

**22 GCA BUSINESS REGULATIONS
CH. 3 FAIR LABOR STANDARDS**

**CHAPTER 3
FAIR LABOR STANDARDS**

- Article 1. Minimum Wage and Hour Act.
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- Article 3. Prohibit Age Discrimination in Employment Practices.
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**ARTICLE 1
MINIMUM WAGE AND HOUR ACT**

CROSS-REFERENCES: For wages required to be paid to workers working on contracts with the Government of Guam, see 5 GCA Chapter 5, Art. 13 (a part of the Guam Procurement Law).

- § 3101. Title.
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- § 3118. Right of collective Bargaining Protected.
- § 3119. Territory-Federal Cooperation.
- § 3120. Separability of Provisions.

§ 3121. Minimum Wage: Automatic Increase.

§ 3101. Title.

This Chapter may be cited as the *Minimum Wage and Hour Act of Guam*.

SOURCE: GC § 46000.

§ 3102. Declaration of Policy.

It is declared to be the policy of this Chapter: (a) to establish minimum wage and maximum hour standards at levels consistent with the public health, efficiency and general well-being of workers; (b) to safeguard existing minimum wage and maximum hour standards which are adequate to the health, efficiency and general well-being of workers from the effects of the serious and unfair competition resulting from wage and hour standards detrimental to the health, efficiency and general well-being of workers; and (c) to increase employment opportunities.

SOURCE: GC § 46001.

§ 3103. Wage and Hour Commissioner.

This Chapter will be administered by a Wage and Hour Commissioner, who shall be the Director of Labor.

SOURCE: GC § 46002.

§ 3104. Definitions.

As used in this Chapter:

- (a) Commissioner means the Wage and Hour Commissioner.
- (b) Employ includes to permit or suffer to work.
- (c) Employer includes any individual partnership, association, corporation, business trust, legal representative, government entity or instrumentality, or any organized group of persons, acting directly or indirectly in the interest of an employer in relation to an employee, but shall not include the United States Government, except when engaged in non-appropriated fund activities.
- (d) Employee includes any individual employed by an employer, but shall not include any individual employed;

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(1) in agriculture for any workweek in which the employer of the individual employs less than ten (10) persons;

(2) in domestic employment in or about a private home.

(e) Industry means a trade, business, industry, or branch thereof, or group of industries to which individuals are employed.

(f) Wage means (except as the Wage and Hour Commissioner may provide under § 3116) legal tender of the United States, or checks on banks convertible into cash on demand at full face value thereof and in addition thereto the reasonable cost, as determined by the Commissioner, to the employer of furnishing an employee with board, lodging or other facilities if such board, lodging or other facilities are customarily furnished by such employer to his employees but shall not include tips or gratuities of any kind: Provided, that the cost of board, lodging or other facilities shall not be included as a part of the wage paid to any employee to the extent that it is excluded therefrom under the terms of a bona fide collective bargaining agreement applicable to the particular employee.

(g) Week means any period of seven (7) consecutive days.

(h) Agriculture means agriculture as defined in Section 3(f) of the Federal Fair Labor Standards Act of 1938, or as the same may be amended from time to time.

SOURCE: GC § 46003. Item (3) amended by P.L. 11-167.

2014 NOTE: Pursuant to the authority granted by 1 GCA § 1606, subsection designations were altered from numbers to lowercase letters to adhere to the Compiler's alpha-numeric scheme.

§ 3105. Minimum Wages.

Every employer shall pay each person employed by him wages at a rate not less than Eight Dollars and Twenty-Five Cents (\$8.25) per hour, effective January 1, 2015.

SOURCE: GC § 46004. Repealed and reenacted by P.L. 19-31:1. Amended by P.L. 28-140:1 (July 18, 2006); and P.L. 32-178:1 (July 10, 2014).

§ 3105.1 Independent Economic Impact Statement.

On or before June 1, 2015, the Director of the Department of Labor shall issue a Request for Proposal for the purpose of conducting a one (1) year Independent Economic Impact Statement, relative to the minimum wage

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increase authorized through P.L. 32-178. The Department of Labor, in collaboration with the Guam Economic Development Authority, shall identify the resources necessary to fund the Independent Economic Impact Statement. The Department of Labor, in collaboration with the University of Guam, shall determine the study parameters.

The Independent Economic Impact Statement shall be completed by an identified group that includes an Economist with a Master's degree or Ph.D. in Economics from an institution of higher learning accredited by an accreditation agency recognized by the U.S. Secretary of Education, or similar accredited body that is recognized internationally, no later than March 30, 2016, and shall be transmitted to the Speaker of *I Liheslaturan Guåhan* and to *I Maga'lahaen Guåhan* on or before April 30, 2016.

SOURCE: Added by P.L.32-229:1 (Dec. 29, 2014).

§ 3106. Alien or H-2 Workers Minimum Wage.

Every employer employing an alien or aliens who have not been lawfully admitted to the United States for permanent residence by the United States Department of Justice shall pay all United States citizens and permanent residents and citizens of the Federated States of Micronesia, the Republic of Palau, the Republic of the Marshall Islands, or the Commonwealth of the Northern Mariana Islands doing the same or substantially similar work wages in an amount equal to or greater than the wages paid to the non-resident alien(s) doing the same or substantially similar work. This subsection shall not apply to any construction projects which are in progress on the effective date of this Act or for which construction contracts have been signed prior to the date this Act becomes law.

SOURCE: GC § 46004.1. Added by P.L. 19-031:2.

§ 3107. Maximum Hours; Split Shifts.

(a) *No* employer shall employ any employee in excess of forty (40) hours a week, unless such employee receives compensation for employment in excess of such weekly hours, at a rate *not less than* one and one-half (1-1/2) times the regular rate at which he is employed, *except* that the provisions of this Subsection shall *not* apply to employees covered under Section 207(k) of the Fair Labor Standards Act, Chapter 8 of Title 29 of the United States Code.

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(b) No employer shall employ any employee in split shifts unless all of the shifts within a period of twenty-four (24) hours fall within a period of fourteen (14) consecutive hours, except in case of extraordinary emergency.

(c) No employer shall employ any employee for a work period of more than five (5) hours without a meal period of not less than thirty (30) minutes; except that when a work period of not more than six (6) hours will complete the day's work, the meal period may be waived by mutual consent of employer and employee. Meal period shall not be considered 'on duty' or counted as time worked, unless the nature of his work prevents an employee from being relieved of duty.

SOURCE: GC § 46005. Subsection (a) amended by P.L. 11-083 to reduce the hours from "forty-eight" to "forty". Subsection (c) added by P.L. 12-086. Subsection (a) amended by P.L. 30-215:2 (Dec. 13, 2010).

§ 3108. Exemptions.

The provisions of §§ 3105 and 3107 shall not apply with respect to:

(a) any employee employed by his son, daughter, spouse or parent;

(b) (1) Any employee who is employed in a bona fide executive capacity, which is any employee who is compensated on a salary or fee basis at a rate of not less than Four Hundred Fifty-five Dollars (\$455.00) per week and whose primary duty is management of the enterprise where the employee is employed or of a recognized department thereof; who customarily and regularly directs the work of two (2) or more other employees; and who has the authority to hire or fire other employees or whose suggestions and recommendations as to hiring, firing, advancement, promotion, or any other change of status of other employees are given particular weight.

(2) Any employee who is employed in a bona fide administrative capacity, which is any employee who is compensated on a salary or fee basis at a rate of not less than Four Hundred and Fifty-five Dollars (\$455.00) per week and whose primary duty is the performance of office or non-manual work directly related to the management of the general business operations of the employer or the employer's customers, and whose primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

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(3) Any employee who is employed in a bona fide professional capacity, which is any employee who is compensated on a salary or fee basis at a rate of not less than Four Hundred Fifty-five Dollars (\$455.00) per week and whose primary duty is the performance of work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction or requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor. It shall also include computer systems analysts, computer programmers, software engineers or other similarly skilled workers in the computer field.

(4) Any employee who is employed as an outside salesperson, which is an employee who is employed for the purpose of and who is customarily and regularly engaged away from the employer's place of business in making sales or obtaining orders or contracts for services or the use of facilities for which a consideration will be paid by the client or customer.

(5) Any employee with a primary duty of teaching, tutoring, instructing or lecturing in the activity of imparting knowledge and who is employed in this activity as a teacher in an educational establishment;

(c) any employee employed in the propagating, catching, taking, harvesting, cultivating or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds or other aquatic forms of animal or vegetable life, including the going to and returning from work and the loading and unloading of such products prior to first processing;

(d) any employee employed as a seaman;

(e) any employee employed a driver of a vehicle carrying passengers for hire operated solely on call from a fixed stand;

(f) any employee employed as a golf caddie;

(g) any employee employed as a newspaper boy in the delivery of newspapers to the consumer.

(h) any employee to the extent that such employee is exempted by the Commissioner pursuant to §§ 3113 and 3114.

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SOURCE: GC § 46006. Subsection (b) amended by P.L. 28-164:1 (Jan. 4, 2007). Subsection (h) amended by P.L. 17-013:6; further amended by P.L. 19-031:3. Subsections (h) and (i) amended by P.L. 21-140:20.

§ 3109. Duty of Wage and Hour Commissioner; Employees, Salaries.

The Commissioner shall enforce the provisions of this Chapter.

SOURCE: GC § 46007.

§ 3109.1. Publishing Applicable Laws.

The Director of Labor shall post on the Department's internet website Title 22 GCA § 3108 and Title 17 GAR, Division 1, Chapter 4, as amended herein.

SOURCE: Added by P.L. 28-164:4 (Jan. 4, 2007).

§ 3110. Record of Employees.

Every employer shall keep in or about the premises where any employee is employed, a record of the name, address, social security number or, in the case of alien workers, the passport number and occupation of each such employee, of the amount paid each pay period to each such employee, of the hours worked each day and each workweek by each such employee, and of such other information, and for such periods of time as the Commissioner, may by regulation prescribe. The Commissioner or his authorized representative, shall have direct access to inspect, copy, or subpoena the possession of such records to conduct all necessary investigation. The Commissioner or his authorized representative, shall have the authority to inspect, copy, and use as evidence all reports, documents, and/or statements of any kind or nature submitted to any department of the government of Guam for the purpose of enforcing the provision of this Chapter. Every employer shall furnish to the Commissioner or his authorized representative such information relating to the employment of workers and in such manner that the commissioner or his representative can use to interview employees during working hours at the place of employment. The commissioner shall cause this Chapter to be printed and copies of rules and regulations issued by the Commissioner shall be furnished to employers affected thereby without charge.

SOURCE: GC § 46008. Repealed and reenacted by P.L. 21-140:21.

§ 3111. Violations; Penalty.

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Any employer who intentionally hinders or delays the Commissioner or his authorized representative in the performance of his duties in the enforcement of this Chapter; or who intentionally refused to admit the Director of Labor or his authorized representative to any place of employment; or who fails to keep any record required under the provisions of § 3110 or who refuses to make such records accessible or to give information required for the proper enforcement of this Chapter, upon demand, to the Director of Labor or his authorized representative shall be guilty of a misdemeanor.

SOURCE: GC § 46009. Amended by P.L. 13-187:223; further amended by P.L. 21-140:16.

§ 3112. Information Not to be Divulged, When.

Any information secured from inspection of the records, or from transcriptions thereof, or from inspection of the employer's premises by the Commissioner or his authorized representative may be used in connection with their official duties or within the scope and course of their employment but not otherwise, and shall not be divulged to other than officials concerned with, and solely for the purposes of, the administration of the laws of the territory relating to matters under the jurisdiction of the Commissioner, except in a proceeding in court provided by this Chapter.

SOURCE: GC § 46010.

§ 3113. Handicapped Workers.

The Commissioner may provide by regulations, after public hearing at which any person may be heard, and subject to the approval of the Governor and promulgation by Executive Order, for the employment in any occupation of individual whose earning capacity is impaired by age or physical or mental deficiency or injury at wages lower than the minimum wage rate provided in § 3105 as the Commissioner may find appropriate to prevent curtailment of opportunities for employment, to avoid undue hardship, and to safeguard the minimum wage rate under this Chapter. No employee shall be employed at wages fixed pursuant to this section except under a special license issued under applicable regulations, which license shall be issued for such period as the commissioner shall determine but not to exceed one year.

SOURCE: GC § 46011.

§ 3114. Wage Rates for Learners and Apprentices.

For any occupation, the Commissioner may provide by regulations after a public hearing at which any person may be heard, and subject to the approval of the Governor and promulgation by Executive Order, for the employment in such occupation of learners and apprentices at such wages lower than the minimum wage rate provided by § 3105 as the Commissioner may find appropriate to prevent curtailment of opportunities for employment and to safeguard the minimum wage rate under this Chapter. No employee shall be employed at wages fixed pursuant to this section except under special license issued under applicable regulations, which license shall be issued for such period as the Commissioner shall determine but not to exceed one year.

SOURCE: GC § 46012.

§ 3115. Oaths; Affidavits; Subpoenas; Witnesses; Immunities.

The Commissioner or his authorized representative may administer oaths, take or cause to be taken the depositions of witnesses, and require by subpoenas the attendance and testimony of witnesses and the production of all books, records and other evidence relative to any matter under investigation. Such subpoena shall be signed and issued by the Commissioner or his authorized representative. In cases of failure of any person to comply with any subpoena lawfully issued under this section, or on the refusal of any witness to produce evidence to testify to any matter regarding which he may be lawfully interrogated, the Judge of the Superior Court of Guam, upon the application of the Commissioner or his authorized representative, shall compel obedience by proceeding for contempt, as in the case of disobedience of the requirements of a subpoena issued by such court or a refusal to testify therein. The Commissioner may certify to official acts.

No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, contracts, agreements, or other records and documents before the Commissioner or his authorized representative, or in any cause or proceeding instituted under this Chapter, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subject to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he is compelled to testify or produce evidence, documentary or otherwise., after having claimed his privilege against self-incrimination, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

SOURCE: GC § 46013.

§ 3116. Administrative Procedures, Guidelines and Regulations.

The provisions incorporated in the Federal Labor Standards Act Field Operations Handbook (also known as the “Blue and Red Field Operations Handbook”) in effect on the effective date of this act shall serve as the basic set of procedures, guidelines, and regulations governing the application of Fair Labor Standards in Guam, and are hereby adopted as procedures, guidelines and procedures of the Department of Labor to the extent not inconsistent with Guam law, subject to later amendment or repeal by the Director of Labor. In addition, the Administrator of Wages and Hours may adopt such other rules and regulations that may be necessary to implement this Chapter, included, but not limited to, other guidelines in implementing a standard of administration and enforcement not inconsistent with Guam Wage and Hour laws and other labor-related laws. For any occupation, the Director of Labor may make and revise, in accordance with the Administrative Adjudication Law, such administrative regulations, as he may deem appropriate to carry out the purposes of this Chapter or necessary to prevent the circumvention or evasion thereof and to safeguard the minimum wage rates thereby established. Such regulations may include, but are not limited to, regulations defining and governing outside salesman; learners and apprentices, their number, proportion, and length of service; part-time pay; prevailing wages; disabled workers adverse wages; handicapped workers; bonuses; overtime pay; special pay for special or extra work; permitted deductions for previously agreed to costs of, or fair value of, board, lodging and other facilities charges to employees or allowances for board, lodging, or other facilities customarily furnished by employers to employees; or allowances for such other such special conditions or circumstances which may be usual in a particular employer-employee relationship. Regulations or revisions thereof pursuant to this section shall be made only after fully complying with the Administrative Adjudication Law.

SOURCE: GC § 46014. Repealed and reenacted by P.L. 21-140:22.

§ 3117. Penalties; Collection of Unpaid Wages; Injunctions, etc.

(a) Criminal. Any employer who intentional violates any provisions of this Chapter other than § 3211, or of any rule, regulation or order issued under the authority of this Chapter, or who discharges or in any other manner discriminates against such employee because such employee has made a complaint to his employer, to the Department of labor or to any other person, or has instituted or caused to be instituted any proceeding under or

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related to this Chapter, or has testified or is about to testify in any such proceedings, shall be guilty of a misdemeanor. Each day a violation continues shall constitute a separate offense. Failure of an employer to pay an employee any wages shall constitute prima facie evidence of a violation of this Chapter.

(b) Liability to employee. Any employer who violates any provision of §§ 3105 or 3107 shall be liable to the employee or employees affected in the amount of their unpaid minimum wages or unpaid overtime compensation, as the case may be, and in case of wilful violation an additional equal amount as liquidated damages.

(c) Collection suits, attorney's fees; assignments; relief from costs. Action to recover such liability may be maintained in the Superior Court of Guam by any one or more employees for an in behalf of himself or themselves and other employees similarly situated, or such employee or employees may designate an agent or representative to maintain such action for and in behalf of all employees similarly situated. The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, in the event the plaintiff or plaintiffs prevail, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action. At the request of any person paid less than the amount to which he is entitled under the provisions of this Chapter, the Commission may take an assignment in trust for the assigning employee of the full amount to which he is entitled under this subsection and may bring any legal action necessary to collect such claim, and the employer shall be required to pay the costs and such reasonable attorney's fees as may be allowed by the court in the event the commissioner prevails. The Commissioner shall not be required to pay the filing fee, or other costs, in connection with such action. The Commissioner, in case of suit, may join various claimants against the same employer in one action.

(d) Injunctions. Whenever it appears to the Commissioner that any employer is engaged in any act or practice which constitutes or will constitute a violation of any provision of this Chapter, or of any provision of any regulation, he may in his discretion bring an action in the Superior Court of Guam in which it is charged the act or practice complained of occurred to enjoin such act or practice and enforce compliance with this Chapter or with such regulation, and upon a proper showing, a permanent or temporary injunction or decree or restraining order shall be granted without bond.

SOURCE: GC § 46015. Subsection (1) amended by P.L. 13-187:224; further amended by P.L. 21-140:17.

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2014 NOTE: Subsection designations were altered from numbers to lowercase letters to adhere to the Compiler's alpha-numeric scheme pursuant to the authority granted by 1 GCA § 1606.

NOTE: "District Court" changed to *Superior Court* to reflect change made to court structure and jurisdiction by the *Court Reorganization Act of 1974* (P.L. 12-85).

§ 3118. Right of Collective Bargaining Protected.

Nothing in this Chapter shall be deemed to interfere with, impede, or in any way diminish the right of employees to bargain collectively through representatives of their own choosing in order to establish wages in excess of the applicable minimum under this Chapter, or to establish hours of work shorter than the applicable maximum under this Chapter.

SOURCE: GC § 46016.

§ 3119. Territory-Federal Cooperation.

In the administration of this Chapter, the Commissioner and the Director shall cooperate to the fullest extent consistent with the provisions of this Chapter with the Administrator of Wage and Hour and Public Contracts Division, United States Department of Labor.

SOURCE: GC § 46017.

§ 3120. Separability of Provisions.

If any provision of this Chapter or the application of such provisions to any person or circumstances is held invalid, the remainder of the Chapter and the application of such provision to other persons or circumstances shall not be affected thereby.

SOURCE: GC § 46018.

§ 3121. Minimum Wage; Automatic Increase.

Whenever a Federal Law establishes a minimum wage higher than the minimum wage established pursuant to § 3105, the minimum wage under this Chapter shall be correspondingly increased to the minimum wage level of the Federal law with the same effective date.

SOURCE: GC § 46019. Added by P.L. 12-035.

ARTICLE 2
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- § 3201. Wages to be Paid When.
- § 3202. Payment When Amount Disputed.
- § 3203. Fines, Deductions for.
- § 3204. Wages, Deductions From.
- § 3205. Criminal Penalty.
- § 3206. Injunction for Failure to Pay Wages.
- § 3207. Claims for Wages Preferred.
- § 3208. Filing of Claims: Contests.
- § 3209. When Claims Paid: Prorating.
- § 3210. Separability of Provisions.
- § 3211. Additional Criminal Penalties.
- § 3212. Deductions and Forms of Payment.
- § 3213. Statement if Wages not Paid.
- § 3214. Liens for Unpaid Wages.
- § 3215. Definitions.
- § 3216. Enforcement of Prevailing Wages.
- § 3217. Definition of Failure to Pay Wages.
- § 3218. Fees and Costs.
- § 3219. Penalties.
- § 3220. Waivers.
- § 3221. Representation by Attorney General or a Private Attorney.
- § 3222. Class Actions.
- § 3223. Changes in Employment Contracts: Discrimination.

§ 3201. Wages to be Paid, When.

The earned wages of all employees shall be due and payable within seven (7) days after the end of each pay period, except that:

(a) the earned wages of all employees discharged the employer either with or without cause shall be immediately due and payable upon discharge;

(b) if an employee leaves his employment voluntarily, his earned wages shall be due and payable on the next regular pay day;

(c) where work is suspended as a result of a labor dispute, the wage of all employees earned to the date of such suspension shall become due and payable at the next regular pay day.

SOURCE: GC § 46030.

§ 3202. Payment When Amount Disputed.

In 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 and the Director of Labor 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 § 3201, and the acceptance by the employees of such payment shall not constitute a release or accord and satisfaction with respect to the disputed amount.

SOURCE: GC § 46031. Amended by P.L. 21-140:14.

§ 3203. Fines, Deductions for.

No fines shall be collected, deducted or retained by any person out of any compensation earned by any employees.

SOURCE: GC § 46032.

§ 3204. Wages, Deductions From.

It shall be unlawful for any person to deduct and retain any part of portion of any compensation earned by any employee except where required by federal or territorial statute or by court process or when such deductions are authorized in writing by the employee, provided that deductions for fines may not be so authorized.

SOURCE: GC § 46033.

§ 3205. Criminal Penalty.

Any person who, having the ability to pay, intentionally refuses to pay wages due and payable when demanded or who violates any provision of §§ 3201 through 3204 of this Title shall be guilty of a misdemeanor.

SOURCE: GC § 46034. Amended by P.L. 13-187:225; and P.L. 21-140:18.

§ 3206. Injunction for Failure to Pay Wages.

If any judgment obtained by the Commissioner against an employer for nonpayment of wages remains unsatisfied for a period of thirty (30) days after the time to appear therefrom has expired and no appeal is pending or after such judgment has been finally affirmed on appeal, the Commissioner may institute proceedings in the name of the territory in the District Court in which such employer has his principal place of business to compel such employer to cease doing any business until such judgment has been satisfied.

SOURCE: GC § 46035.

§ 3207. Claims for Wages Preferred.

When the business of any person, corporation, company or firm is suspended as a result of a writ of execution or attachment or is placed in the hands of a receiver, trustee or assignee for creditors, then in all such cases claims for wages for each claimant an amount per claimant not to exceed one thousand forty (1040) hours multiplied by the minimum wage in effect on the last day labor was performed by the employee and earned within six (6) months of the date such business is suspended or placed in the hands of a receiver, trustee or assignee for creditors shall be paid in full prior to the payment of taxes or any other debts except a debt secured by a mortgage or security interest duly recorded before the wages were earned.

SOURCE: GC § 46036. Repealed and reenacted by P.L. 21-140:15.

§ 3208. Filing of Claims: Contests.

Any employee desiring to enforce his claim for wages under §§ 3207 to 3209 shall present a statement under oath showing the amount due, the kind of work for which such wages are due, and when such work was performed to the officer or persons charged with such property within twenty (20) days after the seizure thereof on any execution or writ of attachment or within six (60) days after such property has been placed in the hands of a receiver, trustee or assignee for creditors. Any interested party may contest any such claim or part thereof by filing sworn exceptions thereto with such officer or persons within ten (10) days after the period for filing claims, and thereupon the claimant shall be required to reduce his claim to judgment before any part thereof shall be paid.

SOURCE: GC § 46037.

§ 3209. When Claims Paid: Prorating.

No claim shall be paid until after the expiration of the time for filing and contesting claims. If the funds realized from the sale of the property are insufficient to pay the total claims for wages presented, then such funds shall be prorated on such claims.

SOURCE: GC § 46038.

§ 3210. Separability of Provisions.

If any provision of this Act or the application of such provision to any person or circumstance is held invalid, the remainder of the Act and the

application of such provision to other persons or circumstances shall not be affected thereby.

SOURCE: GC § 46039.

§ 3211. Additional Criminal Penalties.

(a) It shall be a felony of the second degree to knowingly and materially alter payroll records to deprive an employee of wages rightfully due.

(b) It shall be a felony of the second degree to knowingly and materially falsify payroll records to deprive an employee of wages rightfully due.

SOURCE: GC § 46040. Added by P.L. 21-140:1.

§ 3212. Deductions and Form of Payments.

(a) All deductions taken from an employee's pay by an employer, and all sums payable or paid to the employer from said pay to the employee, shall be shown on the employee's pay statement or check stub, and a copy thereof shall be given to the employee at the time the employee is paid. A copy thereof shall be kept by the employer for three (3) years.

(b) All payments made to an employee by an employer shall be in the form of cash or check. It is then the employee's responsibility to cash his or her check. No employer of non-immigrant alien employees may deduct from their pay any funds for transmittal off-island for any purpose whatever.

SOURCE: GC § 46041. Added by P.L. 21-140:2.

§ 3213. Statement of Wages Not Paid.

If an employer cannot or does not pay wages rightfully due when due to one (1) or more employees, the employer shall, within five (5) days, exclusive of Saturdays, Sundays, and holidays:

(a) Give each employee and the Director of Labor a statement showing the correct hours worked for the pay period in question, the correct wages earned, the correct legal deductions from pay, and correct wages payable. A statement containing errors shall be considered correct if the employer can establish that the error was an honest error made accidentally and in good faith; and if after ten (10) working days, the wages have still not been paid, then the employee shall:

(b) Deliver to the Department of Labor a list of receivable due the employer, a list of all the employer's bank accounts along with copies of the latest bank statements, the name of all officers, directors, and

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managers of the employer if a corporation, and the names, addresses and telephone numbers of any person owning more than ten percent (10%) of the employer, along with copies of all time cards and payment records for all employees for the pay periods missed.

SOURCE: GC § 46042. Added by P.L. 21-140:3.

§ 3214. Liens for Unpaid Wages.

When the Director of Labor finds that an employer has not paid wages due, then, in addition to all other remedies, relief, and liens allowed by law or at equity,

(a) The Director of Labor (the “Director”) through the Attorney General's Office may promptly file a labor lien on any real property owned by the employer, to be filed at the Department of Labor Management, and have served upon the holders of any mortgage thereon a copy of the lien, and

(b) The Director through the Attorney General's Office may promptly file a labor lien on any personal property (including accounts receivable) owned by the employer to be filed at the Department of Revenue and Taxation, and

(c) The Director through the Attorney General's Office may order the bank accounts of the employer frozen, and

(d) Liens and bank accounts frozen by this section shall be released upon posting with the Director a cash bond or a surety bond issued by an insurance company licensed in Guam in an amount equal to wages allegedly owed plus fines, penalties, costs, and attorney's fees, and

(e) None of the actions of the Director set out in paragraphs (a) through (d) above may be taken without the approval of the Superior Court set out in an order, which only may be entered without notice when the Director has satisfied the court that funds will be dissipated if notice be given.

SOURCE: GC § 4602.1. Added by P.L. 21-140:4.

§ 3215. Definitions.

(a) *Wages.* For purposes of this Title, wages (however denominated) means the gross amount owed to the employee, and includes but is not limited to all compensation for labor for which an employee is entitled,

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including regular pay, overtime pay, commissions, wages as defined in Subsection (6) of § 3104 of this Code, wages to which the employee may be entitled based on the Prevailing Wage Rates established pursuant to Section 101(a)(15)(H) ii of 8 U.S.C. 1186 (federal immigration law) established by the Governor of Guam or the United States Government, wages based on contract, and all other amounts to which the employee is entitled for labor performed on behalf of an employer. Retirement contributions of both the employer and the employee to a retirement fund or plan, including the Government of Guam Retirement Fund, shall be the property of the retirement fund or plan held in trust for the benefit of the members of the plan or fund, and the employer retains no rights thereto. Actions for non-payment of such contributions or misuse of such funds or plans may be enforced, prohibited and recovered by the Attorney General, the employee, or any member in the same manner as an action for unpaid wages, with the same penalties and attorney's fees. Except for government employees and employees of non-profit organizations enjoying tax-free status, employees cannot do volunteer work at lower than regular pay or without overtime if applicable which work will directly or indirectly benefit his or her employer. This rule does not apply to employers who operate institutions engaged in the care of sick, aged, or mentally ill or defective persons. This exemption permits these institutions to adopt a fourteen (14) day workweek instead of a seven (7) day workweek and does not require overtime unless an employee is employed more than eight (8) hours per day or in excess of eighty (80) hours in the fourteen (14) day workweek.

(b) *Local worker.* For purposes of this Title, local worker or local employee means a U.S. citizen, a permanent resident of the United States, a U.S. national, or a person from the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federal States of Micronesia, or the Republic of the Marshall Islands.

SOURCE: GC § 46042.2. Added by P.L. 21-140:5.

§ 3216. Enforcement of Prevailing Wages.

The Department of Labor is authorized to conduct, administer, apply and enforce prevailing wages required to be paid to non-immigrant alien workers under the provisions of Section 101(a)(15)(H)(ii) of 8 U.S.C. 1186 rates for the territory of Guam once they have been established by the Governor of Guam.

SOURCE: GC § 46042.3. Added by P.L. 21-140:6.

§ 3217. Definition of *Failure to Pay Wages*.

For purposes of this Title, *failure to pay wages* or *unpaid wages* (however denominated) includes but is not limited to:

- (a) Failure to pay sums due for wages, overtime, and benefits; or
- (b) Failure to pay sums deducted from pay for payment to another within five (5) days of the day an employee's pay is due. As to child support payments deducted from an employee's pay but not paid in a timely manner by an employer property served with a court order of wage assignment issued by a Guam court, or authorized by the employee to deduct such payments, any penalties shall accrue to the benefit of the spouse receiving the support who shall have the authority to enforce such non-payment against the employer; or
- (c) Underpayment of wages; or
- (d) Understating hours worked; or
- (e) Improper deduction of sums from wages; or
- (f) Payment with a check which is dishonored; or
- (g) Taking illegal kickbacks from employees by an employer or employer's agent; or
- (h) Any scheme whereby an employer deprives an employee of the employee's rightful wages.

Wages include sums payable for work done pursuant to a contract to perform personal services or to perform as an artist or performer. It is against public policy to allow avoidance of wage law enforcement, minimum wage laws, overtime laws, child labor laws, etc. by inducing employees to sign employment contracts.

SOURCE: GC § 46043. Added by P.L. 21-140:7.

§ 3218. Fees and Costs.

Any employer who fails to pay one (1) or more employee wages when due or who violates any provisions of this Title or who fails to pay overtime or who violates the child labor laws of the territory shall pay all attorney's fees and costs necessary to collect such amounts. The Department of Labor shall be entitled to a collection fee to be paid by the employer in the amount of twelve percent (12%) of wages due and collected by the Department of

Labor or the government of Guam on behalf of an employee to offset the costs to the people of Guam to enforce the provisions of this Title.

SOURCE: GC § 46044. Added by P.L. 21-140:8.

§ 3219. Penalties.

(a) Except for government entities, any employer who fails to pay one (1) or more employees wages when due or who underpays an employee shall pay punitive damages to the employee of three (3) times the wages due, unless the employer can establish, as an affirmative defense in equity, by a preponderance of the evidence, that:

(1) In the case of non-payment, the employer did not have the ability to pay the wages due; and

(2) The employer complied with all other provisions of this Chapter; and

(3) There was no fraud committed against any employee by the employer in the computation of wages; and

(4) The employer was in substantial compliance with all territorial and federal laws as to wage and hours matters relating to employees, and that any non-compliance was in good faith; and

(5) In the case of non-payment, managers or officers of the employer were not given priority in the disbursement of wages or allowances; and

(6) In the case of non-payment, the employer complied with the requirements of § 3213 this Code; and

(7) The employer comes before the court with clean hands; and

(8) In the case of an underpayment, the underpayment was a good faith error with no intent to defraud.

(b) Any person participating in any fraud or intentional non-payment or underpayment of wages against any employee or any person knowingly benefiting from any fraud or intentional non-payment or underpayment of wages shall be jointly and severally liable with the employer and others liable for all unpaid wages, penalties, attorney's fees and costs due to any unpaid employee of the employer.

SOURCE: GC § 46045. Added by P.L. 21-140:9.

§ 3220. Waivers.

An employee may not waive his right to or compromise wages earned. An employee may waive or compromise penalties, costs and attorney's fees arising from violations of this Chapter only if all wages are paid in full and only if the employee is represented by an attorney and the waiver or compromise is approved in writing by the employee and his attorney.

SOURCE: GC § 46046. Added by P.L. 21-140:10.

§ 3221. Representation by Attorney General or a Private Attorney.

The Attorney General or a private attorney may represent employees and/or the Director of Labor in actions for unpaid wages or for violations of this Title. In such violations, the court shall award reasonable attorney's fees of not less than One Hundred Twenty-Five Dollars (\$125) per hour to the government of Guam or the private attorney to be paid by the employer.

SOURCE: GC § 46047. Added by P.L. 21-140:11.

§ 3222. Class Actions.

The courts shall liberally permit class actions suits against an employer based upon violations of this Chapter.

SOURCE: GC § 46048. Added by P.L. 21-140:12.

§ 3223. Changes in Employment Contracts: Discrimination.

If an employment contract for a non-immigrant alien worker to work in Guam has been previously submitted to the Guam Department of Labor, the U.S. Department of Labor, the U.S. Immigration and Naturalization Service, or the U.S. State Department as part of a process to obtain a visa or permission to work in the United States, then any prior or subsequent replacement, modification or amendment thereto is enforceable by the employer and may benefit the employer only if it is legal and not contrary to public policy and only if it is submitted to the Department of labor, and is approved in writing by the Department of Labor. Such submission and approval are not required if the only modification is to increase the wages of the employee. It shall be a felony of the second degree for an employer to knowingly employ, compensate, or provide preference to non-immigrant workers over local workers, or to discriminate against local workers in the employment or compensation of non-immigrant workers

SOURCE: GC § 46049. Added by P.L. 21-140:13.

ARTICLE 3
PROHIBIT AGE DISCRIMINATION IN EMPLOYMENT PRACTICES

- § 3301. Definitions.
- § 3302. Prohibition of Age or Sex Discrimination.
- § 3303. Age Discrimination.
- § 3304. Enforcement.
- § 3305. Rules and Regulations.
- § 3306. Invalidity.

§ 3301. Definitions.

As used in this Chapter:

(a) *Person* means one or more individuals, partnerships, associations, corporation, legal representatives, business trustees, receivers or any organized group of persons;

(b) *Employer* means the territory of Guam or any authority, board, commission, department or institution thereof, and every other person employing an individual within this Territory; and

(c) *Employee* means an individual employed by a person.

SOURCE: GC § 46100. Added by P.L. 15-017:1.

§ 3302. Prohibition of Age or Sex Discrimination.

It shall be unlawful for an employer:

(a) to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions or privileges of employment because of such individual's age or sex; or

(b) to limit, segregate or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee because of such individual's age or sex.

Provided, however, that it shall not be unlawful for any employer to take any affirmative action where such action is based upon reasonable factors other than age or sex.

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SOURCE: GC § 46101. Added by P.L. 15-017:1.

§ 3303. Age Discrimination.

The prohibition regarding discrimination based on age of this Chapter shall be limited to individuals who are at least forty (40) years of age.

SOURCE: GC § 46102. Added by P.L. 15-017:1.

§ 3304. Enforcement.

(a) Any person alleging a violation of this Chapter may bring a civil action in the Superior Court for such legal or equitable relief as will effectuate the purposes of this Chapter.

(b) In any action brought to enforce this Chapter, the court shall have jurisdiction to grant such legal or equitable relief as may be appropriate to effectuate the purposes of this Chapter, including without limitation judgments compelling employment, recovery of attorney fees, reinstatement or promotion or enforcing the liability for amounts deemed to be unpaid wages.

SOURCE: GC § 46103. Added by P.L. 15-017:1.

§ 3305. Rules and Regulations.

The Director of the Department of Labor may issue such rules and regulations as may be considered necessary or appropriate for carrying out this Chapter.

SOURCE: GC § 46104. Added by P.L. 15-017:1.

§ 3306. Invalidity.

If any provision of this Chapter is held by a court to be invalid, such invalidity shall not affect the remaining provisions of this Chapter and to this end the provisions of this Chapter are declared severable.

SOURCE: GC § 46105. Added by P.L. 15-017:1.

ARTICLE 4
EMPLOYMENT LEAVE FOR VICTIMS OF VIOLENCE

SOURCE: Entire article added by P.L. 30-236:1 (Dec. 30, 2010).

§ 3401. Required Leave.

- § 3402. Definitions.
- § 3403. Exceptions.
- § 3404. Civil Penalties.
- § 3405. Application.

§ 3401. Required Leave.

An employer must grant reasonable and necessary leave from work, with or without pay, for an employee to:

- (a) Prepare for and attend court proceedings;
- (b) Receive medical treatment or attend to medical treatment for a victim who is the employee's daughter, son, parent or spouse; or
- (c) Obtain necessary services to remedy a crisis caused by domestic violence, sexual assault or stalking.

The leave must be needed because the employee or the employee's daughter, son, parent or spouse is a victim of a crime of violence to include, *but not be limited to*, domestic violence, assault, sexual assault, stalking or any act that would support an order for protection. An employer may not sanction an employee or deprive an employee of pay or benefits for exercising a right granted by this section.

§ 3402. Definitions.

For purposes of this subchapter, the terms *daughter, son, parent and spouse* have the same meanings as those terms have under federal regulations adopted pursuant to 29 United States Code, Section 2654. An employer may require an employee to provide reasonable documentation of the family relationship, which may include a statement from the employee, a birth certificate, a court document or similar documents.

§ 3403. Exceptions.

Section 3401 of this Article is not violated if:

- (a) The employer would sustain undue hardship from the employee's absence;
- (b) The request for leave is *not* communicated to the employer within a reasonable time under the circumstances; or
- (c) The requested leave is impractical, unreasonable or unnecessary based on the facts then made known to the employer.

§ 3404. Civil Penalties.

The Department of Labor may assess civil penalties of *up to* Two hundred dollars (\$200) for each violation of this section, *if* notice of the violation was given to the employer and the department within six (6) months of the occurrence.

§ 3405. Application.

This Article applies to all public and private employers.

**ARTICLE 5
RIGHT TO PRIVACY IN THE WORKPLACE ACT**

SOURCE: Article added by P.L. 32-139 (April 28, 2014).

§ 3501. Prohibited Inquiries.

§ 3501. Prohibited Inquiries.

(a) It *shall* be unlawful for any employer to ask any employee to provide any username, password, or other related account information in order to gain access to a social networking website where that employee maintains an account or profile.

(b) It *shall* be unlawful for any employer to ask any prospective employee to provide any username, password, or other related account information in order to gain access to a social networking website where that prospective employee maintains an account or profile.

(c) It *shall* be unlawful for any employer to ask any employee to provide any username, password, or other related account information in order to gain access to a non-employer provided email account.

(d) It *shall* be unlawful for any employer to ask any prospective employee to provide any username, password, or other related account information in order to gain access to a non-employer provided email account.

(e) The prohibitions in Subsections (a), (b), (c) or (d), *supra*, *shall not* apply to inquiries made pursuant to a valid court order, or that are required by federal law for purposes of national or homeland security, or to an employee or prospective employee who is registered or required to be registered under the provisions of Chapter 89 of Title 9, GCA.

(f) Violations of Subsections (a), (b), (c) or (d) of this Section are civil violations punishable by a fine of One Thousand Dollars for the first offense and Two Thousand Dollars for subsequent offenses.

ARTICLE 6
GUAM FAMILY AND MEDICAL LEAVE ACT

SOURCE: Entire article added by P.L. 33-170:1 (June 30, 2016).

- § 3601. Title.
- § 3602. Eligibility Requirements.
- § 3603. Definitions.
- § 3604. Leave Requirements.
- § 3605. Continuation of Benefits.
- § 3606. Certification of Leave to Care for Child, Spouse, or Parent.
- § 3607. Certification of Leave for Employee's Health Condition.
- § 3608. Miscellaneous Provisions.
- § 3609. Reinstatement.

§ 3601. Title.

This Article may be cited as the *Guam Family and Medical Leave Act*.

§ 3602. Eligibility Requirements.

(a) Except as provided in Subsection (b) of this Section, it *shall* be an unlawful employment practice for any employer, as defined in § 3603(b), to refuse to grant a request by any employee with more than twelve (12) months of service with the employer, and who has at least one thousand (1,000) hours of service with the employer during the previous twelve (12)-month period, to take up to a total of twelve (12) workweeks in any twelve (12)-month period for family care and medical leave. Family care and medical leave requested pursuant to this Subsection *shall not* be deemed to have been granted unless the employer provides the employee, upon granting the leave request, a guarantee of employment in the same or a comparable position upon the termination of the leave.

(1) In any case in which the necessity for leave as defined under § 3603(c)(1) is foreseeable based on an expected birth or placement, the employee *shall* provide the employer with not less than thirty (30) days'

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notice, before the date the leave is to begin, of the employee's intention to take leave under such Subsection, except that if the date of the birth or placement requires leave to begin in less than thirty (30) days, the employee *shall* provide such notice as is practicable.

(2) In any case in which the necessity for leave as defined under § 3603(c)(2) or (3) is foreseeable based on planned medical treatment, the employee:

(A) *Shall* make a reasonable effort to schedule the treatment so as not to disrupt unduly the operations of the employer, subject to the approval of the health care provider of the employee or the health care provider of the son, daughter, spouse, or parent of the employee, or health care provider of the parent, son, or daughter of an employee's spouse, as appropriate; and

(B) *Shall* provide the employer with not less than thirty (30) days' notice, before the date the leave is to begin, of the employee's intention to take leave under such Subsection, except that if the date of the treatment requires leave to begin in less than thirty (30) days, the employee *shall* provide such notice as is practicable.

(b) Notwithstanding Subsection (a) of this Section, it *shall not* be an unlawful employment practice for an employer to refuse to grant a request for family care and medical leave by an employee if the employer employs fewer than twelve (12) employees in Guam.

§ 3603. Definitions.

For the purposes of this Article:

(a) *Child* means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis who is either of the following:

- (1) Under eighteen (18) years of age; or
- (2) An adult dependent child.

(b) *Employer* means either of the following:

- (1) Any person (including any individual, association, partnership, corporation, company, entity, or organized group of persons acting directly or indirectly in the interest of an employer

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in relation to an employee) who directly employs twenty-five (25) or more persons to perform services for a wage or salary; or

(2) The government of Guam, and any governmental entity, department, agency, commission, instrumentality, or public corporation, but excluding the United States government. The government of Guam and each respective governmental entity, department, agency, commission, instrumentality, or public corporation acting as an employer under this Article *shall* be responsible for the development of the necessary rules and regulations to ensure that the intent of this Article is followed and implemented pursuant to the Administrative Adjudication Law under Chapter 9, Title 5, Guam Code Annotated, or other applicable law.

(c) *Family care and medical leave* means any of the following:

(1) Leave for reason of the birth of a child of the employee, or the placement of a child with an employee in connection with the adoption or foster care of the child by the employee;

(2) Leave to care for a parent, spouse, or child of an employee, or a parent or child of the spouse of an employee, who has a serious health condition; or

(3) Leave because of an employee's own serious health condition that makes the employee unable to perform the functions of the position of that employee, except for leave taken for disability on account of pregnancy, childbirth, or related medical conditions.

(d) *Employment in the same or a comparable position* means employment in a position that has the same or similar duties and pay that can be performed at the same or similar geographic location as the position held prior to the leave.

(e) *FMLA* means the federal *Family and Medical Leave Act of 1993* (P.L. 103-3), as amended.

(f) *Health care provider* means any of the following:

(1) A person who is licensed to practice medicine under the provisions of Article 2 (Physician's Practice Act), Chapter 12, Title 10 Guam Code Annotated; or an individual licensed to

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practice medicine in another state or jurisdiction who directly treats or supervises the treatment of the serious health condition for which leave under this Article is taken; or

(2) Any other person determined by the United States Secretary of Labor to be capable of providing health care services under the FMLA.

(g) *Parent* means a biological, foster, or adoptive parent, a stepparent, a legal guardian, or other person who stood in loco parentis to the employee when the employee was a child.

(h) *Serious health condition* means an illness, injury, impairment, or physical or mental condition that involves either of the following:

(1) Inpatient care in a hospital, hospice, or residential health care facility; or

(2) Continuing treatment or continuing supervision by a health care provider.

§ 3604. Leave Requirements.

(a) An employer *shall not* be required to pay an employee for any leave taken pursuant to § 3602(a), except as required by Subsection (b) of this Section.

(b) An employee taking leave permitted by § 3602(a) may elect, or an employer may require the employee, to substitute, for leave allowed under § 3602(a), any of the employee's accrued vacation leave or other accrued time off during this period or any other paid or unpaid time off negotiated with the employer. If an employee takes leave because of the employee's own serious health condition, the employee may also elect, or the employer may also require the employee, to substitute accrued sick leave during the period of the leave. However, an employee *shall not* use sick leave during a period of leave in connection with the birth, adoption, or foster care of a child, or to care for a child, parent, or spouse with a serious health condition, unless mutually agreed to by the employer and the employee.

§ 3605. Continuation of Benefits.

(a) During any period that an eligible employee takes leave pursuant to § 3602(a) or takes leave that qualifies as leave under the FMLA, the employer *shall* maintain and pay for coverage under a "group health plan," as defined in Section 5000(b)(1) of the Internal Revenue Code, for the

duration of the leave, not to exceed twelve (12) workweeks in a twelve (12)-month period, commencing on the date leave taken under the FMLA or under § 3602(a) commences, at the level and under the conditions coverage, if any, would have been provided if the employee has continued in employment continuously for the duration of the leave; *provided*, that the employee *shall* continue to pay for the employee's share of insurance premiums at the same level that would have applied if the employee has continued in employment continuously for the duration of the leave. Nothing in the preceding sentence shall preclude an employer from maintaining and paying for coverage under a "group health plan" beyond twelve (12) workweeks. An employer may recover the premium that the employer paid as required by this Subsection for maintaining coverage for the employee under the group health plan if both of the following conditions occur:

(1) The employee fails to return from leave after the period of leave to which the employee is entitled has expired; and

(2) The employee's failure to return from leave is for a reason other than the continuation, recurrence, or onset of a serious health condition that entitles the employee to leave under § 3602(a) or other circumstances beyond the control of the employee.

(b) Any employee taking leave pursuant to § 3602(a) *shall* continue to be entitled to participate in employee health plans for any period during which coverage is not provided by the employer under § 3605(a), employee benefit plans, including life insurance or short-term or long-term disability or accident insurance, pension and retirement plans, and supplemental unemployment benefit plans to the same extent and under the same conditions that apply to unpaid leave taken for any purpose other than those described in § 3602(a). In the absence of these conditions an employee *shall* continue to be entitled to participate in these plans and, in the case of health and welfare employee benefit plans, including life insurance or short-term or long-term disability or accident insurance, or other similar plans, the employer may, at the employer's discretion, require the employee to pay premiums, at the group rate, during the period of leave not covered by any accrued vacation leave, or other accrued time off, or any other paid or unpaid time off negotiated with the employer, as a condition of continued coverage during the leave period. However, except as otherwise provided in this Article or Subsection (c) of this Section, the nonpayment of premiums by an employee *shall not* constitute a break in service for purposes of longevity,

seniority under any collective bargaining agreement, or any employee benefit plan.

(c) For purposes of pension and retirement plans, an employer *shall not* be required to make employer or employee contribution payments during the period of unpaid leave, and the unpaid leave period during which plan payments are not made *shall not* be required to be counted for purposes of time accrued under the plan. However, an employee covered by a pension or retirement plan may continue to make contributions at the employee's expense in accordance with the terms of the plan during the period of the unpaid leave, and the employer may make corresponding employer contributions if required in accordance with the terms of the plan.

(d) During a family care and medical leave period, the employee *shall* retain employee status with the employer, and the leave *shall not* constitute a break in service for purposes of longevity, seniority under any collective bargaining agreement, or any employee benefit plan. An employee returning from leave *shall* return with no less seniority than the employee had when the leave commenced for purposes of layoff, recall, promotion, job assignment, and seniority-related benefits such as vacation.

§ 3606. Certification of Leave to Care for Child, Spouse, or Parent.

(a) An employer may require that an employee's request for leave to care for a child, a spouse, or a parent, who has a serious health condition be supported by a certification issued by the health care provider of the individual requiring care. That certification *shall* be sufficient if it includes all of the following:

- (1) The date on which the serious health condition commenced;
- (2) The probable duration of the condition;
- (3) An estimate of the amount of time that the health care provider believes the employee needs to care for the individual requiring the care; and
- (4) A statement that the serious health condition warrants the participation of a family member to provide care during a period of the treatment or supervision of the individual requiring care.

(b) Upon expiration of the time estimated by the health care provider in Subsection (a)(3) of this Section, the employer may require the employee to

obtain recertification, in accordance with the procedure provided in Subsection (a) of this Section, if additional leave is required.

§ 3607. Certification of Leave for Employee's Health Condition.

(a) An employer may require that an employee's request for leave because of the employee's own serious health condition be supported by a certification issued by his or her health care provider. That certification *shall* be sufficient if it includes all of the following:

- (1) The date on which the serious health condition commenced;
- (2) The probable duration of the condition; and
- (3) A statement that, due to the serious health condition, the employee is unable to perform the functions of his or her position.

(b) The employer may require that the employee obtain subsequent recertification regarding the employee's serious health condition on a reasonable basis, in accordance with the procedure provided in Subsection (a) of this Section, if additional leave is required.

(c) In any case in which the employer has reason to doubt the validity of the certification provided pursuant to this Section, the employer may require, at the employer's expense, that the employee obtain the opinion of a second health care provider, designated or approved by the employer, concerning any information certified under Subsection (a) of this Section.

(d) The second health care provider designated or approved under Subsection (c) of this Section *shall not* be employed on a regular basis by the employer.

(e) In any case in which the second opinion described in Subsection (c) of this Section differs from the opinion in the original certification, the employer may require, at the employer's expense, that the employee obtain the opinion of a third health care provider, designated or approved jointly by the employer and the employee, concerning the information certified under Subsection (a) of this Section.

(f) The opinion of the third health care provider concerning the information certified under Subsection (a) of this Section *shall* be considered to be final and *shall* be binding on the employer and the employee.

(g) As a condition of an employee's return from leave taken because of the employee's own serious health condition, the employer may have a

uniformly applied practice or policy that requires the employee to obtain certification from the employee's health care provider that the employee is able to resume work. Nothing in this Subsection shall supersede a valid collective bargaining agreement that governs the return to work of that employee.

§ 3608. Miscellaneous Provisions.

(a) It *shall* be an unlawful employment practice for an employer to refuse to hire, or to terminate, discharge, fine, suspend, expel, or discriminate against, any individual because of any of the following:

(1) An individual's exercise of the right to family care and medical leave provided by § 3602(a); or

(2) An individual's giving information or testimony regarding the individual's family care and medical leave, or another person's family care and medical leave, in any inquiry or proceeding related to rights guaranteed under this Section.

(b) This Article *shall not* be construed to require any changes in existing collective bargaining agreements during the life of the contract.

(c) Leave provided pursuant to this Article may be taken in one (1) or more periods. The twelve (12)-month period during which twelve (12) workweeks of leave may be taken under this Article *shall* run concurrently with the twelve (12)-month period under the FMLA, and *shall* commence on the date leave taken under the FMLA commences.

(d) In any case in which both parents entitled to leave under § 3602(a) are employed by the same employer, the employer *shall not* be required to grant leave in connection with the birth, adoption, or foster care of a child that would allow the parents family care and medical leave totaling more than the amount specified in § 3602(a).

§ 3609. Reinstatement.

(a) Notwithstanding § 3602(a), an employer may refuse to reinstate an employee returning from leave to the same or a comparable position if all of the following apply:

(1) The employee is a salaried employee who is among the highest paid ten percent (10%) of the employer's employees employed on Guam;

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(2) The refusal is necessary to prevent substantial and grievous economic injury to the operations of the employer; and

(3) The employer notifies the employee of the intent to refuse reinstatement at the time the employer determines the refusal is necessary under Subsection (a)(2) of this Section.

(b) In any case in which the leave has already commenced, the employer *shall* give the employee a reasonable opportunity to return to work following the notice prescribed by Subsection (a)(3) of this Section.

(c) Leave taken by an employee pursuant to this Article *shall* run concurrently with leave taken pursuant to the FMLA, or with other non-FMLA leave taken pursuant to the employer's leave policies if such leave also qualifies for leave pursuant to this Article. The aggregate amount of leave taken pursuant to this Article or the FMLA, or both, *shall not* exceed twelve (12) workweeks in a twelve (12)-month period. The aggregate amount of leave taken pursuant to this Article or other non-FMLA leave taken pursuant to the employer's leave policies if such leave also qualifies for leave pursuant to this Article, or both, *shall not* exceed the greater of twelve (12) workweeks in a twelve (12)-month period, or the maximum amount allowed for the non-FMLA leave taken pursuant to the employer's leave policies.

(d) It *shall* be an unlawful employment practice for an employer to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided under this Article.

ARTICLE 7
LEAVE FOR CHILD SCHOOL-RELATED PURPOSES

SOURCE: Entire article added by P.L. 33-170:2 (June 30, 2016).

- § 3701. Title.
- § 3702. Definitions.
- § 3703. Leave for Child School-Related Purposes.

§ 3701. Title.

This Article may be cited as the *Child School-Related Leave Act*.

§ 3702. Definitions.

(a) For purposes of this Article, the following terms have the following meanings:

(1) *Parent* means a parent, guardian, stepparent, foster parent, or grandparent of, or a person who stands in loco parentis to, a child.

(2) *Child* (plural: *children*) and *employer shall* have the same definitions as set forth in § 3603 of Article 6 of this Title.

(3) *Child care provider* or *school emergency* means that an employee's child cannot remain in a school or with a child care provider due to one (1) of the following:

(A) The school or child care provider has requested that the child be picked up, or has an attendance policy, excluding planned holidays, that prohibits the child from attending or requires the child to be picked up from the school or child care provider;

(B) Behavioral or discipline problems;

(C) Closure or unexpected unavailability of the school or child care provider, excluding planned holidays; or

(D) A natural disaster, including, but not limited to, fire, earthquake, or flood.

§ 3703. Leave for Child School-Related Purposes.

(a) (1) An employer *shall not* discharge or in any way discriminate against an employee who is a parent of one (1) or more children of the age to attend pre-school, kindergarten, or grades one (1) to twelve (12), inclusive, for taking off up to forty (40) hours each year, for the purpose of either of the following child-related activities:

(A) To find, enroll, or re-enroll the employee's child in a school or with a licensed child care provider, or to participate in activities of the school or licensed child care provider of his or her child, if the employee, prior to taking the time off, gives reasonable notice to the employer of the planned absence of the employee. Time off pursuant to this Subsection *shall not* exceed eight (8) hours in any calendar month of the year; or

(B) To address a child care provider or school emergency, if the employee gives notice to the employer.

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(2) If more than one (1) parent of a child is employed by the same employer at the same worksite, the entitlement under Subsection (a)(1) of a planned absence as to that child applies, at any one (1) time, only to the parent who first gives notice to the employer, such that another parent may take a planned absence simultaneously as to that same child under the conditions described in Subsection (a)(1) only if he or she obtains the employer's approval for the requested time off.

(b) (1) The employee *shall* utilize existing vacation, personal leave, or compensatory time off for purposes of the planned absence authorized by this Section, unless otherwise provided by a collective bargaining agreement. An employee also may utilize time off without pay for this purpose, to the extent made available by the employee's employer.

(2) Notwithstanding Subsection (b)(1), in the event that all permanent, full-time employees of an employer are accorded vacation during the same period of time in the calendar year, an employee of that employer may *not* utilize that accrued vacation benefit at any other time for purposes of the planned absence authorized by this Section.

(c) The employee, if requested by the employer, *shall* provide documentation from the school or licensed child care provider as proof that he or she engaged in the child-related activities permitted in Subsection (a) on a specific date and at a particular time. For purposes of this Subsection, "documentation" means whatever written verification of parental participation the school or licensed child care provider deems appropriate and reasonable.

(d) No employer shall discharge, threaten to discharge, demote, suspend, or in any other manner discriminate against an employee in terms and conditions of employment because the employee has taken time off to engage in the child-related activities permitted in Subsection (a). An employer who has been found in a grievance procedure, arbitration, or court proceeding to have violated this Subsection *shall* be required, if applicable, to reinstate or promote the affected employee, and *shall* be liable to the affected employee for an amount equal to three (3) times the employee's lost wages and work benefits, in addition to actual lost wages and benefits and other damages to which the employee may be entitled.
