-416 Procedure

CDA understands and accepts its obligation to maintain a workplace free of alcohol and illegal drugs. To ensure that the objectives of this policy are met, CDA will actively implement and maintain a drug-free program. The program will have the following elements: collection and testing, education and guidance, referral and rehabilitation. CDA has accepted the CNMI CDA's Alcohol and Drug Free Workplace program and will utilize and work with this program in accordance with the guidance provided in the Civil Service's Personnel Service System Rules and Regulations [NMIAC Title 10, Chapter 10] with the exception that any administrative or disciplinary hearings and decisions will be conducted by CDA executive director and the board as provided in this regulation.

§ 25-40-418 Testing Occasions

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(a) Pre-employment Testing

(1) At the time of application, persons applying for any position with CDA will be notified that any offer of employment is contingent upon a negative urine test. After receiving an offer of employment, the candidate shall be tested for the presence of cocaine, marijuana, opiates, amphetamines, phencyclidine in the urine, etc. The test shall be paid for by the candidate.

(2) Also at the time of application, applicants who were previously employed by CDA and applicants who have had an offer for CDA employment withdrawn due to a previous positive urine test result must provide a written release of drug testing history for the two years immediately preceding the application date.

(3) No new CDA candidate may be assigned to work in any position until he or she presents the results of a urine test, taken after the offer for employment has been made, that shows a negative result for the presence of cocaine, marijuana, opiates, amphetamines, and phencyclidine.

(4) If the candidate's test result is positive for the presence of a tested drug, without a legitimate explanation, the offer of employment will be withdrawn.

(5) If the candidate's drug testing history shows a positive drug test within two years prior to the application date, the offer of employment will be withdrawn unless the candidate submits a statement of fitness for duty and agrees to execute an agreement similar to a return to duty contract described below [§25-40-434].

(b) Reasonable Suspicion Testing

Where there is a reasonable suspicion that an employee is under the influence of alcohol or drugs while at work or about to begin work, he or she shall submit to a breath or urine test for the presence of alcohol, cocaine, marijuana, opiates, amphetamines, and phencyclidine, upon written notice from the employee's supervisor. Except as otherwise provided, CDA shall pay for the testing.

(1) Testing Decision Authority. Only a manager or higher official is permitted to make reasonable suspicion testing decisions.

(2) Objective inquiry. The supervisor or higher CDA official will observe the employee suspected of being under the influence of alcohol or illegal drugs. A decision to request testing shall be based on eye-witness reports, facts of the event, and observed physical and behavioral characteristics of the employee.

(3) Prior to making the decision to require testing, the management official will question the employee in a private area to ascertain whether there are any reasons other than alcohol or drug use for any behavior observed.

(4) Transportation assistance. The employee shall be accompanied to the collection site by a supervisor and shall be provided transportation home from the collection site. If the individual refuses and demands to drive his/her vehicle, the supervisor shall notify the Department of Public Safety.

(5) Duty pending test results. Until the results of the drug and alcohol test are complete and verified, no employee tested based upon reasonable suspicion shall be allowed to perform or continue to perform a safety-sensitive duty.

(6) Report. The manager ordering reasonable suspicion testing shall put in writing, in detail, the facts leading to the decision. This report shall be considered confidential and

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will be maintained in the employee's medical file, which is confidential, until needed for a disciplinary action. Only at that time will the report be filed in the employee's personnel file.

(c) Post-Accident Testing

As soon as practical after an accident any employee whose action or inaction may have contributed to the accident must submit to breath and urine tests for the presence of alcohol, cocaine, marijuana, opiates, amphetamines, phencyclidine, upon written notice from the employee's supervisor. Except as otherwise provided, CDA shall pay for the testing.

(1) Objective inquiry. A department head or higher CDA official's decision to request testing shall be based on eye-witness reports, facts of the event, and observed physical and behavioral characteristics of the employee. Specifically, the department head or higher CDA official shall require the driver of any CDA vehicle or the operator of any CDA equipment involved in the accident to be tested.

(2) Transportation assistance. The employee shall be accompanied to the collection site by a management official and shall be provided transportation home from the collection site. If the individual refuses and demands to drive his/her vehicle, the management official shall notify the Department of Public Safety.

(3) Duty pending test results. Until the results of the drug and alcohol test are complete and verified, no employee reasonably suspected of having been under the influence of alcohol or drugs at the time of the accident shall be allowed to perform or continue to perform a safety-sensitive duty.

(4) Report. The supervisor or higher CDA official ordering post-accident testing shall put in writing, in detail, the facts leading to the decision. This report shall be considered confidential and will be maintained in the employee's medical file, which is confidential, until needed for a disciplinary action. Only at that time will the report be filed in the employee's personnel file.

(d) Random Testing

Not less than every two years, randomly selected employees performing safety-sensitive functions will be required to submit to breath-tests for alcohol and urine tests for cocaine, marijuana, opiates, amphetamines, and phencyclidine. The testing will be done during on-duty time. Except as otherwise provided, CDA shall pay for the testing.

(1) Method of selection. Employees will be selected by a statistically valid method such as a random number table or computer-based random number generator that is matched with employee Social Security numbers, payroll identification numbers, or other comparable identifying numbers.

(2) Number to be tested. No more than 25 percent of all employees performing safety-sensitive functions shall be required to submit to breath-alcohol testing and no more than 50 percent shall be required to submit to urine testing. The actual percentage will be determined at the beginning of each fiscal year by the executive director and the office manager after reviewing CDA's prior positive testing rates, reasonable suspicion and post-accident events, and referrals for service.

§ 25-40-420 Collection and Testing Procedures

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(a) Collection

(1) Breath and urine specimens shall be collected only at a site approved by CDA or at the scene of an accident if proper equipment and personnel can be made immediately available.

(2) Breath and urine specimens shall be collected only by a technician trained in the collection of specimens in accordance with standard collection protocols as specified in the U.S. Department of Transportation Regulation, 49 CFR, Part 4 (B and C) "Procedures for Transportation Workplace Drug Testing Programs," except as otherwise provided in this section. However, a certified medical review officer (MRO) or a consulting physician, when requested, may assist in facilitating the collection for post-accident testing.

(b) Confirming Tests

(1) Alcohol Test. Breath specimens shall first be subjected to a screening test for alcohol. If that test indicates a probable breath alcohol concentration (BAC) of 0.02 or greater, a second test, confirming the first and providing quantitative data of alcohol concentration, shall be performed. No alcohol test shall be considered positive unless both the screening test and the confirming test show a BAC of 0.02 or greater.

(2) Drug Test. The urine sample will be split into two specimens (primary and secondary). Both specimens will be shipped to the laboratory selected for performing tests for CDA. Primary urine specimens shall first be subjected to a screening test. Only if the screening test shows positive for the presence of a prohibited drug, will a second test be conducted on the same urine specimen to identify the presence of a specific drug or metabolite, using a gas chromatography/mass spectrometry (GC/MS) test. No drug test shall be considered positive unless both the screening test and the confirming test show the presence of one or more of the drugs tested for.

(c) Results

(1) The breath test results shall be transmitted by the technician, in a manner to assure confidentiality, to the employee and to CDA office manager.

(2) The laboratory conducting the urine test shall give the results only to the MRO. The MRO shall discuss the test result with the tested individual.

(3) If the test shows positive for the presence of a specific drug or drugs, the employee may request that the MRO have the secondary specimen tested at another laboratory certified by the United States Department of Health and Human Services, for the presence of the drug or drugs found in the primary specimen.

(i) The employee must make the request in writing, within 72 hours of receiving notice of the result of CDA's test.

(ii) The results of the second test shall be given to the MRO, who shall discuss the result with the employee.

(iii) The employee shall pay for the cost of the second test.

(4) Upon receiving a report of a positive test result, the MRO shall determine if there is any alternative medical explanation for the result, including the use of prescribed medication by the employee. Such a determination shall be based on information received from the employee such as the tested individual's medical history and records. If

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the MRO. determines it to be necessary he or she may request pertinent analytical records from the laboratory or require a re-analysis of the specimen.

- (5) The MRO. shall report the urine test result as negative and shall take no further action if he or she determines:
- (i) There is a legitimate medical explanation for a positive test result, other than the use of the specific drug; or
 - (ii) Based on a review of laboratory inspection reports, quality assurance and quality control data, and other drug test results, the positive drug test result is scientifically insufficient for further action.
- (6) Employees receiving a positive test result will be subjected to disciplinary action up to termination of employment.

(d) Report to CDA

The MRO. shall report all positive and negative urine drug test results, in a manner to assure confidentiality, to CDA executive director. Other than as specified above, the MRO. shall not release the results of drug tests to any other individual without a written release from the tested employee.

§ 25-40-422 Employee Awareness and Rehabilitation

(a) Employee Awareness Training. All employees shall receive information concerning the effects and consequences of drug and alcohol use on personal health, safety, and the work environment; the manifestations and behavioral clues indicative of drug and alcohol use; and the resources available to the employee in evaluating and resolving problems associated with the use of illegal and legal drugs and alcohol.

(b) Employees Seeking Voluntary Assistance. CDA employees shall be allowed to voluntarily seek assistance for alcohol or drug use at any time prior to being required to be tested under the reasonable suspicion, post-accident, or random testing procedures.

(1) Referrals. Employees may request referral to a substance abuse professional (SAP) for treatment, may self-refer, or may be referred by a manager as part of a performance counseling session. Such referrals shall only be made a part of the employee's medical file and shall not be a part of the employee's personnel file. Referrals shall be kept confidential.

(2) Voluntary referrals. Employees who voluntarily seek assistance in dealing with drug and alcohol problems or who accept referrals, before job performance is compromised, shall be provided the same leave benefits for recommended treatment as provided for any other health problem.

(c) Accountability for job performance. Regardless of participation in or requests for referrals, employees shall be held accountable for acceptable job performance. In no case where job performance has been compromised will disciplinary action be waived for employees asking for assistance and referral. Such requests may be considered a mitigating factor in determining the appropriate form of discipline.

§ 25-40-424 Prohibited Conduct

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The following conduct or activity is prohibited by CDA and employees violating this provision will be subject to disciplinary action:

- (a) **Sale, Purchase, Possession with Intent to Deliver, or Transfer of Alcohol or Illegal Drugs.** No employee shall sell, purchase, or transfer; attempt to sell, purchase, or transfer; or possess with the intent to deliver, any illegal drug while on CDA property, in any CDA vehicle or on any CDA business, except that alcohol may be purchased, transported, maintained, and consumed in reasonable quantities where social drinking is part of doing CDA-related business.
- (b) **Possession of Illegal Drugs.** No employee shall possess any illegal drug while on CDA property, in any CDA vehicle, or on any CDA-related business.
- (c) **Possession of Open Containers of Alcohol.** No employee shall possess an open container of alcohol in any vehicle while on CDA property, in any CDA vehicle, or on any CDA-related business.
- (d) **Under the Influence of Alcohol or Illegal Drugs.** No employee shall be under the influence of alcohol or any illegal drug when at work, or reporting to work with the intention of working. As used in this subsection, alcohol includes any alcohol found in any prescription or non-prescription drug such as cough syrup used other than as directed by the physician or normal usage per nonprescription directions. An employee is presumed to be under the influence of alcohol or an illegal drug if:
 - (1) The employee has a BAC of 0.02 or more;
 - (2) The employee has a detectable amount of any illegal drug in his or her urine;
 - (3) The employee uses alcohol or any illegal drug while on call when the employee knows he or she may be called upon to perform CDA-related functions; or
 - (4) The employee uses alcohol or any illegal drug within four hours prior to reporting to work and expects to perform CDA-related functions.

§ 25-40-426 Refusal to be Tested

No employee required to be tested for drugs or alcohol under any provision of this subpart shall refuse to be tested. The following conduct shall be considered a refusal to be tested:

- (a) Refusing in writing to submit to testing after receiving clear and specific written notice of the requirement to be tested;
- (b) Refusing verbally, in front of at least two witnesses, to submit to testing after receiving clear and specific written notice of the requirement to be tested;
- (c) Failing to timely provide an adequate specimen for testing, without a valid medical explanation, after receiving clear and specific written notice of the requirement to be tested. An MRO, or consulting physician shall determine if there is any medical reason for failure to provide an adequate urine sample (shy bladder) or an adequate breath sample (shy lung);
- (d) Engaging in conduct that clearly obstructs the specimen collection process;

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- (e) Failing to remain available for post-accident testing, or leaving the scene of an accident before a testing decision is made. An employee may leave the scene of an accident only to obtain necessary medical care or assistance in responding to the accident. If the employee leaves the scene, the employee must notify his or her supervisor as soon as possible of his or her location and reason for leaving the scene;
- (f) Consuming alcohol or illegal drugs after an accident and before a testing decision is made;
- (g) Failing to report, during the work shift in which an accident occurred, an accident which could have resulted in a testing decision; or
- (h) Failing to report to the specimen collection site timely after being informed of the requirement to be tested.

§ 25-40-428 Other Actions Violating this Regulation

- (a) **Giving False Information.** No employee shall give false information about a urine specimen or attempt to contaminate or alter the specimen.
- (b) **Refusal to Comply with Treatment Recommendations.** No employee shall fail to comply with recommendations for treatment or after-care made by an MRO or SAP as a consequence of a prior positive drug or alcohol test result.
- (c) **Failure to Notify CDA of Conviction.** No employee shall fail to notify the office manager of any criminal drug statute conviction, within five days of such conviction, if the violation of the criminal drug statute occurred while the employee was conducting CDA business, or while on or using CDA property.

§ 25-40-430 Refusal to be Tested; Penalties and Consequences

- (a) **Disciplinary Action.** An employee committing any act prohibited by this procedure shall be subject to an appropriate form of discipline, depending on the circumstances.
 - (1) **Generally.** Where an employee commits any act prohibited by this procedure, without valid reason, the employee shall be disciplined up to and including removal. At a minimum, the employee shall receive a formal reprimand. If the prohibited act committed by the employee relates to the use or possession of alcohol or illegal drugs, the employee shall be referred to an S.A. P. for assessment and treatment.
 - (2) **Serious offenses.** The following acts, even for a first offense, will result in an immediate disciplinary action for removal:
 - (i) The sale, purchase, possession with intent to deliver, or transfer of illegal drugs, or the attempt to sell, purchase, or transfer illegal*;
 - (ii) Being involved in an accident resulting in a fatality while under the influence of alcohol or illegal drugs;

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- (iii) While performing and about to perform duties in a safety sensitive position, being under the influence of alcohol or illegal drugs;
- (iv) An unexcused refusal to be tested;
- (v) Giving false information, contaminating, or attempting to contaminate a urine sample;
- (vi) Failing to notify the proper authority of conviction for a drug;
- (vii) Testing positive for alcohol or illegal drugs within five years of a prior positive test; or
- (viii) Breaching any term of a return to duty contract executed under the provisions of this procedure.

(b) **Counseling Concerning Treatment Options.** Those employees not removed from CDA service after committing any act prohibited by this procedure shall be informed of resources available for evaluating and resolving problems associated with the use of alcohol and illegal drugs. At a minimum, the supervisor or office manager shall give the names, addresses, and telephone numbers of local substance abuse professionals and substance abuse counseling or treatment programs. The employees will then be required to fulfill all the specified steps of treatment before being considered ready for return to duty.

(c) **Report to Department of Public Safety.** An employee committing any act prohibited by law shall be reported, by CDA, to the Department of Public Safety for possible criminal prosecution.

(d) **Duty/Pay Status Pending Disciplinary Action.** Unless the employee was involved in an accident resulting in a fatality, an employee subject to a disciplinary action for committing any act prohibited by this procedure, shall be allowed to remain on the job pending resolution of any proposed disciplinary action but shall not be allowed to perform a safety-sensitive function, even if that means assigning the employee duties the employee would not otherwise be performing. An employee subject to a disciplinary action for committing any act that resulted in a fatal accident shall be placed on leave without pay pending resolution of the disciplinary action for removal.

§ 25-40-432 Return to Duty Procedures

Requirements. No employee who has tested positive for the presence of alcohol or illegal drugs shall be allowed to return to work until the employee has:

- (a) Complied with treatment recommendations of an MRO or SAP and been released for work by an SAP in consultation, when appropriate, with the MRO or a consulting physician;
- (b) Tested negative in a subsequent test paid for by the employee for the presence of alcohol, if the removal from duty was due to alcohol use; or cocaine, marijuana, opiates, amphetamines, and phencyclidine, if the removal from duty was due to drug use; and
- (c) Agreed to execute a return to duty contract.

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§ 25-40-434 Return to Duty Contract

The return to duty contract shall include the following provisions:

- (a) **Aftercare.** An agreement to comply with aftercare and follow-up treatment recommendations for one to five years, as determined appropriate by the employee's SAP;
- (b) **Follow-up testing.** An agreement to unannounced alcohol or drug testing, depending on the substance which resulted in the removal from duty, paid for by the employee, for one to five years, as determined appropriate by the employee's SAP, but there shall be no fewer than six tests in the first year after the employee returns to work;
- (c) **Compliance with Rules.** An agreement to comply with CDA rules, policies, and procedures relating to employment;
- (d) **Term.** An agreement that the terms of the contract are effective for five years after the employee's return to duty; and
- (e) **Breach of Contract.** An agreement that violation of the return to duty contract is grounds for termination.

§ 25-40-436 Administrative Considerations

- (a) **Confidentiality.** CDA shall not knowingly disregard an employee's right to confidentiality in matters relating to alcohol or drug testing or otherwise neglect his or her responsibilities under this procedure.
- (b) **Job Security Maintained.** Employees shall not have job security or promotional opportunities jeopardized solely because of a request for a drug or alcohol treatment referral.
- (c) **Required Documentation.** Although voluntary referrals or referrals made prior to testing are kept strictly confidential, documentation of poor performance or disciplinary actions taken due to drug or alcohol abuse shall be included in the employee's personnel file.
- (d) **Authority/Responsibility.**
 - (1) Management/supervisory employees at all levels are responsible for implementing program elements to ensure that the objectives of the program are communicated to all employees and that problems are handled in a confidential, timely, and professional manner.
 - (2) The office manager will:
 - (i) Ensure that all employees are given a copy of CDA's regulation and policy and procedures;
 - (ii) Be responsible for establishing management and employee alcohol and drug free workplace training programs.
 - (iii) Liaising with the Commonwealth government's Alcohol and Drug Free Workplace Coordinator, testing facilities, and the medical review officer;

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(iv) Additionally, the Human Resource Office will be the central contact point for company interaction with the employee assistance programs and for maintaining documentation on rehabilitative actions.

Subpart D- Employee and Management Responsibilities

§ 25-40-438 Code of Ethics for CDA Personnel Service

- (a) All persons in CDA service should:
- (1) Put loyalty to the highest moral principles and the country above loyalty to persons, party, or government office.
 - (2) Uphold the laws applicable in the Commonwealth and in all subdivisions thereof and never be a party to their evasion.
 - (3) Give a full day's labor for a full day's pay; giving to the performance of duties earnest effort and best thought.
 - (4) Seek to find and employ more efficient and economic ways of getting tasks accomplished.
 - (5) Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or note; and never accept, for him/herself or his/her family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his/her governmental duties.
 - (6) Make no private promises of any kind binding upon the duties of office, since a government employee has no private word which can be binding on public duty.
 - (7) Engage in no business with the government, either directly or indirectly, which is inconsistent with the conscientious performance of governmental duties.
 - (8) Never use any information coming confidentially in the performance of governmental duties as a means for making private profit or benefitting others.
 - (9) Expose corruption wherever discovered.
 - (10) Uphold these principles, ever conscious that public office is a public trust.
- (b) In addition, custodians of federal funds shall maintain a written code or standards of conduct which shall govern the performance of their officers, employees, or agents engaged in the award and administration of contracts supported by federal funds. No employee, officer, or agent of the grantee shall participate in selection, or in the award or administration of a contract supported by federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when the employee, officer, or agent, or an organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's and contractor's officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub-agreements. To the extent permitted by law or regulations, such standards of conduct shall provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's officers, employees, or agents, or by contractors or their agents.
- (c) CDA expects its employees to be representatives of its legal self. Like any other employer, it has the right to expect the employees to foster its business and wellbeing. The government's, inclusive of CDA, first business is the maintenance of law and order at all times

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(even after regularly scheduled working hours) because without law and order, the government's goals and objectives cannot be realized. An illegal or dishonorable act of an agent or employee may degrade and embarrass the government and CDA and lessen their effectiveness.

(d) To protect its credibility and rapport in the community, CDA has the right to take administrative action as necessary and justifiable against employees who violate its laws or detract from its policies. Such administrative action is aside from any court action which may ensue from a criminal act or omission.

(e) It is a mistake for anyone to believe that good discipline is simply a matter of enforcement by those at the head of the administration. Good discipline requires employee leadership, not only enforcement procedures. Most of all, it involves the active support of the employees. The employees of CDA, as a group, have a greater stake in improving the quality of CDA's service than any other interested party. An organization can take genuine pride and provide an opportunity to find a meaningful outlet for abilities and an opportunity for advancement in accordance with employee contribution. Leadership which meets these needs of employees will have no difficulty getting employee support.

(f) So that all employees will understand the standards of conduct that are expected of them, these principles are set forth in this subpart. Officials and employees of CDA are reminded that they must not only avoid wrong-doing in the conduct of their official duty, but must, with equal care, also avoid the appearance of wrong-doing. Acts which have the appearance of wrong-doing are prohibited equally with actual acts of wrong-doing.

(g) Each employee shall avoid situations in which his/her private interests conflict with or raise a reasonable question of conflict with his/her duties and responsibilities at work. An employee shall avoid any action, whether or not specifically prohibited, which might result in or create the appearance of using the government or CDA for private gain, giving preferential treatment to any person, impeding company efficiency or economy, making an CDA-related decision outside of official channels or by exceeding authority, or affecting adversely the confidence of the public in the integrity of the government or CDA.

§ 25-40-440 Policy on Employee Conduct

(a) The maintenance of the highest standards of honesty, integrity, impartiality, and conduct by CDA employees is essential to assure the proper performance of CDA business and maintain the confidence of citizens in CDA.

(b) Employees of CDA are expected to comply with all laws and regulations. Legal requirements are essentially concerned with official conduct, i.e., behavior of the employee in the course of or in relation to official duties. CDA employees are required to conduct themselves in such a manner that the work of CDA is effectively accomplished and to observe the requirements of courtesy, consideration, and promptness in dealing with or serving the public or its business clientele.

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(c) Personal and private conduct of an employee (as opposed to official conduct), that reflects adversely upon the dignity and prestige of CDA, is also a matter of concern to management. All employees are expected to cultivate those personal qualities which characterize a good civil servant-loyalty to the government and CDA, a deep sense of responsibility for the public trust, and a standard of personal deportment which will be a credit to the individual and CDA.

§ 25-40-442 Subordination to Authority

An employee is required to carry out the announced policies and programs of the Commonwealth and CDA. While policies related to work are under consideration, the employee may, and is expected to, express opinions and points of view; but once a decision has been rendered by those in authority, the employee will be expected unreservedly to assure the success of programs which it is the employee's responsibility to effectuate. If the employee fails to carry out any lawful regulation, order, or policy, or deliberately refuses to obey the proper requests of superiors having responsibility for the employee's performance, the employee is subject to appropriate disciplinary action.

§ 25-40-444 Management Responsibility

CDA shall establish and maintain internal procedures by means of which all employees are adequately and systematically informed of the content, meaning, and importance of the regulations in this subpart. Copies of the regulations in this subpart shall be given to each employee within ninety days from the effective date of these regulations and to new employees upon entrance to duty. The executive director shall remind his or her employees of the regulations in this subpart periodically, at least once annually, through a publication or memorandum issued to all employees.

§ 25-40-446 Employee Responsibility

(a) It is the responsibility of employees to familiarize themselves and to comply with the regulations in this subpart. Employees are expected to consult with their managers and the office manager on general questions they may have regarding the applicability of the regulations, both on specific ethical and conduct matters and for guidance on questions of conflict of interest.

(b) Each employee represents CDA to the community and is expected to conduct himself/herself at all times so that his/her actions will not bring discredit upon CDA. Employees shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct or other conduct prejudicial to CDA. Such conduct can adversely affect their continued employment with CDA.

(c) The employee shall at all times observe the local laws which govern the CNMI and shall also respect the culture and traditions of the Commonwealth and its peoples. The employee is responsible for his/her actions at all times, whether during or after working hours.

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(d) CDA shall not be responsible for assisting the employee if he or she violates the local or federal laws, and neither shall it be held financially responsible for the negligent action of the employee other than as provided by law.

(e) Discrimination and harassment will not be tolerated. Any employee of this company while in the performance of his or her duty who discriminates against or harasses any other employee, or allows such harassment or discrimination to take place, because of race, creed, color, ancestry, membership in a labor organization, political affiliation, place of origin, disability, sex, religion, age, sexual orientation, or veterans status, will be subject to disciplinary action in accordance with the provisions of this subpart.

§ 25-40-448 Disciplinary and Other Remedial Action

(a) Violations of the regulations in this subpart by an employee may be cause for appropriate disciplinary action which may be in addition to any penalty prescribed by law.

(b) Every effort must be made to follow a program of progressive discipline, imposing disciplinary actions of increasing severity if continued disciplinary infractions occur. However, serious offences will be responded to with an appropriate disciplinary consequence.

(c) The steps of CDA's progressive discipline program are provided in part 200, subpart D of this chapter.

(d) The goal of progressive discipline must be to correct unacceptable behavior while being objective and fair in administering disciplinary actions. All actions should treat the offense and not the person.

§ 25-40-450 Conflict of Interest

(a) CDA expects that all employees will avoid activities that create a conflict of interest with their responsibilities to CDA. Employees should use good judgment, professional commitment, and moral ethics to protect themselves and CDA from potential conflicts. Employees have a duty and responsibility to conduct work-related matters solely for the benefit of CDA.

(b) Examples of conflict of interest include, but are not limited to:

(1) Outside activities that have negative effect on an employee's ability to perform the job requirement of his/her position at CDA.

(2) Outside jobs or business interests that are in competition with the company's business.

(3) Outside activities that involve the use of confidential information learned directly or indirectly through employment at CDA.

(4) Use of CDA position to obtain private gain for CDA employee or his or her immediate family member.

(c) Failure to report a potential conflict of interest and/or refusal to resolve such conflict may result in disciplinary action, including discharge.

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- (d) CDA reserves the right to determine when an activity conflicts with CDA's interests and to take whatever remedial action is necessary to resolve the conflict. Such actions might include:
- (1) Changes in assigned duties;
 - (2) Divestment by the employee of the conflicting interest;
 - (3) Disciplinary action; and/or
 - (4) Disqualification for a particular assignment.
 - (5) Remedial action, whether disciplinary or otherwise, shall be effected in accordance with any applicable laws or regulations.

§ 25-40-452 Ethical and Other Conduct and Responsibilities of Employees

- (a) Gifts, Entertainment, and Favors.
- (1) Except as provided in subsections (b) and (c) of this section, an employee shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value, from a person who:
 - (i) Has, or is seeking to obtain, contractual or other business or financial relations with CDA;
 - (ii) Conducts operations or activities that are regulated by CDA; or
 - (iii) Has interests that may be substantially affected by the employee's performance of official duty.
 - (2) Except as specifically authorized by law, employees are not authorized to accept on behalf of CDA voluntary donations or cash contributions from private sources for travel expenses, or the furnishing of services in-kind, such as hotel accommodations, meals, and travel accommodations.
 - (3) The prohibitions of subsection (a) do not apply in the context of obvious family, non-official, or personal relationships, such as those between the parents, children, or spouse of the employee, when the circumstances make it clear that it is those relationships, rather than the business of the persons concerned, which are the motivating factors.
 - (4) An employee may accept food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon or dinner meeting or other meeting or on an inspection tour where an employee may properly be in attendance.
- (b) An employee may accept loans from banks or other financial institutions on customary terms to finance proper and usual activities, such as home mortgage loans.
- (c) An employee may accept unsolicited advertising or promotional material such as pens, pencils, note pads, calendars, and other items of nominal intrinsic value.
- (d) An employee shall avoid any action, whether or not specifically prohibited by this subpart, which might result in, or create the appearance of:
- (1) Using public office for private gain;
 - (2) Giving preferential treatment to any person;
 - (3) Impeding CDA efficiency or economy;
 - (4) Losing independence or impartiality;

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- (5) Making a CDA decision outside official channels; and/or
- (6) Affecting adversely the confidence of the public in the integrity of CDA.

(e) An employee shall not solicit a contribution from another employee for a gift to an official superior or accept a gift from an employee receiving less pay. However, this subsection does not prohibit a voluntary gift of nominal values or donation in a nominal amount made on a special occasion such as marriage, illness, or retirement.

(f) An employee shall not accept a gift, present, decoration, or other thing from a foreign government unless authorized by law or by the Constitution.

(g) This section does not prohibit receipt of bona fide reimbursement, unless prohibited by law, for actual expenses for travel and such other necessary subsistence as is compatible with this part for which no CDA payment or reimbursement is made. However, an employee may not be reimbursed and payment may not be made on the employee's behalf, for excessive personal living expenses, gifts or entertainment, nor does it allow an employee to be reimbursed by a person for travel on official business under CDA orders when reimbursement is prescribed by law.

§ 25-40-454 Outside Work and Interests

(a) Policy: Outside work is permitted to the extent that it does not prevent an employee from devoting the employee's primary interests, talents, and energies to the accomplishment of work for CDA or tend to create a conflict between the private interests of an employee and official responsibilities. The employee's outside employment shall not reflect discredit on CDA.

(b) Definitions:

(1) The term "outside work" means all gainful employment other than the performance of official duties. It includes, but is not limited to self-employment and working for another private business (including personally owned businesses, partnerships, corporations, and other business entities).

(2) The term "active proprietary management" refers to a business affiliation in which substantial ownership is coupled with responsibility for day-to-day management efforts.

(3) A "conflict of interest" is one in which an CDA employee's private interests, usually of an economic nature, conflict or raise a reasonable question of conflict with the employee's public duties and responsibilities. Potential conflict of interest is prohibited and is to be avoided whether it is real or only apparent.

(c) Restrictions: An employee shall not engage in outside activity incompatible with the full and proper discharge of the duties and responsibilities of the employee's CDA employment. Any activity involving an incompatibility of interest is prohibited. Any work assignment or employment affiliation which might encourage on the part of members of the general public a reasonable presumption of a conflict of interest falls in this category. Incompatible activities include but are not limited to:

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- (1) Acceptance of a fee, compensation, gift, payment of expenses, or any other thing of monetary value in circumstances in which acceptance may result in, or create the appearance of conflicts of interest.
 - (2) Outside employment which tends to impair an employee's mental or physical capacity to perform CDA duties and responsibilities in an acceptable manner. An employee shall not receive any salary or anything of monetary value from a private source as compensation for services to CDA.
- (d) Among other things, abuse of leave privileges to engage in outside work shall be treated as an interference with official performance. Active proprietary management of any except the smallest business is questionable because of the probability that such management responsibilities may interfere with the employee's obligations to the employee's primary employer, CDA. Employees are especially urged to seek the advice of the office manager or executive director before committing themselves to such activities.
- (e) An employee shall not perform outside work:
- (1) Which is of such a nature that it may be reasonably construed by the public to be the official act of CDA.
 - (2) Which involves the use of CDA facilities, equipment, or supplies of whatever kind.
 - (3) Which involves the use of official information not available to the public.
- (f) While an employee is not prohibited from performing outside work solely because the work is of the same general nature as the work the employee performs for CDA, no employee may perform outside work:
- (1) If the work is such that the employee would be expected to do it as a part of regular duties.
 - (2) If the work involves active proprietary management of a business closely related to the official work of the employee.
 - (3) If the work for a private employer is of the same type or closely kin to that involved in the program responsibilities of the office in which the employee is employed.
 - (4) If the work would tend to influence the exercise of impartial judgment on any matters coming before the employee in the course of official duties.
- (g) This section does not preclude an employee from:
- (1) Participation in the activities of political parties not prescribed by applicable law.
 - (2) Participation in the affairs of, or acceptance of an award for, meritorious public contribution or achievement given by a charitable, religious, professional, social, fraternal, non-profit educational, recreational, public service, or civic organization.

§ 25-40-456 Financial Interests

- (a) An employee shall not:
- (1) Have a direct or indirect financial interest that conflicts with CDA duties and responsibilities.

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(2) Engage in directly or indirectly, a financial transaction as a result of, or primarily relying on, information obtained through CDA employment.

(b) This section does not preclude an employee from having a financial interest or engaging in financial transactions to the same extent as a private citizen not employed by CDA, so long as it is not prohibited by law, the Constitution, or the regulations in this part.

§ 25-40-458 CDA Property

General Responsibility. Employees shall be held accountable for CDA properties and money entrusted to their individual use in connection with their official duties. It is their responsibility to protect and conserve CDA property and to use it economically and for official purposes only.

§ 25-40-460 Information

It is the policy of CDA to accord the public access to information about its activities and to make available to the public records of CDA except in cases where the disclosure of the record is prohibited by statute or constitutes an invasion of privacy of any individual concerned, or the record is exempt from the disclosure requirements, and sound grounds exist which require application of an applicable exemption. An employee may not testify in any judicial or administrative proceedings concerning matters related to the business of CDA without the permission of the executive director or the board of directors.

§ 25-40-462 Gambling, Betting, and Lotteries

While on CDA-owned or leased property or while on duty for CDA, an employee shall not participate in any gambling activity including the operation of a gambling device, in conducting a lottery or pool, in a game for money or property, or in selling or purchasing a numbers slip or ticket, unless the activity has prior approval by the board and is a required CDA duty.

§ 25-40-464 Other Types of Conduct

(a) **Negotiations for Post-CDA Employment.**

It is the policy of CDA that employees shall not, without proper clearance, negotiate for future non-CDA employment with persons or organizations having business with CDA and to which the employee is called upon officially to render advice or make judgments. In the event an employee desires to negotiate for such employment, the employee must inform the executive director of his/her intentions. If the executive director determines that the proposed negotiations will not adversely affect CDA's interests, the employee may be authorized to proceed.

(b) **Selling or Soliciting.** Employees and other persons are prohibited from selling or soliciting for personal gain within any building occupied or used by CDA without proper permission. This prohibition does not apply to:

- (1) Authorized and installed business activities.
- (2) Solicitation for health drives, the Red Cross, and other purposes approved under the government's fund-raising policy.

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- (3) Token solicitations for floral remembrances, retirement gifts, and similar purposes.

§ 25-40-466 Community and Professional Activities

Employees are encouraged to participate in the activities of professional societies and of civic organizations whose purposes and objectives are not inconsistent with those of the departments in which they are employed. Affiliation with such groups may be mutually beneficial to the employee and to CDA; however, such participation must not affect adversely an employee's performance of regularly assigned duties.

Subpart E- Political Activity

§ 25-40-468 Political Activities

The political activities of persons in CDA shall be subject to the restrictions of this subpart.

§ 25-40-470 Rights of Employees

All employees in CDA shall have the following rights:

- (a) To vote for the candidates of their choice and to express their opinions on political matters.
- (b) To be active members of the political party or organization of their choosing.
- (c) To make voluntary contributions to a political party for its general expenditures.

§ 25-40-472 Prohibited Activities

Employees of CDA shall not:

- (a) Use their office or official influence to interfere with an election or to affect the results of an election.
- (b) Use their official authority to coerce any person or political party in reference to any politically related activity.
- (c) Be obligated to contribute to any political fund or render service to any political activity.
- (d) Solicit or receive political contributions from anyone while on CDA time, on CDA property, or on CDA business.
- (e) Campaign for any candidate for public office during official working hours.

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(f) Promote or oppose legislation relating to programs of CDA without the official sanction of the proper CDA authority. (It should be clearly understood, however, that nothing in this policy is to be considered as restricting or interfering with the obligation of employees to respond freely and candidly to any inquiries made of them in regard to appropriations or related matters.)

§ 25-40-474 Public Office

An employee who is an official candidate for public office, once certified by the Board of Elections, shall take annual leave or leave without pay.

§ 25-40-476 Penalty

An employee found guilty of a prohibited activity shall be subject to disciplinary action.

PART 500 EMPLOYMENT PROCESSES

Subpart A- Employee Grievances

§ 25-40-501 Policy

CDA, in accordance with the principles of good management, recognizes the importance of settling employee-management disagreements and misunderstandings promptly, fairly, and in ways that will resolve the issue and maintain the self-respect of both the employee and the management staff. To accomplish this, every effort will be made to settle grievances expeditiously and at the lowest possible level of supervision.

§ 25-40-505 Coverage

This policy will apply to all CDA employees expressing their concern or dissatisfaction with work-related issues that are not otherwise excluded by this chapter.

§ 25-40-510 Matters Not Covered

The grievance system will not cover the following:

- (a) An adverse action separately appealed;
- (b) A fitness-for-duty examination;
- (c) The content of published CDA or other government policy;
- (d) Non-selection for appointment, promotion, or transfer from a group of properly ranked and certified candidates;

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(e) Non-recommendation or disapproval of a merit increase, performance award, or other kind of honorary discretionary award; and

(f) An employee who is serving on probationary status.

§ 25-40-515 Freedom from Restraint

Employees seeking adjudication of their grievances in a reasonable manner and in accordance with this regulation will be unimpeded and free from restraint, interference, coercion, discrimination, or retaliation.

§ 25-40-520 Employee's Right to Representation

CDA recognizes that grievances are personal in nature and that aggrieved employees or groups of employees must have the right in presenting their grievances to be accompanied, represented, and advised by representatives of their own choosing. Therefore, in the formal grievance process, as hereinafter defined, the employee or group of employees have the right to be represented by counsel or other representative of their own choosing at their own discretion and expense. If the employee or group of employees chooses to serve as their own representative or to designate a member of the aggrieved group as spokes-person, they may do so.

§ 25-40-525 Role of CDA Board of Directors

CDA board serves as the ultimate appellate level for grievances of employees or groups of employees. It shall consider only those formal grievances which cannot be settled to the satisfaction of all concerned in accordance with the formal procedure defined in part 500.

§ 25-40-530 Employee's Right to Seek Advice

Sometimes an employee has a valid reason for not taking a grievance to the immediate supervisor. The grievance system, therefore, provides opportunity for an employee to communicate informally with and seek advice from the office manager and/or the executive director of higher rank than the employee's immediate supervisor.

§ 25-40-535 Informal Grievance Procedure

(a) The grievance action shall first be initiated by the aggrieved employee who will discuss the problem informally with the supervisor, or if the employee feels the relationship with the immediate supervisor is such that the matter cannot be reasonably discussed, the employee may discuss it with the next level of supervision.

(b) A grievance concerning a particular act or occurrence must be presented within ten calendar days of the date of the act or occurrence or the date the aggrieved employee became aware of the act or occurrence.

§ 25-40-540 Formal Grievance Procedure

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(a) If the grievance is not settled within five calendar days, or if the employee is not satisfied with the decision of the immediate supervisor, the employee or representative may, within the next ten calendar days, put the grievance in writing and submit it to the executive director as a formal grievance. The written representation must contain the following information:

- (1) The name of the aggrieved employee and the employee's work section;
- (2) The details of the grievance;
- (3) The corrective action desired; and
- (4) The name of the employee's representative, if any.

(b) The executive director will examine the grievance, discuss it with the grievant or representative, and render a decision, in writing, within 14 calendar days after receiving the grievance. The executive director may have the employee's immediate supervisor present, if he or she deems it appropriate to the resolution of the grievance.

(c) If the executive director is not successful in settling the grievance to the employee's satisfaction within 14 calendar days after the grievance was presented to executive director in writing, the employee may, within 15 calendar days after receiving written notification of the decision or the failure of the executive director to provide a decision, resubmit the grievance to the board.

(d) If the grievance is against the executive director, the employee may, after attempting to informally resolve the issue with the executive director, formally submit the grievance to the board.

(e) The board shall set a time for its review of the case within a reasonable time after receiving a grievance. If the board desires to have the grievance heard by a hearing officer, it must inform the aggrieved employee and representative as soon as possible.

(f) In hearings before the board or a hearing officer, the aggrieved employee and/or representative shall be allowed to appear and present the case. An appropriate management representative shall also be allowed to appear before the board. Both sides shall have the right to call witnesses in support of their positions and to cross-examine witnesses for the other side. The board or the hearing officer shall prepare a summary of the hearing. If both parties desire a formal, written record prepared by a recorder, the cost of such services shall be shared equally. If only one side desires a formal written record of the proceedings, that side shall bear the cost.

(g) The board shall reach a decision and present it formally to the aggrieved employee and the executive director within 15 working days following the close of the formal hearing. Decision by the board shall be made by a majority vote of the entire CDA Board of Directors and shall be final.

(h) If the aggrieved employee is dissatisfied with the decision after having exhausted all administrative appeal levels, the employee has recourse to the courts.

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(i) The office manager shall be kept informed as to the progress of a formal grievance and is responsible for assuring that the time limits established in this procedure are met. The office manager is also responsible to assure that the formal record of the grievance is assembled into one place, stored, and safeguarded.

(j) The office manager shall be the final custodian of all records of a grievance and is responsible for their proper storage and security.

Subpart B- Employee Appeals

§ 25-40-545 General

This subpart establishes CDA appeal process. Any employee of CDA may appeal, personally and/or in writing, a decision by CDA to take adverse action resulting from the disciplinary process, reduction-in-force procedures, or an “unsatisfactory” evaluation of performance.

§ 25-40-550 Rights of the Parties

In any appeal the appealing employee and CDA have certain rights. These include:

(a) **Right to a Hearing.**

(1) If an appeal is filed by an employee, both CDA and the employee will be entitled to a full and fair hearing before the board or a hearing officer designated by the board, to present evidence, and to be represented by counsel. At the hearing, although technical rules of evidence shall not apply, the testimony may be recorded, but will not be transcribed. Hearing minutes will be prepared and maintained. The board shall present its findings of fact and final decision in writing to all parties.

(2) Only one hearing will be held, unless the board determines that unusual circumstances require a second hearing. Any evidence presented at the hearing must bear on the issue of whether the adverse action taken was justified and proper.

(3) The board will decide whether or not a hearing is required for an appealed performance rating based upon the written appeal of the employee. Subsection (b) does not apply to performance rating appeals.

(b) **Denial of a Hearing.**

(1) The board may make the determination to deny a hearing on the appeal when a hearing is impractical by reason of extraordinary circumstance. In such cases the board will notify both parties in writing of the reason(s) for denying a hearing.

(2) If the board determines that no hearing is reasonably possible, CDA and the employee will be notified to submit, in writing, any additional evidence they desire to present on the issues so that a decision can be made on the record presented.

(c) **Freedom from Reprisal or Interference.**

(1) The employee and the employee’s representative will be free to use the Appeal Process without restraint, interference, coercion, discrimination, or reprisal.

(2) No employee, whether acting in an official capacity for CDA or on any other basis, will be allowed to interfere with, or attempt to interfere with, another employee’s

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exercise of rights under this subpart. The spirit as well as the letter of the requirement must be enforced. In addition to abstaining from overt acts or interference, the official is prohibited from making any statement or taking any action that has the appearance of a threat, interference, or intimidation.

- (d) **Employee Representation.** Employees have the right to present an appeal without representation or to be accompanied, represented, and advised by a representative of their choice at their own expense. Employees may change their representative, but must notify the board of the change, in writing. Employees may select other government employees as their representative, provided that such employees are willing to represent them and are not disqualified because of conflict of position or unavailability to serve in that capacity because of priority needs of, or unreasonable cost to, their employee agency, as determined by the desired representative's appointing authority or management official. Employees are free to select their representative from outside the government service, but entirely at their own expense.
- (e) **CDA Representation.** CDA's representative at a hearing will be the executive director or his or her designee, if the employee does not have an attorney-representative. CDA's legal counsel or the Attorney General's designee will represent the executive director if the employee does have legal representation.
- (f) Subject to the approval of the Attorney General, CDA Board of Directors may retain an attorney or other professional to assist with legal, human resource management, or other necessary expertise.
- (g) **Employee Entitled to Official Time to Prepare an Appeal.**
- (1) An employee will be entitled to one day of official time-off as administrative leave to prepare the appeal, if the employee is otherwise in an active duty status. The employee's work on the appeal will take place outside CDA work premises.
 - (2) If the employee's representative is an employee of CDA, the representative will also be entitled to one day of official time to help prepare the appeal if otherwise in an active duty status.
 - (3) Both the employee who is appealing and the employee who is acting as representative shall make arrangements with the office manager for the use of official time. Leave forms will be utilized.
 - (4) If the representative is a government employee from another agency, it is the employee's responsibility to determine if that agency will allow them time off to assist with the appeal.
 - (5) If preparation requires more than one day off from work, the employee must request annual leave or unpaid time. If the appeal involves complicate issues that require extensive preparation time, the employee may request additional time, up to three additional days, from the board.
 - (6) The employee may view and request copies of any documents being used to support the adverse action being appealed. These copies will be provided at the employee's expense.

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PART 600 FAIR TREATMENT IN THE WORKPLACE

§ 25-40-601 Equal Employment Opportunity Policy

(a) It is the policy of CDA that there shall be no discrimination based on such factors as race, creed, color, ancestry, membership in a labor organization, political affiliation, place of origin, disability, sex, religion, age, sexual orientation, veterans status, and similar matters not related to individual merit and fitness.

(b) CDA will establish and implement a system of personnel administration based on merit principles and generally accepted methods governing the classification of positions and the employment, conduct, movement and separation of CDA employees. CDA will contribute to the CNMI government's efforts to build a career service which will attract, select, and retain the best-qualified employees, based on merit, who shall hold their positions free from coercion, discrimination, reprisal, or political influences and will render competent and effective service to the Community, according to the dictates of ethics and morality. In order to achieve these purposes, CDA that the personnel management shall be applied and administered in accordance with the following merit principles:

- (1) Equal opportunity for all regardless of race, creed, color, ancestry, membership in a labor organization, political affiliation, place of origin, disability, sex, religion, age, sexual orientation, or veterans status;
- (2) Impartial selection of the ablest person for service with CDA by means of selection tools which are fair, objective, and practical;
- (3) Just opportunity for competent employees to be promoted within CDA;
- (4) Reasonable job security for the competent employee;
- (5) Systematic classification of all positions through adequate job evaluation;
- (6) Fair and reasonable grievance and complaint procedures for all employees on matters pertinent to conditions of employment and these regulations;
- (7) Proper employer-employee relations to achieve a well-trained, productive, and happy work force.

§ 25-40-605 Prohibition of Harassment

CDA prohibits any form of unlawful harassment against its employees based upon any of the protected categories listed above. The prohibited conduct includes actions taken by or against employees by other employees, agents, contractors, vendors, or clients. Each employee is expected to assist CDA in preventing or eliminating harassment by bringing incidents of perceived harassment or discrimination to the attention of management or CDA's office manager.

§ 25-40-610 Prohibition of Sexual Harassment

(a) Sexual harassment of employees by their supervisors, coworkers, vendors, or customers will not be tolerated and should be promptly. Employees at all levels are expected to conduct themselves in a courteous and professional manner at all times. Any behavior that is coercive, intimidating, harassing, or sexually offensive in nature is inappropriate and prohibited.

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(b) Based on guidelines developed by the U.S. Equal Employment Opportunity Commission, sexual harassment includes unwelcome sexual advances or requests for sexual favors, or other verbal or physical conduct based on gender when:

- (1) Submission to such conduct is an explicit or implicit term or condition of employment.
- (2) Submission to or rejection of the conduct is used as the basis for an employment decision.
- (3) The conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.

(c) Inappropriate sexual conduct can take many forms and is not limited to physical assault, unwelcomed, or unwanted sexual requests or demands for sexual favors. Sexual harassing actions may include, but are not limited to, any of the following kinds of behavior: explicit sexual propositions, sexual innuendos, sexually suggestive comments, obscene or sexually suggestive pictures or drawings, obscene gestures or language, sexually oriented jokes and teasing, intimate touching or other unwanted physical contact, such as hugging, pinching, patting, or "accidental" brushing up against.

§ 25-40-615 Expectation of Non-Discriminatory and Non-Harassing Behavior

All employees, and especially supervisors and managers, are expected to implement and enforce the equal employment opportunity policy at all times. Discrimination for or against any employee on the basis of any of the protected factors listed above, or any other basis prohibited by federal or Commonwealth law shall not be tolerated. CDA shall maintain its workplace free from unlawful harassment, including sexual harassment. Any employee or official who engages in any act of discrimination or harassment on the basis of any of the above factors violates CDA and government policy, and such misconduct will subject an employee to corrective action ranging from counseling to adverse action up to and including termination. Such harassment by a non-employee (for example, a client or contractor) is also prohibited. Supervisors and management officials shall not tolerate any such outside harassment and shall take necessary action to prevent its continuation or recurrence.

§ 25-40-620 Complaint Process

(a) Any employee who believes that he or she have been the subject of, or have witnessed, job-related harassment or discrimination (whether by an employee, agent, contractor, vendor, or client of CDA, or others doing business with CDA), should promptly report it to a supervisor or manager. If any supervisor or manager is considered to be the discriminating or harassing agent, the employee may go directly to the office manager or the executive director. Confidentiality will be maintained to the extent permitted by the circumstances.

(b) Complaints of discrimination, harassment and/or retaliation shall be accepted both in writing and orally. If any supervisor or manager becomes aware of a discriminatory or

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harassment situation, he or she must immediately report the situation to the office manager or the executive director, even if the employee does not wish to file a complaint.

(c) A supervisor who receives a claim of discrimination or harassment in violation of this policy shall take such complaint seriously and immediately notify the executive director. A supervisor who does not take appropriate action also violates this policy and exposes the Commonwealth government to liability.

(d) After a complaint is received, CDA shall investigate the complaint or promptly forward the complaint to an assigned complaint investigator, who may be within or outside CDA. The complaint investigator shall commence the investigation immediately upon receipt of the complaint from the contact person. The investigation shall not exceed 14 days unless a longer period is necessary to gather all material information relevant to the complaint. Any person accused of a violation shall be allowed the opportunity to rebut the charges.

(e) After the investigation is completed, CDA will take appropriate disciplinary action, if warranted. Discipline may include: EEO training, counseling, written warning, demotion, discharge, or any other action deemed appropriate. CDA will also communicate with the complainant its decision on the results of the investigation and any corrective or remedial actions taken or proposed.

§ 25-40-625 Retaliation

CDA absolutely forbids retaliation of any kind against any employee who, in good faith, complains about harassment or assists or participates in any manner in the investigation. CDA will take disciplinary action against anyone, fellow employee or management staff, who attempts to retaliate in any way.

§ 25-40-630 Equal Employment Opportunity Officer and Representative

The executive director of CDA shall be the Equal Employment Opportunity Officer for CDA with the responsibility for ensuring compliance with CDA EEO program. The EEO Officer shall appoint and be assisted by the office manager, as CDA's EEO representative, who shall fulfill this role as part of that person's regular duties. The office manager shall advise employees, including managers and other supervisors, regarding their rights and responsibilities under this policy and applicable federal and Commonwealth laws and shall be provided with appropriate training for such purpose. The office manager must be accessible to employees and capable of assisting them in the complaint process.

§ 25-40-635 Nepotism

(a) For the purpose of this regulation, nepotism is defined as employment or employment benefit bestowed on the basis of family relationship and not in consideration of merit.

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- (b) For the purpose of this regulation, an immediate relative is defined as a spouse, parent, sibling, or child related by blood, legal marriage, common-law marriage, legal adoption, or cultural adoption.
- (c) The basic criteria for the appointment and promotion of all CDA employees shall be appropriate qualifications and performance. There shall be no discrimination, for or against, based on relationship by family or marriage in any employment action.
- (d) Employment or employment benefit by reason of blood or marriage relationship rather than merit is prohibited.
- (e) No employee shall supervise an immediate family member except in emergency situations.
- (f) No applicant will be hired to a position with a direct reporting relationship to an immediate relative or where a relationship or association exists that creates a reasonable assumption that that person, as an employee, would be in a favored position in relationship to other employees.

§ 25-40-640 Political Affiliation

No person with authority to make or recommend a personnel action relative to a person in, or an applicant for, a position with CDA, may make inquiry concerning political affiliation. All disclosures made by an employee or an applicant concerning political affiliation shall be ignored. Discrimination may not be exercised, threatened, or promised by any person in CDA against or in favor of an employee in, or an applicant for, a position with CDA because of political affiliation.

§ 25-40-645 Coercion

An CDA employee shall not use CDA employment to coerce, or give the appearance of coercing, a person to provide financial benefit to self or another person, particularly one with whom the employee has family, business, or financial ties.

PART 700 PERFORMANCE EVALUATION

§ 25-40-701 Employee Performance Evaluation Process

CDA will establish and maintain an employee work performance review system which will recognize, evaluate and reward employees and their contributions toward increasing efficiency and economy within CDA. An employee performance evaluation process is essential to:

- (a) Improve employee effectiveness by:
 - (1) Providing a working atmosphere in which an employee may be motivated to achieve the highest performance potential; and

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- (2) Identifying work performance standards agreed to by both management and employee.
- (b) Strengthen the employee-supervisory relationship by:
 - (1) Establishing a framework for continuing employee-supervisor communications regarding performance standards and development of employee potential; and
 - (2) Guaranteeing employees the opportunity to participate in the establishment of performance standards.
- (c) Provide management with an objective basis for relating employee work performance to a wide variety of pertinent personnel management activities.

§ 25-40-705 Policy

- (a) The executive director shall ensure that managers/supervisors in their respective jurisdictions reach and maintain a clear understanding with their subordinates of the standards of work performance which must be met in order to successfully accomplish assigned work. The supervisor and the employee, on a person-to-person basis, must understand and agree on the work objectives set, the manner in which they can be reached, and the way they will be evaluated. A review of the employee's position description is necessary, therefore, to assure such understanding of the duties, performance standards, and work objectives established.
- (b) A written rating of performance shall be submitted by the employee's manager/supervisor annually, commencing at the anniversary of the employee's employment date, based upon the preceding 12-months performance record and other pertinent factors. The performance rating will be acknowledged by the employee and concurred by the executive director, on forms prescribed by CDA board, for each permanent, probationary, and limited-term employee. CDA office manager shall administer the performance rating report ensuring timely and justified implementation of the program and will alert the executive director to any problem or changes needed for improvement to the program.
- (c) Non-CDA employees shall not be delegated the authority to supervise or evaluate CDA employees.

§ 25-40-710 Responsibilities

- (a) The Board of Directors shall be responsible to:
 - (1) Develop, evaluate, and improve CDA's annual employee review system and performance rating report; and
 - (2) Provide advice, assistance, and supervision in the administration of the system.
- (b) The executive director shall be responsible to implement, administer, and obtain compliance with the purposes of the system, including:
 - (1) Provide assistance to supervisors and employees, as needed, in preparing the annual performance rating;

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- (2) Provide training to managers/supervisors so they can effectively evaluate employee performance; and
 - (3) Assure that employees understand the provisions, procedures, and objectives of the performance evaluation plan.
- (c) Managers are responsible to:
- (1) Ensure that position descriptions accurately reflect the duties and responsibilities assigned;
 - (2) Determine jointly with each employee the performance standards to be met and keep each employee advised of strengths, weaknesses, and opportunities for improvement;
 - (3) Provide periodic counseling to employees throughout the evaluation year and document significant incidents of good or poor performance;
 - (4) Conduct the annual employee performance reviews; and
 - (5) Initiate appropriate personnel actions in cases of continuing unsatisfactory performance.
- (d) The employee is responsible to:
- (1) Request clarification from the manager/supervisor of any performance ratings, work objectives, or duties which are not clearly understood;
 - (2) Advise the manager/supervisor of any fact or circumstance which the employee believes should be considered during the review process;
 - (3) Participate in performance appraisal discussions and in the development of performance standards, and make suggestions for improving performance; and
 - (4) Acknowledge the performance ratings.
- (e) In the event the employee disagrees with any of the ratings, the employee must so indicate on the performance rating form and must submit a written statement to the executive director for review and inclusion in the employee's official personnel folder along with the appraisal.

§ 25-40-715 Relationship to Other Personnel Management Activities

- (a) By using the employee anniversary date system (as contrasted to a fixed due date), managers/supervisors will have a full year to better consider and evaluate each employee and coordinate the employee's performance evaluation with the other factors which make up the totality of the employee review system.
- (b) Managers do not have a right to retain an employee in a position in which the employee's overall rating is "unsatisfactory." To permit such a situation would not be in the best public interest and would not be consistent with good management principles. In such cases, the manager/supervisor must initiate the necessary personnel action to have such an employee reassigned, demoted, or separated from the position at the earliest possible date in accordance with the provisions of this regulation.
- (c) An employee with a current official rating of "outstanding/exceptional" will receive an additional two points of retention credit for reduction-in-force purposes.

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§ 25-40-720 Performance Rating

A completed performance rating must be submitted to the executive director by the responsible manager/supervisor for each employee on an annual basis at the employee's anniversary date for appropriate action.

§ 25-40-725 Rating Probationary Employees

The final probationary performance rating shall be completed for probationary appointees prior to the completion of six months of employment with CDA. The rating will recommend conversion to a permanent appointment after six months or a continuation of probationary status until the end of one year of employment.

§ 25-40-730 Appeals

An employee may appeal an "unsatisfactory" appraisal as provided in part 200, subpart B, of this chapter.

PART 800 TRAINING AND EMPLOYEE DEVELOPMENT

§ 25-40-801 Policy

As appropriate training increases workers' effectiveness in jobs, improves morale, decreases labor turnover, prepares new employees to do jobs for which they are not trained, provides an effective means of screening and placement, and prepares employees for filling responsible jobs and upward mobility, CDA acknowledges its commitment to train and develop a viable workforce within CDA.

§ 25-40-805 Responsibilities

- (a) The executive director, supported by CDA office manager, shall:
- (1) Implement training programs at all levels within CDA to assure that training objectives are met;
 - (2) Determine annual training objectives and implementation plans that reflect the immediate priorities within CDA;
 - (3) Budget funds to support the needed training programs;
 - (4) Report to CDA Board of Directors annually by September 30 of each year, the nature, content, and results attained by in-service training activities;
- (b) CDA office manager will hold the secondary role of training officer for CDA and shall work with managers/supervisors to:
- (1) Identify and define training needs for developing CDA workforce;
 - (2) Determine training goals to be met for each CDA job category;

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- (3) Establish training and development goals to be met by CDA employees for promotion and career development;
 - (4) Evaluate all training programs to ensure that manpower development programs accomplish their objectives;
 - (5) Assure that training and education services in the Commonwealth are fully utilized before seeking outside sources; and
 - (6) Develop a recommended training schedule to be submitted with the annual budget;
 - (7) Provide advice and assistance to managers/supervisors as they conduct employee development activities;
 - (8) Locate, evaluate, and determine the cost of training resources within and outside the Commonwealth, as needed;
 - (9) Maintain current training records for all employees;
 - (10) Improve quality of training through evaluation of course content and practical testing of skills and knowledge gained through training.
- (c) Supervisors/managers, in carrying out the training objectives in their respective program areas, shall:
- (1) Plan to release employees when needed for formal classroom instruction;
 - (2) Inform trainees of the content of the training programs, the objectives and benefits, and the employees' responsibility to absorb and use the instruction provided;
 - (3) Encourage employees to engage in self-improvement activities which may lead to improved performance and possible promotion; and
 - (4) Deliver or assist in the delivery of instruction within the limits of their individual capabilities.

§ 25-40-810 Coverage

All training must be authorized by the executive director, will be work-related, and will be limited to the following categories:

- (a) **Orientation:** Within one week after an employee enters employment with CDA, CDA office manager and the employee's manager/supervisor will conduct an orientation for the new employee in the policies, procedures, rules, and regulations which are specific to the employee and to the performance of the employee's job.
- (b) **Job Skills:** training to:
 - (1) Improve an employee's performance in the position currently occupied; and
 - (2) Prepare an employee to move laterally in the same or closely related class of position.
- (c) **Promotional:** training which prepares an employee to perform with adequate efficiency the basic task of higher-level position for which the employee is being trained.
- (d) **Developmental:** training offered to broaden an employee's knowledge and perspectives.

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- (e) Supervisory, Managerial, and Executive Training:
- (1) Inasmuch as the work of the government is the best and most important training resource for potential managers, opportunity should be given to qualified employees to participate in progressively responsible work within the area(s) of intended succession.
 - (2) Opportunities for supervisory, managerial, professional, and executive training will be offered to potential managers if value to CDA can be identified and if funding is available.
 - (3) Employees entering a supervisory position must receive supervisory/management training not earlier than six months prior to such promotion and no later than six months after entry into such position.

§ 25-40-815 External Training Sources

Training courses provided by sources outside the Commonwealth will be utilized as necessary and to the extent the budget will permit.

§ 25-40-820 Training Costs Defined

- (a) The term “all costs,” when used in this part to define CDA’s intent to support an employee undergoing training, means:
- (1) Round trip transportation to the training site by the least expensive air routing;
 - (2) Mileage allowance for on-island travel by private transportation;
 - (3) Training leave with pay, i.e., the employee’s regular salary will be paid, as all training will be work-related and the employee will be in work status. If overtime work is required and performed, payment will be made in accordance with law.
 - (4) Cost of tuition, books, and fees; and
 - (5) Stipend. i.e., the regular per diem rate for the time authorized to be spent at the training site.
- (b) CDA will pay all pre-reviewed and approved necessary costs for training.
- (c) Unapproved costs incurred or caused by the employee will be the responsibility of the employee.
- (d) Unplanned and unavoidable expenses related to approved-training and not caused by the actions of the employee will be reviewed on a case-by-case basis by the executive director.

§ 25-40-825 Support for Training

Managers/supervisors are encouraged to support positively CDA’s training efforts, as improved skills and more effective supervision at all levels will improve mission accomplishment.

§ 25-40-830 Evaluation of Training

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- (a) CDA office manager shall develop and maintain a system which will provide information and analysis of the effectiveness of training received by CDA employees. Such analyses shall be used to determine the value of training received and programs utilized.
- (b) All personnel who attend and return from a training course outside the Commonwealth shall submit to CDA office manager a written report including a summary of the course along with a judgment of the added value gained from the course.
- (c) Employees who received training may be required to provide a presentation to CDA managers/supervisors and/or staff, sharing the training received.

§ 25-40-835 Unsponsored Training Activities

- (a) Personal advancement training or academic training toward baccalaureate or higher degrees is highly encouraged. However, CDA shall not sponsor or have any responsibility for any costs incurred for such training.
- (b) Personal advancement training or academic training taken at the election of the employee will utilize annual leave or leave without pay, as approved by the executive director.
- (c) Unsponsored training activities will comply with the leave policies established by this regulation.

PART 900 PERFORMANCE MANAGEMENT EVALUATION

§ 25-40-901 Purpose

Regularly and honestly evaluating the performance of CDA is one of the most difficult, yet one of the most important requirements for CDA to be a successful organization. A meaningful performance management evaluation requires that the individuals conducting the evaluation not only to know and understand the mission, strategy, and goals established by CDA for the period being evaluated, but also the projects and their measurable objectives for each CDA section and the duties and responsibilities for each employee. With this knowledge and the use of analytical evaluative methods the evaluator must determine how well each section has performed in their part of achieving CDA mission and goals, and then, after full consideration of the findings, make an objective judgment of the overall degree of effectiveness that CDA has attained in relation to mission and goal accomplishment.

§ 25-40-905 CDA Strategic Goals

CDA's long range plan and strategic goals will be set, reviewed, and modified, as required by changing circumstances, annually in conjunction with budget development at a strategic planning session held for that express purpose.

§ 25-40-910 Objectives of CDA Performance Management Evaluation Program

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The objectives of CDA performance management evaluation program are to:

- (a) Provide a comprehensive basis for improvements in CDA's management of its activities, programs, and employee performance;
- (b) Assure compliance with statutory requirements, regulations, and Board directives governing CDA's programs and practices;
- (c) Evaluate the participation and effectiveness of managers and supervisors in their performance management and section goal attainment; and
- (d) Achieve CDA goals and objectives established in the annual strategic planning session.

§ 25-40-915 Responsibilities

- (a) Section managers are responsible for:
 - (1) Establishing section objectives that contribute to the accomplishment of CDA's strategic objectives;
 - (2) Providing leadership, guidance, and supervision in the accomplishment of section objectives;
 - (3) Keeping the executive director apprised of significant problems and achievements in carrying out their performance management responsibilities and accomplishing their assigned portion of CDA's strategic goals.
- (b) The executive director is responsible for:
 - (1) Guiding senior CDA managers in an annual strategic planning session to establish, review, and modify strategic goals for CDA;
 - (2) Providing management, direction, and continued oversight in the accomplishment of CDA's established strategic goals;
 - (3) Conducting, through a designated evaluation officer, an annual performance management evaluation to measure goal accomplishment;
 - (4) Using evaluation results to work with CDA management team and the board of directors to developing plans for improving CDA's performance and goal accomplishment.

§ 25-40-920 Annual Report

- (a) Report of CDA performance management evaluation shall be made to CDA Board in its annual report not later than November 30 of each year. The report shall be based upon:
 - (1) the comprehensive CDA performance management evaluation report on the projects completed and the goal-related objectives reached for each section; and*
 - (2) the overall successful goal achievement performance of CDA.
 - (3) CDA's financial status on the last day of the fiscal year.
- (b) The designated evaluating officer in consultation with the executive director shall develop the evaluation plan and the format for reporting.

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§ 25-40-925 Action

Using on-going observations and the findings in the annual comprehensive CDA performance management report, the executive director shall:

- (a) Direct and follow-up on corrective action to be taken with respect to any deficiencies noted in any of the reports.

- (b) Ensure that managers conduct or arrange training for those employees who appear to be deficient in the supervisory, technical, or other job-related performance aspects of meeting CDA's mission, as indicated in the several evaluations.

PART 1000 RECORDS AND REPORTS

§ 25-40-1001 Purpose

This subpart defines the minimum requirements for personnel records to be originated and maintained by CDA.

§ 25-40-1005 Policy

CDA shall establish a system of records for all personnel presently or previously employed by CDA. The records shall be separated so that those of active employees are filed separately from those of former employees. Other supporting records, as deemed appropriate by the Personnel Committee, may also be maintained. The office manager shall develop and maintain the personnel records for CDA.

§ 25-40-1010 Records Required

- (a) Official Personnel Folder (OPF). An official personnel folder (or file) shall be maintained for each employee. The folder shall contain, as a minimum, the following elements of primary information covering the employee:
 - (1) Formal application for employment.
 - (2) Copy of the certificate of eligible applicant list from which selected.
 - (3) Form on which prior creditable service is listed and service computation date is derived.
 - (4) Letter of original selection signed by an authorized selecting official.
 - (5) Copy of each personnel action affecting the employee.
 - (6) Copy of each form reflecting choice of health benefits or group life insurance coverage, designation of beneficiary, and other legal and binding assignments or designations.
 - (7) Adverse action supporting material, if the action is consummated.

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(b) Secondary information, as contrasted to permanent-type information as delineated above, shall be kept in the OPF but filed on the left side of the folder. Examples of temporary material include:

- (1) Performance evaluation reports;
- (2) Annual employee review documentation sheets;
- (3) Descriptions of positions occupied by the employee;
- (4) Letters of reprimand (retained but usable as a past offense for two years only);
and
- (5) Items of correspondence concerning the employee but which have no historical or permanent value, e.g., letters of commendation or congratulation.

(c) Employee Record Card. This card record summarizes critical data concerning the identity, status, movement, and separation of an employee. Every personnel action taken will be recorded on the employee record card. Exceptional or less than satisfactory performance ratings shall be noted on the employee record card showing the rating and date thereof.

(d) Medical Records.

- (1) Medical examination forms and drug and alcohol test result forms for each employee shall be maintained in a file separate from the OPF. This is essential to protect the privacy of the individual. The records shall be maintained in a locked filing cabinet or safe with access allowed only to personnel authorized by the executive director. Access must be restricted only to persons who have a “need to know” as determined and approved by the executive director.
- (2) Whenever access to a medical record is allowed, the office manager shall record on a log sheet maintained in the individual medical record:
 - (i) Date of access;
 - (ii) Name of person allowed such access; and
 - (iii) Reason for access.

(e) Records of EEO Cases, Disciplinary Investigations, and Official Inquiries. Any records of an EEO case, disciplinary investigation, or official inquiry concerning an employee shall be filed in a separate folder, clearly identified by the employee’s name, date of birth, and Social Security number. The material shall be kept in a locked filing cabinet or safe, with access allowed only on a “need to know” basis and upon approval by the executive director. The existence of any of these files shall be noted in the OPF, filed on top of the last entry therein.

(f) Confidential medical and investigation records may be kept in the same filing cabinet or safe but must be maintained in separate drawers or areas. Access to one individual file or set of files does not allow access to others without specific authorization.

§ 25-40-1015 Disposition of Records

(a) Upon the separation of an employee for whatever reason, the employee’s official personnel folder shall be closed and removed to storage.

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(b) Prior to sending the file to storage, all secondary material filed on the left side of the folder shall be reviewed and duplicate information or documents considered unnecessary for permanent retention will be either given to the employee or destroyed.

(c) Medical examination records and investigation file material shall be placed in the OPF for retention so that the record is accurate and complete.

(d) Records of alcohol and drug test results shall be retained in the employee's medical file until the time period for retention, established as one year for negative testing results, two years for testing program records, and five years for all positive testing results, has passed. At that time, the test records shall be destroyed.

§ 25-40-1020 Access to Official Personnel Folder

Employees may have access to their own official personnel folders at any time during regular working hours provided the office manager or another responsible employee assigned by the executive director watches as the employees' reviews take place. Employees are entitled access to their medical records, but investigation reports are not available to the employees. If employees persist in their desire to see investigation reports, they should be referred to the agency which prepared the report or secure a court order authorizing the executive director to allow the employee access to the investigation report.

§ 25-40-1025 Information Available to the Public

The names, present and past position titles, grades, salaries, and duty stations of a CDA employee is information available to the public; provided, however, such shall not be available when the release of the information is otherwise prohibited by law or when the information is sought for the purpose of commercial or other solicitation. To receive information an open-government request for the information must be submitted to CDA.

§ 25-40-1030 Reports

(a) Accurate and timely reports are invaluable to the management of a workforce. They are important to the processes of budgeting, manpower planning, forecasting staffing needs and declines, and other management areas.

(b) CDA office manager is required to establish and maintain a roster of all persons in CDA which shall include, as a minimum, for each person, the class of position held, the salary or pay, any changes that might occur in class, title, pay, or status and any other necessary data.

(c) The executive director shall prescribe a system of reports and the format for reporting to provide, on a timely basis, the information required by law and for the efficient and effective operation of CDA.

§ 25-40-1035 Timekeeping Records

TITLE 25: COMMONWEALTH DEVELOPMENT AUTHORITY

An assigned and trained timekeeper shall be responsible for recording and certifying time and attendance reports of CDA employees. The timekeeper shall also record and certify leave time taken by any CDA employee. The method of recording and certifying time, attendance and leave shall be in compliance with Commonwealth and federal law and requirements established by the Director of Finance.

PART 1100 SPECIAL PROVISION

§ 25-40-1101 Financial Austerity Measures

- (a) At any time CDA Board of Directors, at the advice of the executive director, declares by directive to all CDA staff the need for financial austerity measures that affect CDA, all provisions in this regulation that require increases in employees' salaries due to permanent or temporary promotions, acting or detail assignments, reallocation or reclassification of positions, and step increases of any type will be suspended effective on the date set in the directive.
- (b) The suspension shall expire upon subsequent notice to all CDA staff of its expiry. Upon such expiration, all employees who qualified for the increases during the time of suspension shall receive the pay increases effective the date the suspension expired. The increases shall not be made retroactive to any earlier date.



**PUBLIC NOTICE OF CERTIFICATION AND ADOPTION
OF AMENDMENTS TO THE REGULATIONS OF
THE DEVELOPMENT CORPORATION DIVISION (DCD)
OF THE
COMMONWEALTH DEVELOPMENT AUTHORITY**

PRIOR PUBLICATION IN THE COMMONWEALTH REGISTER
AS PROPOSED AMENDMENT TO THE DCD RULES & REGULATIONS
Volume 42, Number 06, pp 043649 to 043696, of June 28, 2020

ACTION TO ADOPT AMENDMENTS TO THE DCD RULES & REGULATIONS: The Commonwealth Development Authority, hereby adopts as permanent, the referenced amendments to the DCD Regulations which were published in the Commonwealth Register at the above-referenced pages, pursuant to the procedures of the Administrative Procedure Act, 1 CMC §9104(a). The Commonwealth Development Authority announced that it intended to adopt them as permanent, and now does so. A true copy is attached. We also certify by signatures below that, as published, such adopted amendments to the DCD Rules & Regulations are a true, complete and correct copy of the referenced amendments to the DCD Rules & Regulations and that they are being adopted with modifications.

PRIOR PUBLICATION: The prior publication was as stated above.

MODIFICATIONS FROM PROPOSED REGULATIONS, IF ANY: Modifications to the Proposed Amendments to the DCD Rules & Regulations:

- 1) § 25-10-910 Second Mortgage on Real Estate. Remove: Last sentence "Third mortgages shall not be accepted."
- 2) Add: Third Mortgage on Real Estate as § 25-10-915. Third mortgages may be allowed, in addition, to either a first or second mortgage(s), if a loan application has a strong economic feasibility and potential for success, and the loan applicant has a good credit rating and excellent repayment ability. Third mortgage(s) may also be allowed for loan revisions.
- 3) Renumber § 25-10-915 - § 25-10-930 to § 25-10-916 - § 25-10-931
- 4) Amend § 25-10-1005 Surety: Remove "shall" after the word "Applicant" and replace with "may". Add the following sentences after the word "cost.": The DCD Board may waive any of the above requirements with adequate justification of a borrower's resources and experience, sufficient collateral to support the loan request, and with controlled disbursements, based on percentage of project completion. Most especially since the Northern Mariana Islands has smaller communities and limited access and higher costs associated with those type of services and professionals on their respective islands, which are sometimes exacerbated by extenuating circumstances beyond control.
- 5) Amend § 25-10-1010 Life Insurance: Replace the words "are required" after borrowers, first sentence, with the words "may be required".

AUTHORITY: The DCD Board of Directors, through its Chairman, and the Board of Directors of the Commonwealth Development Authority, through its Chairman, are authorized to promulgate the DCD Rules and Regulations by virtue of the authority given to CDA under 4 CMC §10203(a)(2) and (a)(30), and NMIAC § 25-10-015.

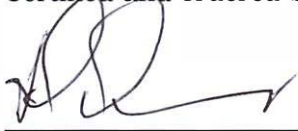
EFFECTIVE DATE: Pursuant to the APA, 1 CMC § 9105(b), these adopted amendments and modifications to the DCD Rules and Regulations are effective 10 days after compliance with APA, 1 CMC §§9102 and 9104(a) or (b), which, in this instance, is 10 days after this publication in the Commonwealth Register.

COMMENTS AND AGENCY CONCISE STATEMENT. Pursuant to the APA, 1 CMC § 9104(a)(2), the agency has considered fully all written and oral submissions respecting to the amendments to the DCD Rules & Regulations. Upon this adoption of the amendments and modifications to the DCD Rules & Regulations, the agency, if requested to do so by an interested person, either prior to adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the considerations urged against its adoption. Please see the following pages for this agency's concise statement, if any, in response to filed comments.

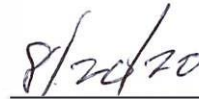
The adopted amendments and modifications to the DCD Regulations were approved for promulgation by the Attorney General in the above-cited pages of the Commonwealth Register, pursuant to 1 CMC sec. 2153(e) (To review and approve, all rules and regulations to be promulgated by any department, agency or instrumentality of the Commonwealth government, including public corporations, except as otherwise provided by law) as to form and legal sufficiency) and are hereby being adopted without substantial substantive change.

We declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on the 20th day of August 2020, at Saipan, Commonwealth of the Northern Mariana Islands.

Certified and ordered by:



IGNACIO L. PEREZ
Chairman, CDA Board of Directors



Date



FRANK LEE SN. BORJA
Chairman, DCD Board of Directors



Date

Pursuant to 1 CMC § 2153(e) and 1 CMC §9104(a)(3), the certified final regulations, modified as indicated above from the cited proposed regulations, have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General, and shall be published (1 CMC § 2153(f)).

Dated the 25 day of August, 2020



EDWARD MANIBUSAN
Attorney General

Filed and Recorded by:



ESTHER SN. NESBITT
Commonwealth Registrar

08.25.2020

Date

§ 25-10-910 Second Mortgage on Real Estate

Secondary mortgages are discouraged, but may be allowed if a Loan application has a strong economic feasibility and potential for success, the Loan Applicant has a good credit rating and excellent repayment ability, and the total outstanding principal debt of the holder of the first security interest and the proposed second mortgage shall not exceed more than thirty percent (30%) of the appraised value of the land for unimproved bare land or forty percent (40%) of the appraised value of the land for improved land and proposed improvements. ~~Third mortgages shall not be accepted.~~

§ 25-10-915 Third Mortgage on Real Estate

Third mortgages may be allowed, in addition, to either a first or second mortgage(s), if a loan application has a strong economic feasibility and potential for success, and the loan applicant has a good credit rating and excellent repayment ability. Third mortgages may also be allowed for loan revisions.

§ 25-10-920 Leasehold Mortgage

The total loan allowable on the first leasehold mortgage interest given as security shall not exceed fifty percent (50%) of the appraised leasehold value (existing as well as proposed leasehold improvements), but excluding the underlying value of the fee simple land. No loan secured only by a leasehold mortgage shall have a repayment term that is greater than the remaining term of the mortgaged lease. Prior to accepting a mortgage on a lease, the borrower shall obtain for DCD an estoppel certificate from the fee simple landowner certifying that the lease is in full force and effect and consenting to the mortgage of the leasehold interest.

§ 25-10-925 Chattel Mortgage and Inventories

Loans may further be secured by a chattel mortgage or a security interest on personal and/or business properties provided that such Loan amounts shall not exceed forty percent (40%) of the value of such personal and/or business properties, or of the purchase price thereof, whichever is lower, and provided that DCD receives a first lien on the chattel mortgage or security interest. Crops or agricultural products such as livestock, poultry and fish may not be used as security for any Loan due to their perishable nature.

§ 25-10-930 Additional Security

In addition to any one or combination of the above securities, the Board of Directors shall require individual guaranties from the shareholders of a corporation, the partners in an association or partnership and the owners and members of an LLC. The Board of Directors may also require individual guaranties from directors of a corporation and other managers of the loan applicant and may require an assignment of receivables and/or assignment of life or mortgage insurance from each Loan Applicant. All guarantors, endorsers or other cosigners are subject to the same credit underwriting standards as the principal loan applicant.

§ 25-10-935 Appraisals

The Board of Directors in determining the sufficiency of any real or personal property offered as security shall use the current market value of the property, and may require a complete appraisal report for all Loans greater than \$25,000 or a letter of appraisal (i.e., curbstone appraisal) for all Loans less than \$25,000, subject to the discretion of the Executive Director. All appraisals shall be by an appraiser approved and engaged by DCD. DCD shall contact the appraiser and order the appraisal; however, the cost of, and any expenses associated with, the appraisal shall be paid by and be the obligation of the Loan Applicant. The Board of Directors shall only approve and engage qualified appraisers who are U.S. educated, and who are licensed and authorized under applicable CNMI law to conduct business and to appraise commercial and residential property in the CNMI.

§ 25-10-940 Title Insurance

All Loans having real estate as security may be required to have title insurance policies naming CDA as the loss payee. All title insurance and title reports submitted to CDA must be from a CNMI licensed title insurance company. The expense of title insurance, casualty insurance and title opinions shall be paid solely by the Loan Applicant.

PART 1000 - INSURANCE

§ 25-10-1001 Property & Casualty Insurance ("P&C")

All Loans having real estate improvements as security shall have the necessary insurance policies insuring the improvements against any damage due to earthquake, fire, typhoon, and any other casualty and liability up to the full insurable value of the improvements. Such insurance shall be obtained from a company on the list of insurance companies approved by DCD and licensed to do business in the CNMI.

§ 25-10-1005 Surety

With respect to construction Loans, a Loan Applicant ~~shall~~ may be required to produce a performance and a payment bond each covering the full value of the project, the improvements and the construction cost. The DCD Board may waive any of the above requirements with adequate justification of a borrower's resources and experience, sufficient collateral to support the loan request, and with controlled disbursements, based on percentage of project completion. Most especially since the Northern Mariana Islands has smaller communities and limited access and higher costs associated with those type of services and professionals on their respective islands, which are sometimes exacerbated by extenuating circumstances beyond control.

§ 25-10-1010 Life Insurance

All fishing, farming and agricultural borrowers ~~are required~~ maybe required to maintain adequate life insurance in an amount equal to or greater than the outstanding balance of their Loan principal, interest and fees. This requirement of life insurance may only be waived upon a showing of three (3) declination letters from three (3) DCD approved life insurance companies. Depending on the planned use of the Loan proceeds and/or the risks involved with the business ventures, DCD may also require general commercial Loan borrowers to maintain life insurance in amounts DCD deems sufficient to adequately cover the Loan proceeds and/or risks involved. On all life insurance policies covering Loans, DCD shall be named as the first or primary beneficiary. Upon approval of a Loan application, DCD shall inform the Loan Applicant of any life insurance requirement. In the event the Loan Applicant has an existing life insurance policy, with coverage in excess of the Loan amount, the borrower may assign the benefits of the existing policy to DCD to satisfy the life insurance requirement. Unless the borrower has first obtained an acceptable waiver, no loan proceeds shall be disbursed to any borrower, until the requisite life insurance has been obtained and the first year premium has been paid in full.

§ 25-10-1015 P&C, Surety and Life Insurance Companies

Loan Applicants may be required to purchase all required insurance and bonds from any one of the several companies approved by DCD. DCD shall keep a list of such approved P&C, surety and life insurance companies for easy reference and the following shall apply:

- (a) Upon approval of the Loan Applicant's insurance application by the insurance firm, initial premiums may be paid, at the time of closing of the Loan, out of the first disbursement of loan proceeds;
- (b) Subsequent premiums shall be paid by the borrower in accordance with the insurance policies terms and conditions;
- (c) Should a borrower fail to pay any of the subsequent premiums, DCD may pay such premium on behalf of the borrower;
- (d) Should DCD pay such premium on behalf of the borrower, then the borrower's Loan shall be restructured to include the premium payment by DCD, and any related fees, in the principal amount owed. In the event a loan is restructured, the borrower shall be advised by DCD of the new monthly payment amounts.
- (e) Borrowers may, at any time during the term of their Loans, select a different insurance firm, as long as the newly selected insurance firm can satisfactorily meet the insurance requirements of DCD and is on the DCD approved list of companies; and



**MARIANAS
VISITORS AUTHORITY**

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FAX: (670) 664-3237
E-mail: info@mymarianas.com
www.mymarianas.com



Public Notice of Adoption to the Procurement Regulations for the Marianas Visitors Authority

Notice of Adoption: The Marianas Visitors Authority (MVA) Board of Directors approved the adoption of the following amendments to its Procurement Regulations at its meeting of August 5th, 2020.

Prior Publication: These regulations were proposed on March 12, 2020, and appeared in the June 28, 2020 Commonwealth Register [42 Com. Reg. 43697].

Modifications from Proposed Regulations, If Any: The proposed amendments to NMIAC § 90-20-210(b)(2) is amended to read as follows:

“The Managing Director may make small purchases of \$1,000 by any commercially reasonable method and shall exercise best efforts to ensure responsible expenditure of MVA funds. Purchase orders may be used for such transactions. Procurement requirements shall not be artificially divided as to constitute a small purchase of \$1,000 or less.”

NMIAC § 90-20-210(d)(1) to read as follows:


“The Chair of the MVA Board is the expenditure authority for small purchases between \$1,000.01 and \$10,000.”

Authority: These amendments are promulgated under the authority of 4 CMC 2124(d), which authorizes MVA to adopt procurement and supply regulations consistent with those of the Commonwealth government, and 4 CMC § 2128, which grants MVA the authority to adopt rules and regulations.


Effective Date: These amendments will become effective ten days after publication of this Notice of Adoption in the Commonwealth Register. 1 CMC § 9105(b).

Comments and Agency Concise Statement: The proposed amendments would change the way the MVA conducts small purchases. MVA received no written or oral comments from the public regarding these amendments.

Submitted by:  Date: 08.24.2020
Marian Aldan-Pierce, MVA Chair

Filed and Recorded by:  Date: 08.27.2020
Esther SN. Nesbitt
Commonwealth Registrar

I certify, pursuant to 1 CMC § 2153(e) and 1 CMC § 9104(a)(3), that I have reviewed and approved these regulations as to form and legal sufficiency.

 Date: 8/27/2020
Edward Manibusan
Attorney General



Commonwealth of the Northern Mariana Islands
BOARD OF PROFESSIONAL LICENSING
 P.O. Box 502078, Bldg., 1242 Pohnpei Court
 Capitol Hill, Saipan, MP 96950
 Tel No: (670) 664-4809 Fax: (670) 664-4814
 Email: cnmi@cnmibpl-hcplb.net
 Website: cnmibpl-hcplb.net



**NOTICE OF PROPOSED AMENDMENTS TO THE
 BOARD OF PROFESSIONAL LICENSING BOARD SEAL**

INTENDED ACTION TO ADOPT THESE PROPOSED REGULATIONS: The Board of Professional Licensing (BPL) 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 compliance with 1 CMC §§ 9102 and 9104(a) or (b) (1 CMC § 9105(b)).

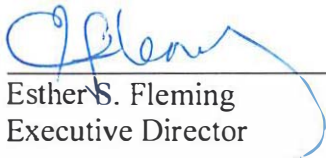
AUTHORITY: The Board of Professional Licensing has statutory power to promulgate and effect regulations pursuant to P.L. 14-95, as amended.

THE TERMS AND SUBSTANCE: The attached proposed amendment is to impose the picture of the Board of Professional Licensing Board Seal.


THE SUBJECTS AND ISSUES INVOLVED: Adding the actual picture of the Board of Professional Licensing Board Seal to the regulation:

- 1. § 125-20.1-801 Board Seal

DIRECTIONS FOR FILING AND PUBLICATION: The Board is soliciting comments regarding these proposed amendments which must be received by the Board within thirty (30) days of first publication of this notice in the Commonwealth Register. Interested persons may request copies of the proposed amendments by contacting us at 664-4809 or by email at cnmi@cnmibpl-hcplb.net or come by our office located at Bldg. 1242, Pohnpei Ct., Capitol Hill, Saipan. Written comments on these amendments should be dropped off at our office or sent to the BPL, P.O. Box 502078, Saipan, MP, 96950.

Submitted By: 
 Esther S. Fleming
 Executive Director

08/13/20
 Date

Received By: 
 Matilda A. Rosario
 Special Assistant for Administration

08/17/2020
 Date

Filed and Recorded By:

Esther SN Nesbitt
Esther SN Nesbitt
Commonwealth Register

08-19-2020

Date

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).

Edward Manibusan
EDWARD MANIBUSAN
Attorney General

8/19/2020
Date



Commonwealth of the Northern Mariana Islands
BOARD OF PROFESSIONAL LICENSING
P.O. Box 502078, Bldg., 1242 Pohnpei Court
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Website: cnmibpl-hcplb.net



NUTISIA PUT I MANMAPROPONI NA AMENDA PARA I KUETPUN PROFESSIONAL LICENSING BOARD SEAL

I AKSION NI MA'INTENSIONA PARA U MA'ADAPTA ESTI I MANMAPROPONI NA

REGULASION SIHA: I Kuetpun "Professional Licensing" (BPL) ha intensiona para u adapta kumu petmanienti na regulasion siha i mañechettun na Manmaproponi na Regulasion siha, sigun gi manera siha gi Åktun i Administrative Procedure, 1 CMC § 9104(a). I Regulasion siha para u ifektibu gi dies (10) dihas dispues di "compliance" yan i 1 CMC §§ 9102 yan i 9104 (a) pat i (b) (1 CMC § 9105 (b)).

ATURIDÁT: I Kuetpun "Professional Licensing" gai aturidát para u cho'gui yan na'huyung I regulasi6n siha sigun para i P.L. 14-95, komu ma'amenda.

I TEMA YAN SUSTANSIAN I PALÁBRA SIHA: I mañechettun na manmaproponi na amenda para i pinegan litratun i Kuetpun "Professional Licensing Board Seal."

SUHETU YAN ASUNTU NI TINEKKA: I hinahålum i aktu na litratun i Kuetpun "Professional Licensing Board Seal" para i regulasi6n:

2. § 125-20.1-801 Seyun Kuetpu

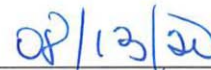
DIRECTIONS FOR FILING AND PUBLICATION: DIREKSION PARA U MAPO'LU YAN

MAPUPBLIKA: I Kuetpu mamamaisin upiñon siha put esti i manmaproponi na amendasion siha ni debi na u marisibi ni Kuetpu gi hålum i trenta (30) dihas gi primet na publikasion esti na nutisia gi hålum i Rehistran Commonwealth. I manintirisáo na petsona siña marikuesta kopia nu i manmaproponi na amenda. Ågang ham gi 664-4809 pat i email gi cnmi@cnmibpl-hcplb.net pat bisita i ufisinan-måmi ni gaigi gi Bldg. 1242, Pohnpei Ct., Capito Hill, Saipan. I tinigi' upiñon put esti na amendasion siha debi na u machuli' guatu gi ufisinan-måmi pat na'hånáo para i BPL, P. O. Box 502078, Saipan, MP 96950.

Nina'hålum as:




Esther S. Fleming
Direktot Eksakatibun i HCPLB



Fetcha

Rinisibi as:




Matilda A. Rosario
Ispisiåt na Ayudånti para i Atministrasi6n



Fetcha


Pine'lu yan
Ninota as:



Esther SN Nesbitt
Rehistran Commonwealth

08.19.2020
Fetcha

Sigun i 1 CMC § 2153(e) (I Abugâdu Henerât ha aprueba i regulasion siha na para u macho'gui kumu fotma) yan 1 CMC § 9104(a) (3) (ahentan inaprueban Abugâdu Henerât) i manmaproponi na Regulasion siha ni mañechettun guini ni manmaribisa yan manma'aprueba kumu fotma yan sufisienti ligât ginin i CNMI Abugâdu Henerât yan debi na u mapublika, 1 CMC § 2153(f) (pupublikasion i areklamentu yan regulasion siha).



EDWARD MANIBUSAN
Abugâdu Henerât

8/19/2020
Fetcha



Commonwealth of the Northern Mariana Islands
BOARD OF PROFESSIONAL LICENSING
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 Website: cnmibpl-hcplb.net



**ARONGORONG REEL POMMWOL LIIWEL NGÁLI
 BOARD OF PROFESSIONAL LICENSING BOARD SEAL**

MÁNGEMÁNGIL MWÓGHUT REEL REBWE ADÓPTÁÁLI POMMWOL MWÓGHUTUGHUT KKal: Board-il Professional Licentins (BPL) re mángemángil rebwe adóptááli Pommwol Mwóghutughut ikka e appasch bwe ebwe lléghló mwóghutughutúl, sáangi mwóghutughutúl Administrative Procedure Act, 1 CMC § 9104(a). Ebwe bwunguló mwóghutughut kkal llól seigh ráál mwiril aal angúungU fengál me 1 CMC §§ 9102 me 9104(a) ngáre (b) (1 CMC § 9105(b)).

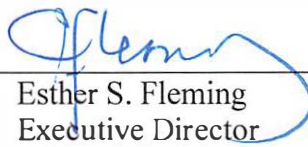
BWÁNGIL: Eyoor aar “statutory power” Board of Professional Licensing reel rebwe arongawow me mwirilóól mwóghutughut sáangi P.L. 14-95, igha aa liiwel.

KKAPASAL ME AWEEWEL: Pommwol liiwel ikka e appasch ebwe ffat literóoto Board of Professional Licensing Board Seal.


KKAPASAL ME ÓUTOL: Aschuulong literóotol Board of Professional Licensing Board Seal ngáli mwóghutughut:

- § 125-20.1-801 Board Seal

AFAL REEL AMMWELIL ME AKKATÉÉWOWUL: Board re tingór kkapas iye e ssúl ngáli pommwol liiwel kkal iye rebwe bwughi sáangi Board llól eliigh (30) ráál mwiril aal akkatééwow arongorong yeel me llól Commonwealth Register. Schóó kka re tipáli pappidil pommwol liiwel yeel rebwe faingi gháámem me 664-4809 ngáre sáangi email me cnmi@cnmibpl-hcplb.net ngáre mweteto bwulasiyo iye áámem me Bldg. 1242, Pohnpei Ct., Asúngúl, Seipál. Ischil kkapas reel liiwel kkal ebwe bweibwigholó reel áámem bwulasiyo ngáre afanga ngáli BPL, P. O. box 502078, Saipan, MP, 96950.

Isáliyalong: 
 Esther S. Fleming
 Executive Director


 Ráál

Bwughiyal: 
 Matilda A. Rosario
 Special Assistant ngáli Administration


 Ráál

Ammwelil: Esther SN Nesbitt
Commonwealth Register

08.19.2020
Ráál

Sáangi 1 CMC § 2153(e) (sáangi átirowal AG bwe aa lléghló reel fféerúl) me 1 CMC § 9104 (a) (3) (sáangi átirowal AG) reel pommwol mwóghutughut ikka e appasch bwe ra takkal amwuri fischiiy me aa lléghló reel fféerúl me legal sufficiency sáangi Soulemelemil Allégh Lapalapal CNMI me ebwe akkatééwow, 1 CMC § 2153(f) (arongowowul allégh me mwóghutughut).

Edward Manibusan
EDWARD MANIBUSAN
Soulemelemil Allégh Lapalap

8/19/2020
Ráál

§ 125-20.1-801 **Board Seal**

The official seal of the Board shall be a metal impression seal consisting of four symbols imposed inside the smaller circle representing the islands: a large latte stone with a star placed on the capstone; a Carolinian outrigger canoe; two fairy terns flying in pairs; and a Carolinian mwar. Imposed on the bottom portion of the small circle is the date the Board was established. In the outer annular space are the words “Board of Professional Licensing” and “Commonwealth of the Northern Mariana Islands.”





Commonwealth of the Northern Mariana Islands
HEALTH CARE PROFESSIONS LICENSING BOARD

P.O. Box 502078, Bldg., 1242 Pohnpei Court
Capitol Hill, Saipan, MP 96950

Tel No: (670) 664-4809 Fax: (670) 664-4814

Email: cnmi@cnmibpl-hcplb.net

Website: cnmibpl-hcplb.net



**NOTICE OF PROPOSED AMENDMENTS TO THE
HEALTH CARE PROFESSIONS LICENSING BOARD SEAL**

INTENDED ACTION TO ADOPT THIS PROPOSED REGULATION: The Health Care Professions Licensing Board (HCPLB) intends to adopt as permanent regulation the attached Proposed Amendment to the Board Seal, pursuant to the procedures of the Administrative Procedure Act, 1 CMC § 9104(a). The regulation would become effective 10 days after compliance with 1 CMC §§ 9102 and 9104(a) or (b) (1 CMC § 9105(b)).

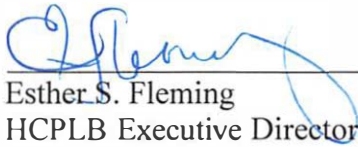
AUTHORITY: The Health Care Professions Licensing Board has statutory power to promulgate and effect regulations pursuant to 3 CMC § 2206(e), as amended.

THE TERMS AND SUBSTANCE: The attached proposed amendment is to impose the picture of the Health Care Professions Licensing Board Seal.


THE SUBJECTS AND ISSUES INVOLVED: Adding the actual picture of the Health Care Professions Licensing Board Seal to the regulation:

1. § 140-50.3-140 – Seal

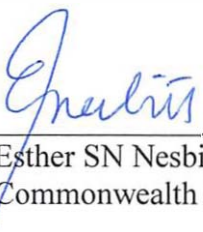
DIRECTIONS FOR FILING AND PUBLICATION: The Board is soliciting comments regarding this proposed amendment which must be received by the Board within thirty (30) days of first publication of this notice in the Commonwealth Register. Interested persons may request copies of the proposed amendment by contacting us at 664-4809 or by email at cnmi@cnmibpl-hcplb.net or come by our office located at Bldg. 1242, Pohnpei Ct., Capitol Hill, Saipan. Written comments on these amendments should be dropped off at our office or sent to the BPL, P.O. Box 502078, Saipan, MP, 96950.

Submitted By: 
Esther S. Fleming
HCPLB Executive Director

08/13/20
Date

Received By: 
Matilda A. Rosario
Special Assistant for Administration

08/17/2020
Date

Filed and Recorded By: 
Esther SN Nesbitt
Commonwealth Registrar

08.19.2020
Date

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).


EDWARD MANIBUSAN
Attorney General

8/19/2020
Date



Commonwealth of the Northern Mariana Islands
HEALTH CARE PROFESSIONS LICENSING BOARD
 P.O. Box 502078, Bldg., 1242 Pohnpei Court
 Capitol Hill, Saipan, MP 96950
 Tel No: (670) 664-4809 Fax: (670) 664-4814
 Email: cnmi@cnmibpl-hcplb.net
 Website: cnmibpl-hcplb.net



**NUTISIA PUT I MANMAPROPONI NA AMENDA PARA I
 HEALTH CARE PROFESSIONS LICENSING BOARD SEAL**

**I AKSION NI MA'INTENSIONA PARA U MA'ADAPTA ESTI I MANMAPROPONI NA
 REGULASION:** I "Health Care Professions Licensing Board" (HCPLB) ha intensiona na para u adãpta kumu petmanienti na regulasion siha i mañechettun na Manmaproponi na Amenda para i Seyun Kuetpu, sigun gi manera siha gi Åktun i Administrative Procedure, 1 CMC § 9104(a). I Regulasion siha para u ifektibu gi dies (10) dihas dispues di "compliance" yan i 1 CMC §§ 9102 yan i 9104 (a) pat i (b) (1 CMC § 9105 (b)).

ATURIDÁT: I Health Care Professions Licensing Board gai aturidát para u cho'gui yan na'huyung i regulasion siha sigun para i 3 CMC § 2206(e), komu ma'amenda.

I TEMA YAN SUSTANSIAN I PALÁBRA SIHA: I mañechettun na manmaproponi na amenda para i pinegan litrátun i "Health Care Professions Licensing Board Seal."


SUHETU YAN ASUNTU NI TINEKKA: I hinahålum i aktu na litrátun i "Health Care Professions Licensing Board Seal para i regulasion:

- 2. § 140-50.3-140 – Seyu

**DIRECTIONS FOR FILING AND PUBLICATION: DIREKSION PARA U MAPO'LU YAN
 MAPUPBLIKA:** I Kuetpu mamamaisin upiñon siha put esti i manmaproponi na amendasion siha ni debi na u marisibi ni Kuetpu gi hålum i trenta (30) dihas gi primet na publikasion esti na nutisia gi hålum i Rehistran Commonwealth. I manintirisão na petsona siña marikuesta kopia nu i manmaproponi na amenda. Ågang ham gi 664-4809 pat i email gi cnmi@cnmibpl-hcplb.net pat bisita i ufisinin-mãmi ni gaigi gi Bldg. 1242, Pohnpei Ct., Capito Hill, Saipan. I tinigi' upiñon put esti na amendasion siha debi na u machuli' guatu gi ufisinin-mãmi pat na'hånão para i BPL, P. O. Box 502078, Saipan, MP 96950.


Nina'hålum as: 
 Esther S. Fleming
 Direktot Eksakatibun i HCPLB


 Fetcha

Rinisibi as: 
 Matilda A. Rosario
 Ispisiãt na Ayudãnti para i Atministrasiõn


 Fetcha

Pine'lu yan
Ninota as:



Esther SN Nesbitt
Rèhistran Commonwealth

08.19.2020
Fetcha

Sigun i 1 CMC § 2153(e) (1 Abugâdu Henerât ha aprueba i regulasion siha na para u macho' gui kumu fotma) yan 1 CMC § 9104(a) (3) (ahentan inapruedan Abugâdu Henerât) i manmaproponi na Regulasion siha ni mañechettun guini ni manmaribisa yan manma'aprueba kumu fotma yan sufisienti ligât ginin i CNMI Abugâdu Henerât yan debi na u mapupblika, 1 CMC § 2153(f) (publikasion i areklamentu yan regulasion siha).



EDWARD MANIBUSAN
Abugâdu Henerât

8/19/2020
Fetcha



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**ARONGORONG REEL POMMWOL LIIWEL NGÁLI
 HEALTH CARE PROFESSIONS LICENSING BOARD SEAL**

MÁNGEMÁNGIL MWÓGHUT REEL REBWE ADÓPTÁÁLI POMMWOL MWÓGHUTUGHUT: Health Care Professions Licensing Board (HCPLB) re mángemángil rebwe adóptááli mwóghutughut bwe ebwe lléghló Pommwol Liiwel ngáli Board Seal, sáangi mwóghutughutúl Administrative Procedure Act, 1 CMC § 9104(a). Ebwe bwunguló mwóghutughut kkal llól seigh ráál mwiril aal angúungú fengál me 1 CMC §§ 9102 me 9104(a) ngáre (b) (1 CMC § 9105(b)).

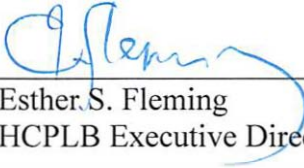
BWÁNGIL: Eyoor aal Health Care Professions Licensing Board “statutory power” reel rebwe arongawow me mwirilóól mwóghutughut sáangi ngáli 3 CMC § 2206 (e), igha aa liiwel.


KKAPASAL ME AWEEWEL: Pommwol liiwel iye e appasch ebwe ffat literóótol Health Care Professions Licensing Board Seal.


KKAPASAL ME ÓUTOL: Aschuulong literóótol Health Care Professions Licensing Board Seal ngáli mwóghutughut:

1. § 140-50.3-140 – Seal

AFAL REEL AMMWELIL ME AKKATÉÉWOWUL: Board re tingór kkapas iye e ssúl ngáli pommwol liiwel kkal iye rebwe bwughi sáangi Board llól eliigh (30) ráál mwiril aal akkatééwow arongorong yeel me llól Commonwealth Register. Schóó kka re tipáli pappidil pommwol liiwel yeel rebwe faingi gháámem me 664-4809 ngáre sáangi email me cnmi@cnmibpl-hcplb.net ngáre mweteto bwulasiyo iye áámem me Bldg. 1242, Pohnpei Ct., Asúngúl, Seipál. Ischil kkapas reel liiwel kkal ebwe bweibwigholó reel áámem bwulasiyo ngáre afanga ngáli BPL, P. O. box 502078, Saipan, MP, 96950.

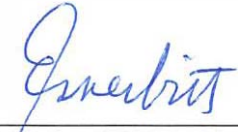
Isáliyalong: 
 Esther S. Fleming
 HCPLB Executive Director


 Ráál

Bwughiyal: 
 Matilda A. Rosario
 Special Assistant ngáli Administration


 Ráál

Ammwelil:



Esther SN Nesbitt
Commonwealth Registrar

08.19.2020

Ráal

Sáangi 1 CMC § 2153(e) (sáangi átirowal AG bwe aa lléghló reel fféerúl) me 1 CMC § 9104 (a) (3) (sáangi átirowal AG) reel pommwol mwóghutughut ikka e appasch bwe ra takkal amwuri fischiiy me aa lléghló reel fféerúl me legal sufficiency sáangi Soulemelemil Allégh Lapalalap CNMI me ebwe akkatééwow, 1 CMC § 2153(f) (arongowowul allégh me mwóghutughut).



EDWARD MANIBUSAN
Soulemelemil Allégh Lapalalap

8/19/2020

Ráal

§ 140-50.3-140 Seal

The Board shall have a seal and shall provide for its use. The official seal of the Board shall be a metal impression seal consisting of four symbols imposed inside the smaller circle representing the islands: a large latte stone with a caduceus symbol for medicine place in front of the capstone; a Carolinian outrigger canoe, two fairy terns flying in pairs; and a Carolinian mwar. Imposed on the bottom portion of the small circle is the date the Board was established. In the outer annular space are the words “Health Care Professions Licensing Board” and “Commonwealth of the Northern Mariana Islands”.





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**NOTICE OF PROPOSED AMENDMENTS TO THE
 HEALTH CARE PROFESSIONS LICENSING BOARD FOR DENTISTS, DENTAL ASSISTANTS,
 DENTAL HYGIENISTS, AND DENTAL THERAPISTS**

INTENDED ACTION TO ADOPT THIS PROPOSED REGULATION: The Health Care Professions Licensing Board (HCPLB) intends to adopt as permanent regulation the attached Proposed Amendment, pursuant to the procedures of the Administrative Procedure Act, 1 CMC § 9104(a). The regulation would become effective 10 days after compliance with 1 CMC §§ 9102 and 9104(a) or (b) (1 CMC § 9105(b)).

AUTHORITY: The Health Care Professions Licensing Board has statutory power to promulgate and effect regulations pursuant to 3 CMC § 2206(b) and § 2212(f), (g) and (h), as amended.


THE TERMS AND SUBSTANCE: The attached proposed amendment is to amend the regulations for Dentists, Dental Assistants, Dental Hygienists, and Dental Therapists.

THE SUBJECTS AND ISSUES INVOLVED: Amendment to the regulation is to amend the regulations to make it more consistent with the American Dental Association governing Dentists, Dental Assistants, Dental Hygienists, and Dental Therapists.

DIRECTIONS FOR FILING AND PUBLICATION: The Board is soliciting comments regarding this proposed amendment which must be received by the Board within thirty (30) days of first publication of this notice in the Commonwealth Register. Interested persons may request copies of the proposed amendment by contacting us at 664-4809 or by email at cnmi@cnmibpl-hcplb.net or come by our office located at Bldg. 1242, Pohnpei Ct., Capitol Hill, Saipan. Written comments on these amendments should be dropped off at our office or sent to the BPL, P.O. Box 502078, Saipan, MP, 96950.

Submitted By: 
 Esther S. Fleming
 Executive Director

08/13/20
 Date

Received By: 
 Matilda A. Rosario
 Special Assistant for Administration

08/17/2020
 Date

Filed and Recorded By:



Esther SN Nesbitt
Commonwealth Registrar

08.19.2020

Date

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).



EDWARD MANIBUSAN
Attorney General

8/19/2020

Date



Commonwealth of the Northern Mariana Islands
HEALTH CARE PROFESSIONS LICENSING BOARD
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**NUTISIA PUT I MANMAPROPONI NA AMENDA SIHA PARA I
 HEALTH CARE PROFESSIONS LICENSING BOARD PARA I MANDENTISTA,
 MANAYUDÁNTI NA DENTISTA, “HYGIENISTS” NA MANDENTISTA, YAN “THERAPISTS”
 NA MANDENTISTA**

I AKSION NI MA’INTENSIONA PARA U MA’ADÁPTA ESTI I MANMAPROPONI NA REGULASION: I “Health Care Professions Licensing Board” (HCPLB) ha intensiona na para u adápta kumu petmanienti na regulasion siha i mañechettun na Manmaproponi na Amenda, sigun gi manera siha gi Áktun i Administrative Procedure, 1 CMC § 9104(a). I Regulasion siha para u ifektibu gi dies (10) dihas dispues di “compliance” yan i 1 CMC §§ 9102 yan i 9104 (a) pat i (b) (1 CMC § 9105 (b)).

ATURIDÁT: I Health Care Professions Licensing Board gai aturidát para u cho’gui yan na’huyung i regulasion siha sigun para i 3 CMC § 2206(e) yan § 2212(f), (g) yan (h), komu ma’amenda.


I TEMA YAN SUSTÁNSIAN I PALÁBRA SIHA: I mañechettun na manmaproponi na amenda sa’ para u amenda i regulasion para i Mandentista, Manayudánti na Dentista, “Hygienists” na Mandentista, yan “Therapist” na Mandentista siha.

SUHETU YAN ASUNTU NI TINEKKA: I amenda para i regulasion sa’ para u amenda i regulasion siha para u na’más kunsisti yan i “American Dental Association” ni ha gubiebietna i Mandentista, i Manayudánti na Mandentista, “Hygienists” na Mandentista, yan i “Therapist” na Mandentista.

DIRECTIONS FOR FILING AND PUBLICATION: DIREKSION PARA U MAPO’LU YAN MAPUPBLIKA: I Kuetpu mamamaisin upiñon siha put esti i manmaproponi na amendasion siha ni debi na u marisibi ni Kuetpu gi hálum i trenta (30) dihas gi primet na publikasion esti na nutisia gi hálum i Rehistran Commonwealth. I manintirisáo na petsona siña marikuesta kopia nu i manmaproponi na amenda. Ágang ham gi 664-4809 pat i email gi cnmi@cnmibpl-hcplb.net pat bisita i ufisinan-mâmi ni gaigi gi Bldg. 1242, Pohnpei Ct., Capito Hill, Saipan. I tinigi’ upiñon put esti na amendasion siha debi na u machuli’ guatu gi ufisinan-mâmi pat na’hânáo para i BPL, P. O. Box 502078, Saipan, MP 96950.


Nina’hálum as: 
 Esther S. Fleming
 Direktot Eksakatibun i HCPLB


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Rinisibi as: 
 Matilda A. Rosario
 Ispisiát na Ayudánti para i Atministrasion


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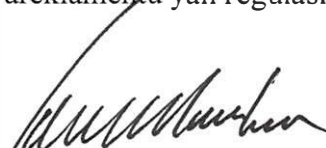
Pine'lu yan
Ninota as:



Esther SN Nesbitt
Rehistran Commonwealth

08.19.2020
Fetcha

Sigun i 1 CMC § 2153(e) (I Abugådu Heneråt ha aprueba i regulasion siha na para u macho'gui kumu fotma) yan 1 CMC § 9104(a) (3) (ahentan inaprueban Abugådu Heneråt) i manmaproponi na Regulasion siha ni mañechettun guini ni manmaribisa yan manma'aprueba kumu fotma yan sufisienti ligåt ginin i CNMI Abugådu Heneråt yan debi na u mapublika, 1 CMC § 2153(f) (publikasion i areklamentu yan regulasion siha).



EDWARD MANIBUSAN
Abugådu Heneråt

8/19/2020
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Commonwealth of the Northern Mariana Islands
HEALTH CARE PROFESSIONS LICENSING BOARD
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**ARONGORONG REEL POMMWOL LIIWEL NGÁLI
HEALTH CARE PROFESSIONS LICENSING BOARD NGÁLIIR “DENTIST”, “DENTAL
ASSISTANTS”, “DENTAL HYGIENISTS”, ME “DENTAL THERAPISTS”**

**MÁNGEMÁNGIL MWÓGHUT REEL REBWE ADÓPTÁÁLI POMMWOL MWÓGHUTUGHUT
KKAL:** Health Care Professions Licensing Board (HCPLB) re mángemángil rebwe adóptááli Pommwol Liiwel ikka e appasch bwe ebwe lléghló mwóghutughutúl, sángi mwóghutughutúl Administrative Procedure Act, 1 CMC § 9104(a). Ebwe bwunguló mwóghutughut kkal llól seigh ráál mwiril aal abwungubwung sángi 1 CMC §§ 9104(a) ngáre (b) (1 CMC § 9105(b)).

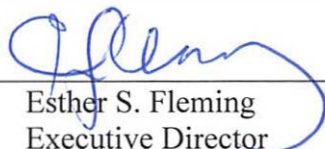
BWÁNGIL: Eyoor aar “statutory power” Health Care Professions Licensing Board reel rebwe arongowow me mwirilóól mwóghutughut sángi 3 CMC § 2206(b) me § 2212(f), (g) me (h), igha aa liiwel.

KKAPASAL ME AWEEWEL: Pommwol liiwel ikka e appasch ebwe liiweli mwóghutughut ngáliir “Dentists”, “Dental Assistants”, “Dental Hygienists”, me “Dental Therapists”.

KKAPASAL ME ÓUTOL: Liiwel ngáli mwóghutughut ebwe siiweli mwóghutughut bwe ebwe ffil ngáli American Dental Association iye e lemeli “Dentists”, “Dental Assistants”, “Dental Hygienists”, me “Dental Therapists”.

AFAL REEL AMMWELIL ME AKKATÉÉWOWUL: Board re tingór kkapas iye e ssúl ngáli pommwol liiwel iye Board rebwe bwughi llól eliigh (30) ráál reel aal akkatééwow arongorong yeel me llól Commonwealth Register. Schóó kka re tipáli pappidil pommwol liiwel rebwe faingi gháámem me 664-4809 ngáre email ngáli cnmi@cnmibpl-hcplb.net ngáre mweteto reel áámem bwulasiyo iye e lo Bldg. 1245, Pohnpei Ct, Asúngúl, Seipél. Ischil kkapas reel liiwel kkal ebwe bweibwogholó reel áámem bwulasiyo ngáre afanga ngáli BPL, P.O. Box 502078, Saipan, MP, 96950.

Isáliyalong:




Esther S. Fleming
Executive Director



Ráál

Bwughiyal:



Matilda A. Rosario
Special Assistant ngáli Administration



Ráál

Ammwelil:



Esther SN Nesbitt
Commonwealth Registrar

08.19.2020

Ráál

Sáangi 1 CMC § 2153(e) (sáangi átirowal AG bwe aa lléghló reel fféerúl) me 1 CMC § 9104 (a) (3) (sáangi átirowal AG) reel pommwol mwóghutughut ikka e appasch bwe ra takkal amwuri fischiiy me aa lléghló reel fféerúl me legal sufficiency sáangi Soulemelemil Allégh Lapalapal CNMI me ebwe akkatééwow, 1 CMC § 2153(f) (arongowowul allégh me mwóghutughut).



EDWARD MANIBUSAN
Soulemelemil Allégh Lapalap

8/19/2020

Ráál

Part 2500- ~~Dental Assistant~~ [Reserved]

Part 2600 - Dentists, Dental Assistants, Dental Hygienists and Dental Therapists

§ 140-50.3-2601	Definitions
§ 140-50.3-2603 5	Exemptions from License Requirements
§ 140-50.3-2604 10	Licensure by Endorsement
§ 140-50.3-2605 15	Dentist – Licensure
§ 140-50.3-2608 20	Dentist – Scope of Practice
§ 140-50.3-2610 25	Dentist – Continuing Dental Education
§ 140-50.3-2615 30	Dental Hygienist – Licensure
§ 140-50.3-2617 35	Dental Hygienist – Scope of Practice
§ 140-50.3-2618 40	Dental Hygienist – Continuing Dental Education (CDE)
§ 140-50.3-2620 45	Dental Therapist – Licensure
§ 140-50.3-2623 50	Dental Therapist – Scope of Practice
§ 140-50.3-2625 55	Dental Therapist – Continuing Dental Education (CDE)
§ 140-50.3-2630 60	Dental Assistant – Registration
§ 140-50.3-2633 65	Dental Assistant – Scope of Practice
§ 140-50.3-2640 70	[Reserved]
§ 140-50.3-2650 75	Schedule of Fees
§ 140-50.3-2655 80	Renewal
§ 140-50.3-2660 85	[Reserved]
§ 140-50.3-2665 90	Infection Control
§ 140-50.3-2668 95	Prescribing, Ordering or Dispensing Medication
§ 140-50.3-2670 700	Prohibition on Interference by a Non-Dentist
§ 140-50.3-2673 701	Designation of a Dental Director
§ 140-50.3-2675 705	Patient Records and Their Transfer
§ 140-50.3-2678 710	Requirements for General Anesthesia, Parenteral Sedation, and Oral Sedation
§ 140-50.3-2680 715	Patient Rights
§ 140-50.3-2682 720	Impaired Dentists or Dental Hygienists
§ 140-50.3-2684 725	Reporting Requirements
§ 140-50.3-2685 730	Disciplinary Action
§ 140-50.3-2690 735	Principles of Ethics and Code of Professional Conduct

Part 2700 ~~Dentist~~ {Reserved}

- (a) “**ADA**” is the American Dental Association.
- (b) “**ADHA**” is the American Dental Hygiene Association.
- (c) “**Administer local anesthetic agents,**” means the administration of local anesthetic agents by injection, both infiltration and block, limited to the oral cavity, for the purpose of pain control.
- (d) “**Conscious sedation**” is a minimally depressed level of consciousness that retains the patient’s ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal command and that is produced by a pharmacological or non-pharmacological method or a combination thereof.
- (e) “**Continuing Dental Education (CDE)**” consists of dental educational activities designed to review existing concepts and techniques, to convey information beyond the basic dental education, and to update knowledge on advances in scientific, clinical, and nonclinical practice related subject matter, including evidence-based dentistry. The objective is to improve the knowledge, skills, and ability of the individual to provide the highest quality of service to the public and the profession. All continuing dental education should strengthen the habits of critical inquiry and balanced judgment that denote the truly professional and scientific person and should make it possible for new knowledge to be incorporated into the practice of dentistry as it becomes available.
- (f) “**CPR**” means cardiopulmonary resuscitation.
- (g) “**DEA Registration**” means the license given to qualified practitioners to prescribe order or dispense a controlled substance, by the federal Drug Enforcement Agency (DEA).
- (h) “**Deep sedation**” is an induced state of depressed consciousness accompanied by partial loss of protective reflexes, including the inability to continually maintain an airway independently and/or to respond purposefully to physical stimulation or verbal command, and is produced by a pharmacological or non-pharmacological method or a combination thereof.
- (i) “**Dental Assistant**” means an auxiliary employee of a licensed dentist(s) who performs supportive chair side procedures under the direct supervision and full responsibility of that licensed dentist.
- (j) “**Dental Hygiene**” means the delivery of preventive, educational, and clinical services supporting total health for the control of oral disease and the promotion of oral health provided by a dental hygienist within the scope of his or her education, training, and experience.
- (k) “**Dental Hygienist**” is a mid-level dental health care provider who has been duly licensed by the Board to practice dental hygiene in the CNMI and to engage in clinical procedures primarily concerned with the performance of preventive dental services that are performed in accordance with the rules and regulations of the Board.
- (l) “**Dental Specialist**” means a dentist who has received advanced training and certification in an ADA-recognized dental specialty and is licensed as a dental specialist by the Board.
- (m) “**Dental Specialty**” means any of the dental specialties which are currently recognized by the American Dental Association which currently include the following: Dental Public Health,

Endodontics, Oral and Maxillofacial Pathology, Oral and Maxillofacial Radiology, Oral and Maxillofacial Surgery, Orthodontics and Dentofacial Orthopedics, Pediatric Dentistry, Periodontics, and Prosthodontics.

- (n) **“Dental Therapist”** is a mid-level dental health care provider given advanced duties and responsibilities in patient care, having professional education and training as required by the Board, and who has been duly licensed by the Board to practice dental therapy in the CNMI, as defined by the rules and regulations thereof.
- (o) **“Dentist”** means a person who has been duly licensed by the Board to practice dentistry in the CNMI, as hereafter defined.
- (p) **“Dentistry”** is the diagnosis or treatment, by surgery or other method, of diseases and lesions and the correction of malposition’s of the human teeth, alveolar process, gums, jaws, or associated structures; and such diagnosis or treatment may include all necessary related procedures as well as the use of drugs, anesthetic agents, and physical evaluation. Without limiting the foregoing, a person practices dentistry within the meaning of this chapter who does any one or more of the following:
- (1) By written, verbal, or in any other way advertises him or herself or represents him or herself to be a dentist able to perform procedures on patients in the CNMI;
 - (2) Performs or offers to perform an operation or diagnosis of any kind, or treats diseases or lesions of the human teeth, alveolar process, gums, jaws, or associated structures, or corrects malposed positions thereof;
 - (3) In any way indicates that he will perform by himself or his agents or servants any operation upon the human teeth, alveolar process, gums, jaws, or associated structures, or in any way indicates that he will construct, alter, repair, or sell any bridge, crown, denture, or other prosthetic appliance or orthodontic appliance;
 - (4) Makes, or offers to make, an examination of, with the intent to perform or cause to be performed any operation on the human teeth, alveolar process, gums, jaws, or associated structures.
- (q) ~~**“Direct Supervision”** means a licensed dentist is in the dental facility and~~
- ~~(1) — Personally diagnoses the condition to be treated; or~~
 - ~~(2) — Confirms the diagnosis, personally authorizes the procedures, and before dismissal of the patient, evaluates the performance of the dental auxiliary.~~
- ~~**“Direct Supervision”** means that the dentist is available for consultation over procedures which the dentist has authorized, and for which the dentist remains responsible. To qualify as direct supervision, the dentist must either be physically present in the dental facility, or supervise using teledentistry.~~
- (r) **“Dispense”** means to give out a medication.
- (s) **“General anesthesia”** means a controlled state of unconsciousness intentionally produced by anesthetic agents and accompanied by partial or complete loss of protective reflexes, including the inability to independently maintain an airway and respond purposely to physical stimulation or verbal command.
- (t) **“General Supervision”** means a licensed dentist has authorized the procedures and they are being carried out in accordance with the dentist’s diagnosis and treatment plan.

(u) ~~“Indirect Supervision” means a licensed dentist is in the dental facility, authorizes the procedures, and remains in the dental facility while the procedures are being performed by the dental auxiliary.~~

“Indirect Supervision” means the supervision of tasks or procedures that do not require continuous supervision at the time the tasks or procedures are being performed, but require the tasks be performed with the prior knowledge and consent of the dentist.

(v) **“Irreversible Tasks”** are those intra-oral treatment tasks which, when performed, are irreversible, create unalterable changes within the oral cavity or the contiguous structures, or which cause an increased risk to the patient.

(w) **“JCNDE”** is the Joint Commission on National Dental Examinations. The JCNDE is the agency responsible for the development and administration of the National Board Dental Examination as well as the National Board Dental Hygiene Examination.

(x) **“Licensee”** is any person who has been lawfully issued a license to practice in the CNMI by this Board.

(y) **“NBDE”** is the National Board Dental Examination and is a two-part examination to assist state boards in determining qualifications of dentists who seek licensure to practice dentistry.

(z) **“Nitrous oxide inhalation analgesia”** is the administration by inhalation of a combination of nitrous oxide and oxygen, producing an altered level of consciousness that retains the patient’s ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal command.

(aa) **“NPI Number”** is the National Practitioner Identifier (NPI), an identification number given to health care providers by the Centers for Medicare and Medicaid Services.

(bb) **“Order,”** with regard to medication, means the verbal or written instruction to administer a medication to a patient.

(cc) **“OSHA”** means the Occupational Safety and Health Administration, the main federal agency charged with the enforcement of safety and health legislation.

(dd) **“OTC medication”** means over-the-counter medication or medication that can be purchased without a prescription.

(ee) **“Pediatric Advanced Life Support (PALS) certification”** is a certification that means a person has successfully completed a pediatric advanced life support course offered by a recognized accrediting organization.

(ff) **“Prescribe”** means the written or electronic instruction given to dispense a medication to a patient.

(gg) **“Reversible Tasks”** are those intra-oral treatment tasks which are readily reversible; do not create unalterable changes within the oral cavity or the contiguous structures; and which do not cause any increased risk to the patient.

(hh) “Teledentistry” means the delivery of dental health care and patient consultation through the use of telehealth systems and technologies, including live, two-way interactions between a patient and a dentist licensed in the CNMI using audiovisual telecommunications technology, or the secure transmission of electronic health records and medical data to a dentist licensed in the CNMI to facilitate evaluation and treatment of the patient outside of a real-time or in-person interaction. Prior to engaging the use of teledentistry, a dentist must demonstrate to the Board that (1) there is limited access to dentistry services

in the intended community; and (2) must enter a written collaborative agreement with each dental therapist who will be performing services under the dentist's direct supervision using teledentistry.

~~(ii) (hh)~~ “U.S. Territory” shall mean all territories, commonwealths, or possessions of the United States.

~~(ii) (ii)~~ “U.S. state” shall refer to any of the fifty states or U.S. territory, unless otherwise specifically defined in these regulations.

(kk) “Written Collaborative Agreement” means a written agreement with a licensed dentist who authorizes and accepts responsibility for the services performed by a dental therapist using teledentistry. The services authorized under a collaborative agreement may further limit a dental therapist’s scope of practice and limit tasks that may be performed under the written collaborative agreement and conferred direct supervision, but may not expand the dental therapist’s scope beyond tasks as described in the rules and regulations of the Board. A written collaborative agreement must contain, at minimum:

- (1) the tasks which may be performed by the dental therapist under direct supervision of the dentist; and
- (2) the protocol for using teledentistry consultation; and
- (3) the procedures for amending the content of the agreement; and
- (4) the duration of the agreement not to exceed one year; and
- (5) the name of a secondary, alternative supervising dentist, if desired; and
- (6) endorsement by all parties.

§ 140-50.3-2603~~5~~ Exemptions from License Requirements

The following individuals are exempt from obtaining a CNMI license to practice as a dentist, dental hygienist, or dental therapist:

- (a) A dentist, dental hygienist, or dental therapist in the U.S. Military in the discharge of official duties;
- (b) A visiting dentist, dental hygienist, or dental therapist from another jurisdiction presenting information or demonstrating procedures before a dental society, dental study club, organization, or convention in the CNMI; or
- (c) A physician or other medically trained and licensed individual, when emergency treatment is necessary for the relief of pain, in the absence of a licensed dentist, dental hygienist, or dental therapist.

§ 140-50.3-2604~~10~~ Licensure by Endorsement

- (a) The Board may grant a license to a person to practice as a dentist, dental hygienist, dental therapist or specialist without examination if:
 - (1) The person holds a valid, active license to practice as a dentist, dental hygienist, dental therapist, or specialist in any U.S. state or Canada; and

- (2) The person substantially complies with the requirements for licensure in § 140-50.3-2605~~15~~–2607~~20~~; and
 - (3) The requirements in the jurisdiction of licensure are at least as stringent as those under these regulations; and
 - (4) Applicant is not the subject of an adverse report from the National Practitioner Data Bank, the American Association of Dental Examiners Clearinghouse for Board Actions, or the licensing/regulatory entity of any jurisdiction, including foreign countries.
- (b) The Board may deny a license by endorsement to a person to practice dentistry, dental hygiene, or dental therapy if the person has been the subject of an adverse action in which his/her license was suspended, revoked, placed on probation, conditioned, or renewal denied.

§ 140-50.3-2605~~15~~ Dentist – Licensure

(a) Requirements.

An applicant to practice as a dentist must be at least twenty-one years of age; a U.S. citizen or a foreign national who is lawfully entitled to remain and work in the CNMI; and must meet the following requirements:

- (1) Applicant is a graduate of a dental school accredited by the Commission on Dental Accreditation (CODA) of the American Dental Association (ADA) or the Commission on Dental Accreditation of Canada; and
- (2) Applicant has taken and passed the examination administered by the Joint Commission on National Dental Examinations or the written examination and the Objective Structured Clinical Examination (OSCE) administered by the National Dental Examiner Board of Canada; or the applicant has a current an active license to practice as a dentist in any U.S. state or Canada; and
- (3) Applicant is not the subject of any adverse action against their license to practice dentistry in any U.S. State or territory, or Canada and is not the subject of any pending litigation in regard to their practice of dentistry.

(b) Application.

An application for a license to practice dentistry shall be made under oath on a form provided by the Board and shall be accompanied with the following information, documentations, and fees (non-refundable) as required in these regulations:

- (1) The applicant’s full name and all aliases or other names ever used, current address, date and place of birth, NPI, and social security number; and
- (2) Applicant’s 2x2 photograph taken within six months from date of application; and
- (3) A list of all jurisdictions, U.S. or foreign, in which the applicant has ever been licensed or has applied for a license to practice dentistry, has been denied licensure, or voluntarily surrendered a license to practice dentistry; and

- (4) A curriculum vitae including a detailed education and experience history which shall include dates, places, institutions, educational programs, and description of all prior education and work experience; and
- (5) A list of all sanctions, judgments, awards, settlements, or convictions against the applicant in any jurisdiction, U.S. or foreign, that may constitute grounds for disciplinary action in that jurisdiction or be of concern to the Board; and
- (6) A current report from the National Practitioner Data Bank (NPDB), the American Association of Dental Examiners Clearinghouse for Board Actions, or any other entity having information pertinent to the applicant's performance; and
- (7) Notarized or certified copies acceptable to the Board of the following:
 - (i) Diploma showing a degree of Doctor of Dental Surgery or Doctor of Dental Medicine; and
 - (ii) Current and active license to practice as a dentist in any U.S. state or Canada; and
 - (iii) Current DEA registration certificate, if held by the applicant.

(c) Dental Specialist.

A specialist license will be issued by the Board to those applicants that have met all other requirements and have completed a specialty program accredited by the American Dental Association Commission on Dental Accreditation or the Commission on Dental Accreditation of Canada, or hold a specialty permit issued by the appropriate specialty board.

§ 140-50.3-2608~~20~~ Dentist – Scope of Practice

- (a) A CNMI-licensed dentist engaging in the practice of dentistry may:
 - (1) Perform or hold out to the public as being able to perform dental operations;
 - (2) Use the words “doctor,” “dentist,” or “dental surgeon” or the letters “D.D.S.” or “D.M.D.” or other letter or title that represents the dentist as engaging in the practice of dentistry;
 - (3) Diagnose, treat, operate on, correct, attempt to correct, or prescribe for a disease, lesion, pain, injury, deficiency, deformity, or physical condition, malocclusion or malposition of the human teeth, alveolar process, gingiva, maxilla, mandible, or adjacent tissues;
 - (4) Perform or attempt to perform an operation incident to the replacement of teeth;
 - (5) Furnish, supply, construct, reproduce, or repair dentures, bridges, appliances, or other structures to be used and worn as substitutes for natural teeth;
 - (6) Extract or attempt to extract human teeth;
 - (7) Exercise control over professional dental matters or the operation of dental equipment in a facility where the acts and things described in this section are performed or done; and

- (8) Evaluate, diagnose, treat, or perform preventive procedures related to diseases, disorders, or conditions of the oral cavity, maxillofacial area, or adjacent and associated structures; a dentist whose practice includes the services described in this paragraph may only perform the services if they are within the scope of the dentist's education, training, and experience and in accord with the generally recognized ethical precepts of the dental profession.

(b) Dental Specialist.

A licensed dentist may not hold out to the public as being a specialist in a branch or dentistry by verbal communication, advertising, or using such terms as "specialist" or using the name of the specialty or other verbiage in a way that would imply to the public that the dentist is so qualified, without first securing a specialist's license issued by the Board.

§ 140-50.3-2614~~25~~25 Dentist – Continuing Dental Education (CDE)

- (a) Each dentist licensed to practice dentistry in the CNMI is required to complete forty CDE hours (20 hours per year) as a prerequisite to the renewal of his/her biennial license.
- (b) One CDE unit or credit equals one contact hour.
- (c) Approved continuing dental education activities include, but are not limited to, courses, workshops, or symposiums approved, provided, or sponsored by the American Dental Association (ADA), Academy of General Dentistry (AGD), or the World Dental Federation.
- (d) If a licensee fails to meet the CDE requirements for renewal of license because of illness, military service, medical, or religious activity, residence in a foreign country, or other extenuating circumstances, the Board, upon appropriate written request from the applicant, may grant an extension of time to complete same, on an individual basis.
- (e) It shall be the responsibility of the licensee to obtain documentation, satisfactory to the Board, from the organization or institution of his or her participation in the continuing dental education, and the number of course/credit hours.
- (f) Licensure renewal shall be denied to any licensee who fails to provide satisfactory evidence of completion of CDE requirements or who falsely certifies attendance at and/or completion of the CDE as required herein.

§ 140-50.3-2615~~30~~30 Dental Hygienist – Licensure

(a) Requirements.

An applicant applying for a license to practice dental hygiene in the CNMI must be at least twenty-one years of age, be a U.S. citizen or a foreign national lawfully entitled to remain and work in the CNMI, and must meet the following requirements:

- (1) Applicant is a graduate of an accredited program for dental hygiene accredited by the Commission on Dental Accreditation (CODA) of the American Dental Association (ADA) or the Commission on Dental Accreditation of Canada; and
- (2) Applicant has taken and passed the National Board Dental Hygiene Examination administered by the Joint Commission on National Dental Examinations or the Canadian National Board Dental

Hygiene Examination; or the applicant has a current and active license to practice dental hygiene in any U.S. state or Canada; and

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- (3) Applicant who is a foreign trained dental hygienist and who graduated from a school of dentistry recognized by the department of health in that respective country and can provide evidence of:
- (i) Attaining the U.S. equivalent of a Bachelor's Degree in Dental Hygiene, and
 - (ii) Provide evidence of 160 hours of supervised clinical practice, demonstrating competent skills to the satisfaction of and as witnessed and certified by a Dentist licensed in the CNMI who is approved by the Board, and:
- ~~(3)~~ (4) Applicant has no adverse action against their license to practice dental hygiene in any U.S. State, Canada, or other foreign jurisdiction, and is not the subject of any pending litigation in regard to their practice of dental hygiene; and
- ~~(4)~~ (5) Applicant must specify in the application the dentist(s) by whom the applicant is to be employed.

(b) Application.

An application for a license to practice dental hygiene shall be made under oath on a form provided by the Board and shall be accompanied with the following information, documentations, and fees (non-refundable) as required in these regulations:

- (1) Completed application with information that includes the applicant's full name and all aliases or other names ever used, current address, date and place of birth, and social security number; and
- (2) Current 2x2 photograph of the applicant taken within six months from date of application; and
- (3) A list of all jurisdictions, U.S. or foreign, in which the applicant has ever been licensed, has applied for a license to practice dental hygiene, has been denied licensure, or voluntarily surrendered a license to practice dental hygiene; and
- (4) A curriculum vitae including a detailed education and experience history which shall include dates, places, institutions, educational programs, and description of all prior education and work experience; and
- (5) A list of all of all sanctions, judgments, awards, settlements, or convictions against the applicant in any jurisdiction, U.S. or foreign, that may constitute grounds for disciplinary action in that jurisdiction or be of concern to the Board; and
- (6) Notarized or certified copies acceptable to the Board of the following: A diploma showing a degree of Dental Hygiene; and
 - (i) Document showing proof that applicant has taken and passed the National Board Dental Hygiene examination administered by the Joint Commission on National Dental Examinations or the Canadian National Board Dental Hygiene Examination; or
 - (ii) Current and active license to practice as a dental hygienist in any U.S. state or Canada.

§ 140-50.3-261735 Dental Assistant – Scope of Practice

(a) A CNMI-licensed dental hygienist may:

- (1) Educate, demonstrate, and instruct the public on achieving better oral and systemic health;
- (2) Examine visually and by the use of instruments, such as an explorer and a periodontal probe or other means, the teeth and the tissues surrounding the teeth;
- (3) Examine visually and by palpation the head and neck region for any lesions or abnormalities;
- (4) Remove calcareous deposits, accretions, and stains from the surfaces of the teeth with the use of hand instruments or ultrasonic instrumentation;
- (5) Perform root planing and scaling and periodontal soft tissue curettage with the use of hand instruments, ultrasonic instruments, or soft tissue lasers;
- (6) Expose and develop radiographs (x-rays);
- (7) Administer local anesthetic agents;
- (8) Remove restorative overhangs;
- (9) Apply topical antimicrobials and preventive agents;
- (10) Apply pit and fissure sealants;
- (11) Make alginate impressions of the dentition;
- (12) Deliver occlusal guards or teeth whitening trays;
- (13) Research, as it relates to the field of dentistry; and
- (14) Assist the dentist and dental team as needed in delivering quality dental care.

(b) A CNMI-licensed dental hygienist may not:

- (1) Deliver dental hygiene services independent of a CNMI-licensed dentist, except for educational and preventative oral health services provided by dental hygienists employed by the Commonwealth Healthcare Corporation which are rendered pursuant to the Public Health's Oral Health Program for children, within the scope of these regulations;
- (2) Diagnose, treatment-plan, or write prescriptions for medications, except under the direct order and supervision of a CNMI-licensed dentist;
- (3) Cut or incise hard or soft tissues; and
- (4) Perform other procedures that require the professional competence and skill of a dentist.

§ 140-50.3-261840 **Dental Hygienist –Continuing Dental Education (CDE)**

- (a) All dental hygienists licensed to practice dental hygiene in the CNMI are required to complete twenty-four CDE hours (12 hours per year), as a prerequisite to the renewal of their biennial license.
- (1) One CDE unit or credit equals one contact hour.
 - (2) Approved continuing dental education activities include, but are not limited to, courses, workshops, or symposiums approved, provided, or sponsored by the American Dental Hygienist's Association (ADHA), Academy of General Dentistry (AGD), American Dental Association (ADA), or the World Dental Federation.
 - (3) If a licensee fails to meet the CDE requirements for renewal of license because of illness, military service, medical, or religious activity, residence in a foreign country, or other extenuating circumstances, the Board, upon appropriate written request from the applicant, may grant an extension of time to complete same, on an individual basis.
 - (4) It shall be the responsibility of the licensee to obtain documentation, satisfactory to the Board, from the organization or institution of his or her participation in the continuing dental education, and the number of course/credit hours.
 - (5) Licensure renewal shall be denied to any licensee who fails to provide satisfactory evidence of completion of CDE requirements or who falsely certifies attendance at and/or completion of the CDE as required herein.

§ 140-50.3-262045 **Dental Therapist – Licensure**

- (a) Requirements.

An applicant applying for a license to practice as a dental therapist in the CNMI must be at least twenty-one years of age, be a U.S. citizen or a foreign national lawfully entitled to remain and work in the CNMI, and must meet the following requirements:

- (1) Applicant is a graduate of an accredited dental therapy educational program in the U.S. or Canada or is a foreign trained dentist having graduated from a school of dentistry recognized by the department of health in that respective country; and
- (2) Applicant can communicate proficiently in the English language. If proficiency in the English language is in question, the applicant may be required by the Board to show a passing score on the TOEFL test; and
- (3) Applicant has a current and active license to practice as a dental therapist in any U.S. state or Canada, or as a dentist in any foreign country; and
- (4) Applicant is not the subject of any adverse action against their license to practice as a dental therapist in any U.S. State or Canada, or as a dentist in any foreign country, and is not the subject of any pending litigation in regard to their practice as a dental therapist or dentist; and
- (5) Applicant must specify in the application the dentist(s) by whom the applicant is to be employed.

(b) Application.

An application for a license to practice as a dental therapist shall be made under oath on a form provided by the Board and shall be accompanied with the following information, documentations, and fees (non-refundable) as required in these regulations:

- (1) Completed application with information that includes the applicant's full name and all aliases or other names ever used, current address, date and place of birth, and social security number; and
- (2) Current 2x2 photograph of the applicant taken within six months from date of application; and
- (3) A list of all jurisdictions, U.S. or foreign, in which the applicant has ever been licensed or has applied for a license to practice as a dental therapist or a dentist; has been denied licensure; or voluntarily surrendered a license to practice as a dental therapist or dentist; and
- (4) A curriculum vitae including a detailed education and experience history which shall include dates, places, institutions, educational programs, and description of all prior education and work experience; and
- (5) A list of all sanctions, judgments, awards, settlements, or convictions against the applicant in any jurisdiction, U.S. or foreign, that may constitute grounds for disciplinary action in that jurisdiction or be of concern to the Board; and
- (6) Notarized or certified copies acceptable to the Board of the following:
 - (i) Diploma showing a degree of Dental Therapy or a degree of Doctor of Dental Surgery from a school of dentistry recognized by the department of health in that respective country; and
 - (ii) Documents showing proof that applicant is licensed to practice as a dental therapist in any U.S. state or Canada, or a foreign trained dentist graduated from a school of dentistry recognized by the department of health in that respective country;

§ 140-50.3-262350 Dental Therapist-Scope of Practice

(a) A person licensed as a dental therapist in the CNMI must adhere to the specific parameters and scope of practice and may perform the following services under the general supervision of a CNMI-licensed dentist:

~~(1)~~ (1) Oral examination and diagnosis of dental disease;

~~(+)~~ (2) Oral health instruction and disease prevention education, including nutritional counseling and dietary analysis;

~~(2)~~ (3) Preliminary charting of the oral cavity;

~~(3)~~ (4) Taking intra-oral and extra-oral photographs;

~~(4)~~ (5) Exposing and developing radiographs;

~~(5)~~ (6) Prophylaxis or removal of stains, accretions, or deposits and polishing of the coronal portion of the teeth above the cemento enamel junction (CEJ); and

- (7) Scale and root planning (removal of calculus or deposits below the cemento enamel junction (CEJ):
- ~~(6)~~ (8) Application of topical preventive or prophylactic agents, including fluoride varnishes-and gel:
- (9) Placement of pit and fissure sealants:
- (10) Application of silver diamine fluoride:
- (11) Pulp vitality testing:
- (12) Application of desensitizing agents on primary or permanent teeth:
- (13) Placement of temporary restorations on primary or permanent teeth:
- (14) Fabrication and cementation of temporary crowns on permanent teeth:
- (15) Placement and removal of restorative bands:
- (16) Suture removal and dressing changes:
- (17) Impressions for, and delivery of, occlusal guards, athletic mouth guards and whitening trays but not laser bleaching:
- (18) Impressions for removable prosthesis:
- (19) Tissue Conditioning and soft reline for removal prosthesis: and
- (20) Minor adjustments of removable prosthesis.

(b) A licensed dental therapist may perform the following services under direct supervision of a dentist:

- ~~(1) Fissuotomies and pit and fissure sealants on primary and permanent teeth;~~
- (1) Cavity preparation:
- ~~(2) Pulp vitality testing;~~
- (2) Placement, shaping, polishing, and adjustment of restorative materials or fillings on primary or permanent teeth:
- ~~(3) Application of desensitizing agents on primary or permanent teeth;~~
- (3) Indirect and direct pulp capping on primary and permanent teeth:
- ~~(4) Placement of temporary restorations on primary or permanent teeth;~~
- (4) Placement and removal of space maintainers on primary teeth:
- ~~(5) Simple restorations on primary teeth;~~

- ~~(5) Placement and removal of restorative bands;~~
- ~~(6) Try-in of removable prosthesis;~~
- ~~(7) Occlusal shaping, adjustment, and polishing of fillings on primary or permanent teeth;~~
- (5) Recommendation of permanent crowns;
- (7) Non-surgical extraction of primary teeth;
- ~~(8) Administration of topical and local anesthetic;~~
- (8) Non-surgical extraction of permanent teeth with greater than grade 2 mobility;
- ~~(9) Administration and monitoring of nitrous oxide;~~
- (9) Tooth re-implantation;
- ~~(10) Fabrication and cementation of temporary crowns on permanent teeth;~~
- (10) Stabilization of re-implanted teeth or teeth otherwise affected by trauma;
- ~~(11) Placement of preformed crowns on primary teeth;~~
- (11) Emergency palliative treatment or dental pain;
- ~~(12) Placement and removal of space maintainers on primary teeth;~~
- (12) Administration and monitoring of nitrous oxide (with proof of certification from a Board-approved program)
- ~~(13) Suture removal and dressing changes;~~
- (13) Fabrication and cementation of temporary crowns on permanent teeth;
- ~~(14) Impressions for, and delivery of, occlusal guards, athletic mouth guards, and whitening trays;~~
- ~~(15) Impressions for removable prosthetics;~~
- ~~(16) Tissue conditioning and soft reline for removable prosthetics;~~
- ~~(17) Repair, try-in, and adjustment of removable prosthetics;~~
- ~~(18) Recementation of permanent crowns, inlays, or onlays;~~
- (14) Dispensing medications as ordered by the dentist;
- ~~(20) (15) Observation and monitoring of patients under sedation; and~~
- (16) Administration of local anesthetic

(c) The supervising dentist is professionally and legally responsible for all care provided by the dental therapist.

(e) (d) Limitation of Practice as a Dental Therapist.

A licensed dental therapist in the CNMI must strictly adhere to the following:

- (1) Must work under the supervision of a dentist holding a current and unrestricted license to practice dentistry in the CNMI; and
- (2) May not hold themselves out to the public as a dentist, dental hygienist, or refer to themselves as “doctor” or hold themselves out to the public in any written, verbal, or other form to be a Doctor of Dental Surgery or Doctor of Dental Medicine, regardless of their training or title in any foreign country; and
- (3) Must not diagnose, do a treatment plan, or write prescriptions for medications, except under the direct order and supervision of a CNMI-licensed dentist and
- (4) Must not perform other procedures that require the professional competence and skill of a dentist.

§ 140-50.3-262555 Dental Therapist – Continuing Dental Education (CDE)

- (a) All dental therapists licensed to practice in the CNMI are required to complete twenty-four CDE hours (12 hours per year) as a prerequisite to the renewal of their biennial license.
- (b) One CDE unit or credit equals one contact hour.
- (c) Approved continuing dental education activities include, but are not limited to:
 - (1) Courses, workshops, or symposiums approved, provided, or sponsored by the American Dental Hygienist’s Association (ADI-IA), Academy of General Dentistry (AGD), American Dental Association (ADA), or the World Dental Federation;
 - (2) Courses, workshops, or symposiums approved by the Board that are offered by dental colleges or universities, or dental organizations or associations.
 - (3) Self-study programs offered by a dental college or university, the AGD or the ADA, or other programs approved by the board.
- (d) If a licensee fails to meet the CDE requirements for renewal of license because of illness, military service, medical, or religious activity, residence in a foreign country, or other extenuating circumstances, the Board, upon appropriate written request from the applicant, may grant an extension of time to complete same, on an individual basis.
- (e) It shall be the responsibility of the licensee to obtain documentation, satisfactory to the Board, from the organization or institution of his or her participation in the continuing dental education, and the number of course/credit hours.
- (f) Licensure renewal shall be denied to any licensee who fails to provide satisfactory evidence of completion of CDE requirements or who falsely certifies attendance at and/or completion of the CDE as required herein.

§ 140-50.3-2630~~60~~ Dental Assistant – Registration

All persons wishing to perform the duties and functions of a dental assistant must register with the Board within three months of employment or change of employment status with any dental office or clinic. An applicant to practice as a dental assistant must be a U.S. citizen or a foreign national lawfully entitled to remain and work in the CNMI. An application for registration shall be on a form provided by the Board accompanied with the following information and documentation:

- (a) The applicant's full name and all aliases or other names ever used, current address, date and place of birth, and social security number; and
- (b) Proof that the applicant is a U.S. citizen or a foreign national. If foreign, applicant must provide a copy of a valid immigration status allowing for legal work in the CNMI; and
- (c) Name and business address of employer and the name of the supervising dentist; and
- (d) A curriculum vitae including a detailed education and experience history which shall include dates, places, institutions, educational programs and description of all prior education and work experience.

§ 140-50.3-2633~~65~~ Dental Assistant – Scope of Practice

- (a) The supervising dentist shall be accountable and fully responsible for all dental services, procedures, and duties performed by a dental assistant under the dentist's supervision. However, a dental assistant is responsible for his or her own professional behavior and shall be held accountable for such.
- (b) A dental assistant may perform the following supportive dental procedures under the direct supervision of a licensed dentist:
 - (1) Retract a patient's cheek, tongue, lips, or other tissues during dental procedures;
 - (2) Place and remove a rubber dam;
 - (3) Conduct a preliminary oral inspection, conduct preliminary charting of the oral cavity, and report observations to the supervising dentist;
 - (4) Remove debris as is normally created and accumulated during or after procedures by the dentist with the use of vacuum devices, compressed air, mouthwashes, and water;
 - (5) Provide assistance, including placement of material in a patient's oral cavity, in response to the specific direction of a licensed dentist who is performing a dental procedure on a patient;
 - (6) Removal of sutures and post-surgical dressings;
 - (7) Application of topical preventive or prophylactic agents, including fluoride varnishes;
 - (8) Placement and removal of matrix retainers for restorations;
 - (9) Impressions for casts or models;

- (10) Removal of excess cement after a dentist has placed or removed a permanent or temporary inlay, crown, bridge, appliance, or orthodontic brackets or bands, using hand instruments and slow-speed handpiece only;
- (11) Prophylaxis or removal of stains, accretions, or deposits from the teeth of children below the age of fourteen (14) only;
- (12) Coronal polishing using a slow-speed handpiece with a rubber cup or brush;
- (13) Placing of retractions, cord, or other material for tissue displacement for crown and bridge impressions;
- (14) Fabrication and cementation of temporary crowns after the dentist has prepared the teeth for crown and bridge work;
- (15) Placement and removal of orthodontic separators;
- (16) Take intra-oral measurements for orthodontic procedures;
- (17) Check for loose bands and brackets;
- (18) Placement and removal of ligature ties;
- (19) Removal of arch wires;
- (20) Fitting and removal of head appliances;
- (21) Placement and removal of inter-arch elastics;
- (22) Preliminary selecting and sizing of bands;
- (23) Patient education in oral hygiene;
- (24) Take, expose, and process dental radiographs;
- (25) Take intra-oral and extra-oral photographs;
- (26) Take and record blood pressure and vital signs;
- (27) Relate pre- and post-operative or surgical instructions to the patient or their guardian;
- (28) Monitoring of nitrous oxide administration;
- (29) Placement of pit and fissure sealants;
- (30) Dispense medications as ordered by the dentist; and
- (31) Observation and monitoring of patients under sedation.

(c) A dental assistant employed by the Commonwealth Healthcare Corporation may assist a dental hygienist, independent of a licensed dentist, for educational and preventative oral health services rendered pursuant to the Public Health’s Oral Health Program for children, within the scope of these regulations.

(d) Prohibited Duties of Dental Assistants.

A dental assistant shall not perform the following functions or duties or any other activity, which represents the practice of dentistry or requires the knowledge, skill, and training of a licensed dentist, dental hygienist, or dental therapist:

- (1) Diagnosis and treatment planning, independent of a CNMI-licensed dentist;
- (2) Extraction of teeth and surgical or cutting procedures on hard or soft tissues;
- (3) Placement, condensation, carving, finishing, or adjustment of final restorations, placement of pulp capping materials and cement bases; or any cementation procedure;
- (4) Prescribing or injecting of medication;
- (5) Cementation or bonding of any fixed prosthetic or orthodontic appliance;
- (6) Instrumenting or final filling of root canals; and
- (7) Intra-orally finishing or adjusting the occlusion of any final restoration.

§ 140-50.3-2640~~70~~ [Reserved]

§ 140-50.3-2650~~75~~ Schedule of Fees

The following fees shall apply, unless they conflict with NMIAC § 140-50.1-116:

(a)		Application Fee:	
	(1)	Initial Application	\$100.00
	(2)	Dental Assistant Registration Application	\$100.00
(b)		Licensure Fees:	
	(1)	Dentist	\$200.00
	(2)	Dental Specialist	\$200.00
	(3)	Dental Hygienist	\$100.00
	(4)	Dental Therapist	\$100.00
(c)		Renewal Fees:	
	(1)	Dentist	\$200.00
	(2)	Dental Specialist	\$200.00
	(3)	Dental Hygienist	\$100.00
	(4)	Dental Therapist	\$100.00
	(5)	Late Fee	\$25.00
(d)		Replacement/Duplication of License/Card	\$25.00
(e)		Verification of License Fee	\$25.00

§ 140-50.3-2655~~80~~80 Renewal

- (a) All licenses issued by the Board expire every two years following issuance or renewal and become invalid after that date.
- (b) Each licensee shall be responsible for submitting a completed renewal application at least sixty days before the expiration date. The Board shall send, by mail or email, a notice to every person licensed hereunder giving the date of expiration and the fee and any additional requirement for the renewal thereof.
- (c) All licensees must submit satisfactory evidence of completion of CDE requirements, as required under these regulations.
- (d) A late fee of \$25.00 will be charged every 1st of the month after the expiration date.
- (e) Licenses which have expired for failure to renew on or before the date required may be reinstated within one year of the expiration date upon payment of the renewal and late fees for each calendar month until the renewal fee is paid.
- (f) A licensee whose license has been revoked, suspended, or placed on probation by the licensing authority of another U.S. state, Canada, or foreign jurisdiction, or who has voluntarily or involuntarily surrendered his or her license in consideration of the dismissal or discontinuance of pending or threatened administrative or criminal charges, following the expiration date of his CNMI license, shall be deemed ineligible for renewal of his or her license to practice as a physician in the CNMI.

§ 140-50.3-2660~~85~~85 [Reserved]

§ 140-50.3-2665~~90~~90 Infection Control

The following shall be adhered to with regard to infection control where dental services are provided:

- (a) All instruments that come in contact with blood and/or saliva shall be sterilized after each use with the employment of one of the following:
 - (1) Steam autoclave;
 - (2) Dry-heat;
 - (3) Chemical vapor; or
 - (4) disinfectant/chemical sterilant approved by the U.S. Environmental Protection Agency (EPA) with the recommended dilution and specified soaking times.
- (b) All dental health care workers shall take appropriate precautions, pursuant to OSHA standard 29 C.F.R. 1910.1030, "Blood borne Pathogens," or its successor, to prevent injuries caused by needles, scalpels, and other sharp instruments or devices during procedures. If a needle stick injury occurs, the dentist shall comply with the requirements established by OSHA. All sharp items and contaminated wastes must be packaged and disposed of according to the requirements established by any federal and local government agencies which regulate health or environmental standards.
- (c) All dental health care workers who have exudative lesions or weeping dermatitis shall refrain from contact

with equipment, devices, and appliances that may be used for or during patient care, where such contact holds potential for blood or body fluid contamination, and shall refrain from all patient care and contact until condition(s) resolves unless barrier techniques would prevent patient contact with the dental health care worker's blood or body fluid.

- (d) All dental health care workers shall follow the guidelines for Infection Control in Dental Health-Care Settings established by the Centers for Disease Control (CDC).

§ 140-50.3-2668~~95~~ Prescribing, Ordering or Dispensing of Medication

The following must be adhered to for the prescribing, ordering, or dispensing of medication:

- (a) A CNMI-licensed dentist wishing to prescribe, order, or dispense any controlled substance shall hold a current DEA registration that is on file with the Board; and
- (b) Any clinic or facility that holds in-stock any medication to order or dispense to patients shall register with the Board, on an application provided by the Board; shall list the dentist under whose license and DEA number the medication is being purchased; and must list the type of medications being kept in stock to order or dispense; and
- (c) The ordering or dispensing of any medication, other than OTC medications, can ONLY be done under the direct command of a CNMI-licensed dentist who holds a current DEA registration, and given to a patient that has been examined by that dentist.

§ 140-50.3-2670~~700~~ Prohibition on Interference by a Non-Dentist

No person or entity, whether owner, manager, or other entity other than the designated Dental Director, shall:

- (a) Direct or interfere with the clinical judgment and competent practice of dentistry, dental hygiene, dental therapy, or dental assisting; and
- (b) Select a course of treatment for a patient, the procedures or materials to be used as part of the course of treatment, or the manner in which such course of treatment is carried out.

§ 140-50.3-2673~~701~~ Designation of a Dental Director

A non-dentist owned business, corporation, or entity providing dental services beyond basic educational and preventive services shall name a CNMI-licensed dentist as a dental director. The dental director shall have responsibility for the clinical practice of dentistry, which includes, but is not limited to:

- (a) Diagnosis of conditions within the human oral cavity and its adjacent tissues and structures;
- (b) Prescribing, ordering, or dispensing of drugs to patients;
- (c) The treatment plan of any dental patient;
- (d) Overall quality of patient care that is rendered or performed in the practice of dentistry, dental hygiene, dental therapy, and dental assisting;

- (e) Supervision of dental hygienists, dental therapist, dental assistants, or other personnel involved in direct patient care and the authorization for procedures performed by them in accordance with the standards of supervision established by the Board; and
- (f) Other specific services within the scope of clinical dental practice.

§ 140-50.3-2675~~705~~ Patient Records and Their Transfer

- (a) Dentists shall maintain and keep adequate records of the diagnosis made and the treatment performed for a reasonable period of time.
- (b) Upon written request, original patient treatment records shall be made available for inspection by the members of the Board or its designated representative, for the ascertainment of facts. Reasons for requesting records would include investigation of patient complaints, verification of dental treatments, and any other valid reasons involving the Board's need to know.
- (c) Upon written request, copies of patient records, including dental x-rays, dental models, and the treatment rendered shall be made available to another dentist for continued treatment. A dentist is entitled to charge the patient a reasonable fee for their duplication.

§ 140-50.3-2678~~710~~ Requirements for General Anesthesia, Parental Sedation, and Oral Sedation

- (a) A facility in which there will be the administration of general anesthesia, parenteral sedation, or oral sedation for dental procedures shall contain the following properly operating equipment and supplies that are properly used:
 - (1) Anesthesia machine (only required for general anesthesia);
 - (2) Emergency medications;
 - (3) Electrocardiograph monitor;
 - (4) Pulse oximeter;
 - (5) Cardiac defibrillator;
 - (6) Positive pressure oxygen;
 - (7) Suction equipment;
 - (8) Laryngoscope and blades;
 - (9) Endotrachial tubes;
 - (10) Magill forceps;
 - (11) Oral airways;
 - (12) Stethoscope;

- (13) Blood pressure monitoring device; and
- (14) Precordial stethoscope.
- (b) Maintain a staff of supervised personnel capable of handling procedures, complications, and emergency incidents. All personnel involved in administering and monitoring general anesthesia, parenteral sedation, or oral sedation shall hold a current certificate in basic cardiopulmonary resuscitation (CPR).
- (c) A dentist wishing to administer general anesthesia may only do so if approved by the Board, having completed a recognized residency, and shall hold a current and valid general anesthesia permit issued by any U.S. State (excluding U.S. territories) or Canadian Territory.
- (d) A dentist wishing to administer intra venous (I.V.) sedation shall have a current and valid I.V. sedation permit issued by any U.S. State (excluding U.S. territories) or Canadian Territory.
- (e) A dentist wishing to administer pediatric oral sedation shall have completed at least twenty hours of accredited continuing education in this area and shall hold a current certificate in Pediatric Advanced Life Support (PALS).

§ 140-50.3-2680~~715~~ Patient Rights

Each patient shall, at a minimum, be afforded the following rights:

- (a) To be treated with respect, consideration, and dignity;
- (b) To privacy in treatment;
- (c) To have their records kept confidential and private;
- (d) To be provided information concerning their diagnosis, evaluation, treatment options, and progress;
- (e) An opportunity to participate in decisions involving their health care;
- (f) To refuse any diagnostic procedure or treatment and be advised of the consequences of that refusal; and
- (g) To obtain a copy or summary of their personal dental record.

§ 140-50.3-2682~~720~~ Impaired Dentists or Dental Hygienists

- (a) The Board shall have the power to deny an application; refuse to renew or restore; suspend; revoke; place on probation; or condition the license of any dentist or dental hygienist whose mental or physical ability to practice medicine with reasonable skill and safety is impaired.
- (b) By submission of an application for licensure or renewal, an applicant shall be deemed to have given his or her consent to submit to mental or physical examination and/or chemical dependency evaluation, including the taking of tissue or fluid samples, at his or her own expense, as the Board may direct, and to waive all objections as to the admissibility or disclosure of such information and related findings, reports, or recommendations in an administrative or judicial proceeding. If a licensee or applicant fails to submit to an examination or evaluation when properly directed to do so by the Board, unless failure was due to circumstances deemed beyond the licensee's control, the Board shall be permitted to enter a final order upon proper notice, hearing, and proof of refusal.

- (c) If the Board finds, after examination and hearing, that the applicant or licensee is impaired, he/she shall be subject to the following:
 - (1) Direct the applicant or licensee to submit to care, counseling, or treatment, at his or her own expense, acceptable to the Board; and
 - (2) Deny the application, suspend, place on probation, or condition the license for the duration of the impairment; or
 - (3) Revoke the license.
- (d) Any licensee or applicant who is prohibited from practicing dentistry or dental hygiene under this section shall, at reasonable intervals, be afforded an opportunity to demonstrate to the satisfaction of the Board that he or she can resume or begin to practice dentistry or dental hygiene with reasonable skill and safety. A license shall not be reinstated, however, without the payment of all applicable fees and the fulfillment of all requirements, as if the applicant had not been prohibited.

§ 140-50.3-2684~~725~~ Reporting Requirements

- (a) Reporting to the Board.
 - (1) Each licensee and each person in the Commonwealth employing a dental care professional shall report to the Board:
 - (i) Information, which it receives relating to the professional competence and conduct of a dental care professional, regulated pursuant to the law or these regulations. In particular, it shall report negative information;
 - (ii) A professional review action that adversely affects the dental privileges of a dental care professional for a period of more than 30 days; and
 - (iii) Acceptance of the surrender of dental privileges, or any restriction of such privileges, of a dental care professional.
 - (2) The Board shall provide a form for such reports.
 - (3) The report shall be made within thirty-five days of receipt of the information by the person or by a management-level individual.
- (b) Reporting to National and Interstate Data Banks.
 - (1) The Board shall report adverse dental care professional information to the National Practitioner Data Bank (NPDB), the American Association of Dental Examiners Clearinghouse for Board Actions, and such other interstate or national dental professional data bank within thirty-five days following such determination.
 - (2) The information to be reported shall include:
 - (i) Discipline of a dental care professional described by, or undertaken pursuant to, the law and these regulations, and without regard to whether the action of the disciplining entity has been stayed by a reviewing court;

- (ii) A professional review action that adversely affects the dental privileges of a dental care professional for a period of more than thirty days; and
- (iii) Acceptance of the surrender of dental privileges or any restriction of such privileges of a dental care professional.

§ 140-50.3-2685730 Disciplinary Action

The Board shall have the power to impose administrative penalties and/or reprimands; revoke or suspend; or refuse to issue, restore, or renew the license of any person who is found guilty of one or more of the violations pursuant to P.L. 15-105 § 2224 and §§ 140-50.3-901–1300 of the regulations, including, but not limited to the following:

- (a) Exercising undue influence on the patient or client, including the promotion of the sale of services, goods, appliances, or drugs in such manner as to exploit the patient or client for the financial gain of the practitioner or a third party;
- (b) Failing to make available to a patient or client, upon request, copies of documents in the possession or under the control of the licensee that have been prepared for and paid for by the patient or client;
- (c) Making false or materially incorrect or inconsistent entries in any patient records or in the records of any health care facility, school, institution, or other work place location;
- (d) Revealing personally identifiable facts, data, or information obtained in a professional capacity without the prior consent of the patient or client, except as authorized or required by law;
- (e) Practicing or offering to practice beyond the scope permitted by law; accepting and performing professional responsibilities which the licensee knows or has reason to know that he or she is not competent to perform; or performing, without adequate supervision, professional services that

the licensee is authorized to perform only under the supervision of a licensed professional, except in an emergency situation where a person’s life or health is in danger;
- (f) Delegating professional responsibilities to a person when the licensee delegating such responsibilities knows or has reason to know that such person is not qualified, by training, by experience, or by licensure, to perform them;
- (g) Performing professional services which have not been duly authorized by the patient or client or his or her legal representative;
- (h) Failing to maintain an accurate and legible written evaluation and treatment history for each patient;
- (i) Failing to identify to a patient, patient’s guardian, or the Board the name of an employee, employer, contractor, or agent who renders dental treatment or services upon request;
- (j) Failing to report suspected child abuse to the proper authorities, as required by law;
- (k) Failing to respond to written communications from the Board to make available any relevant records, with respect to an inquiry or complaint, about the licensee’s unprofessional conduct;
- (l) Falsifying, altering, or destroying treatment records in contemplation of an investigation by the Board or a lawsuit being filed by a patient;

- (m) Intentionally presenting false or misleading testimony, statements, or records to the Board or the Board's investigator or employees during the scope of any investigation or at any hearing of the Board;
- (n) Committing or conspiring to commit an act which would tend to coerce, intimidate, or preclude any patient or witness from testifying against a licensee in any disciplinary hearing, or retaliating in any manner against any patient or other person who testifies or cooperates with the Board during any investigation involving the Board;
- (o) Violating any lawful order of the Board previously entered in a disciplinary hearing, or failing to comply with a lawfully issued subpoena of the Board;
- (p) Violating any term of probation, condition, or limitation imposed on the licensee by the Board;
- (q) Practicing with an expired, suspended, or revoked license, permit, or registration;
- (r) Using the title "doctor," "dentist," "dental surgeon," "dental hygienist," "dental therapist," or the letters "D.D.S." or "D.M.D." or other modifications, derivatives, or acronyms thereof, in the individual or firm name, or in any title, sign, card, ad, electronic communication, or other device to indicate that the person or firm is practicing dentistry, dental hygiene, or dental therapy;
- (s) Prescribing controlled substances for a habitual drug user in the absence of substantial dental justification, if the licensee knows or has reason to know the patient is a habitual drug user;
- (t) Using or removing controlled substances from any health care facility or other work place location without prior authorization;
- (u) Failing to exercise reasonable diligence to prevent partners, associates, and employees from engaging in conduct which would violate any rule, regulation, or order of the Board;
- (v) Failing to avoid interpersonal relationships that could impair professional judgment or risk the possibility of exploiting the confidence of a patient, including committing any act of sexual abuse, misconduct, or exploitation related to the licensee's practice of dentistry;
- (w) Termination of a dentist-patient relationship by a dentist, unless reasonable notice of the termination is provided to the patient. For purposes of this provision, a "dentist patient" relations exists where a dentist has provided dental treatment to a patient on at least one occasion within the preceding year. "Termination of a dentist-patient relationship by the dentist" means that the dentist is unavailable to provide dental treatment to a patient, under the following circumstances:
 - (1) The office where the patient has received dental care has been closed for a period in excess of fifty days; or
 - (2) The dentist discontinues treatment of a particular patient for any reason, including non-payment of fees for dental services, although the dentist continues to provide treatment to other patients at the office location.
- (x) Interfering or attempting to interfere with the professional judgment of an individual who is licensed or certified by the Board. Examples include, but are not limited to, the following:

- (1) Establishing professional standards, protocols, or practice guidelines which conflict with generally accepted standards within the dental profession;
- (2) Entering into any agreement or arrangement for management services that interferes with a dentist's exercise of his/her independent professional judgment or encourages improper overtreatment or undertreatment by dentists;
- (3) Placing limitations or conditions upon communications, clinical in nature, with the dentist's patients;
- (4) Precluding or restricting an individual's ability to exercise independent professional judgment over all qualitative and quantitative aspects of the delivery of dental care; or
- (5) Penalizing a dentist for reporting violations of a law regulating the practice of dentistry.

§ 140-50.3-2690~~735~~ Principles of Ethics and Code of Professional Conduct

- (a) For licensed dentists, the Board adopts, as if fully set out herein and to the extent that it does not conflict with CNMI laws, rules, or Board Position Statements, the American Dental Association (ADA) Principles of Ethics and Code of Professional Conduct as it may, from time to time, be amended. A copy of the ADA Principles of Ethics and Code of Professional Conduct may be obtained by contacting the American Dental Association at 211 East Chicago Avenue, Chicago, IL 60611, or by phone at (312) 440-2500, or on the Internet at <http://www.ada.org>.
- (b) For licensed dental hygienists, the Board adopts, as if fully set out herein and to the extent that it does not conflict with CNMI laws, rules, or Board Position Statements, the American Dental Hygienists' Association (ADHA) Code of Ethics for Dental Hygienists as it may, from time to time, be amended. A copy of the ADHA Code of Ethics for Dental Hygienists may be obtained by contacting the American Dental Hygienists' Association at 444 North Michigan Avenue, Suite 3400, Chicago, IL 60611, or by phone at (312) 440-8900, or on the Internet at <http://www.adha.org>.
- (c) For registered dental assistants, the Board adopts, as if fully set out herein and to the extent that it does not conflict with CNMI laws, rules, or Board Position Statements, the American Dental Assistants Association (ADAA) Principles of Ethics and Professional Conduct as it may, from time to time, be amended. A copy of the ADAA Principles of Ethics and Professional Conduct may be obtained by contacting the American Dental Assistants Association at 203 North LaSalle Street, Chicago, IL 60601-1225, or by phone at (312) 541-1550, or on the Internet at <http://www.dentalassistant.org>.

Part 2700 - ~~Dentist~~ [Reserved as Part of 2600]



1 COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
 2 DEPARTMENT OF LABOR
 3 ADMINISTRATIVE HEARING OFFICE

4 IN THE MATTER OF:)
 5 CNMI Department of Labor Enforcement) CAC No. 17-002-04(T)
 6 Section (Tinian))
 7 Complainant,)
 8 v.) DECISION
 9 Bridge Investment Group, LLC.)
 10 Respondent.)

11 I. INTRODUCTION

12
 13 This Compliance Agency Case came for an Administrative hearing on August 10,
 14 2017 and August 30, 2017 at the Administrative Hearing Office of the CNMI Department
 15 of Labor before former Hearing Officer Jerry Cody. The Department of Labor
 16 Enforcement Section (“Enforcement” or “Department”) was represented by investigator
 17 Ramona Cabrera-Viches and former Assistant Attorney General Joseph Hallahan.
 18 Respondent Bridge Investment Group, LLC (“Respondent”) was represented by Attorney
 19 Daniel T. Guidotti.¹

20 II. PROCEDURAL HISTORY

21 On June 22, 2017, Enforcement filed a Determination, Notice of Violation, and
 22 Notice of Hearing (“Determination”) against Respondent for an unlawful reduction in
 23 force, among other things, in violation of NMIAC § 80-20.1-240.
 24

25 On August 10, 2017, an Administrative Hearing was held. On August 24, 2017,
 26 Enforcement filed an amended determination. A second hearing was held on August 30,
 27

28 ¹ On December 3, 2019, Attorney for Respondent, Mr. Guidotti, filed a notice withdrawing from the case.

1 2017 for additional testimony. Pursuant to an oral motion to amend the determination
2 made during the hearing, Enforcement filed a second amended determination, which
3 alleged violations of 3 CMC § 4937² and NMIAC § 80-20.1-240(c)³ on behalf of twenty
4 two (22) former employees of Respondent. Further, pursuant to ordered briefing, the
5 parties' filed legal briefs as to the legislative history, interpretation, and authority under
6 the aforementioned citations.

7 The former Hearing Officer did not issue a decision on the briefing or the case prior
8 to resignation. Due to ambiguity in the record, the undersigned Administrative Hearing
9 Officer called for a status conference to clarify a number of issues. Due to the passage of
10 time, the parties did not elect for the undersigned Administrative Hearing Officer to rehear
11 the case. Additionally, the parties declined to submit factual stipulations or proposed
12 findings of fact and conclusions of law. Instead, the parties agreed to stipulate to the
13 evidence and exhibits, then file the documents for review. On September 30, 2019, the
14 parties filed a stipulation and submitted twelve (12) exhibits for the record.

15 III.FINDINGS OF FACT

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17 In consideration of the record and credibility of witness testimony, the undersigned
18 hereby issues the following findings of fact:

- 19 A. In early 2017, Respondent was experiencing permitting issues with the CNMI
20 environmental and regulatory issues that resulted in delays with construction for the
21 Tinian Ocean View Resort and Casino project. Ex. 2.1 – 2.21 and 11.
22 B. The delays with the construction projected triggered the need for a reduction in
23 force.

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27 ² "An employer who employs foreign national workers may reduce the number of current employees based on the
economic necessity. The employer shall provide notice to the Department [of Labor] at least sixty days prior to the
reductions in force." 3 CMC § 4937.

28 ³ "Before commencement of a reduction in force, an employer shall give at least 60 days written notice to the
Department and at least 30 days notice to each affected employee" NMIAC § 80-20.1-240(c).

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- C. On February 15, 2017, Respondent gave affected employees verbal notice of the reduction in force. Ex. 2.1 – 2.21 and 11.
- D. On February 17, 2017, Respondent gave affected employees written notice of the reduction in force. Ex. 2.1 – 2.21 and 11.
- E. Respondent was aware of the issues for months and had the requisite time to take necessary action to notify employees. Ex. 2.1 – 2.21 and 11 (“For the past several months, the Company has been experience permitting issues Over the course of the past several months, the Company has taken adequate steps to ensure that all employees are informed of the obstacles. . . .”).
- F. The reduction in force was set to be effective February 17, 2017. Ex. 2.1 – 2.21 and 11.
- G. The reduction in force affected the following twenty two (22) employees:
 - 1. Acido, Jennylyn O., US Citizen, Human Resource Assistant, \$8.00 per/hr.;
 - 2. Aldan, Brandon M., US Citizen, Security Officer, \$7.50 per/hr.;
 - 3. Aldan, Joaquin Jr. B., US Citizen, Security Shift Supervisor, \$8.75 per/hr.;
 - 4. Aldan, Perry M., US Citizen, Construction Laborer, \$8.50 per/hr.;
 - 5. Aldan, Vanna B., US Citizen, Construction Laborer, \$8.50 per/hr.;
 - 6. Aquininggoc, Terence M., US Citizen, Construction Laborer, \$9.00 per/hr.;
 - 7. Cabrera, Henry Jr. A., US Citizen, Security Officer, \$7.50 per/hr.;
 - 8. Cabulay, Michael John, US Citizen, Heavy Equipment Operator, \$8.00 per/hr.;
 - 9. Cruz, Dachelbai, B., US Citizen, Heavy Equipment Operator, \$9.00 per/hr.;
 - 10. Dela Cruz, Kaisha S., US Citizen, Accounting Assistant, \$8.00 per/hr.;
 - 11. Diaz, Francisco, US Citizen, Procurement Specialist, \$10.00 per/hr.;
 - 12. Lazaro, Rudolfo Jr. S., US Citizen, Construction Laborer, \$8.00 per/hr.;
 - 13. Lizama, Luciana H., US Citizen, Administrative Assistant, \$8.00 per/hr.;
 - 14. Manglona, Joe Raymond B., US Citizen, Assistant Safety Supervisor, \$9.00 per/hr.;
 - 15. Masga, Bruce E., US Citizen, Heavy Equipment Operator II, \$10.00 per/hr.;
 - 16. Natividad, Frances Ann S., US Citizen, Electrician Helper, \$8.00 per/hr.;
 - 17. Reyes, Robin Rae D., US Citizen, Construction Laborer, \$8.00 per/hr.;
 - 18. Sandbergen, Allen F., US Citizen, Construction Laborer, \$8.00 per/hr.;
 - 19. San Nicolas, Junell Joemar P., US Citizen, Security Officer, \$8.75 per/hr.;
 - 20. Santos, Ramon Francisco D., US Citizen, Construction Laborer, \$8.00 per/hr.;
 - 21. Shai, Edward D., US Citizen, Procurement Assistant, \$10.00 per/hr.; and
 - 22. Casilla, Quirino C., CW-1, Brickmason, \$8.50 per/hr.

1 See Ex. 2.1 –2.21, 3, 4, and 11.

2 H. Respondent did not submit written notice to the Department.

3 I. On February 21, 2017, Enforcement sent Respondent a letter inquiring as to the
4 layoff. Ex. 1.

5 J. Subsequently, the Department initiated an investigation for alleged violations for
6 failure to give the requisite notice to the affected employees and the Department.
7 As a result of the investigation, Enforcement initiated the present compliance
8 agency case against Respondent.

9 IV. CONCLUSIONS OF LAW

10 In consideration of the record, the parties' legal briefs, and the applicable law, the
11 undersigned hereby issues the following conclusions of law:

12 **A. The undersigned rejects Respondent's arguments to render Department 13 regulations void.**

14 The parties submitted legal briefs to argue the applicability of the relevant statute
15 and regulations. Ultimately, Respondent concedes that 3 CMC § 4937 applies. However,
16 Respondent argues that the Department erred in promulgating NMIAC § 80-20.1-240(c)
17 for, arguably, exceeding the scope of authority under the Legislature.⁴
18

19 The separation of powers doctrine prohibits one branch of state government from
20 encroaching upon and exercising powers of another branch. The Administrative Hearing
21 Office falls under the Department of Labor within the executive branch. Simply, an agency,
22 such as the Department of Labor, does not have the authority to declare a statute
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25 ⁴ Generally, "an administrative agency is a creature of statute, having only those powers expressly granted to it by
26 Congress or included by necessary implication from the Congressional grant." *Soriano v. United States*, 494 F. 2d
27 681, 683 (9th Cir. 1974) (citations omitted). "Although the Court has stated that an agency's legislative regulations
28 will be upheld if they are 'reasonably related' to the purposes of the enabling statute, we would expand considerably
the discretion and power of agencies were we to interpret "reasonably related" to permit agencies to proscribe
conduct that Congress did not intend to prohibit. 'Reasonably related to' simply cannot mean 'inconsistent
with.'" *Guardians Ass'n v. Civil Serv. Comm'n of City of New York*, 463 U.S. 582, 614–15, 103 S. Ct. 3221, 3238–
39, 77 L. Ed. 2d 866 (1983) (internal citation omitted).

1 unconstitutional or regulation invalid.⁵ Such challenges are beyond the power of
2 jurisdiction of the agency. For that same reason, an agency and its hearing officer do not
3 have the authority or jurisdiction to declare in an adjudicatory proceeding that a regulation
4 exceeds statutory authority.⁶ Instead, the Administrative Hearing Office is bound to uphold
5 the statute or regulation as written. Accordingly, the undersigned rejects Respondent's
6 arguments as to applicability and validity of the relevant law.

7 **B. Respondent violated 3 CMC § 4937 by failing to give requisite notice.**

8
9 "An employer who employs foreign national workers may reduce the number of
10 current employees based on economic necessity. The employer shall provide notice to the
11 Department at least sixty days prior to the reduction in force." 3 CMC § 4937. The
12 violation of 3 CMC § 4937 "shall be grounds for imposition of a fine in the employer of
13 up to two thousand dollars *for each foreign national worker terminated* in the reduction
14 in force and debarment of the employer." 3 CMC § 4964 (g) (emphasis added).

15 As a preliminary matter, Respondent does not contest the applicability of 3 CMC
16 § 4937.⁷ Additionally, Respondent recognizes the Administrative Hearing Officer's
17 authority to impose a fine or sanction for a violation of 3 CMC § 4937.⁸ Lastly,
18 Respondent does not contest the factual allegations of the determination.⁹

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22 ⁵ "The judicial power of the Commonwealth shall be vested in a judiciary of the Northern Mariana Islands which shall
23 include one supreme court and one superior court and such other inferior courts as established by law." CNMI
24 Const. Art. IV § 1.

25 ⁶ "If an administrative agency acts in excess of its statutory jurisdiction, power or authority, or limitations, court shall
26 review the agency agency and set aside any action in excess of its authority. *Seman v. Aldan*, 2 CR 916, *aff'd*, 3
27 CR 152 (DNMI App. Div. 1987).

28 ⁷ *See* Resp.'s Brief at 2 ("... BIG previously admitted that 3 CMC § 4937 applies to BIG"); *see also* Respondent's
Reply at 2 ("BIG previously admitted that 3 CMC § 4937 applies to BIG.").

⁸ *Supra* Note 5 ("The Hearing Office may, however, fine BIG for failing to notify the Department of the reduction in
force.").

⁹ *See* Respondent's Brief at 2 ("The facts are generally undisputed. BIG terminated 21 employees on February 17,
2017. BIG did not provide 60 days' notice to the Department prior to instituting the reduction in force, nor did BIG
provide 30 days' notice to the 21 employees terminated in the reduction in force.") *See also* Respondent's Brief at 7
("Although BIG admittedly did not provide notice to any Preferred Workers terminated on February 17, 2017.").

1 Here, at all times relevant to this action, Respondent employed foreign national
2 workers.¹⁰ On February 15, 2017, Respondent gave certain employees verbal notice that
3 their employment was directly affected by a reduction in force, effective February 17,
4 2017.¹¹ On February 17, 2017, Respondent provided 21 employees written notice.¹²
5 Among other things, the notice stated that Respondent was experiencing permitting and
6 regulatory issues and needed to implement cost-cutting measures. The notice also states
7 that the reduction in force was based on company objectives and goals with regards to job
8 category, job necessity, performance ratings/evaluation, and length of employment.
9 Respondent never provided the Department with verbal or written notice prior to
10 instituting the reduction in force.

11 Significantly, the reduction in force amounted to approximately twenty-five
12 percent (25%) of Respondent's workforce.¹³ Specific information as to the affected
13 employee's names, citizenship, job-title, and pay is as follows¹⁴:

- 14 1. Acido, Jennylyn O., US Citizen, Human Resource Assistant, \$8.00 per/hr.;
- 15 2. Aldan, Brandon M., US Citizen, Security Officer, \$7.50 per/hr.;
- 16 3. Aldan, Joaquin Jr. B., US Citizen, Security Shift Supervisor, \$8.75 per/hr.;
- 17 4. Aldan, Perry M., US Citizen, Construction Laborer, \$8.50 per/hr.;
- 18 5. Aldan, Vanna B., US Citizen, Construction Laborer, \$8.50 per/hr.;
- 19 6. Aquingoc, Terence M., US Citizen, Construction Laborer, \$9.00 per/hr.;
- 20 7. Cabrera, Henry Jr. A., US Citizen, Security Officer, \$7.50 per/hr.;
- 21 8. Cabulay, Michael John, US Citizen, Heavy Equipment Operator, \$8.00
per/hr.;
- 22 9. Cruz, Dachelbai, B., US Citizen, Heavy Equipment Operator, \$9.00 per/hr.;
- 23 10. Dela Cruz, Kaisha S., US Citizen, Accounting Assistant, \$8.00 per/hr.;
- 24 11. Diaz, Francisco, US Citizen, Procurement Specialist, \$10.00 per/hr.;
- 25 12. Lazaro, Rudolfo Jr. S., US Citizen, Construction Laborer, \$8.00 per/hr.;
- 26 13. Lizama, Luciana H., US Citizen, Administrative Assistant, \$8.00 per/hr.;

27 ¹⁰ Exhibit 4.

28 ¹¹ See Exhibit 2.1 to 2.21.

¹² See Exhibit 2.1 to 2.21.

¹³ See Exhibit 2.1 to 2.21; *See also* Exhibit 4.

¹⁴ See Exhibit 2.1 to 2.21; *see also* Exhibit 4, *see also* Second Amended Determination at 1-2.

- 1 14. Manglona, Joe Raymond B., US Citizen, Assistant Safety Supervisor, \$9.00
- 2 per/hr.;
- 3 15. Masga, Bruce E., US Citizen, Heavy Equipment Operator II, \$10.00 per/hr.;
- 4 16. Natividad, Frances Ann S., US Citizen, Electrician Helper, \$8.00 per/hr.;
- 5 17. Reyes, Robin Rae D., US Citizen, Construction Laborer, \$8.00 per/hr.;
- 6 18. Sandbergen, Allen F., US Citizen, Construction Laborer, \$8.00 per/hr.;
- 7 19. San Nicolas, Junell Joemar P., US Citizen, Security Officer, \$8.75 per/hr.;
- 8 20. Santos, Ramon Francisco D., US Citizen, Construction Laborer, \$8.00
- 9 per/hr.;
- 10 21. Shai, Edward D., US Citizen, Procurement Assistant, \$10.00 per/hr.; and
- 11 22. Casilla, Quirino C., CW-1, Brickmason, \$8.50 per/hr.

12 *See Ex. 2.1 –2.21 and 11.*

13 As shown above, Mr. Quirino Casilla was the only foreign national worker affected

14 by the reduction in force. Despite arguments by Respondent that Mr. Casilla was

15 terminated, it is clear that Respondent treated Mr. Casilla as part of the reduction in force.

16 See Ex. 11. Further, considering that Mr. Casilla’s employment was contemporaneous

17 with the reduction in force, there is no documents to support a termination for cause, and

18 procedures for resignation were not followed, the undersigned finds that Mr. Casilla’s

19 employment was affected by the reduction in force. *See* Recording 51:44-53:17; *see also*

20 Recording 1:06:03-1:06:18. Accordingly, the undersigned finds that Respondent violated

21 3 CMC §4937 when it laid off Mr. Casilla without adequate notice.

22 **C. Respondent violated NMIAC § 80-20.1-240 by failing to give requisite notice.**

23 “Before commencement of a reduction in force, an employer shall give at least 60

24 days written notice to the Department and at least 30 days notice to each affected employee

25 on the standard form provided by the Department.” NMIAC § 80-20.1-240(c).¹⁵ “The

26 effective date of a reduction in force is a date at least 30 days after the employees to be

27 laid off have received notice of termination due to reduction in force, downsizing, or

28 closure of the business.” NMIAC § 80-20.1-240(d). In such cases, the Administrative

15 Notably, the plain language of the cited regulations do not specifically restrict this mandate to foreign workers.

1 Hearing Officer may “award unpaid wages . . . for conduct of the employer that is in
2 violation of Commonwealth of federal law.” NMIAC § 80-20.1-485(c)(2). Further, the
3 Administrative Hearing Officer may “[i]mpose such other sanction, order or relief as may
4 reasonably give effect to the requirements of Commonwealth law.” NMIAC § 80-20.1-
5 485(c)(13).

6 It is undisputed that Respondent gave its affected employees verbal notice on
7 February 15, 2017 and written notice on February 17, 2017. *See* Ex 2.1—2.21 and 11.
8 Further, the reduction in force was made effective on February 17, 2017. *See* Ex 2.1—
9 2.21 and 11. For failure to give thirty (30) days written notice to both the employee and
10 the Department, the undersigned finds that Respondent violated NMIAC § 80-20.1-240.
11 Considering that Respondent failed to give its employees the required one month notice
12 of the reduction in force, the undersigned finds it appropriate to award one month’s wages
13 to the 22 affected employees, at their customary rate and hours, as listed above.

14 It is also undisputed that Respondent failed to give any advance written notice to
15 the Department. Instead, one of the affected employees notified the Department’s
16 Enforcement Section of the reduction in force and Enforcement initiated an investigation
17 that prompted this compliance agency case. For failure to give adequate written notice to
18 the Department, the undersigned finds that Respondent violated NMIAC § 80-20.1-240.
19 Further, in light of its egregious violation for failing to give the Department sixty (60)
20 days notice for the reduction of force concerning 22 employee, the undersigned finds a
21 sanction of \$10,000 appropriate and justified.¹⁶
22
23
24

25 ¹⁶ Generally, the Administrative Hearing Officer has the authority to impose sanctions of \$2,000 per violation or “such
26 other sanction, order, or relief as may reasonably give effect to the requirements of Commonwealth law.” NMIAC
27 § 80-20.1-485(c). Here, there are a total 22 violations (stemming from the 22 affected employees) of NMIAC § 80-
28 20.1-240. The undersigned finds a sanction at said rate, a total of \$44,000, to be excessive and does little to serve
the ends of justice – especially in light of the current economic crisis. However, considering the gravity of the
violation (i.e., failing to give *any* notice) and the reckless disregard of applicable regulations, a considerable sanction
is warranted to hold Respondent accountable and deter similar actions.

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V. JUDGMENT

Based on the record and applicable law, judgment is entered in favor of the Department. Respondent violated 3 CMC § 4937 and NMIAC § 80-20.1-240 when it initiated a reduction in force without the requisite advanced written notice to the employee and the Department. In consideration of the violation for 3 CMC § 4937, Respondent is **SANCTIONED** \$2,000. In consideration of the violation for NMIAC § 80-20.1-240, for failure to give affected employees the requisite one month notice, Respondent is **ORDERED** to pay each of the affected employees their respective wages, at their respective customary rate of pay and customary hours, for one month's time. Enforcement shall assist in ensuring the appropriate payments are made to the employees and submit an accounting to the Administrative Hearing Office. In consideration of the violation for NMIAC § 80-20.1-240, for failure to give the Department the requisite sixty (60) days notice before instituting a reduction in force, Respondent is **SANCTIONED** \$10,000. Any person or party aggrieved by this Order may appeal, to the Secretary of Labor within **fifteen (15) days** of the date of issuance of this Order.¹⁷

So ordered this **26th** day of June, 2020.

/s/
JACQUELINE A. NICOLAS
Administrative Hearing Officer

¹⁷ The Notice of Appeal Form is available online at www.marianaslabor.net. The aggrieved person or party must file the completed form at the Administrative Hearing Office, with the applicable filing fee.



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
 DEPARTMENT OF LABOR
 ADMINISTRATIVE HEARING OFFICE

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In Re the Matter of:) CAC No. 18-031-09
)
 The Department of Labor,)
 Enforcement and Compliance Section)
 On behalf of Reduction in Force Employees,) **ORDER GRANTING RESPONDENT'S**
) **MOTION TO DISMISS**
 Complainant,)
)
 v.)
)
 Pacific Rim Land Development, LLC)
 DBA Pacific Rim,)
)
 Respondent.)

On July 10, 2019, Respondent, through Counsel, filed a Motion to Dismiss the Notice of Violation in the above-captioned case for failure to state a claim and untimeliness. On August 13, 2019, Complainant filed its Opposition and on August 20, 2019, Respondent submitted its Reply to Complainant's Opposition. On June 4, 2020, Respondent withdrew its Opposition, after reviewing all of the documents submitted by both parties.

Based on the pleadings and arguments of Respondent and the withdrawal of Complainant's Opposition, the undersigned finds good cause for the dismissal of this case. Accordingly, Respondent's Motion to Dismiss is hereby GRANTED.

ORDERED this 16th day of July, 2020.

/s/ Joey P. San Nicolas
JOEY P. SAN NICOLAS
 Pro Tem Administrative Hearing Officer



1 COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
 2 DEPARTMENT OF LABOR
 3 ADMINISTRATIVE HEARING OFFICE

4 In Re the Matter of:

5 Zaji O. Zajradhara,

6 Complainant,

7 v.

8 Jin Joo Corporation,

9 Respondent.

) Labor Case No. 18-060

) ORDER GRANTING COMPLAINANT'S
) MOTION TO DISMISS

12 On May 16, 2019, Administrative Hearing Officer Jacqueline A. Nicolas entered a voluntary
 13 recusal in the above-captioned case due to a conflict of interest. On October 28, 2019,
 14 Complainant filed a Motion to Dismiss All Pending Cases in this and other pending cases of
 15 which Complainant is a party, before the CNMI Department of Labor Administrative Hearing
 16 Office. The case was then assigned to the undersigned *Pro Tem* Hearing Officer.

17 Based on the review of Complainant's Motion to Dismiss and the Affidavit attached therein,
 18 Complainant clearly demonstrates that he no longer wishes to pursue any of his pending cases at
 19 the Administrative Hearing Office. Moreover, Complainant has shown that he wishes to prioritize
 20 his current job over litigating cases at the Administrative Hearing Office. Accordingly, the
 21 undersigned finds good cause for the dismissal of this case. Complainant's Motion to Dismiss is
 22 hereby GRANTED. Any pending deadlines and hearings scheduled in this matter are hereby
 23 VACATED.

24 ORDERED this 16th day of July, 2020.

27 /s/: Joey P. San Nicolas
 28 JOEY P. SAN NICOLAS
 Pro Tem Administrative Hearing Officer



1 COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
 2 DEPARTMENT OF LABOR
 3 ADMINISTRATIVE HEARING OFFICE

4 **In Re the Matter of:**)
 5 Zaji O. Zajradhara,) **Labor Case No. 18-065**
 6)
 7 Complainant,) **ORDER GRANTING COMPLAINANT'S**
 8 v.) **MOTION TO DISMISS**
 9)
 10 GIG Partners, Inc. dba Bossano Bar,)
 11 Respondent.)

12 On October 28, 2019 Complainant filed a Motion to Dismiss All Pending Cases in this and
 13 other pending cases of which Complainant is a party, before the CNMI Department of Labor
 14 Administrative Hearing Office. On November 20, 2019, Administrative Hearing Officer
 15 Jacqueline A. Nicolas entered a voluntary recusal in this case due to a conflict of interest. The
 16 case was then assigned to the undersigned *Pro Tem* Hearing Officer.

17 Based on the review of Complainant's Motion to Dismiss and the Affidavit attached therein,
 18 Complainant clearly demonstrates that he no longer wishes to pursue any of his pending cases at
 19 the Administrative Hearing Office. Moreover, Complainant has shown that he wishes to prioritize
 20 his current job over litigating cases at the Administrative Hearing Office. Accordingly, the
 21 undersigned finds good cause for the dismissal of this case. Complainant's Motion to Dismiss is
 22 hereby GRANTED. Any pending deadlines and hearings scheduled in this matter are hereby
 23 VACATED.

24 ORDERED this 14th day of July, 2020.

25
 26
 27 /s/ Joey P. San Nicolas
 28 **JOEY P. SAN NICOLAS**
Pro Tem Administrative Hearing Officer



**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE**

In Re Matter of:)	Consolidated Labor Case Nos.
)	
Mir Md Masud Alam)	19-012
Md Imran Hossain)	19-013
Anowar Hossain)	19-014
Mohammad Naymur Rahman,)	19-015
)	
Complainants,)	
)	
v.)	FINDINGS OF FACT & CONCLUSIONS OF LAW
)	
Osman Gani <i>dba</i> Saipan Security Service,)	
)	
Respondent.)	

I. INTRODUCTION

These matters came for an Administrative Hearing on July 8, 2020 at 9:00 a.m. at the Administrative Hearing Office. Due to the ongoing COVID-19 public health emergency and pursuant to Administrative Orders 20-03 and 20-04, the hearing was held telephonically. Complainants Md Imran Hossain, Anowar Hossain, and Mohammad Naymur Rahman (collectively “Complainants”)¹ were present and represented by Attorney Pamela Brown Blackburn. Interpreter Md Abdul Mabud was also present. Respondent Osman Gani *dba* Saipan Security Service (“Respondent”) was not present.² The Department’s Enforcement, Compliance, and Monitoring Section (“Enforcement”) was also present and represented by Investigators Jerrick Cruz and Arlene Rafanan.

II. BACKGROUND & PROCEDURAL HISTORY

On February 28, 2019, Complainants filed a labor complaint for unpaid wages. The Respondent was given an opportunity to respond to the Complaint but did not file a written Answer. On October 31, 2019, after several continuances, the matter was referred to Enforcement

¹ On June 16, 2020, the undersigned issued a written order granting Complainant’s motion to withdraw the complaint for Labor Case 19-012. The motion was granted, however, to avoid confusion, the case caption in the consolidated cases was not changed.

² As discussed below, Respondent had adequate notice of the hearing. Accordingly, the hearing proceeded ex parte.

1 for further investigation.³ On March 6, 2020, Enforcement filed a written determination stating
2 their investigation found unpaid wages for each complainant, and recommended damages. During
3 the June 16, 2020 Prehearing Conference, the parties stated that they did not contest the findings
4 and recommendations in the written determination. As ordered, Complainants filed and
5 exchanged exhibit lists and proposed exhibits. Respondent failed to submit any prehearing
6 statement, witness/exhibit lists, or copies of proposed exhibits.⁴ During the Administrative
7 Hearing, Complainants submitted handwritten timesheets and summaries of hours worked and
8 payments received. These documents were admitted into the recording during the Administrative
9 Hearing. Respondent did not appear to the Administrative Hearing.

10 On July 15, 2020, the record was reopened for the limited purpose of (1): receive corrected
11 and clarifying information from the Complainants; and (2) receive additional testimony from
12 Respondent due to his non-appearance. In accordance to the deadlines and specifications of the
13 Order Reopening the Case, Complainants supplemented the records with signed affidavits,
14 corrected calculations of unpaid wages, and additional handwritten records. Significantly, despite
15 opportunities to do so, Respondent did not submit any records, documents, testimony, or other
16 evidence to contest these claims. Ultimately, Respondent chose not participate in the adjudicative
17 proceedings.

18 III. FINDINGS OF FACT

19 Based upon the filings, testimony, and admitted exhibits, the undersigned issues the
20 following findings of fact:

- 21 1. Complainants entered into a verbal agreement with Respondent to work as security guards
22 at various poker establishments in Saipan. Specifically, in no particular order,
23 Complainants worked at High Roller #1, High Roller #5, and High Roller #7.
- 24 2. Each complainant was authorized to work in the CNMI as a CNMI-Only Transitional
25 Worker (“CW-1”) after paying Respondent a fee to process their respective CW-1 papers.⁵

26 ³ The delay in this matter was to allow Respondent time to secure an attorney. Despite several months of delay,
27 Respondent was unable to secure an attorney.

28 ⁴ Notably, the October 31, 2019, Referral and Scheduling Order stated that a prehearing statement of the issues,
witness/exhibits lists, and copies of proposed exhibits must be filed and exchanged at the Prehearing Conferences. On
June 16, 2020, neither party was prepared to submit said documents, but the undersigned gave the parties until the end
of the day to file and exchange said documents. Several continuances were granted to allow Respondent time to secure
an attorney. Respondent failed to act and attempted to delay the proceedings.

⁵ This finding is based on Complainants’ sworn testimony. There is no record or other documentation submitted to this
effect.

1 The fee was based on a separate agreement between the parties, collateral to the claim for
2 unpaid wages.⁶

- 3 3. Based on the pleadings, investigation, determination, and submitted exhibits, MD Imran
4 Hossain agreed to work at a rate of \$5.00 per hour. Anowar Hossain and Mohammad
5 Naymur Rahman agreed to work at a rate of minimum wage.
- 6 4. The number of hours and work schedule was determined on an as needed basis.
7 Specifically, Respondent would notify Complainants when and where to work beforehand
8 but a set number of hours or set schedule was not established or guaranteed. Generally,
9 Complainants worked seven days a week for twelve (12) hour shifts, each day.
- 10 5. On occasion, Respondent provided transportation to and from work. Upon arriving to
11 work, Complainants would check in with the cashier at the Poker establishment.
- 12 6. Complainants were expected to stand guard for the entire shift. Complainants did not take
13 breaks for lunch or rest, and only briefly left their post to use the restroom.
- 14 7. Respondent agreed to pay the Complainants on a biweekly basis, but payments were
15 irregular or nonexistent.
- 16 8. Complainants documented their own time records. Each day, Complainants would prepare
17 their time sheets. Said records were submitted by Complainants to Respondent. However,
18 Respondent did not keep, maintain, or submit any such records.
- 19 9. Md Imran Hossain worked as a security guard for Respondent from October 2, 2018 to
20 January 16, 2019 for a total of 1,277 hours.⁷ In wages, Md Imran Hossain received only
21 \$4,452.50.⁸ Md Imran Hossain only received partial payment from October 2, 2018 to

22 ⁶ Notably, this agreement was established before the US Department of Labor published the Interim Final Rules
23 regarding employer fees and responsibilities for obtaining a Temporary Labor Certification.

24 ⁷ Ex.1.

25 ⁸ Ex. 2. The case was reopened, in part, for the limited purpose of correcting the typographical and erroneous
26 calculations for the record. When counsel submitted corrected calculations, the summary lowered the total amount
27 paid from \$4,452.50 to \$4,327.50. This discrepancy was unexplained. Additionally, the undersigned finds that the
28 original errors should not affect the amount actually paid and received by Complainant. Since the matter was reopened
for a limited purpose, the conflicting amount will be settled in favor of the original evidence. Further, in light of the
continued discrepancies from Complainant's accounting of the amounts and hours worked, the total amount of unpaid
wages will be settled in favor of the original submission. Notably, this error affects the total amount of unpaid wages
requested. Specifically, Complainant originally requested \$7,144.80 and now requesting \$7,238.08 in unpaid wages.
It is the Complainant's burden to prove their case and present credible evidence to the Administrative Hearing Officer.
In light of the errors and continued discrepancies with Complainant's summary, the undersigned shall defer to the
amended calculations submitted by Enforcement. The undersigned finds the amended calculations from Enforcement
to be trustworthy as it makes the necessary corrections and does not deviate from the original testimony.

1 December 15, 2018. Md Imran Hossain was not paid for the period of December 16, 2018
2 to January 16, 2019.⁹

3 10. Anowar Hossain worked as a security guard for Respondent from November 24, 2018 to
4 January 18, 2019 for a total of 759.5 hours.¹⁰ In wages, Anowar Imran was partially paid
5 \$400 for the work week ending in December 1, 2018 and \$640 for the work week ending
6 in December 8, 2018. In total, Anowar Imran received only \$1,040.00.¹¹ Anowar received
7 no other payment for wages from December 9, 2018 to January 16, 2019.

8 11. Mohammad Naymur Rahman worked as a security guard for Respondent from July 29,
9 2018 to November 7, 2018.¹² From August 28, 2020, Mohammad Naymur Rahman
10 worked a total of 734 hours.¹³ In wages, Mohammad Naymur Rahman received only
11 \$1,500.¹⁴ While Mohammad Naymur Rahman received a check for \$875, the check
12 bounced and was never deposited.

13 12. Respondent made repeated promises to pay the Complainant's but failed to do so.

14 ///

15 ⁹ Complaint in LC-19-014.

16 ¹⁰ Ex. 3. The case was reopened, in part, for the limited purpose of correcting the typographical and erroneous
17 calculations for the record. When counsel submitted corrected calculations, the summary increased the total amount
18 of hours worked from 759.5 hours to 774.5 hours. This discrepancy was unexplained. Additionally, the undersigned
19 finds that the original errors should not affect the amount of hours actually worked by Complainant. Since the matter
20 was reopened for a limited purpose, the conflicting amount will be settled in favor of the original submission. Notably,
21 this error affects the total amount of unpaid wages requested. Specifically, Complainant originally requested \$6,059.56
22 and now requesting \$6,190.06 in unpaid wages. It is the Complainant's burden to prove their case and present credible
23 evidence to the Administrative Hearing Officer. In light of the errors and continued discrepancies with Complainant's
24 summary, the undersigned shall defer to the amended calculations submitted by Enforcement. The undersigned finds
25 the amended calculations from Enforcement to be trustworthy as it makes the necessary corrections and does not
26 deviate from the original testimony.

27 ¹¹ Ex. 4.

28 ¹² Ex. 5.

¹³ Ex. 7. Notably, the calculations contain another error. For the work week of 10/7/2018-10/13/2018, Complainant
references 74 total hours worked. Upon review of Enforcement's amended determinations and calculations, as well as
the hand written timesheets, Complainant only worked 72 hours during the above-mentioned week.

¹⁴ Ex. 6 and Ex. 7. The case was reopened, in part, for the limited purpose of correcting the typographical and erroneous
calculations for the record. When counsel submitted corrected calculations, the summary lowered the total amount
paid from \$2,400 to \$0. This discrepancy was unexplained. Additionally, the undersigned finds that the original errors
should not affect the \$1,500 amount actually paid and received by Complainant. Since the matter was reopened for a
limited purpose, the conflicting amount will be settled in favor of the original evidence. Further, in light of the
continued discrepancies from Complainant's accounting of the amounts and hours worked, the total amount of unpaid
wages will be settled in favor of the original submission. Notably, this error affects the total amount of unpaid wages
requested. Specifically, Complainant originally requested \$7,014.71 and now requesting \$6,334.50 in unpaid wages.
It is the Complainant's burden to prove their case and present credible evidence to the Administrative Hearing Officer.
In light of the errors and continued discrepancies with Complainant's summary, the undersigned shall defer to the
amended calculations submitted by Enforcement. The undersigned finds the amended calculations from Enforcement
to be trustworthy as it makes the necessary corrections and does not deviate from the original testimony.

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IV. CONCLUSIONS OF LAW

Based on the above-stated findings of fact and applicable law, the undersigned issued the following conclusions of law:

1. Respondent is in Default.

Pursuant to NMIAC § 80-20.1-480(l), “[e]xcept for good cause shown, failure of a party to appear at a hearing after timely being served notice to appear shall be deemed to constitute a waiver of any right to pursue or contest the allegations in the complaint. If a party default, the hearing officer may enter a final order containing such findings and conclusions as may be appropriate.” “Although Employer is in default, Employees still must present a *prima facie* case in order to obtain a judgment in this case.”¹⁵

Here, Respondent had more than adequate notice of the Administrative Hearing. Specifically, written notice in the Referral and Scheduling Order was issued and served to Respondent on October 31, 2019. Further, during the June 16, 2020 Prehearing Conference, both parties were verbally reminded of the scheduled Administrative Hearing, confirmed contact numbers, and given verbal instructions for telephonic procedures. On the morning of the Administrative Hearing, the Clerk called Respondent approximately ten (10) times. On the second time, Respondent answered, indicated to call him back in three minutes, and abruptly hung up. The Clerk repeatedly attempted to reconnect with Respondent over the following ten (10) minutes to no avail.

Furthermore, Respondent has repeatedly failed to participate in the adjudicative proceedings—even after multiple continuances and opportunities to do so. For instance, during the prehearing conference, Respondent failed to submit or produce any evidence or potential witnesses. During the Administrative Hearing, Respondent failed to appear for the telephonic hearing, as instructed. Further, after the case was reopened to give Respondent an opportunity to provide testimony, Respondent declined to submit a sworn affidavit.

In conclusion, Respondent was provided meaningful access and opportunity to participate, yet declined to do so. Accordingly, the undersigned finds that Respondent waives his right to contest the allegations against him.

///

¹⁵ *Batiguas, et. al. v. Java Imports Ltd.*, Labor Case Nos. 14-1178 through 14-1180, Administrative Order at 41 Com. Reg. 042193 (Jun. 28, 2019).

1 **2. The Applicable Statute of Limitations Limits the Claim in LC 19-015.**

2 Pursuant to 3 CMC § 4962, “[n]o labor complaint may be filed more than six months after
3 the date of the last-occurring event that is the subject of the complaint, except in cases where the
4 actionable conduct was not discoverable upon the last-occurring event.” “Generally, at common
5 law, [the] ‘last occurring event,’ otherwise known as the “last element” accrual rule, has been held
6 to mean that the statute of limitations runs from the occurrence of the last element essential to the
7 cause of action.”¹⁶

8 Here, the complaints were filed February 28, 2019. In Labor Case No. 19-015,
9 Complainant Mohammad Naymur Rahman originally claimed wages dating beyond the August
10 28, 2018. In accordance with the applicable statute of limitations, relief is limited to the unpaid
11 wages starting at August 28, 2020. Accordingly, any claims dated before the August 28, 2018 are
12 time-barred.

13 **3. Complainants are Entitled to Minimum Wage.**

14 Pursuant to 3 CMC § 4931, “[n]o foreign national worker employed pursuant to this
15 chapter shall be paid less than the minimum wage provided by law.” In 2007, the United States
16 enacted a law incrementally raising the minimum wage in the Commonwealth until it reaches the
17 U.S. minimum wage.¹⁷ On September 30, 2018 the minimum wage in the CNMI increased from
18 \$7.05 per hour to \$7.25 per hour, matching the U.S. minimum wage. Accordingly, any agreement
19 to work below the minimum wage is not enforceable by operation of law.

20 Md Imran Hossain worked as Respondent’s employee from October 2, 2018 to January
21 16, 2019 for a total of 1,277 hours.¹⁸ Based on calculations of hours worked (regular and
22 overtime), rate of pay, and amounts actually paid, Md Imran Hossain accumulated a total of
23 \$6,727 in unpaid wages.¹⁹

24 Anowar Hossain worked as Respondent’s employee from November 24, 2018 to January
25 18, 2019 for a total of 759.5 hours.²⁰ Based on calculations of hours worked (regular and overtime,

26 ¹⁶ *In the Matter of Aminul Islam v. Christoopher G. Imbo*, Labor Case No. 17-015 (Administrative Order issued
27 October 5, 2018) (Published at 41 Com. Reg. 041755 (May 28, 2019)).

28 ¹⁷ *See* Fair Minimum Wage Act of 2007, Public Law 110-28, as amended.

¹⁸ Ex.’s 1-2.

¹⁹ *Id.*

²⁰ Ex.’s 3-4. During the Administrative Hearing, counsel for Complainants identified that Exhibit 4 was improperly
labeled as RAHMAN, Mohammad Naymur, but was indeed a summary of Anowar Hossain.

1 rate of pay, and amounts actually paid, Anowar Hossain accumulated a total of \$6,222.69 in
2 unpaid wages.²¹

3 Mohammad Naymur Rahman worked as Respondent's employee from July 29, 2018 to
4 November 7, 2018. Pursuant to the six month statute of limitations, Mohammad Naymur Rahman
5 may only recover wages as far back as August 28, 2018.²² Based on calculations of hours worked
6 (regular and overtime, rate of pay, and amounts actually paid within the six months statute of
7 limitations, Mohammad accumulated a total of \$4,812.75 in unpaid wages.²³

8 **4. Complainants are Entitled to Liquidated Damages.**

9 Pursuant to 3 CMC § 4947(d)(2), a hearing officer is authorized to “[a]ssess liquidated
10 damages in twice the amount of unpaid wages or overtime compensation in any case in which a
11 foreign national worker prevails on unpaid wages or overtime compensation claims unless the
12 hearing officer finds extenuating circumstances”

13 In these matters, Respondent hired Complainants to work as security guards without
14 adherence to local and federal laws. Specifically: (1) Respondent did not announce the position
15 or submit a Job Vacancy Announcement; (2) Respondent required Complainants to pay the CW-
16 1 petition filing and processing fee; (3) Respondent did not maintain or submit employment
17 records; (4) there is no showing that Respondent complied with the 30% work force objective;
18 (5) there is no showing that Respondent paid the necessary taxes; and (6) Respondent did not pay
19 Complainants the applicable minimum wage. Additionally, Respondent repeatedly delayed the
20 proceedings. For instance, Respondent made repeated promises to pay the Complainants but
21 failed to do so, which delayed initiation of the complaint. Further, Respondent made numerous
22 pleas for additional time to procure an attorney to represent him in these labor cases, yet made no
23 demonstrative effort to actually obtain counsel. This delayed adjudication. Lastly, Respondent
24 often declined to participate in the legal proceedings, including the Administrative Hearing.

25 In sum, Respondent has proven to be an irresponsible employer who has taken advantage
26 of these employees and has skirted applicable laws. While the undersigned cannot sanction him
27 for labor violations because Enforcement has declined to pursue an agency case in the matter, the

28 ²¹ *Id.*

²² 3 CMC § 4962.

²³ Ex's 5-7. During the Administrative Hearing, counsel for Complainants identified that Exhibit 7 improperly accounted wages received. As testified to and shown by Exhibit 6, a check for payment bounced and was not cashed in. See Enforcement's Amended Determination, Amended Exhibit D.

1 undersigned finds liquidated damages in twice the amount of unpaid wages or overtime
2 compensation owed to each Complainant to be appropriate and warranted.

3 **V. JUDGMENT**

4 Accordingly, based on the foregoing, judgment is hereby entered in favor of
5 Complainants. Pursuant to 3 CMC § 4947(d)(1) and (d)(2) Respondent is ordered to pay the
6 respective Complainant the following amounts²⁴ within thirty (30) calendar days of this Order:

- 7 1. With respect to Labor Case No. 19-013, Complainant Md Imran Hossain is awarded
8 \$6,727 in unpaid wages and overtime compensation. Additionally, Complainant Md
9 Imran Hossain is awarded \$13,454 in liquidated damages.
- 10 2. With respect to Labor Case No. 19-014, Complainant Anowar Hossain is awarded
11 \$6,222.69 in unpaid wages and overtime compensation. Additionally, Complainant
12 Anowar Hossain is awarded \$12,445.38 in liquidated damages.
- 13 3. With respect to Labor Case No. 19-015, Complainant Mohammad Naymur Rahman is
14 awarded \$4,812.75 in unpaid wages and overtime compensation. Additionally,
15 Complainant Mohammad Naymur Rahman is awarded \$9,625.50 in liquidated damages.

16 Any person or party aggrieved by this Order may appeal, to the Secretary of Labor within
17 **fifteen (15) calendar days** of the date of issuance of this Order.²⁵

18 So ordered this 31st day of July, 2020.

19 /s/
20 **JACQUELINE A. NICOLAS**
21 Administrative Hearing Officer

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26 ²⁴ Pursuant to NMIAC § 80-20.1-120, "parties holding unpaid awards under orders issued by the Administrative
27 Hearing Office of the Department of Labor may proceed with collection actions in the Commonwealth courts without
28 first exhausting collection remedies at the Department of Labor. . . . In general, the Department will not pursue
collection actions in individual cases because of resource constraints." NMIAC § 80-20.1-120.

²⁵ The Notice of Appeal Form is available online at www.marianaslabor.net or hard copies are available at the
Administrative Hearing Office. The aggrieved person or party must file the completed form at the Administrative
Hearing Office, with the applicable filing fee.



1 COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
 2 DEPARTMENT OF LABOR
 3 ADMINISTRATIVE HEARING OFFICE

4 In Re Matter of:)
 5 Mir Md Masud Alam, et. al.,) Consolidated Labor Case Nos.
 6) 19-012 to 19-015
 7 Complainant,)
 8 v.) ORDER GRANTING MOTION TO
 9 Osman Gani dba Saipan Security Services,) WITHDRAW COMPLAINT IN LABOR
 10 Respondent.) CASE NO. 19-012
 11)

12 This matter came for a Prehearing Conference on June 16, 2020 at 9:00 at the
 13 Administrative Hearing Office. Complainants Mir Md Masud Alam, Md Imran Hossain,
 14 Anowar Hossain, and Mohammad Naymur Rahman (collectively, "Complainants") were
 15 represented by Attorney Pamela Blackburn Brown, who appeared telephonically. Respondent
 16 Osman Gani dba Saipan Security Services ("Respondent") was present and also appeared
 17 telephonically. The Department's Enforcement Section were present and represented by
 18 Investigators Arlene Rafanan and Jerrick Cruz ("Enforcement").

19 Prior to the Prehearing Conference, Complainants' filed a motion to withdraw the
 20 complaint in Labor Case 19-012. Pursuant to Complainants' motion, and without objection from
 21 Respondent, the complaint with respect to Labor Case 19-012 is hereby **DISMISSED**.

22 During the Prehearing Conference, parties confirmed receipt of Enforcement's written
 23 determination. Notably, both parties stated they did not contest the findings in the written
 24 determination. As previously ordered in the October 31, 2019 Referral and Scheduling Order,
 25 the parties are to submit their respective exhibit list, witness list, and copies of exhibits they
 26 intend to introduce at the Administrative Hearing at the Prehearing Conference. Since the
 27 Prehearing Conference was conducted telephonically, Parties may file the necessary documents
 28 by emailing hearing@dol.gov.mp, or dropping the documents at the Administrative Hearing
 Office before the end of the day. Additionally, as stated in the October 31, 2019 Order, evidence



**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE**

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In Re the Matter of:)	Consolidated Labor Case Nos.
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Mengli Ma)	19-018
Yubin Liu)	19-019
Xiaoyang Gao)	19-020
Bingping Li)	19-021
Wenpi Wang)	19-022
Yushuang Sun,)	19-023
)	
Complainants,)	
)	ORDER DISMISSING LC-19-023
v.)	
)	
Osman Gani and Xiao Tang Sanchez <i>dba</i>)	
24/7 Enterprises,)	
)	
Respondents.)	
)	

On June 24, 2020, Complainant Yushuang Sun filed a motion to withdraw her respective complaint against Respondents. The undersigned finds that good cause for dismissal exists when the Complainant no longer wishes to pursue their claims. Accordingly, Labor Case 19-023 is hereby **DISMISSED**. Moving forward, the above-captioned consolidated cases shall be renamed to exclude Yushuang Sun and Labor Case 19-023.

So ordered this 12th day of August, 2020.

/s/
JACQUELINE A. NICOLAS
Administrative Hearing Officer



**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE**

<p>In Re the Matter of:</p> <p>Krishna M. Piol,</p> <p style="padding-left: 100px;">Complainant,</p> <p style="text-align: center;">v.</p> <p>Micronesia Renewable Energy Inc. – CNMI,</p> <p style="padding-left: 100px;">Respondent.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Labor Case No. 19-041</p> <p>FINDINGS OF FACT AND CONCLUSIONS OF LAW</p>
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I. INTRODUCTION

This matter came before the undersigned for an Administrative Hearing on July 21, 2020 at 9:00 a.m. at the Administrative Hearing Office. Complainant Krishna M. Piol (“Complainant”) was present and self-represented. Respondent Micronesia Renewable Energy Inc.— CNMI (“Respondent”) was present and represented by Chief Operations Officer Jeff Voacolo and Attorney Vincent DLG. Torres. The Department’s Enforcement, Compliance and Monitoring Section (“Enforcement”) was also present and represented by Investigator Arlene Rafanan. Due to the ongoing COVID-19 public health emergency, the hearing was held telephonically.

II. PROCEDURAL HISTORY

On June 3, 2019, Complainant filed a claim for breach of contract for failure to pay commission and bonuses allegedly owed. On June 28, 2019, after review of the pleadings, the matter was referred to Enforcement. On December 4, 2019, Enforcement submitted a written determination finding no violation, and recommending dismissal based on their investigation.¹ A Prehearing Conference was held on January 21, 2020, but the parties failed to show. The Order to Show Cause for failure to appear and the Administrative Hearing was scheduled and held on February 12, 2020. The parties appeared but were unprepared to proceed with the Administrative

¹ As a preliminary matter, parties should note that Enforcement’s determination is simply a product of their investigation and recommendation to the administrative hearing officer. Enforcement’s determination does not constitute a final finding of fact or decision.

1 Hearing. The Administrative Hearing was continued to March 4, 2020. Pursuant to Respondent's
2 Motion to continue to allow new counsel time to prepare, the matter was rescheduled to March
3 18, 2020. Then, due to the COVID-19 public health emergency and temporary closure of
4 government offices, the matter was taken off calendar. Upon reopening of government offices,
5 the matter was scheduled and heard before the undersigned.

6 III. FINDINGS OF FACT

7 In consideration of the record and credibility of witness testimony, the undersigned hereby
8 issues the following findings of fact:

- 9 1. Complainant began working for Respondent as a CNMI Solar Salesperson on July 2,
10 2018.
- 11 2. The employment arrangement is governed by a written consulting job offer, distinct from
12 an employment contract.² The written offer outlines the job description, responsibilities,
13 compensation, and bonus incentives.
- 14 3. Complainant agreed to the terms of the offer. Despite certain issues with the document
15 and misinformation from management,³ Complainant does not contest the authenticity of
16 her signature on the fourth page of the job offer. Further, testimony from Respondent
17 indicates standard practice of signing "in boarding" documents at the start of employment,
18 and consistency in the application of terms within the written offer.
- 19 4. Under the terms of the offer, "[t]he CNMI Solar Salesperson base bay will be \$325.00
20 paid weekly, plus 2.5% on contractual value minus BGRT on every sale that the
21 salespersons sells for MRE."⁴ Further, "[a] \$5,000 bonus will be given to the sales people
22 who reach 30 sales a quarter."⁵ Lastly, "[a]ll contracts that undergo cancellations will be
23

24 ² Ex. 1.

25 ³ Notably, there are a number of issues with this document. First, there is ambiguity in undefined and intermingled
26 terms such as CNMI Solar Energy Sales Consultant, CNMI Solar Salesperson, MRE Solar Energy Sales Consulting
27 position, and ESA. Second, the stand-alone signature page on page 4 is not dated. Since it is a stand-alone signature
28 page, it is unclear whether Complainant received or reviewed the remaining pages. Further, without a date, it is unclear
when Complainant agreed to these terms or whether changes to the offer were made in other pages. Accordingly, it is
unclear whether Complainant accepted the terms of the entire document or simply the fourth page. Third, the offer
does not provide for definite key provisions such as a start date.

⁴ Ex. 1.

⁵ *Id.*

1 reimbursed to MRE [and] if the ESA is terminated or resigned for any reason that
2 **pending commissions will be forfeited back to MRE.**⁶ (Emphasis added).

- 3 5. The terms of the offer were in place during Complainant's entire employment period.
4 6. Complainant resigned on October 12, 2018.
5 7. Upon resignation, Complainant had a number of pending contracts (i.e., paperwork was
6 completed but solar panels were not yet installed or paid for)⁷ with the following clients:
7 a. Huaxian Xu;
8 b. Emy Ada;⁸
9 c. Bofan Cabrera;⁹
10 d. Mariano Palacios;¹⁰
11 e. Maggie Naputi;¹¹
12 f. Nathan Castro;¹²
13 g. Juan Villagomez;¹³ and
14 h. Elsie Matsunaga.
15 8. There was no written contract or written document supporting entitlement to a referral
16 bonuses.
17 9. Due to financial reasons and policies of Sunnova, the financial arm of Respondent,
18 contracts that are pending for ninety (90) days are cancelled. As a result of Super Typhoon
19 Yutu, many contracts were delayed and reached the ninety (90) days cap. Accordingly,
20 such contracts were cancelled.
21 10. As a matter of business initiative, Respondent followed up with cancelled clients to resign
22 willing and interested parties. There was no bad faith or unfair business practices in the
23 cancellation and resigning of clients.

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25 ///

26 ⁶ *Id.*

27 ⁷ Ex. 2B.

28 ⁸ Ex. 8

⁹ Ex. 6

¹⁰ Ex. 7

¹¹ Ex. 3

¹² Ex. 5

¹³ Ex. 4.

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IV. CONCLUSIONS OF LAW

In consideration of the above-stated findings and applicable law, the undersigned hereby issues the following conclusions of law:

1. Complainant did not file within the six months statute of limitations.

Pursuant to 3 CMC § 4962, “[n]o labor complaint may be filed more than six months after the date of the last-occurring event that is the subject of the complaint, except in cases where the actionable conduct was not discoverable upon the last-occurring event.” “Generally, at common law, [the] ‘last occurring event,’ otherwise known as the “last element” accrual rule, has been held to mean that the statute of limitations runs from the occurrence of the last element essential to the cause of action.”¹⁴

The last date Complainant worked for Respondent was October 12, 2018. Complainant filed her complaint on June 3, 2019—approximately eight months after employment. The matter was referred to Enforcement for investigation because, at the time, it was unclear whether any actionable conduct was not discoverable upon the last date of employment. Specifically, the initial filings included follow up conversations to recoup the commission within the six month statute of limitation and the offer letter indicating commissions are forfeited upon resignation was not then filed with the Administrative Hearing Office. Upon review of the entire record, it is clear that Complainant failed to file within the six month statute of limitations.

2. Complainant failed to state a prima facie case for their claim of breach of contract for failure to pay commission and bonuses.

Generally, a contract is formed when there is an offer, acceptance, and consideration. The primary concern when interpreting a contract is to “give effect to the intentions of the parties . . . presumed to be encompassed by the plain language of [the] contract[’s] terms.”¹⁵

Here, the signed offer letter constituted a contract between the parties. The forfeit provision under the contract was unambiguous. Based on contract interpretation principles, Complainant

¹⁴ *In the Matter of Aminul Islam v. Christopher G. Imbo*, Labor Case No. 17-015 (Administrative Order issued October 5, 2018) (Published at 41 Com. Reg. 041755 (May 28, 2019)).

¹⁵ *Saipan Achugao Resort Members Ass’n v. Wan Jin Yoon*, 2011 MP 12 ¶ 15 (quoting *Commonwealth Ports Auth. v. Tinian Shipping Co.*, 2007 MP 22 ¶ 16).

1 forfeited her commission to the eight above-listed clients whose contracts were pending when she
2 resigned on October 12, 2018. The misinformation by Respondent's middle management and
3 misunderstanding by Complainant did not create any entitlement to the commission or bonuses.
4 There are no other written documents to supersede the terms of the contract. There are no other
5 business practices or circumstances that pay out commissions after resignation from the company.
6 Accordingly, Complainant fails to meet her burden to prove entitlement the commission and
7 bonuses.

8 **V. JUDGMENT**

9 Based on the foregoing, judgment is hereby entered in favor of Respondent, Micronesia
10 Renewable Energy, Inc. - CNMI.

11 Any person or party aggrieved by this Order may appeal by filing the Notice of Appeal form
12 and filing fee with the Administrative Hearing Office within fifteen (15) days from the date of
13 this Order.

14 So ordered this 27th day of July, 2020.

15 /s/
16 **JACQUELINE A. NICOLAS**
17 Administrative Hearing Officer
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that Complainant returned to work and failed to submit any documentation to support a claim for unpaid wages.³

During the Prehearing Conference, Respondent made an oral motion to dismiss the claims for failure to state a claim. Upon further review of the pleadings, the undersigned finds that dismissal is appropriate. Notably, this office does not regulate claims or allegations regarding a simple suspension. Further, as demonstrated by Enforcement's written determination and representations made at the Prehearing Conference, there is no showing of a wrongful termination or unpaid wages against Respondent. Pursuant to NMIAC § 80-20.2-130(c) for failure to state a claim, this matter is hereby **DISMISSED**. Further, the Administrative Hearing scheduled for March 4, 2020 at 9:00 a.m. is hereby **VACATED**.

So ordered this **11th** day of February, 2020.

/s/ _____

Jacqueline A. Nicolas
Administrative Hearing Officer

³ In addition to Complainant's failure to submit documents and actively participate in the investigation phase, Complainant's failure to appear at the Prehearing Conference severely limits his ability to support and prove his claims. As stated in the Referral and Scheduling Order, "any exhibits that are not filed or exchanged at [the Prehearing Conference] will not be admitted into evidence at the Administrative Hearing." Order at 3.



1 COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
 2 DEPARTMENT OF LABOR
 3 ADMINISTRATIVE HEARING OFFICE

4 In Re the Matter of:)
 5 Donald Nguyen,) Labor Case No. 19-045
 6 Complainant,) ORDER OF DISMISSAL
 7 v.)
 8 Toothworks, Inc. dba Toothworks Dental)
 9 Clinic,)
 10 Respondent.)
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12 On February 2, 2020, an Order to Show Cause Hearing for Complainant's failure to appear
 13 at the scheduled and noticed Prehearing Conference was set for March 18, 2020. Specifically,
 14 Complainant was ordered to show cause as to why this matter should not be dismissed.

15 Upon electronic service to Complainant, Complainant indicated he is now off island and
 16 will not be able to attend any further hearings. The undersigned finds that Complainant is no
 17 longer interested in pursuing his claim(s) and good cause for dismissal exists. Accordingly, this
 18 matter is hereby **DISMISSED**.

19 Any person or party aggrieved by this Order may appeal, to the Secretary of Labor within
 20 **fifteen (15) days** of the date of issuance of this Order.¹

21 So ordered this 2nd day of July, 2020.

22 /s/
 23 _____
 24 JACQUELINE A. NICOLAS
 25 Administrative Hearing Officer
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28 ¹ The Notice of Appeal Form is available online at www.marianaslabor.net. The aggrieved person or party must file the completed form at the Administrative Hearing Office, with the applicable filing fee.



**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE**

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<p>In Re the Matter of:</p> <p>Ronald T. Cachero,</p> <p style="padding-left: 100px;">Complainant,</p> <p style="padding-left: 100px;">v.</p> <p>Amy International Corp.,</p> <p style="padding-left: 100px;">Respondent.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Labor Case No. 19-047</p> <p>ORDER OF DISMISSAL</p>
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This matter came for an Order to Show Cause Hearing and Prehearing Conference on July 28, 2020 at 9:00 a.m. at the Administrative Hearing Office. Complainant Ronald T. Cachero (“Complaint”) failed to appear. Respondent Amy International Corp., *dba* Hanamitsu Hotel (“Respondent”) was present and represented by owner Huaying “Amy” Zhang, Manager Felipe Kalen, and Supervisor Raffy Tandoc. The Department’s Enforcement, Monitoring, and Compliance Section (“Enforcement”) was also present. This matter was conducted telephonically.

Here, the parties were served with adequate notice of the proceedings at contact information specified by the parties. The Administrative Hearing Office made several attempts to connect with counsel for Complainant to no avail.¹ As demonstrated by Complainant’s repeated failures to appear, Complainant does not wish to participate in the adjudicative proceedings. Pursuant to NMIAC § 80-20.1-485(b), the undersigned finds that Complainant has abandoned this case. Accordingly, this matter is hereby **DISMISSED**.

So ordered this **28th** day of July, 2020.

/s/
JACQUELINE A. NICOLAS
Administrative Hearing Officer

¹ A representative from counsel’s office, Mr. Cris Hilario, indicated that counsel emailed that the office no longer represents Complainant. Notably, a Motion for Leave to Withdraw was never filed by counsel. Further, leave to withdraw was never granted by the undersigned.



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

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<p>In Re the Matter of:</p> <p>Leonard Regua Jr.,</p> <p style="padding-left: 100px;">Complainant,</p> <p style="padding-left: 100px;">v.</p> <p>Amy International Corp.,</p> <p style="padding-left: 100px;">Respondent.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Labor Case No. 19-048</p> <p>ORDER OF DISMISSAL</p>
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This matter came for an Order to Show Cause Hearing and Prehearing Conference on July 28, 2020 at 9:30 a.m. at the Administrative Hearing Office. Complainant Leonardo Regua Jr. (“Complaint”) was represented by Attorney Pamela Blackburn Brown. Respondent Amy International Corp., *dba* Hanamitsu Hotel (“Respondent”) was present and represented by owner Huaying “Amy” Zhang, Manager Felipe Kalen, and Supervisor Raffy Tandoc. The Department’s Enforcement, Monitoring, and Compliance Section (“Enforcement”) was also present. This matter was conducted telephonically.

In explaining why Complainant failed to appear at the previously scheduled Prehearing Conference, Attorney Brown indicated that she had lost contact with Complainant and has no other means of communicating with Complainant. Enforcement adds that Complainant did not participate in the investigative interview and has not been able to locate Complainant. Clearly, Complainant does not wish to participate in the adjudicative proceedings. Pursuant to NMIAC § 80-20.1-485(b), the undersigned finds that Complainant has abandoned this case. Accordingly, this matter is hereby **DISMISSED**.

So ordered this 28th day of July, 2020.

/s/
JACQUELINE A. NICOLAS
Administrative Hearing Officer



**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE**

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<p>In Re the Matter of:</p> <p>Sherwin Elefante,</p> <p style="padding-left: 100px;">Complainant,</p> <p style="padding-left: 100px;">v.</p> <p>Amy International Corp.,</p> <p style="padding-left: 100px;">Respondent.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Labor Case No. 19-049</p> <p>ORDER OF DISMISSAL</p>
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This matter came for a Prehearing Conference on July 28, 2020 at 10:00 a.m. at the Administrative Hearing Office. Complainant Sherwin Elefante (“Complaint”) was represented by Attorney Pamela Blackburn Brown. Respondent Amy International Corp., *dba* Hanamitsu Hotel (“Respondent”) was present and represented by owner Huaying “Amy” Zhang, Manager Felipe Kalen, and Supervisor Raffy Tandoc. The Department’s Enforcement, Monitoring, and Compliance Section (“Enforcement”) was also present and represented by Acting Director of Enforcement Jeffrey T. Camacho. This matter was conducted telephonically.

Here, Attorney Brown indicated that she had lost contact with Complainant and has no other means of communicating with Complainant. Enforcement adds that Complainant did not participate in the investigative interview and has not been able to locate Complainant. Enforcement further indicated that Complainant has exited the CNMI. Pursuant to NMIAC § 80-20.1-485(b), the undersigned finds that Complainant has abandoned this case. Accordingly, this matter is hereby **DISMISSED**.

So ordered this **28th** day of July, 2020.

/s/
JACQUELINE A. NICOLAS
Administrative Hearing Officer



**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE**

<p>In the Matter Of:</p> <p>Rilyn R. Nacua,</p> <p style="padding-left: 100px;">Complainant</p> <p style="text-align: center;">v.</p> <p>K's International Corporation dba K's International Beauty,</p> <p style="padding-left: 100px;">Respondent.</p> <hr style="width: 30%; margin-left: 0;"/>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Labor Case No. 19-053</p> <p>ORDER OF DISMISSAL</p>
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A Status Conference was held on March 3, 2020 at 1:00 p.m. in the Administrative Hearing Office.¹ Complainant Rilyn R. Nacua (“Complainant”) failed to appear.² Respondent K’s International Corporation dba K’s International Beauty (“Respondent”) was present at represented by General Manager Ligaya A. Almodiel. The Department’s Enforcement, Monitoring, and Compliance Section (“Enforcement”) was present and represented by Investigators Jerrick Cruz and Arlene Rafanan.

Upon review of the filings and testimony, the terms of the parties’ out of court settlement appears to be fair.³ Considering that the terms were fair and Complainant was paid, the undersigned finds there are no other issues pending in this case and dismissal is appropriate.⁴

Accordingly, for the reasons stated above, this matter is **DISMISSED** and all remaining deadlines or hearings are **VACATED**.

So ordered this 3rd day of March, 2020.

/s/ _____
Jacqueline A. Nicolas
Administrative Hearing Officer

¹ Pursuant to NMIAC § 80-20.2-120(b)(iv), a hearing may proceed ex parte if parties who received adequate notice failed to appear.

² Records indicate the Complainant has not exited the CNMI and it is unclear whether she is lawfully present or working in the CNMI.

³ While the procedure in reaching settlement was incorrectly facilitated by Enforcement, Respondent testified that there was no undue pressure or coercion from Enforcement.

⁴ Notably, during the Status Conference, Respondent admitted to violating regulations against unauthorized deductions. See NMIAC § 80-20.1-330(m). When asked whether Enforcement would be investigating the matter further or opening an agency case, Enforcement declined to do so at this time due to a lack of manpower and workload issues.



**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE**

<p>In Re the Matter of:</p> <p>Christopher R. Lilles,</p> <p style="padding-left: 100px;">Complainant,</p> <p style="text-align: center;">v.</p> <p>Micronesia Resort, Inc.,</p> <p style="padding-left: 100px;">Respondent.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Labor Case No. 19-057</p> <p>FINDINGS OF FACT AND CONCLUSIONS OF LAW</p>
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I. INTRODUCTION

This matter came before the undersigned for an Administrative Hearing on July 29, 2020 at 9:00 a.m. at the Administrative Hearing Office. Complainant Christopher R. Lilles (“Complainant”) was present and self-represented. Respondent Micronesia Resort, Inc. (“Respondent”) was present and represented by Attorney Colin M. Thompson and Assistant Human Resource Manager Debra Inos. The Department’s Enforcement, Compliance and Monitoring Section (“Enforcement”) was also present and represented by Investigators Jerrick Cruz and Arlene Rafanan. Due to the ongoing COVID-19 public health emergency, the hearing was held online by Microsoft Teams.

II. PROCEDURAL HISTORY

On December 4, 2019, Complainant filed a claim for breach of contract for failure to pay out earned leave and harassment. On December 13, 2019, Respondent filed an Answer generally denying the claims, setting forth a number of affirmative defenses, and requesting attorney’s fees. On December 19, 2019, upon review of the pleadings, the matter was referred to Enforcement for further investigation. On March 3, 2020, Enforcement filed a written determination. On June 30, 2020, a telephonic Prehearing Conference was held. At that time, the claim for harassment was dismissed, Enforcement was ordered to submit an amended determination, and the Administrative

1 Hearing Office received the parties' proposed exhibits. The amended determination was filed
2 and served on July 28, 2019.

3 The issues during the Administrative Hearing were whether, based on the employment
4 contract: (1) Complainant earned leave during the second year of employment; and (2)
5 Complainant was entitled to a pay out of earned leave. During the Administrative Hearing, the
6 undersigned heard testimony from Complainant and Respondent's Assistant Human Resource
7 Manager, Debra Inos. The parties stipulated to admitting Complainants' Proposed Exhibits #1-70
8 onto the record.¹ Additionally, the undersigned admitted Respondent's Proposed Exhibit # 6.²
9 After the Administrative Hearing, Complainant submitted additional documents but said
10 documents were not considered because the record was closed at the conclusion of the hearing.³

11 III. FINDINGS OF FACT

12 In consideration of the record and credibility of witness testimony, the undersigned hereby
13 issues the following findings of fact:

- 14 1. At all times relevant to this claim, Complainant was authorized to work in the CNMI as a
15 CNMI-Only Transitional Worker ("CW-1").⁴
- 16 2. Complainant worked for Respondent from October 2, 2017⁵ to September 30, 2019 doing
17 general maintenance of the Kensington Resort in San Roque, Saipan. Complainant was
18 paid at the rate of \$7.65 per hour. Complainant worked full time but did not have a fixed
19 work schedule.⁶
- 20 3. Complainant and Respondent have a written employment contract.⁷ This employment
21 contract was solely prepared and drafted by Respondent. Complainant did not contribute
22 to or edit the drafting of the employment contract.

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25 ¹ Complainant's Exhibits # 1-70 were renamed as Hearing Exhibits #1-70, respectively.

26 ² Respondent's Exhibit #6 was renamed as Hearing Exhibit # 71.

27 ³ "When a hearing is conducted, the record shall be closed at the conclusion of the hearing unless the hearing officer
28 directs otherwise." NMIAC § 80-20.1-480(m).

⁴ Hearing Exhibit #7-15.

⁵ Hearing Exhibit #50 and 53.

⁶ Hearing Exhibit #1-6.

⁷ *Id.*

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4. The employment contract was prepared as required documentation for Complainant to exit and return to the CNMI. While the employment contract was valid from the period of October 1, 2018 through September 30, 2019, said contract was only signed March 15, 2019 in preparation of Complainant’s off island trip.

5. While the validity period of the employment contract is dated October 1, 2018 through September 30, 2019, the provisions related to annual leave were consistent and applicable throughout Complainant’s employment.

6. With regards to annual leave, provision 5.1 of the employment contract provides: “[e]mployee shall be entitled to fifteen (15) days of paid annual vacation on the completion of 12 months of continuous employment.”⁸

7. Respondent’s leave policy is further described in their employee handbook, which provides:

The first year’s vacation eligibility will be allotted upon completion of one year of continuous service and it may be taken thereafter. Any leave without pay will affect the actual continuous service year.

Earned vacation days must be taken before your next anniversary date. It cannot be carried beyond your next anniversary date, unless the Department Head and General Manager have made a documented approval. Any vacation leave not used by your anniversary date will be forfeited.⁹

8. There is no other method of earning paid leave besides with Respondent. Paid leave is not prorated or partially earned throughout the year.

9. Although not provided for in the contract, company policy allows pay outs of any unused paid leave. This policy is broadly applied to employees with unused leave. There is no showing of additional requirements to be approved for such a payout.

10. Complainant used fifteen (15) day paid leave in April of 2019.¹⁰

11. There was no other unexcused interruption to Complainant’s employment with Respondent.

⁸ Hearing Exhibit #2.

⁹ Hearing Exhibit # 71.

¹⁰ Hearing Exhibit #33

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IV. CONCLUSIONS OF LAW

In consideration of the above-stated findings and applicable law, the undersigned hereby issues the following conclusions of law:

1. An enforceable written employment contract exists between the parties.

“In order to prevent disputes and to help ensure employment under lawful conditions, full-time employment of a foreign national worker must be pursuant to a written employment contract.” NMIAC § 80-20.1-330(b); *see also* 3 CMC § 4922. Notably, since federalization starting November 2009, employers employ foreign workers under the federal government’s approval of a “CNMI Only Transitional Worker” or “CW-1” petition—without the Department’s need to approve contracts.¹¹ Nonetheless, the Administrative Hearing Office retained jurisdiction to preside over disputes related to employment contracts to ensure lawful working arrangements and conditions under applicable law.¹² Here, there was no dispute that a valid and enforceable employment contract exists between the parties.¹³

2. There is no ambiguity in the contract. Based on a plain language reading of the contract, Complainant worked a total of 24 months of continuous service—thereby earning a total of 30 days of paid vacation leave.

The primary concern in interpreting a contract is to “give effect to the intentions of the parties.”¹⁴ There is a presumption that the intent of the contracting parties is expressed within the four corners of the contract.¹⁵ A party generally should not be bound to an intention of the other

23 ¹¹ *In the Matter of Geronimo v. Castle Resorts and Hotel, Inc.*, LC 13-1136 and 1137, Administrative Order published at 41 Com. Reg. 042200-042201 (June 28, 2019).

24 ¹² *In the Matter of Yao v. New Pacificasia Trading Inc., et. al.*, LC 11-1116, Administrative Order published at 41 Com. Reg. 042208 (June 28, 2019); *see In the Matter of Department of Labor v. Femina T. Martinez*, CAC 17-001-05, Administrative Order published at 41 Com. Reg. 042295 (June 28, 2019); *see also In the Matter of Udani v. Huang Shun*, LC-17-003(T), Administrative Order published at 41 Com. Reg. 042087 (June 28, 2019); *see also In the Matter of Wang v. Green Life Noni Corporation*, LC-18-041, Administrative Order published at 41 Com. Reg. 041675 (May 28, 2019).

25 ¹³ Hearing Exhibit # 1-6.

26 ¹⁴ *Saipan Achugao Resort Members Ass’n v. Wan Jin Yoon*, 2011 MP 12 ¶ 15 (quoting *Commonwealth Ports Auth. v. Tinian Shipping Co.*, 2007 MP 22 ¶ 16).

27 ¹⁵ *Id.* ¶ 22.

1 party unless there is evidence that he has reason to know that intention.¹⁶ Where the language of
2 a writing is plain and precise, a court can, as a matter of law, establish the intentions of the parties
3 as declared in the writing.¹⁷

4 In the Commonwealth, where there is ambiguity in meaning of the contract, a party may refer
5 to extrinsic evidence to interpret the contracting parties' intent.¹⁸ A patent ambiguity arises from
6 contract language if it is facially inconsistent.¹⁹ A latent ambiguity arises when either disputed
7 relevant extrinsic evidence or the contract language itself shows potential reasonable differing
8 meanings of terms.²⁰

9 Provision 5.1 of the written and signed employment contract provides: “[e]mployee shall be
10 entitled to fifteen (15) days of paid annual vacation on the completion of 12 months of continuous
11 employment.”²¹ While the contract does not further define or illustrate how to calculate “12 months
12 of continuous employment,” the undersigned finds that the contract’s silence is not the equivalent
13 of ambiguity in a contract.²²

14 Respondent posits that pursuant to policy, “12 months of continuous employment” means the
15 employee must work twelve *full* months, starting from the first day of employment, in order to
16 earn any of the fifteen (15) days of paid annual leave. Even if the undersigned were to rely on the
17 extrinsic evidence of company policy, the written policy does not reflect this precise definition or
18 provide added clarification—it simply replaces the provision as “one year of continuous service.”²³

19 Ultimately, finding no ambiguity, the undersigned must rely on the four corners of the contract
20 to ascertain the parties' intent. In reviewing the four corners of the contract, the undersigned finds
21 that Complainant had no knowledge or notice of Respondent's specific parameters for accruing
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23 ¹⁶ *Riley v. Public School System*, 4 NMI 85, n4 (1994).

24 ¹⁷ *Santos v. Santos*, 2000 MP ¶ 22; *Rosario v. Camacho*, 2001 MP 3 ¶ 66.

25 ¹⁸ *Id.* at 89.

26 ¹⁹ *Id.*

27 ²⁰ *Id.*

28 ²¹ Hearing Exhibit #2.

²² Generally, contractual silence on a particular issue or term is not the equivalent of ambiguity. However, silence or omission as to material terms can create a gap that requires the reviewing body to construe the terms in light of the parties' intention.

²³ Hearing Exhibit #71 (“The first year’s vacation eligibility will be allotted upon completion of one year of continuous service and it may be taken thereafter”).

1 leave—therefore could not be bound to Respondent’s definition. Basically, if Respondent’s intent
2 were to define the leave accrual under provision 5.1 to mean twelve full months starting from the
3 first day of employment, the contract should have stated such.²⁴

4 As stated above, Complainant worked for Respondent from October 2, 2017 to September 30
5 2019. Clearly, Complainant is one day short of working a full 24 months starting from the first
6 date of employment. However, based on a plain language meaning of the contract terms,
7 Complainant worked for Respondent 24 continuous months. Accordingly, the undersigned
8 concludes that Complainant earned a total 30 days of paid annual vacation during the scope of his
9 two year employment with Respondent.

10 **3. There is no breach in contract because Respondent is not required to pay**
11 **Complainant for any unused leave.**

12 As stated above, a party breaches a contract upon their nonperformance of a contractual duty
13 of immediate performance.²⁵

14 Based on contract interpretation principles, the undersigned finds no breach occurred. Here,
15 the four corners of the contract does not require Respondent to pay employees for any unused
16 leave. In other words, there is no provision in the contract that explicitly requires Respondent to
17 act. Instead, Respondent’s Assistant Human Resource Manager testified that the company simply
18 has a policy of paying employees for unused leave. That policy, however, is not the equivalent of
19 a contractual duty to pay out such leave. Based on the four corners of the contract, Respondent is
20 not required to pay out leave. Considering that Respondent had no such duty to perform, the
21 undersigned finds that no breach occurred.

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26 ²⁴ Notably, the rule of *contra proferentem*, also known as interpretation against the drafter, provides when one party is
27 responsible for the drafting of an instrument, absent evidence indicating the intention of the parties, any ambiguity
28 will be resolved against the drafter. *Kunin v. Benefit Tr. Life Ins. Co.*, 910 F.2d 534, 538–39 (9th Cir. 1990).

²⁵ *Manglona v. Baza*, 2012 MP 4 ¶ 13.

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4. The undersigned declines to award attorneys' fees.

Pursuant to 3 CMC § 4947(d)(8), the undersigned has authority to award attorneys' fees when appropriate. In order to ensure self-represented and low income parties are not deterred from initiating legal action,²⁶ circumstances warranting the award of attorney's fees against a pro se litigant have been limited to matters involving frivolous claims.²⁷

Here, the undersigned finds that this was not a frivolous complaint. Moreover, the undersigned recognizes that Complainant is a pro se litigant who could not afford to pay for his own counsel, much less Respondent's counsel. Accordingly, the undersigned declines to award attorneys' fees in this matter.

V. JUDGMENT

Based on the foregoing, Complainant failed to establish his burden to prove a claim for breach of contract. Accordingly, judgment is hereby entered in favor of Respondent.

Any person or party aggrieved by this Order may appeal by filing the Notice of Appeal form and filing fee with the Administrative Hearing Office within fifteen (15) days from the date of this Order.

So ordered this 3rd day of August, 2020.

/s/
JACQUELINE A. NICOLAS
Administrative Hearing Officer

²⁶ See *In the Matter of Zajradhara v. Nippon General Trading Corporation*, LC-17-018, Administrative Order published at 41 Com. Reg. 041761 (Mary 28, 2019).

²⁷ A complainant who files a frivolous claim at the Administrative Hearing Office is subject to sanctions.²⁷ "A motion to recover sanctions and attorney's fees for an opposing party's advocacy of a claim or defense that is frivolous, without merit, or in bad faith shall be permitted pursuant to [NMIAC § 80-80.2-140]." NMIAC § 80-20.1-130(c)(5). "Any complainant or respondent may by motion, file and recover sanctions and attorney's fees for an opposing party's advocacy of a claim or defense that is *frivolous, without merit, or in bad faith*." NMIAC § 80-20.2-140 (emphasis added).



**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE**

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In Re Matter of:)	Labor Case No. 20-003
)	
Brian A. Aguon,)	
)	
Complainant,)	ORDER OF DISMISSAL
)	
v.)	
)	
AM Group Inc.,)	
)	
Respondent.)	
)	

On August 18, 2020 at 9:00 a.m., a telephonic Settlement Conference was held at the Administrative Hearing Office. Complainant was present and self-represented. Respondent was present and represented by Administrative Assistant Manager Alvajeon De Los Santos. The Department’s Enforcement, Compliance, and Monitoring Section was also present and represented by Investigators Arlene Rafanan and Jerrick Cruz.

I hereby certify that I have reviewed the terms of the Settlement Agreement in **Labor Case No. 20-003** and find that the terms are fair under the circumstances of this case and that the parties have knowingly and voluntarily agreed to the terms of the settlement. Therefore, the Settlement Agreement is approved and accepted for the purposes stated herein. The terms of the above-described Settlement Agreement are hereby incorporated into this Order.

Upon review, this case has no other pending issues or claims. Accordingly, the case is hereby **DISMISSED** with prejudice, pursuant to NMIAC § 80-20.1-485(b).¹ Notwithstanding the above, the Administrative Hearing Officer shall retain jurisdiction for the purposes of enforcement of the Order.

So ordered this 18th day of August, 2020.

/s/
JACQUELINE A. NICOLAS
Administrative Hearing Officer

¹ “A complaint may be dismissed upon ... settlement by the party or parties who filed it.” NMIAC § 80-20.1-485(b).”



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
 DEPARTMENT OF LABOR
 ADMINISTRATIVE HEARING OFFICE

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In Re the Matter of:)	Labor Case No. 20-006
Ricardo D. Bangot Jr.,)	
Complainant,)	ORDER OF DISMISSAL
v.)	
DFS Saipan Limited,)	
Respondent.)	

On July 14, 2020, Complainant Ricardo D. Bangot Jr. (hereinafter, "Complainant") filed a written request, through electronic mail, to withdraw or voluntarily dismiss or the above-captioned complaint. The undersigned finds that good cause for dismissal exists when the Complainant no longer wishes to pursue her claims. Accordingly, this matter is hereby **DISMISSED**. All other deadlines and scheduled hearings are hereby **VACATED**.

So ordered this **15th** day of July, 2020.

 /s/
JACQUELINE A. NICOLAS
 Administrative Hearing Officer



1 COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
 2 DEPARTMENT OF LABOR
 3 ADMINISTRATIVE HEARING OFFICE

4 In Re Matter of:)
 5 Evangeline Dela Cruz,) Labor Case No. 20-011
 6 Complainant,) ORDER DISMISSING IMMIGRATION
 7 v.) FRAUD CLAIM
 8 Marianas Health Services, Inc.,)
 9 Respondent.)
 10)
 11)

12 On March 6, 2020, Complainant initiated the above-captioned complaint by alleging
 13 claims unpaid wages and “US CNMI Immigration Fraud” against Respondent. Based on a review
 14 of the filings, it appears that Complainant is alleging a violation of the Interim Final Rules to
 15 obtain a Temporary Labor Certification for a Commonwealth-Only Transitional Worker (“CW-
 16 1”). Those regulations were promulgated by the US Department of Labor and enforced by the
 17 Department of Homeland Security (USCIS).

18 “Whenever it appears by suggestion of the parties or otherwise that the agency lacks
 19 jurisdiction of the subject matter, the agency shall dismiss the action.” NMIAC § 80-20.2-145(c).
 20 Pursuant to 4 CMC § 4942 and NMIAC § 80-20.1-450(b), this office does not have jurisdiction
 21 to hear claims regarding a violation of federal regulations. Accordingly, pursuant to NMIAC §
 22 80-20.2-145(c), Complainant’s claim for “US CNMI Immigration Fraud” is hereby
 23 **DISMISSED**. Respondent has ten (10) calendar days from the date of this Order to file and serve
 24 a response to the claim for unpaid wages. A response is encouraged but not required. Upon review
 25 of the pleadings, the matter may be referred to Enforcement for further investigation.

26 So ordered this 5th day of June, 2020.

27 /s/
 28 JACQUELINE A. NICOLAS
 Administrative Hearing Officer



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

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<p>In Re the Matter of:</p> <p>Aunik Mondal,</p> <p style="padding-left: 100px;">Complainant,</p> <p style="padding-left: 100px;">v.</p> <p>Akhil C. Mollick dba Mollick Enterprises,</p> <p style="padding-left: 100px;">Respondent.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Labor Case No. 20-012</p> <p>ORDER OF DISMISSAL</p>
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Pursuant to 3 CMC § 4962, “[n]o labor complaint may be filed more than six months after the date of the last-occurring event that is the subject of the complaint, except in cases where the actionable conduct was not discoverable upon the last-occurring event.” “If a complaint is not timely filed, the hearing office *shall* dismiss the complaint with prejudice.” NMIAC § 80-20.1-465(e). Emphasis added.

Upon review of the filings, Complainant is seeking unpaid wages and damages for claims arising from employment with Respondent between the 2012 to August 3, 2018. The complaint was filed on May 19, 2020. Even using the latest possible date, i.e., the last date of employment, this labor complaint was filed more than six months the date of the last-occurring event. Accordingly, pursuant to 3 CMC § 4962 and NMIAC § 80-20.1-465(e), this complaint is hereby **DISMISSED**, with prejudice.

So ordered this 31st day of July, 2020.

/s/
JACQUELINE A. NICOLAS
Administrative Hearing Officer



**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE**

<p>In Re the Matter of:</p> <p>Justin Lowe,</p> <p style="padding-left: 100px;">Complainant,</p> <p style="text-align: center;">v.</p> <p>J.C. Tenorio Enterprises, Inc.,</p> <p style="padding-left: 100px;">Respondent.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Labor Case No. 20-018</p> <p>ORDER GRANTING RESPONDENT’S MOTION TO DISMISS</p>
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I. INTRODUCTION

A hearing on Respondent J.C. Tenorio Enterprises, Inc.’s Motion to Dismiss was held on July 27, 2020 at 11:00 a.m. at the Administrative Hearing Office. Complainant Justin Lowe appeared telephonically. Respondent J.C. Tenorio Enterprises, Inc. also appeared telephonically and was represented by Attorney Frances T. Demapan and Human Resource Manager Maxine Lam.

I. BACKGROUND

On June 11, 2020, Complainant filed a Wage and Hour Claim against Respondent with the CNMI Department of Labor. Complainant, a United States citizen, alleges that he is entitled to be paid the prevailing wage rate of \$10.64 per hour for IT Technicians, as opposed to his current rate of \$8.00. Complainant seeks damages in the amount of \$3,088.14, which is equal to the amount he would have made had Respondent paid him the prevailing wage rate for IT Technicians since October 1, 2019. Respondent filed its Answer on June 22, 2020. Respondent then filed its Motion to Dismiss for Lack of Jurisdiction on July 01, 2020. Complainant did not file an Opposition to Respondent’s Motion to Dismiss.

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II. DISCUSSION

A. Respondent’s Motion to Dismiss pursuant to Lack of Jurisdiction is GRANTED.

“The Administrative Hearing Office shall have original jurisdiction to resolve all actions involving alleged violations of labor and wage laws of the Commonwealth, including but not limited to any violation of this chapter and regulations promulgated thereunder.” 3 CMC § 4942.

Here, Respondent argues that there is no CNMI wage law which mandates that Complainant is entitled to a prevailing wage rate. The prevailing wage rate, Respondent argues, is a requirement of the U.S. Department of Homeland Security, not the CNMI Department of Labor.

The undersigned agrees with Respondent. The undersigned could not find, and Complainant could not cite, any CNMI law or regulation that mandates employers to pay employees the federally mandated prevailing wage rate. Moreover, the undersigned finds that there is nothing in Complainant’s complaint that triggers any violation of CNMI labor and wage laws.

III. CONCLUSION

Based on the foregoing, Respondent’s Motion to Dismiss is hereby **GRANTED**. Accordingly, having no other pending issues or matters in this case, the complaint is hereby **DISMISSED**.

ORDERED this 3rd day of August, 2020.

/s/ Joeey P. San Nicolas

JOEY P. SAN NICOLAS
Pro Tem Administrative Hearing Officer