

TITLE 17
LABOR RELATIONS

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CHAPTER 1
DIRECTOR OF LABOR

(No rules filed.)

NOTE: Rule-making authority cited for Director of the Department of Labor, 5 GCA §55108 and 22 GCA §1106.

CHAPTER 2
DIVISION OF GUAM EMPLOYMENT SERVICES

- §2101. Administrative Policy for Alien Employment Certification
Purpose.
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- §2127. Same: Repeal of Policy.

NOTE: Rule-making authority cited for formulation of regulations for the Guam Employment Service, 22 GCA §7103-7106, Title 8 Code of Federal Regulations 214.2(h)(ii), Section 101(a)(15)(h)(ii) and Section 212 (d)(5) of the Immigration and Nationality Act of 1952 as amended and Wagner-Pacer Act (48 Stat. 113, as amended, 29 USC, 49 et seq.) 1933, as amended.

§2101. Administrative Policy for Alien Employment Certification. Purpose. Establishment of policy and procedures to implement, process, transfer and monitor the importation and extension of temporary stay on Guam of non-immigrant alien workers under §101(a) (15)(h)(ii) of the Immigration and Nationality Act of 1952, as amended, and or parolees admitted under §212(d)(5) of the same Act to work for the Department of Defense as direct hires and for Department of Defense contractors. Rules and regulations regarding the parolee program shall be effective through December 31, 1974.

§2102. Same: Job Opportunities for U.S. Residents of Guam. It is the intent of this policy to assure maximum job

and training opportunities to U.S. resident workers on Guam who are available for employment and training. Each employer will continue to hire and train U.S. resident workers to replace non-immigrant alien temporary workers and parolees in all categories for which apprentices and trainees are available. The Guam Employment Service will assist employers by reviewing its records to determine whether any job applicants are on file and will communicate with the Chief Commissioner, the Department of Education and the University of Guam to determine whether any other qualified applicants, apprentices or trainees are available.

§2103. Same: Basic Provisions. Employers seeking to utilize non-immigrant alien temporary workers or parolees on Guam for temporary employment are required to obtain a labor certification from the Department of Labor, stating among other things, that there are not sufficient workers in the United States who are able, willing, qualified and available at the time of application for a visa and admission to the United States and at the place to which the alien is destined to perform such skilled or unskilled labor.

Until existing applicable laws and regulations are modified or changed, except for trainers, instructors, inspectors or special mechanics, petitions for non-immigrant alien temporary workers (H-2) will be approved only for the construction industry and for entertainment.

§2104. Same: Definitions. For the purpose of this administrative policy, the following terms are defined:

(a) *Contract Workers:*

(1) *Non-Immigrant Alien Temporary Worker.* This is often referred to as *Alien Contract Worker*. The non-immigrant alien temporary worker is defined in §101(a)(15)(h)(ii) of the Immigration and Nationality Act of 1952, as amended, "as an alien having residence in a foreign country which he has no intention of abandoning, who is coming temporarily to the United States to perform temporary services or labor if an unemployed person capable of performing such services or labor cannot be found in this country." Such person shall be determined eligible for employment only where qualified skilled

workers, helpers, trainees or apprentices in the United States are:

(i) not available; and

(ii) the employment of a non-immigrant alien temporary worker will not adversely affect the wages and working conditions of a worker in the United States similarly employed.

(iii) *Parolee Worker*. A parolee worker is a worker who falls within the category of §212(d)(5) of the Immigration and Nationality Act of 1952, as amended, as defined in 17 GAR §2104.

(b) *United States*. The term United States as used herein is that defined in the Immigration and Nationality Act of 1952, as amended, §101(a), Public Law 414, as follows:

"The term *United States* ... when used in a geographical sense, means the continental United States, Alaska, Hawaii, Puerto Rico, Guam and the Virgin Islands of the United States."

(c) *United States Resident Worker*. The term United States Resident Worker refers to a citizen of the United States, or a national of the United States or a permanent resident alien.

(d) *Part-Time Employment*. Part-time employment does not qualify for a temporary labor certification. Part-time employment refers to hours or days of work less than those normal or prevailing for the occupation in the employment area (i.e., less than eight (8) hours a day or forty (40) hours a week.)

(e) *Temporary Employment*. This term refers to the job and job duties to be performed in a position which is to be filled for a period of one (1) year or less. It does not refer to the individual who will perform the duties, or to a job that is permanent in nature. Nevertheless, for purposes of these policies and until further notice, jobs in construction industries will be considered to be temporary where the projects are of a limited duration.

(f) *Job Order*. This term is used to describe Form E 514 which is required by the Alien Certification Unit. The Job Order must be filed together with an

employer's petition (by a prospective importer or extender of alien temporary workers or parolees) before a determination can be made:

(1) whether qualified workers, trainees or apprentices are available in the United States (Guam); and

(2) whether the employment of such alien workers will have an adverse effect on the wages and working conditions of workers in the United States (Guam) similarly employed.

(g) *Parolee*. A parolee is a non-immigrant alien contract worker who the Attorney General may, in his discretion, parole into the United States temporarily under such conditions as he may prescribe for emergency reasons or for reasons determined strictly in the public interest. The term parolee has been applied to those non-immigrant aliens coming into work for the Department of Defense as direct hires or for defense contractors. For the purposes of this policy, and in accordance with the Commissioner of the Immigration and Naturalization Service, no parolees will be permitted to be paroled into Guam after December 31, 1973. In addition, extension of parolees will be permitted only up to and including December 31, 1974.

(h) *Transfer*. It is the policy of the government of Guam that all non-immigrant alien workers will complete their contracts with the employer who has petitioned them onto Guam. Transfers may only be allowed as a result of a wage and hour investigation in which it is found that monies are due an employee and/or there are other compelling reasons for allowing such a transfer.

§2105. Same: Reporting. Not later than the seventh day of each month, each employer employing non-immigrant alien temporary workers or parolees will report in writing to the Office of Chief of Compliance the following, for the monthly period ending the previous month:

(a) The name, address, occupation and hourly wage rate of each non-immigrant alien temporary worker or parolee employed by him who is presently on Guam.

(b) The name and occupation of each non-immigrant alien temporary worker and parolee terminated and repatriated during the previous month.

(c) The name and occupation of each non-immigrant alien temporary worker and parolee transferred during the previous month and the name of the company the alien is transferred to.

(d) The name, address, occupation and hourly wage rate of each U.S. resident worker terminated during the previous month stating the reason for termination.

(e) A list of each non-immigrant alien contract worker who is living outside the barracks, the place where the alien is residing, and the number and relationship of each dependent.

Once an employer makes a complete reporting of (a), (b), (c), (d) and (e) above, he may in the following month just indicate in what manner there have been any changes in the previous month's report. For example, if he has no change in the temporary workers or parolees, (i.e., (a) he indicates the same as previous month. If one (1) person has been terminated, he gives the Office of the Chief of Compliance that information under (b). If under (c) he has transferred one (1) employee, he indicates that, etc. However, he must still submit a monthly report indicating any change or no change in (a), (b), (c), (d) or (e) to the Office of Chief of Compliance.

§2106. Same: Restriction of Alien to One (1) Occupation. Non-immigrant alien temporary workers or parolees cannot be employed in any position other than the specific position for which they have been certified for by the Department of Labor. However, prior to the end of their validity period, journeymen only will be permitted to be reclassified in a different occupation as per the employer's attachment submitted along with the employer's MA 7B in which the employer indicates according to Line 31, "another related occupation," if the employer has approved open slots for those positions. A detailed letter requesting the reclassification of those journeymen must be approved by the Department of Labor and Immigration and Naturalization Service.

§2107. Same: Subcontracts. Subcontracts to prime contractors who have valid contracts for a specific project involving men and materials may import H-2 workers to

work on those approved project contracts, if approved by Immigration and Naturalization Service.

§2108. Same: Temporary Labor Certification. (a) **Definition.** A *temporary labor certification* is a certification issued by the Department of Labor to an employer for non-immigrant alien temporary workers or parolees for a period of one (1) year or less, for a specific temporary position for which local U.S. resident workers are not available and whose issuance will not adversely affect the wages and working conditions of local U.S. resident workers who are similarly employed.

(b) **Validity.** A temporary labor certification issued pursuant to this policy shall be issued for a specific period of time setting forth the starting and ending dates of the temporary employment. As a policy matter, no temporary certification will be issued for a period longer than one (1) year.

(c) Extensions of labor certifications will be treated in the same manner as a new application.

(d) Only one (1) certification will be issued unless there are a number of countries involved in obtaining workers, e.g., carpenters from Korea and the Philippines.

§2108. Same: Form MA 7B (Application for Alien Employment Certification). The MA 7B provides for a description of the job duties to be performed and the minimum requirements necessary to adequately perform the job. It is to be completed by the employer when requesting certification for non-immigrant alien temporary workers (or parolees). This form may be used for all occupations. (Please see sample MA 7B Form for the new abbreviated way of filling out this form and the accompanying attachment in the Alien Certification Office.)

The Alien Certification Unit will determine and enter thereon the validity period of the certification. An employer may request that the certification period begin up to thirty (30) days after submission of his petition.

§2109. Same: Filing Procedure. (a) An original and two (2) copies of the MA 7B Form (Application for Alien Employment Certification) plus attachment, must be filed with the Alien Certification Unit listing the total number of aliens requested in all of the occupational categories on the MA 7B Form with a breakdown of the required information in the form of a job description per each

occupation on the attachment. However, only the original labor certification petition will be signed by the Director of Labor or his authorized representative. Copies of the petition as well as attachments will be appropriately stamped by the Alien Certification Unit.

All corrections or changes on documents submitted must be initialed by the employer or his authorized representative and stamped "Correction Approved" by the Alien Certification Unit.

(b) Signed copies of an employer's original project contracts which employees, (that is, non-immigrant alien contract workers) are to work on during the period of their validity period must be filed with the Alien Certification Unit of the Department of Labor.

These copies of the original project contracts must be certified by an officer or responsible person of the firm that they are true and accurate copies of the original project contracts.

(c) An affidavit or signed statement by the employer is to be submitted together with his petition stating the amount to be charged to each employee for meal and lodging (not to exceed Thirty-Two Dollars (\$32.00) per week) and that this amount represents the actual cost to the employer for meal and lodging charged.

(d) Employers petitioning for entertainers must submit an original glossy picture of the entertainer(s), in addition to meeting all the other filing requirements.

Employers or booking agents must file extensions on behalf of approved entertainers at least two (2) weeks prior to the expiration of the validity period of the certification or face the possibility of the repatriation of the entertainer(s) and other sanctions.

§2110. Same: Assignment of Workers to New Projects. An employer may assign his alien contract workers to work on new projects only after receiving a new Guam Department of Labor certification and approval by Immigration and Naturalization Service.

§2111. Same: Transfer of Alien Workers to Other Companies. The general policy of the Department of Labor and Immigration and Naturalization Service is that the transfer of a worker is not permitted (except as indicated in 17 GAR §2104(h) without the consent of his employer and that a worker is to fulfill the terms of his original contract. However, if an investigation by the Department of Labor

reveals any serious violation(s) by a petitioning employer, then the following procedure will apply:

(a) During an investigation, no alien contract worker will be repatriated or transferred, until the conclusion of the investigation, without the express approval of the Department of Labor and Immigration and Naturalization Service.

(b) During an investigation, and where the interest of justice require, an alien may be permitted to transfer to another company even without the approval of his petitioning employer by securing an acceptance letter from another company presenting the acceptance letter to the Department of Labor which will indicate its approval thereof.

However, if an employer goes out of business, or the certification period of the alien has expired, he will be permitted to transfer to another employer if said employer has a vacant slot available and there is concurrence by the old employer, the new employer, the Department of Labor and Immigration and Naturalization Service.

§2113. Same: Other Transfers. Parolee workers may be permitted to transfer to H-2 construction projects if Immigration and Naturalization Service concurs in the transfer and the Department of Labor is notified in writing of such transfer and the barracks where the alien will be housed.

§2114. Same: Other Laws and Regulations. (a) For the purpose of this policy, all petitioning employers of alien contract labor are subject to the rules and regulations now in effect with all government of Guam agencies. All petitions for alien contract workers must be processed with the following units within the Department of Labor:

- (1) Apprenticeship and Training.
- (2) Wage and Hour Section.
- (3) Occupational Safety and Health Section/Zoning Division, Land Management.
- (4) Worker's Compensation Section.
- (5) Bureau of Labor Statistics.
- (6) Alien Certification Unit.

(b) All employers must agree to comply with all federal and local laws and regulations relating to rates of pay, hours of work, safety and health regulations, and all

other government laws or regulations affecting the work place and their employees.

(c) Employers who are not importing or extending non-immigrant alien workers are exempted from the clearance provisions of this alien administrative policy as per 17 GAR §2114.

§2115. Same: Employers Statement. Together with an employer's application for Alien Employment Certification, the employer must submit an employer's statement that must be executed by the employer or a person duly authorized by the employer. If necessary, the authorization of said individual duly authorized may be requested in writing from the petitioning employer.

REVISED EMPLOYER'S STATEMENT

AS OF APRIL 5, 1974

In connection with my Immigration and Naturalization Service petition:

(1) I confirm that fact that an actual bona fide job opening exists and that no qualified U.S. resident worker will be displaced as a result of the importation or extension of alien workers.

(2) Together with this application for Alien Employment Certification I have placed an appropriate job order reflecting minimum requirements with the Guam Employment Service. Upon filing of my application, I will thereafter advertise the job openings I have for qualified skilled and unskilled workers. My advertisement in the local newspaper concerning availability will be completed within two (2) weeks from the date of submission of the application. My advertisement will include the prevailing wage rate being offered to qualified U.S. resident workers for each particular occupation.

(3) I will employ qualified or trainable U.S. resident workers referred to me by the Guam Employment Service. After my petition is granted and all my slots are filled, I will do my best to hire any other available qualified or trainable U.S. resident workers referred to me even though I am presently meeting the ten percent (10%) requirement. However in the event that I have open slots, I agree to hire qualified or trainable (under an approved apprenticeship training program) U.S. resident

worker(s) referred to me by the Guam Employment Service.

(4) Together with my application for Alien Employment Certification, I will provide a detailed presentation of my firm's occupational training program for U.S. resident workers to the Section of Apprenticeship Training of the Department of Labor for approval by the Chief of Human Resources, except entertainers. I understand that if no training program is present or if I do not participate in the Bureau of Apprenticeship Training Program that my petition will not be approved. Further, if after approval of my training program by the Chief of Human Resources an investigation reveals that a program has not been implemented, I understand and agree to the denial of future applications for Alien Employment Certification for one (1) year.

(5)(a) I will provide for my employees adequate housing which shall comply with all applicable federal and local laws and regulations including building permits, zoning and other safety and health requirements. In respect to the foregoing, I hereby agree to allow the Department of Labor to inspect my housing facility(s) and to accommodate any such inspections as may be necessary to assure compliance therewith.

(b) I understand that none of my alien contract employees may live outside the employer's compound or barracks without the explicit written permission of the employer and the Guam Department of Labor. In all cases the employer and the Guam Department of Labor must approve the residence change and the proposed living facilities must be inspected and meet the safety and health requirements for alien employee quarters under the Occupational Safety and Health Act.

(6) I agree to pay my non-immigrant alien contract workers (and parolees) the prevailing wage rate established by the Guam Department of Labor. I also agree to pay those U.S. resident workers who are working in similar job classifications as non-immigrant alien contract workers the prevailing wage rate determined by the Guam Department of Labor.

(7) I will not utilize an alien to work in an occupation other than the one for which he has been certified without prior approval of the Department of Labor and the Immigration and Naturalization Service.

(8) Effective December 1, 1973, I will charge my workers no more than the actual costs of meal and lodging. I understand that this can be as high as Thirty-Two Dollars (\$32.00) per week, but that I must maintain adequate records to document my expenses in the event that I increase the present cost of meal and lodging. I understand that if I cannot adequately document any increase, I will be legally obliged to return to my workers any monies collected in any excess of my actual costs.

(9) I will employ a minimum of ten percent (10%) U.S. resident workers as a percentage of my total work force on Guam. This total work force includes non-immigrant alien temporary workers as well as any other aliens certified and admitted by the U.S. Immigration and Naturalization Service and presently on Guam. I will endeavor to employ as many U.S. resident workers as possible of my total work force on Guam.

I understand that for the purpose of meeting the ten percent (10%) requirement, employment means the employment of a U.S. resident worker on an exempt (salary plus other requirements, 22 GCA §3108) or non-exempt, (hourly) basis.

In the event my petition is approved and I have not met the ten percent (10%) requirement (justifiably) I agree to thereafter, employ any qualified or trainable U.S. resident workers referred to me by the Guam Employment Service, under penalty of revocation or other appropriate sanctions.

(10) I will submit my reports on my labor force composition by the seventh day of each month required by the Guam Department of Labor in its Administrative Policy. I understand that if this report is not submitted on time, there will be a delay in the processing of said petitions and that the validity period usually granted (one year) will be appropriately lessened. I agree that not later than the seventh day of each month (by hand delivery or

postmarked the seventh), I will submit in writing to the Office of Chief of Compliance the following:

(A) The name, address, occupation and hourly wage rate of each non-immigrant alien temporary worker or parolee employed by me who is presently on Guam.

(B) The name and occupation of each non-immigrant alien temporary worker and parolee terminated and repatriated during the previous month.

(C) The name and occupation of each non-immigrant alien temporary worker and parolee transferred during the previous month and the name of the company the alien is transferred to.

(D) The name, address, occupation and hourly wage rate of each U.S. resident worker terminated during the previous month, stating the reason for termination.

(E) A list of each non-immigrant alien contract worker who is living outside the barracks, the place where the alien is residing and the number and relationship of dependents.

(11) I shall provide the Alien Certification Unit a signed copy of the employer-employee contract including renewals, upon request by the Department of Labor. I understand that this contract is to comply with local law and the alien administrative policy, including the payment of the prevailing wages.

(12) I will not employ aliens who are illegally residing on Guam or who otherwise may be in violation of the Immigration and Naturalization Act.

(13) I will permit Guam Department of Labor officials and my employees to have private interviews on reasonable notice upon the request of either party. These interviews will take place, if possible, at times that do not interfere with work.

(14) I will give the Office of Chief of Compliance, a minimum of ten (10) days written notice when terminating an H-2 or parolee worker prior to the termination date of his contract when possible. I agree that I will not request repatriation of any alien worker involved in a pending Department of Labor investigation without written approval of the Director

of Labor, and the Immigration and Naturalization Service. The Director of Labor agrees to not unreasonably deny approval to repatriation in cases involving criminal acts by the employee, violent behavior or documented repeated violations of company work rules after prior warning.

(15) Alien employees are to fulfill the terms of their contract and will not be allowed to transfer to another company at their request without the employer's permission and the concurrence of the Department of Labor except as stated in Paragraph XI of the alien administrative policy.

(16) My employees' hours of work and working conditions will be governed by existing contracts that comply with applicable local labor laws, federal laws and regulations, and the alien administrative policy.

(17) I will pay all the costs of transportation from point to Guam and return after completion of contract or mutual termination, all costs of travel documents, all costs of necessary injections and inoculations, and all costs of pre-engagement, physical examination for my employees and I will not deduct the costs of same from the wages of my employees nor will I in any other way, recover such costs other than those permitted by law or approved by the Department of Labor.

However employees who leave of their own volition prior to the expiration of their contracts or are terminated for cause may be required to pay their own way back to their point of hire. In the event that the employee has insufficient funds, then the employer hereby agrees to return the alien to his point of hire at his expense.

(18) I may institute hospitalization, disability, life insurance and/or dental plans for my employees and may require an employee to contribute up to fifty percent (50%) for said plan(s), provided the entire work force is covered. In the event I do not institute such hospitalization plan, then I will pay all necessary costs of hospitalization and medical expenses resulting from illness or injury of my non-immigrant alien workers on Guam not covered by insurance on employment contracts.

(19) I realize that it is my responsibility to ensure that none of my employees are required to pay brokerage fees or agent fees in exchange for the opportunity of working for me on Guam (unless lawfully required by the alien's country), and that if agent fees are obtained from my employees, I will be legally required to return said fees to those employees. My recourse will be against the agent.

(20) I will make every effort, after seeking U.S. resident workers locally or training local U.S. resident workers to offer employment to qualified individuals seeking employment from the Trust Territory of the Pacific Islands and nearby islands of the South Pacific.

(21) I understand that false, fraudulent or misleading statement in petitions and supportive documents, may result in the revocation of granted petitions and will result in the denial of future petitions and may be punishable by local or federal law.

(22) All other factors being equal, where there is a reduction in force in my company, I agree to terminate aliens first in those job classifications in which there are U.S. resident workers.

(23) I realize that if I take advantage of Paragraph XX of the administrative policy for Alien Employment Certification (17 GAR §2120), (fifty percent (50%) helpers), this will result in lower labor costs, I also agree to minimize my labor costs and to pass on any resulting savings to the consumer.

Name of Company

Date

Signature of Authorized Representative

Printed Name of Authorized Representative

§2114. Same: Prevailing Wage Rates. (a) Petitioning employers are required to pay alien contract laborers, imported or extended under this administrative policy, the "prevailing wage rates" as determined by the Guam Department of Labor. The prevailing wage rates now in existence are those rates previously published and in effect on July 1, 1973.

Construction contracts signed prior to July 1, 1972 and for which no construction has begun will not be accepted for processing unless persuasive justification is presented to explain why construction has not begun.

(b) In the event that additional occupations are requested to be filled by non-immigrant alien workers and there are no prevailing wage rates for those occupations, the Alien Certification Unit will make a survey to determine what the prevailing wage rates for those occupations are.

§2117. Same: Adverse Effect. All requests for employment of non-immigrant alien temporary workers (and parolees) must provide for payment of the applicable prevailing wage rate to each alien. Any request for certification that does not provide for payment of the applicable prevailing wage rate will be rejected on the grounds of adverse effect.

Adverse effect is present where the wage rate offered to the alien is below the prevailing wage rate established for that job classification.

Or where the wage paid to a U.S. resident worker is lower than that being paid or offered to a non-immigrant alien contract worker in the same job classification or, as indicated in Paragraph XXI(B), *supra*.

§2118. Same: Availability. In order that a determination may be made as to availability of U.S. resident workers, the following procedures will be utilized:

(a) The petitioning employer must publish in the local newspaper with the highest circulation for three (3) successive days the jobs vacant, and the prevailing wage rate being offered.

(b) In addition, the Guam Employment Service will review its records to determine whether any job applications are on file, and communicate with the Chief Commissioner's Office, the Department of Education and the University of Guam to determine whether any other apprentices or trainees are available and will inform the Alien Certification Unit of the results.

(c) When availability is present, i.e., the available U.S. resident is a qualified skilled worker, helper, trainee or apprentice, and is able and willing to work, then no certification shall be made for that job classification(s).

§2119. Same: Local Employment Requirement. (a) Generally speaking, applications for Alien Employment Certification will be accepted for processing, but will not be approved unless the applicant firm can show that at least ten percent (10%) of its employees on Guam are U.S. resident workers. This requirement is based upon the adverse effect that the employment of aliens have on job opportunities for U.S. resident workers and the unwillingness on the part of some contractors to seek, hire or train U.S. resident workers.

In the event that an application is approved and the employer does not meet his ten percent (10%) requirement, the reasons justifying the approval of the application by the Director of Labor will be inserted into the employment service file of that company. However, approval of the application will only be for an initial six (6) month period.

The ten percent (10%) requirement will be based upon the applicant employer's total paid work force on Guam, including those non-immigrant alien temporary workers (and parolees) who are currently present on Guam.

(b) An employer who does not meet the ten percent (10%) requirement may be obliged to reduce the number of aliens he is importing in order to come into compliance with the ten percent (10%) requirement.

(c) Where qualified or trainable U.S. resident workers are available, certification will be denied on the basis of availability.

§2120. Same: Certifications Only for Journeyman Level Positions. Effective immediately, only journeyman level non-immigrant alien temporary workers will be considered for certification (importation) except that firms engaged in construction will be permitted to request temporary alien workers for helper or laborer positions in an amount not to exceed fifty percent (50%) of the employer's construction work force on Guam. The wage rate of the construction helper or laborer shall be governed

by the published prevailing wage rate schedule until later modified, approved and published. No non-immigrant alien temporary helper or laborer will be eligible for certification as a journeyman during the period of certification.

§2121. Same: Invalidity of Certifications. (a) A temporary labor certification will become invalid if there are material changes in the circumstances stated on the application for alien employment certification (including supportive attachments or documents required), or if the representation upon which the certification is based is materially incorrect. Materially incorrect means that if the correct facts had been known, a certification would not have been issued.

(b) Certification requests will be deemed to adversely affect the wages or working conditions of U.S. resident workers where it appears that employment is with an employer who has within two (2) years prior to the offer obtained a certification on the basis of material misrepresentation of Form MA 7B or any supplement thereto or Employer's Statement required by the Guam Department of Labor as part of the certification process. Examples of material misrepresentations would be situations where an alien is required by one means or another not authorized by the Department of Labor to return any portions of his wages to the employer, or where an employee is not paid any portion of wages earned according to existing federal or territorial laws, etc.

(c) As to existing certifications, where serious violations or continuing violations are discovered, the existing certification may be revoked with the concurrence of the United States Immigration and Naturalization Service.

§2122. Same: Sanctions. Where a pattern of violations occur; that is repetitious violations of Guam's labor law, federal regulations or the Governor's administrative policy, appropriate sanctions will be imposed which may include denial of alien labor certification for a one (1) to two (2) year period of time. In these cases, the Guam Department of Labor will first hold an informal conference giving the employer an opportunity to refute charges against him.

§2123. Same: Certainty of Wage Payment. (a) To ensure that the new employer has financial ability to pay workers their wages when due, the Department of Labor will insist that:

(1) A new employer submit a financial statement (sworn to by the employer as being true under penalty of perjury) which indicates a sound financial position with sufficient assets to meet potential wage liability of one (1) month's wages for each employee; or

(2) A payroll account, having sufficient funds each month to meet payment of one (1) month's wages for each employee; or

(3) A wage bond from a reputable bonding company guaranteeing one (1) month's wages for each employee.

(b) In the event that an employer is found to have violated the Wage and Hour Law of Guam or the prevailing wage rate, future labor certifications will not be issued until the employer produces a wage bond from a reputable company guaranteeing wages earned by each employee during the validity period of the employee's certification.

§2124. Same: Interview. Upon request, an employer employing non-immigrant alien temporary workers (or parolees) will promptly make his employee(s) available for private interview with representatives of the Guam Department of Labor. To the extent practicable, the Department of Labor will not interfere with the employer's work in progress.

§2125. Same: Termination. Where a non-immigrant alien temporary worker (or parolee) or U.S. resident worker is to be terminated by an employer, the Office of Chief of Compliance must be advised in writing by the employer a minimum of ten (10) calendar days prior to the employee's actual termination. The written notice should state the name and address of the employee, beginning and ending dates of employment, hourly rates paid and reason(s) for termination stated in detail.

The Department of Labor recognizes the employer's right to terminate for cause. In the case of an alien worker, notice of such termination must be given ten (10) days prior to repatriation to the Office of Chief of Compliance. Where it is to the best interest of all concerned, the Department of Labor may authorize that repatriation be expedited.

§2126. Same: Appeals. The Immigration and Naturalization Service has the power to re-examine the facts leading to any adverse decision rendered by the Guam Employment Service, Alien Certification Unit or the Director of the Department of Labor relative to temporary labor certifications, and shall render a final decision on the matter. The appeal to the Immigration and Naturalization Service shall constitute the final administrative remedy.

§2127. Same: Repeal of Policy. This amended policy supersedes previous issuance.