

**TITLE 3: HUMAN RESOURCES**  
**DIVISION 4: EMPLOYMENT AND REGISTRATION**

**§ 4401. Reserved. [Formerly entitled Director of Labor: Functions and Duties.]**

**Source:** PL 15-108, § 4(4401); deleted by PL 17-1 § 5(L)(1) (March 22, 2010).\*

**Commission Comment:** Public Law 15-108 was enacted on November 11, 2007 and became effective on January 1, 2008. PL 15-108 revamped the Non-resident Workers Act in its entirety and renamed the restructured statutory portions as “Part 3. Employment.” In addition to severability and savings provisions, the following were included in PL 15-108.

Section 1. Short title. This Act may be referred to as the "Commonwealth Employment Act of 2007."

Section 2. Findings and purpose. The Commonwealth Legislature finds the following with respect to fair and adequate employment within the Commonwealth of the Northern Mariana Islands: Economic development and prosperity in the Commonwealth require that citizens and permanent residents be given maximum opportunity for employment in the public and private sectors of the economy.

The employment preference for citizens and permanent residents is implemented by clarifying and improving provisions of the current law, such as limiting public sector jobs to citizens and permanent residents to the maximum extent practicable, requiring that employers in the Commonwealth provide jobs to citizens and permanent residents that amount to at least thirty percent (30%) of the employer's work force, and restructuring the moratorium on new hiring of foreign nationals, among other measures.

This employment preference is promoted by effective training to qualify citizen and permanent resident employees, particularly indigenous Carolinian and Chamorro people, for jobs that require special skills, effective advertising of available jobs with full equivalent wages or benefits compared to any wages or benefits that would be offered to a person who is not a citizen or permanent resident, and effective job referral services provided to citizens and permanent residents.

The Covenant envisioned the employment of foreign nationals in the Commonwealth in order to create an economic base that would provide the citizens of the Commonwealth the economic opportunities and standard of living that their counterparts on the mainland are able to enjoy because of the vast area and large population from which communities on the mainland may draw employees. In order for the economy to sustain and foster the development that will produce an increasing number of such jobs, foreign national workers must be available to fill the unskilled and lower skilled jobs that make larger business enterprises economically viable in the Commonwealth.

The Commonwealth's very substantial investment in secondary and post-secondary education over the past 30 years has strived to produce a

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local work force well qualified for managerial, supervisory, technical, professional, visitor industry, and other jobs that are of vital importance to the growth and development of the Commonwealth's economy. The Commonwealth's goal is to establish a regulatory environment so that jobs are available for its qualified high school, college, and graduate school graduates. To accomplish that goal, the Commonwealth requires a two-pronged approach. First, with respect to all jobs, citizens and permanent residents must be given preference over foreign workers imported to fill specific jobs. Second, with respect to jobs for which the Commonwealth's investment in its citizens and permanent residents has already produced a sufficient supply of qualified persons, employers must be required to hire only those citizens and permanent residents. As to the second prong, a minimum wage rate may not be sufficient to attract citizens and permanent residents to take a job for which they are qualified. If the job is reserved for citizens and permanent residents, then the competitive economy will cause the wage rate to rise to a level that citizens and permanent residents find acceptable. As to jobs for which qualified citizens and permanent residents are available, the Legislature finds that it benefits the Commonwealth very substantially to have the wage rate rise to the level required. Wage rates will not rise so long as cheap foreign labor is available. The incentives to foreign workers to remain in the Commonwealth are very large because the working conditions in the Commonwealth are so far superior to the working conditions in their home countries. For that reason, foreign workers will always accept lower wages than citizens and permanent residents. It was never the purpose of the legislative enactments with respect to the use of foreign labor in the Commonwealth to perpetuate jobs at the minimum wage rate. If that happens, much of the Commonwealth's investment in secondary and post-secondary education for its citizens will be lost as those citizens migrate outside the Commonwealth to find good-paying jobs.

In 2006, the Office of the Public Auditor launched a year-long study to identify jobs in the current Commonwealth economy for which citizens and permanent residents are currently available or will be available in the near future. The Public Auditor reported: "The survey was prompted by complaints from residents who were unable to find employment despite statutory provisions requiring preferential hiring of residents, as well as the added concern of increased resident unemployment due to the workforce reductions in the private sector and possible downsizing within the Government." The Public Auditor reported that the study's "conclusions and recommendations are critical foundations in establishing a sustainable resident workforce." The study identified specific positions that "can be easily filled by the existing resident pool." The Public Auditor's study examined carefully all of the jobs currently reserved for citizens and permanent residents and expanded the list of job classifications that should be reserved for residents. The Public Auditor's study was assisted by an organized committee comprised of private sector employers from

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various industries, government officials, and other interested parties. The study consulted with the Department of Labor, the Division of Immigration, the Northern Marianas College, the Workforce Investment Agency, and the Department of Commerce. Prior to the release of the jobs study report, more than a dozen presentations on the preliminary study were made to various public and private sector groups to "ensure that input and feedback from the community was considered before final release of the report."

The Fourteenth Amendment to the United States Constitution does not deny to States the power to treat different classes of persons in different ways." *Reed v. Reed*, 404 U.S. 71, 75 (1971). Under the rational basis test, "[a] classification 'must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.'" *Royster Guano Co. v. Virginia*, 253 U.S. 412, 415 (1920). The statistics provided to the Legislature by the Department of Labor with respect to the history of employment in the Commonwealth since 1983 when the initial foreign worker legislation was enacted; the underlying goals with respect to the structure of and progress within the economy in the Commonwealth; and the Jobs Study Report and ongoing work of the Public Auditor form a rational basis on which to treat foreign workers, present in the Commonwealth for temporary work, differently from citizens and permanent residents. The Legislature finds these factors form a rational basis for the government's interest in preventing all non-resident workers from working in specific job classifications and a rational basis for the government's an interest in singling out specific job classifications from all other jobs in the Commonwealth and finds that the regulatory power delegated to the Secretary of Labor may be exercised in these respects to implement this statute.

The current economic situation in the Commonwealth requires the continued availability of foreign nationals to augment the work force in the Commonwealth but also demands that the system for regulating the employment of foreign nationals be more efficient and less costly to operate.

The Commonwealth has the responsibility to provide fair employment conditions for foreign nationals, to use their labor for the purposes of economic growth and stability for which it was intended, and to regulate labor practices in order to protect against potential abuses.

Experience over the past 30 years has provided certain benchmarks with respect to fair employment conditions for foreign nationals: The system should have clear rules, be easy to understand, provide for lack of facility with the English language, protect basic rights, and assist employers with compliance. The overall guiding policy with respect to foreign national workers is to provide for a stable work force and protect due process rights without creating entitlements.

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The early-intervention mediation that is an integral part of the current system achieves good results in promoting fair employment relationships between foreign national employees and employers in the Commonwealth. Early intervention can be expanded to prevent and resolve disputes more efficiently to the benefit of both employees and employers.

Economic stability and growth in the Commonwealth require support for the visitor industry and other investments, both local and foreign, that generate new employment opportunities. The overall employment system must achieve a balanced approach to opportunities, benefits, and costs to the Commonwealth and, in the Legislature's judgment, that objective is achieved by this Act.

It is the intent of the Legislature that this Act shall not apply to persons admitted to the Commonwealth as tourists, or to persons employed illegally, i.e. without the approval of the Department of Labor, or to those persons employing others illegally in the Commonwealth unless specific provision has been made herein. It is the intent of the Legislature that persons illegally employing others or illegally employed be prohibited from using the terms of this Act to receive or avail themselves of a legal right or benefit. This Act shall not bar any other remedy provided by law.

The Legislature finds that requiring a foreign national worker to submit proof of earnings in excess of the federal poverty guidelines before bringing family members into the Commonwealth for the first time serves the important government interest of maintaining the public welfare and not overburdening public institutions and services in the Commonwealth.

The Legislature finds that a statutory, rather than regulation-based, entry permit for religious activities is necessary due to the need to respect religious requirements and at the same time avoid abuse. The Legislature supports the free expression of religious belief by persons or groups present in the Commonwealth and recognizes the need for their employment of religious professionals for that purpose. The Legislature finds that there is no impairment of the pursuit of religious beliefs or undue burden in the requirement that foreign nationals entering for religious employment be employed by identifiable religious organizations and subject to the same contract requirements as other foreign national workers.

It is the intent of the Legislature that this Act shall not conflict with treaty obligations of the United States. In the event of conflict, U.S. treaty provisions shall pre-empt the provisions of this Act.

It is the intent of the Legislature that this Act shall not conflict with Chapter 5 of Part 1 of Division 1 of Title 6 of the Commonwealth Code (Human Trafficking and Related Offenses). This Act shall in no way limit the authority of the Commonwealth to bring an action pursuant to that Chapter.

It is the intent of the Legislature to repeal current Chapters 5 and 7 of Division 4 of Title 3 of the Commonwealth Code.

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It is the intent of the Legislature that this Act shall supersede any conflicting portions of Public Law 15-5, effective April 10, 2006. It is the intent of the Legislature that this Act shall supersede Public Law 15-45, effective January 29, 2007, but shall preserve its purpose and intent.

It is with these stated objectives that the 15th Commonwealth Legislature enacts these labor reforms in order to meet the economic needs of citizens, permanent residents, businesses, and foreign national workers in the Commonwealth.

Section 3. Re-codification. Division 4 of Title 3 of the Commonwealth Code is recodified as follows:

(a) Chapters 1 and 2 shall be codified as Part 1, Chapters 1 and 2 of Division 4. Part 1 shall be entitled "Citizenship."

(b) Chapter 3 shall be codified as Part 2, Chapter 1 of Division 4. Part 2 shall be entitled "Entry and Deportation."

(c) Chapters 4-8 shall be repealed and reenacted pursuant to Section 4 of this Act and codified as Part 3, Chapters 1-6 of Division 4. Part 3 shall be entitled "Employment."

(d) The Commonwealth Law Revision Commission shall have the discretion to adjust the numbering of code divisions, parts, articles, or sections affected by this Act as necessary to effectuate a reasonable codification of Sections 3 and 4 of this Act.

Section 4. Repealer and reenactment. The Nonresident Workers Act of the Commonwealth of the Northern Mariana Islands, codified in Title 3, Division 4, Chapters 4-8 of the Commonwealth Code, is repealed and reenacted as Part 3, Chapters 1-6 of Division 4 of Title 3 as follows . . .

Section 5. Global amendment. All references to the term "non-resident worker" in the Commonwealth Code shall be replaced by the term "foreign national worker" as defined in Sections 4911 and 4965 of this Act. The term "resident worker" in 4 CMC § 9502(b) shall be replaced by the term "citizen or permanent resident" worker as defined in Section 4511 of this Act.

\*PL 17-1 (enacted on March 22, 2010) contained the following effective date provision:

Section 12. Effective date. This Act shall take effect upon its approval by the Governor or becoming law without such approval and shall be retroactive to November 28, 2009 except as otherwise specifically provided herein.

For more information regarding Public Law 17-1, see comment to 3 CMC § 4511.