

CHAPTER 3
DIVISION OF OCCUPATIONAL SAFETY AND HEALTH

(No rules filed.)

NOTE: Rule-making authority cited for formulation of regulations for the Division of Occupational Safety and Health by the Department of 22 GCA Chapter 1 Article 2.

CHAPTER 4
MINIMUM WAGE AND HOUR REGULATIONS
(WAGE AND HOUR COMMISSIONER)

- §4101. Definitions.
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NOTE: Rule-making authority cited for Wage and Hour Commissioner, 22 GCA §3116. **§4101. Definitions.** For the purposes of the Minimum Wage and Hour Act of Guam:

(a) The term *individual employed ... in a bona fide executive, administrative or supervisory capacity* shall mean any individual:

(1) Whose primary duty consists of the management of the enterprise in which he is employed or of a customarily recognized department or subdivision thereof; and

(2) Who customarily and regularly directs the work of two (2) or more other employees therein; and

(3) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight; and

(4) Who customarily and regularly exercises discretionary powers; and

(5) Who does not devote more than twenty percent (20%) of his hours worked in the workweek to activities which are not directly and closely related to the performance of the work described in Paragraph (1) through (4) of this

Section; provided, however, that this Paragraph (5) shall not apply in the case of an employee who is in sole charge of an independent establishment or a physically separated branch establishment, or who owns at least twenty percent (20%) interest in the enterprise in which he is employed; and

(6) Who is compensated for his services on a salary basis at a rate of not less than Five Hundred Dollars (\$500.00) per month inclusive of the reasonable cost to the employer of board, lodging or other facilities.

(b) The term *individual employed ... in a bona fide ... professional capacity* shall mean any individual:

(1) Whose primary duty consists of the performance of work:

(A) Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study (as distinguished from an apprenticeship, and from training in the performance of routine mental, manual or physical processes); or

(B) Original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination or talent of the employee.

(c) The term *individual employed ... in the capacity of outside salesman* shall mean any individual:

(1) Who is employed for the purpose of and who is customarily and regularly engaged away from his employer's place or places of business in:

(A) Making sales, which shall mean the transfer of title to both tangible and

intangible property; or

(B) For the use of facilities for which a consideration will be paid by the client or customer; and

(2) Whose hours or work of a nature other than that described on Paragraphs (1)a or (1)b of this Subsection do not exceed twenty percent (20%) of the hours worked in the workweek by non-exempt employees of the employer. Exempt work shall include work performance incidental to and in conjunction with the employee's own outside sales or solicitations.

(d) The term *individual employed ... as an outside collector* shall mean any individual:

(1) Who is employed for the purpose of and who is customarily and regularly engaged away from his employer's place or places of business in:

(A) Collecting money for goods or services previously or presently furnished by his employer; or

(B) Collecting money for an account placed in the hands of his employer for collection; and

(2) Whose hours of work of a nature other than that described in Paragraphs (1)a or (1)b of this Section do not exceed twenty percent (20%) of the hours worked in the workweek by non-exempt employees of the employer. Exempt work shall include work performed incidental to and in conjunction with the employee's own outside collection.

(e) The term *retail store* shall mean any store in which goods or commodities in small quantities or parcels are sold at retail or directly to the consumer.

(f) The term *grocery store* shall mean any store in which tea, sugar, spices, coffee, fruits and various other commodities, chiefly food stuffs, are sold.

(g) The term *gasoline station* shall mean a retail station for gasoline and oil.

(h) The term *restaurant* shall mean any establishment where refreshments or meals may be procured by the public.

(i) The terms *laundry establishment and dry-cleaning establishment* shall mean any establishment or place used in the business of marking, sorting, washing, drying, starching, ironing or cleaning wearing apparel, household linens and other articles with solvents, including any establishment providing laundering equipment for use by customers for a fee known by various terms such as laundromat, wash-o-mat or laundrette.

(j) The term *bakery* shall mean a place where bakery products are made or sold at retail.

(k) The terms *barber shop and beauty parlor* shall mean any establishment or place wherein any of the following is practiced for compensation:

(1) Shaving, clipping, trimming or cutting the human hair.

(2) Singeing, shampooing, arranging, adorning, dressing, curling, waving, permanent waving, tinting or dyeing the human hair or apply hair tonics.

(3) Giving facial, scalp, neck or body massages or treatments with oils, creams, lotions or other preparations either by hand or mechanical appliances.

(4) Applying cosmetic preparations, antiseptics, powders, oils, clays, lotions or other preparations to scalp, face, neck or hands.

(5) Manicuring or pedicuring.

(l) *Sheltered workshop or workshop* means a charitable organization or institution conducted not for profit, but for the purpose of carrying out a

recognized program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury, and of providing such individuals with renumeration employment or other occupational rehabilitating activity of an educational or therapeutic nature.

(m) *Handicapped client or client* means an individual whose earning capacity is impaired by age or physical or mental deficiency or injury, and who is being served in accordance with the recognized rehabilitation program of a sheltered workshop within the facilities of such agency or in or about the home of a client.

(n) *A learner or student-learner* is a student who is receiving instruction in an accredited school, college or university and who is employed on a part-time basis, pursuant to a bona fide vocational program.

(o) *Apprentice* means a worker who is employed to learn a skilled trade as defined in Subsection (r) of this Section [Rule I, Section (R)], and in conformity with or substantial conformity with the standards of apprenticeship as set forth in Subsection (q) of this Section.

(p) *A bona fide vocational training program* is one authorized and approved by the Territorial Diversified Occupations Advisory Council or other recognized educational body and provides for part-time employment training which may be scheduled for a part of the workday or workweek, for alternating weeks or for other limited periods during the year, supplemented by an integrated with a definitely organized plan of instruction designed to teach technical knowledge and related industrial information given as a regular part of the student-learner's course by an accredited school, college or university.

(q) *An apprenticeship program* must conform with or substantially conform with the following standards of apprenticeship before the Commissioner or his authorized representative will issue a special certificate authorizing employment of an apprentice under such program at wages lower than the

minimum wage applicable under 22 GCA §3105, as amended:

(1) Employment and training of the apprentice in a skilled trade. A skilled trade is an apprenticeable occupation which satisfies the criteria set forth in Subsection (r) of this Section.

(2) Two (2) or more years (four thousand (4,000) or more hours) of work experience.

(3) A progressively increasing schedule of wages to be paid the apprentice which averages at least fifty per centum (50%) of the journeyman's rate over the period of apprenticeship.

(4) A schedule of work processes or operation in which experience is to be given the apprentice on the job.

(5) Adequate facilities for training and supervision of the apprentice and the keeping of appropriate records concerning his progress.

(6) Related instruction, if available. (one hundred forty-four (144) hours a year is considered necessary.) Related instruction means an organized and systematic form of instruction which is designed to provide the apprentice with knowledge of the theoretical and technical subjects related to his trade. Such instruction may be given in a classroom, through correspondence courses or other forms of self-study.

(r) A *skilled trade* is an apprenticeable occupation which possesses all of the following characteristics:

(1) Is customarily learned in a practical way through training and work experience on the job.

(2) Is clearly identified and commonly recognized throughout an industry.

(3) Requires two (2) or more years (four thousand (4,000) or more hours) of work experience to learn.

(4) Requires related instruction to supplement the work experience (which instruction may be provided in accordance with Subsection (q)(6) of this Section.

(5) Is not merely a part of an apprenticeable occupation.

(6) Involves the development of skill sufficiently broad to be applicable in like occupations throughout an industry, rather than of restricted application to the products of any one company.

(7) Does not fall into any of the following categories:

(A) Selling, retailing or similar occupations in the distributive field.

(B) Managerial occupations.

(C) Clerical occupations.

(D) Professional and semi-professional occupations (this category covers occupations for which entrance requirements customarily include education of college level.)

§4102. Employees Employed in Activities Incidental, Minor or Subsidiary to the Principal Activity. (a) The provisions of 22 GCA §3105 and §3107, as amended, shall not apply to employees employed in activities, incidental, minor or subsidiary to the principal exempt activity; provided, that such employees devote not more than twenty-five per centum (25%) of their hours worked in the workweek to non-exempt work; and provided further, that the total weekly dollar volume of sales of goods or services of the principal activity.

§4103. Handicapped Clients in Sheltered Workshops, Learners and Apprentices. The provisions of 22 GCA §3105 and §3107, as amended, shall not apply to handicapped clients in sheltered workshops, learners or apprentices; provided, application for a special license or forms to be provided by the Minimum Wage

Commissioner is made by the employer of such handicapped clients, learners or apprentices for wages lower than the minimum wage rate provided by 22 GCA §3105, as amended.

§4104. Employers' Records. (a) Every employer shall maintain and keep records in English containing the following information and data on each employee to whom 22 GCA §3105 and §3107, as amended apply:

(1) Name in full, and also an identifying symbol or number if such is used in place of or in addition to a name on any record kept by the employer relating to such employee.

(2) Home address.

(3) Date of birth.

(4) Occupation.

(5) Rate of pay and length of pay period.

(6) Hours worked each workday and total hours worked each workweek.

(7) Total daily or weekly straight-time earnings or wages.

(8) Total weekly overtime compensation.

(9) Total additions to or deductions from wages paid each pay period.

(10) Total wages paid each pay period, date of payment and pay period covered.

(b) Such records shall be preserved by the employer for a period of at least six (6) years.

§4105. Reasonable Cost of Board, Lodging and Other Facilities. (a) The reasonable cost to the employer of furnishing an employee with board, lodging or other facilities is hereby determined to be the actual cost of operation and maintenance, including adequate depreciation, plus an allowance not exceeding five and

one-half per centum (5 1/2%) for interest on the depreciated amount of capital invested by the employer. Reasonable cost shall not include a profit to the employer or to any affiliated person.

(b) The cost of operation and maintenance, the rate of depreciation and the depreciated amount of capital invested by the employer shall be those arrived at by good and proper accounting practices in the territory of Guam. The term "good and proper accounting practices in the territory of Guam" shall not include accounting practices which have been rejected by the Income Tax Division of the Department of Finance, or by the Bureau of Internal Revenue, U.S. Department of Treasury, for income tax purposes. The term *depreciation* shall include obsolescence.

(c) For the purpose of the Minimum Wage and Hour Act of Guam the cost of furnishing facilities which are primarily for the benefit or convenience of the employer are not to be included as wages. The following list of such facilities is illustrative rather than exclusive:

(1) Tools of the trade and other materials and services incidental to carrying on the employer's business.

(2) Uniforms and their laundering, where the nature of the business requires the employee to wear a uniform.

(3) Company transportation from company to work site and return.

§4106. Reduction of Wages. No employer shall reduce a wage paid by him which is in excess of the minimum wage under the Minimum Wage and Hour Act of Guam for the purpose of evading the overtime provisions of 22 GCA §3107, as amended.

§4107. Payment of Wages. (a) Except as provided for by 22 GCA §3201, as amended, the earned wages of all employees shall be due and payable within seven (7) days after the end of each pay period.

(b) In the case of a dispute over wages resulting in, or existing at the time of termination of employment, the

employer shall give notice to the employees of the amount of wages which he concedes to be due and the same shall be payable without any conditions whatsoever at the time fixed by 22 GCA §3201, as amended, and the acceptance by the employees of such payment shall not constitute a release or accord and satisfaction with respect to the disputed amount.

(c) No person shall deduct or retain any part or portion of any compensation earned by an employee except where required by federal or territorial statute or by court process or when deductions are authorized in writing by the employee.

§4108. Display of Posters. Every employer shall display posters containing provisions of the Minimum Wage and Hour Act of Guam in conspicuous places on his premises as furnished by the Commissioner.

§4109. Effective Date. These Rules shall take effect upon promulgation by executive order. Dated at Agana, Guam this 17th day of May, 1961.

NOTE: Title 22, Guam Code Annotated §3105 amended by Public Laws 10-38 and 10-172; further amended by Public Law 12-152; 22 GCA §3107, amended by Public Law 11-83; Subsection (c) added by Public Law 12-86.