

**22 GCA BUSINESS REGULATIONS
CH. 7 EMPLOYMENT SERVICE LAW**

**CHAPTER 7
EMPLOYMENT SERVICE LAW**

- Article 1. Employment Service Law.
- Article 2. Commercial Employment Agencies.

**ARTICLE 1
EMPLOYMENT SERVICE LAW**

- § 7101. Short Title.
- § 7102. Acceptance.
- § 7103. Guam Employment Service.
- § 7104. Guam Employment Service: Administrator.
- § 7105. Director of Labor: General Authority.
- § 7106. Use of Information.
- § 7107. Employment Service Fund.
- § 7108. Employment Service Fund: Source of Monies.
- § 7109. Employment Service Fund: Handling of Fund Monies.
- § 7110. Employment Service Fund: Security.
- § 7111. Employment Service Fund: Replacement of Monies.
- § 7112. Distribution of Alien Contract Worker Quota.
- § 7113. Payment of Alien Contract Workers.
- § 7114. Wages for Alien Contract Employees.
- § 7115. Prohibition on Accepting Fee for Employment of Alien Contract Workers.
- § 7116. Criminal Liability.
- § 7117. Construction.
- § 7118. Mandatory Registration of Non-Immigrant Temporary Worker.
- § 7118.1. Temporary Labor Certification for Non-Immigrant Workers; Restrictions; Penalties.
- § 7119. Non-Immigrant Temporary Worker Registration Fee.
- § 7120. Manpower Development Fund.
- § 7121. Repatriation Guaranty Bond.
- § 7122. Performance and Payment Bond.
- § 7123. When Bond Required.
- § 7124. Prevailing Wages.
- § 7125. Penalties.

22 GCA BUSINESS REGULATIONS
CH. 7 EMPLOYMENT SERVICE LAW

§ 7126. Testing of Temporary Workers' Skills.

§ 7101. Short Title.

This Chapter may be cited as the *Employment Service Law*.

SOURCE: GC § 44000.

§ 7102. Acceptance.

The government of Guam hereby accepts the provisions of the Act of Congress of June 6, 1933, as now in effect or as hereinafter amended, hereinafter referred to as the Wagner-Peyser Act (48 Stat. 113, as amended, 29 U.S.C., 49 et seq.), in conformity with § 4 of said Act, and shall observe and comply with the requirements of said Act. The Department of Labor is hereby designated the agency of Guam for the purpose of said Act, and is vested with all powers necessary to cooperate with the United States Employment Service in accordance with the provisions of said Act.

SOURCE: GC § 44001.

§ 7103. Guam Employment Service.

There is hereby created as a division of the Department of Labor, the Guam Employment Service, whose function it shall be to establish and maintain free public employment offices in such places and in such manner as may be necessary for the proper and efficient administration of this Chapter, and as may be necessary to perform such duties and function as are within the purview of the Wagner-Peyser Act.

SOURCE: GC § 44002.

§ 7104. Same: Administrator.

The Director of Labor shall appoint, under the Personnel Law and Compensation Law, subject to such additional standards as may be required by the United States Department of labor, a full-time, salaried officer to administer the Guam Employment Service, to be known as the Administrator thereof, and such other personnel as may be required to carry out the purposes of this Chapter. Such officer shall, under the direction

22 GCA BUSINESS REGULATIONS
CH. 7 EMPLOYMENT SERVICE LAW

and supervision of the Director of Labor, be responsible for the operation of the service.

SOURCE: GC § 44003.

§ 7105. Director of Labor: General Authority.

The Director of Labor shall cooperate with any authority of the United States having powers or duties under the Wagner-Peyser Act or under any subsequent Acts of Congress further amending that Act or relating to the promotion and maintenance of a system of free public employment offices. he is empowered to take such steps and to do all things necessary to secure to Guam the benefits of said Act or Acts.

SOURCE: GC § 44004.

§ 7106. Use of Information.

All information obtained by the Service from workers, employers, applicants or other persons in the course of administering this Chapter shall be used solely for the purpose of such administration and shall not be disclosed directly or indirectly for other purposes except in accordance with policies or regulations promulgated by or at the direction of the Secretary of Labor of the United States.

SOURCE: GC § 44005.

§ 7107. Employment Service Fund.

There is hereby established a special fund called the Employment Service Fund, hereinafter called *the Fund*, which shall be maintained separate and apart from any other funds of the government of Guam, and independent records and accounts shall be maintained in connection therewith. All monies which are deposited in or paid into the Fund are hereby appropriated to and made continuously available for expenditure in accordance with the provisions of this Chapter, and shall not lapse at any time or be transferred to any other fund. All monies in the Fund which are received from the United States Government or any agency thereof, or which are appropriated by the government of Guam for the purposes described in this Chapter, shall be paid into the Fund, and shall be expended solely for the purposes of

22 GCA BUSINESS REGULATIONS
CH. 7 EMPLOYMENT SERVICE LAW

and in amounts found necessary by the Director of Labor for the proper and efficient administration of this Chapter.

SOURCE: GC § 44006.

§ 7108. Employment Service Fund: Source of Monies.

The Fund shall consist of all monies appropriated by the government of Guam or by the United States of America, or any agency thereof, or received from any other source for the administration of this Chapter; all monies received from the United States Government or any agency thereof, or from any state or territory or agency thereof, or from any person or organization as compensation for services rendered or facilities supplied; amounts received pursuant to any surety bond or insurance policy, or from any other sources for losses sustained by the Fund or by reason of damage to equipment or supplies purchased with monies from the Fund; and all proceeds realized from the sale or other disposition of any equipment or supplies purchased with monies from the Fund.

SOURCE: GC § 44007.

§ 7109. Employment Service Fund: Handling of Fund Monies.

All monies in the Fund shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as is provided by Title 5, Guam Code Annotated, for other special funds of the government of Guam, except that monies in this fund shall not be commingled with other Guam funds, and shall not be available for investment, but shall be maintained in a separate account on the books of a depository bank.

SOURCE: GC § 44008.

§ 7110. Employment Service Fund: Security.

All monies in the Fund shall be secured by the holding depository in the manner and to extent required by §21114 of Title 4 Guam Code Annotated, and shall be maintained in a separate custody account. The Treasurer of Guam shall be liable on his official bond for the faithful performance of his duties in connection with the Fund. His liability on his official bond shall

22 GCA BUSINESS REGULATIONS
CH. 7 EMPLOYMENT SERVICE LAW

be effective immediately upon the enactment of this provision, and this liability shall exist in addition to any liability upon any separate bond extant on the effective date of this provision, or which may be given in the future. All sums recovered on this surety bond for losses sustained by the Fund shall be deposited in the Fund. The cost of premiums for so much of the surety bond as is necessary to provide protection against loss of monies in the Fund may be paid from monies in the Fund.

SOURCE: GC § 44009.

§ 7111. Employment Service Fund: Replacement of Lost Monies.

If any monies received by Guam pursuant to the provisions of the Wagner-Peyser Act are found by the United States Secretary of Labor to have been lost or to have been expended for purposes other than or in amounts in excess of those found necessary by the United States Secretary of Labor for the proper administration of this Chapter, such lost or improperly expended monies shall be replaced by monies appropriated for such purpose from the General Fund of Guam to the Fund. Upon receipt of such a finding from the United States Secretary of Labor, the Director of Labor shall promptly report the amount required for such replacement to the Governor, and the Governor shall, at the earliest opportunity, submit to the Legislature a request for the appropriation of such amount.

SOURCE: GC § 44010.

§ 7112. Distribution of Alien Contract Worker Quota.

The Guam Employment Service, in certifying to the U.S. Immigration and Naturalization Service the eligibility of construction contractors to import non-immigrant alien contract labor under the quota given the Territory of Guam pursuant to its rehabilitation program, shall divide the quota among all of the licensed construction contractors in the Territory of Guam, without regard to the date their licenses were obtained. In the event such a construction contractor does not wish to use his share of the quota so allocated to him, then the Guam Employment Service shall reallocate such unused portion of the quota to all such contractors who desire to import such alien

22 GCA BUSINESS REGULATIONS
CH. 7 EMPLOYMENT SERVICE LAW

contract workers. It is the intent of this section to assure all licensed construction contractors in the Territory of Guam that each will be given a fair and equitable share of that quota of alien contract workers established for the Territory of Guam for rehabilitation purposes.

SOURCE: GC § 44011.

§ 7113. Payment of Alien Contract Workers.

All persons in the Territory of Guam recruiting, importing, or hiring non-immigrant alien contract laborers under the Defense H-1, H-2, H-3, E-1, E-2 or L-1 Immigration programs shall pay all salaries for services rendered in Guam directly to the non-immigrant alien contract worker and all such salaries shall be paid in full in Guam.

SOURCE: GC § 44012.

§ 7114. Wages for Alien Contract Employees.

No person shall enter into any agreement or contract for services to be rendered in Guam at a wage rate below the minimum wage rate. No employer shall be made to pay a rate in excess of the minimum wage rate. An employer may deduct from the minimum wage expenses incurred in providing food, shelter, transportation and incidental fees. These expenses shall be determined in accordance with the Cost of Living Index established by the Department of Commerce.

SOURCE: GC § 44013.

§ 7115. Prohibition on Accepting Fee for Employment of Alien Contract Workers.

No person shall accept or receive from any alien contract worker hired under the Defense H-1, H-2, H-3, E-1, E-2, or L-1 Immigration programs any monetary benefit or fee for the employment, procuring, offering, promising or attempting to procure employment under the Defense H-1, H-2, H-3, E-1, E-2, or L-1 Immigration programs for said alien contract employee.

SOURCE: GC § 44014.

§ 7116. Criminal Liability.

**22 GCA BUSINESS REGULATIONS
CH. 7 EMPLOYMENT SERVICE LAW**

Any person violating the provisions of §§ 7113, 7114, 7115 of this Title is guilty of a felony.

SOURCE: GC § 44015. Amended by P.L. 13-187:220.

NOTE: New §§ 7113-7116 added by P.L. 11-109, effective December 10, 1971. In addition, P.L. 11-109 contained the following:

§ 6. Notwithstanding the provisions of § 3 of this Act, the increase in the wages paid alien contract workers shall not apply to any contract entered into prior to the effective date of this Act, or any contract made pursuant to a public bid opened prior to the effective date of this Act.

The Director of Labor is authorized to issue such regulations as are necessary to effectuate the purpose of this Section, which the Legislature hereby declares to be that of equitably treating contractors who entered into contracts prior to the effective date of this Act.

§ 7117. Construction.

This Chapter shall be liberally construed to accomplish its purpose of promoting employment security by increasing placement opportunities through the establishment and maintenance of a system of free public employment offices. All doubts as to the proper construction of this Chapter shall be resolved in favor of conformity with the requirements of the Wagner-Peyser Act.

SOURCE: GC § 44016.

§ 7118. Mandatory Registration of Non-Immigrant Temporary Worker.

It is unlawful for a non-immigrant temporary worker to report to work prior to obtaining a work permit identification card duly signed by the Director of Labor and sealed by his office. The work permit identification card constitutes a work permit and shall be renewed upon approval of importation, transfer or extension of non-immigrant temporary workers contract.

(a) Work permit identification cards must be carried at all times by the non-immigrant temporary worker and conspicuously displayed during working hours at his place of work. Failure to do so constitutes violation of this Section.

22 GCA BUSINESS REGULATIONS
CH. 7 EMPLOYMENT SERVICE LAW

(b) The mandatory requirements for work registration and identification cards are applicable to the importation, transfer and extension of non-immigrant temporary workers.

(c) Each non-immigrant temporary worker is required to report to the Guam Department of Labor prior to repatriation to point of hire.

(d) Employers or their agents *shall not* purchase or procure repatriation transportation of a non-immigrant temporary worker without obtaining exit clearances from the Guam Department of Labor and the Guam Memorial Hospital Authority.

(e) Actual departures shall be made within thirty (30) days from issuance of exit clearance, and employers or their agents shall furnish the Guam Department of Labor with a certification from the transportation carrier that the non-immigrant worker has departed from Guam. The certification shall include the name of the non-immigrant worker, the name of the carrier, date and ticket number.

SOURCE: GC § 44017. Added by P.L. 18-43:3. Subsection (d) amended by P.L. 31-087:1 (Sept. 30, 2011).

§ 7118.1. Temporary Labor Certification for Non-immigrant Workers; Restrictions; Penalties.

(a) The Director of Labor, pursuant to the Administrative Adjudication Law, shall promulgate rules and regulations to establish operating guidelines for the certification and employment of non-immigrant alien temporary workers in Guam (the *Rules*). Such Rules shall establish the conditions under which such workers may be temporarily employed and housed in Guam because of a need for their skills which are not readily available in Guam. The Rules shall be periodically reviewed by the Department of Labor (the *Department*), at least once every two (2) years, and shall include the following:

(1) A temporary labor certification issued by the Department shall be limited to one (1) employer and only to those projects approved by the Department, shall be non-transferable, and shall be valid only for the specific activity

22 GCA BUSINESS REGULATIONS
CH. 7 EMPLOYMENT SERVICE LAW

designated in the certificate and only for the occupation specified for each temporary worker covered by the certificate.

(2) Civil penalties for violations of the Rules by an employer or by a temporary worker, not to exceed a fine of Five Hundred Dollars (\$500) per person for each such violation.

(b) Any employer who is a persistent violator of the Rules is guilty of a misdemeanor, and upon conviction shall be imprisoned for not more than six (6) months or shall pay a fine of not more than Ten Thousand Dollars (\$10,000), or shall suffer both such imprisonment and fine.

(c) *Persistent violator* means an employer who commits, with criminal negligence as defined in 9 GCA § 4.30, a second violation of the Rules and who has been cited and fined for a previous violation within any twelve (12) month period immediately preceding the second violation.

(d) Any employer with a temporary labor certification found guilty of intentionally or knowingly violating 44017 of this Chapter, or of the Rules, in addition to any sanctions imposed under such § 7118 and § 7118.1, may have his temporary labor certification suspended and be disbarred from any temporary labor certification program for a period not exceeding three (3) years.

(e) Fines collected by the Department under the provisions of this section shall be deposited in the Manpower Development Fund to be employed exclusively for the surveillance and enforcement operations within the Alien Labor and Processing Certification Division and other divisions at the Department of Labor with similar tasks. The Director of Labor shall complete an annual report of all expenditures and activities under this subsection to the Legislature.

(f) A quota for temporary construction workers ("H-2Bs") shall be established by the Governor of Guam to confine the number of such temporary workers to existing job vacancies.

**22 GCA BUSINESS REGULATIONS
CH. 7 EMPLOYMENT SERVICE LAW**

(g) No person will be granted a certification to employ such non-immigrant alien workers without first obtaining a permit for a workers' dormitory from the Department of Public Health and Social Services, except that employers employing a minimum number of such workers or workers planning to live with relatives may obtain an exemption from the dormitory requirement from the Department. No such permit shall be granted in violation of the zoning law. An applicant for such a permit must submit complete, detailed plans of the dormitory, site plans and must demonstrate compliance with all applicable health and safety requirements. No employer may withhold from his workers' wages any funds to cover the cost of meals and housing unless the workers' housing, the kitchen and dining facilities, and the kitchen workers have all necessary health and Department permits, and only after the written consent of the worker, which consent shall be filed with the Department. The Director of Public Health and Social Services, in coordination with the Guam Environmental Protection Agency and the Department, shall cause to be inspected every workers' dormitory at least once every three (3) months.

(h) The Department in cooperation with the Department of Public Health and Social Services, the Guam Environmental Protection Agency, the Department of Revenue and Taxation and the Guam Contractors License Board shall have all necessary investigative powers to carry out the provisions of this section.

(i) No employer of temporary workers regulated under this section may withhold such workers' passports, control such workers' behavior during non-working hours, or deduct from such workers' wages taxes due governments other than the government of Guam or of the United States, except as such deductions are authorized by treaty.

(j) In addition to the other penalties provided in this section, any employer who violates any of the provisions of this section may be sued for civil damages by any worker adversely affected by such violations, and if such damages are established at trial, such damages shall be trebled and the worker shall be entitled to reasonable attorney's fees to be paid by the employer.

22 GCA BUSINESS REGULATIONS
CH. 7 EMPLOYMENT SERVICE LAW

(k) It *shall* be unlawful for a non-immigrant temporary worker admitted to Guam under the H-2(b) program to participate in making any determinations as to the recruitment and selection of personnel, *or* the processing of applications for temporary alien labor certification. Non-immigrant temporary workers admitted to Guam under the H-2(b) program are expressly prohibited from conducting job interviews, rating job applicants or applications, or partaking in any other activity involving making any determinations concerning the selection of employees.

Enforcement. Upon verification by the Department of Labor that a violation of this Subsection has taken place, the Department *shall* assess a penalty on the employer as prescribed by § 7125, *infra*.

SOURCE: Added by P.L. 21-85:1. Subsection (e) amended by P.L. 23-106:3. Subsection (k) added by P.L. 31-121:1 (Sept. 30, 2011).

§ 7119. Non-Immigrant Temporary Worker Registration Fee.

(a) The Guam Department of Labor is authorized to collect a non-refundable registration fee of Two Thousand Ninety-one Dollars (\$2,091.00) annually per non-immigrant temporary worker for each calendar year, or One Hundred Seventy-four Dollars and Twenty-Five Cents (\$174.25) per month or any fraction of a month thereof, One Hundred Sixty-six Dollars and Sixty-seven Cents (\$166.67) representing the registration fee, and Seven Dollars and Sixty Cents (\$7.60) representing the sanitary inspection fees, from the employer of each non-immigrant temporary worker, payable at the time the employer submits the identification application for the non-immigrant worker.

(1) Such registration fee *shall* be based on a time beginning on the day of registration with the DOL and *no greater than* the non-immigrant worker's authorization to legally stay and work in Guam.

(2) In the event that an employer submits the identification application for a worker more than seventy-two (72) hours after the worker has arrived in Guam, the

22 GCA BUSINESS REGULATIONS
CH. 7 EMPLOYMENT SERVICE LAW

DOL *shall* base the registration fee on the arrival date of the worker in Guam.

(b) Funds collected pursuant hereto *shall* be subject to legislative appropriation, and *shall* be used solely to support § 7120, Chapter 7, Title 22, GCA, the Manpower Development Fund (MDF), and the Skills Training Programs for Guam residents in order to eliminate the need to bring non-immigrant temporary workers on Guam; and Chapter 26A Division 2 of Title 10, GCA, the DPHSS Sanitary Inspection Revolving Fund, which is used to ensure that the sanitary conditions of the workers' dormitories is in compliance with DPHSS Rules and Regulations, and also to provide protection for both the general public and the non-immigrant temporary workers as related to environmental health concerns.

(c) For each non-immigrant temporary worker, Two Thousand Dollars (\$2000.00) per annum, or the prorated amount of One Hundred Sixty-six Dollars and Sixty-seven Cents (\$166.67) each month, representing the monthly registration fee, *shall* go to the MDF and appropriated pursuant to § 7120 of this Article; the remaining Ninety-one Dollars (\$91.00) per annum, or the prorated amount of Seven Dollars and Sixty Cents (\$7.60) each month, representing the monthly sanitary inspection fee, *shall* go to the DPHSS Sanitary Inspection Revolving Fund.

(d) Renewals. In the event that the temporary non-immigrant worker is seeking an extension from the United States Citizenship and Immigration Services (USCIS), the Guam Department of Labor may issue a temporary labor ID valid for up to ninety (90) days pending the approval or denial of his or her extension of stay.

(1) At the time the employer submits an application for a renewal of the worker's registration, the employer *shall* submit a police clearance from the Guam Police Department for the non-immigrant worker.

(2) Upon the expiration of the temporary labor ID, the Department of Labor *shall* collect from the employer a nonrefundable registration renewal fee of One Thousand Forty-five Dollars and Fifty Cents (\$1,045.50) for the first

22 GCA BUSINESS REGULATIONS
CH. 7 EMPLOYMENT SERVICE LAW

six (6) months, with One Thousand Dollars (\$1,000.00) going to the MDF and Forty-five Dollars and Fifty Cents (\$45.50) going to the DPHSS Sanitary Inspection Revolving Fund.

(3) For every additional month approved by USCIS thereafter, the employer *shall* be charged a prorated registration fee of One Hundred Seventy-four Dollars and Twenty-five Cents (\$174.25) each month pursuant to § 7119(a).

(4) The renewal fee *shall* be prorated based on the time starting from the seventh (7th) month of registration and ending at the final month approved by USCIS.

(5) In instances where fee waivers are applicable, the Department may adjust the monthly prorated amounts as appropriate.

(6) Should the employer receive a denial of the worker's extension of stay after the initial six (6)-month registration, the fee *shall* be prorated based on the time starting from the seventh (7th) month of registration and ending on the month in which the employer's USCIS denial is dated.

(e) The Guam Department of Labor *shall* waive One Thousand Dollars (\$1,000.00) per annum, or the prorated amount of Eighty-three Dollars and Thirty-four cents (\$83.34) each month, of the fee under § 7119(a) and the amount stipulated under § 7119(c) and Five Hundred Dollars (\$500.00) of the renewal fee for the first six (6) months and Eighty-three Dollars and Thirty-four cents (\$83.34) for the monthly prorated amount under § 7119(d) for each non-immigrant temporary worker working exclusively on civilian construction projects not related to planned construction projects of the military realignment occurring on Guam, as indicated in the project summary sheet of the employer's approved temporary labor certification, or in business activities not related to construction projects on Guam. In cases where the fee is prorated, the Department may adjust the prorated fee amount to account for the waiver.

SOURCE: GC § 44018. Added by P.L. 18-43:4. Amended by P.L. 23-

22 GCA BUSINESS REGULATIONS
CH. 7 EMPLOYMENT SERVICE LAW

106:4 (July 8, 1996), P.L. 29-002:V:VI:1 (May 18, 2007). Amended by P.L. 30-064:3 (Nov. 27, 2009), effective Jan. 26, 2010, pursuant to P.L. 30-064:4. Subsection (a) amended by P.L. 30-111:2 (Mar. 12, 2010) and P.L. 34-098:1 (May 14, 2018). Subsection (c) amended by P.L. 30-111:3 (Mar. 12, 2010) and P.L. 34-098:2 (May 14, 2018). Subsections (d) and (e) amended by P.L. 34-098:3 and 4 (May 14, 2018).

§ 7119.1 Exemption to the Increase of the Fee of Non-Immigrant Temporary Workers.

(a) The increase in the registration fee of non-immigrant temporary workers set forth in this Act, shall not apply to the following contracts:

(1) Contracts entered into or awarded prior to enactment of this Act, which were based upon bid awards made prior to the passage of this Act that cannot be amended or renegotiated to accommodate the increase in the registration fee of non-immigrant temporary workers; and

(2) Contracts entered into or awarded after enactment of this Act, which were based upon bids or proposals submitted prior to enactment of this Act that cannot be amended or renegotiated to accommodate the increase in the registration fee of non-immigrant temporary workers.

(b) For purposes of this Section, each registration claiming an exemption under this Section shall provide the Department of Labor with a copy of its bid contract or award under which any claimed exemption is being made.

(c) The Director of the Department of Labor shall create an affidavit form to be completed and submitted concurrently with the registration fee of non-immigrant temporary workers. Said affidavit shall request from the filing employer all relevant information necessary to properly execute the law as provided in this Act.

SOURCE: Added as uncodified law by P.L. 34-098:6 (May 14, 2018).
Codified to this section by the Compiler.

§ 7120. Manpower Development Fund.

(a) There is hereby created in the Guam Department of Labor, a Manpower Development Fund (MDF), which *shall* remain separate and apart from any other funds of the

22 GCA BUSINESS REGULATIONS
CH. 7 EMPLOYMENT SERVICE LAW

government of Guam.

(b) The MDF is created solely for the purpose of receiving territorial, federal, and private money and revenue from registration fees on non-immigrant temporary workers.

(1) Thirty percent (30%) of the annual revenues generated *shall* be allocated to the Guam Department of Labor. The Department of Labor allocation in the MDF *shall* be expended exclusively to fund the following:

(A) One Hundred Thousand Dollars (\$100,000) *shall* be allocated annually to produce the quarterly “Unemployment Situation on Guam” report and any other reports relating to labor statistics;

(B) legal services in the field of employment and labor law, human resources, or administrative law;

(C) workforce development and training programs; and

(D) the remaining balance of the Department of Labor’s MDF allocation *shall* be used for administrative and operational purposes as may be determined by the Director of Labor.

(2) Seventy percent (70%) of the annual revenues generated *shall* be allocated to the Apprenticeship Training Program at the Guam Community College, with the primary intent to develop the workforce for positions that have been approved for non-immigrant temporary workers. The Guam Community College allocation in the MDF *shall* be paid out by the Treasurer of Guam to the Apprenticeship Training Program at Guam Community College, and *shall* be expended exclusively to fund the following:

(A) direct financial assistance to students enrolled in the apprenticeship or pre-apprenticeship program who may not qualify for the Free Application for Federal Student Aid (FAFSA), such as the Pell Grant. Any unused portion of the allocation under this Subsection shall be returned to the MDF;

**22 GCA BUSINESS REGULATIONS
CH. 7 EMPLOYMENT SERVICE LAW**

(B) the administrative and instructional costs for the operation of the apprenticeship training programs;

(C) facility upgrade and equipment relative to the apprenticeship training programs, and pre-apprenticeship training programs with the Guam Department of Education; and

(D) the advertising and outreach programs for the promotion of the apprenticeship training programs.

(3) Annual Audit of the Manpower Development Fund. The Public Auditor *shall* conduct an annual audit of the Manpower Development Fund to ensure compliance with all statutory regulations governing its deposits and expenditures. The cost of such audit *shall* be paid by the Manpower Development Fund.

(c) The MDF *shall* not be used for any purposes other than those enumerated in this Section, and shall be subject to legislative appropriation.

SOURCE: GC § 44019. Added by P.L. 18-48:5. Amended by P.L. 20-221:28; P.L. 23-106:5; P.L. 25-123:2; P.L. 29-019:VI:47 (Sept. 29, 2007), P.L. 29-113:VI:22 (Sept. 30, 2008). Amended by P.L. 34-098:5 (May 14, 2018). Subsection (b)(2)(A) amended by P.L. 35-103:6 (Oct. 30, 2020).

2018 NOTE: Subsection/subitem designations altered/added pursuant to the authority of 1 GCA § 1606.

§ 7120.1. Unused MDF Funds.

Notwithstanding the general provisions of § 22406 of Title 5 GCA which requires that unused and de-appropriated funds revert to the General Fund, or any other provision of Guam law to the contrary, all de-appropriated or unused funds appropriated from the MDF shall, in all circumstances, be returned to the MDF and not the General Fund.

SOURCE: Added by P.L. 23-106:6.

§ 7120.2. MDF Status Report.

The Director of Administration and the President of Guam Community College shall complete quarterly and annual reports to the Board of Trustees of the College, the Apprenticeship

**22 GCA BUSINESS REGULATIONS
CH. 7 EMPLOYMENT SERVICE LAW**

Advisory Council and the Legislature of the condition of, and activity within, the MDF.

SOURCE: Added by P.L. 23-106:6.

§ 7121. Repatriation Guaranty Bond.

The Department of Labor shall require from all H-2 employers a Repatriation Guaranty Bond equivalent to the cost of transportation for the H-2 worker going back to point of origin.

SOURCE: GC § 44020. Added by P.L. 18-48:6.

§ 7122. Performance and Payment Bond.

The Department of Labor shall require from all H-2 employers a performance and payment bond equivalent to four percent (4%) of the gross cost of the project to guaranty payment of wages and other incidental costs related to wages.

SOURCE: GC § 44021. Added by P.L. 18-48:7.

§ 7123. When Bond Required.

The Repatriation guaranty Bond and the performance and payment bond of Sections 7121 and 7122, respectively of this Chapter, shall be required prior to the issuance of labor certification.

SOURCE: GC § 44022. Added by P.L. 18-43:8.

§ 7124. Prevailing Wages.

The Department of Labor shall disqualify an employer from any non-immigrant worker program if found in violation of the statutory obligation to pay the correct wage rate to the workers employed at such employer's establishment.

SOURCE: GC § 44023. Added by P.L. 21-85:2.

§ 7125. Penalties.

The Department of Labor shall impose a penalty of not less than One Thousand Dollars (\$1,000) or more than Twenty-five Thousand Dollars (\$25,000) and disbarment from employing any aliens under any of the non-immigrant worker programs for a period of two (2) years plus back wages on any employer found

**22 GCA BUSINESS REGULATIONS
CH. 7 EMPLOYMENT SERVICE LAW**

in violation of statutory obligations with respect to the employment of aliens.

SOURCE: GC § 44024. Added by P.L. 21-85:3.

§ 7126. Testing of Temporary Workers' Skills.

The Department of Labor shall, on a random basis, test the skills of non-immigrant temporary workers to make certain that they have the skills set out in their labor certification applications.

(a) When a non-immigrant temporary worker is found in such random testing to be unskilled, all such temporary workers of such worker's employer shall be tested and disqualified as necessary.

(b) The Department of Labor may, if probable cause exists that unqualified non-immigrant temporary workers are employed by a particular employer, test any or all the non-immigrant temporary workers of that particular employer.

(c) Where such tests demonstrate a significant lack of the skills they should possess the Department of Labor shall disqualify such employees from further employment on Guam and shall treat such employees' employers as being in violation of this Chapter, unless

(1) the employer has reported the deficiency to the Department of Labor and

(2) has committed no other violation of this Chapter or any other territorial or Federal labor law.

(d) The Director of Labor shall, pursuant to the Administrative Adjudication Law, promulgate all necessary rules and regulation to govern the methods of testing for skills, the languages in which such tests shall be given, and such other matters as are appropriate to such testing program.

SOURCE: GC § 44025. Added by P.L. 21-85:4.

2018 NOTE: Subsection/subitem designations added/alterd pursuant to the authority of 1 GCA § 1606.

**22 GCA BUSINESS REGULATIONS
CH. 7 EMPLOYMENT SERVICE LAW**

NOTE: §§ 44017.1, 44018 and 44019 as well as §§ 44019.1 and 44019.2 of the Government Code has now been recodified into Title 22, Guam Code Annotated in order to update the current GCA's. Section 44017.1 is now § 7118.1 of 22 GCA; § 44018 is now § 7119 of 22 GCA, and § 44019 is now § 7120 of 22 GCA. Section 44019.1 is now § 7120.1 and § 44019.2 is now § 7120.2 of 22 GCA. Amended by the Compiler of Laws.

**ARTICLE 2
COMMERCIAL EMPLOYMENT AGENCIES**

- § 7201. Short Title.
- § 7202. Definitions.
- § 7203. License Required.
- § 7204. License Fee.
- § 7205. Bond.
- § 7206. Application for License.
- § 7207. Issuance of License.
- § 7208. Termination of License.
- § 7209. Posting.
- § 7210. Records and Reports.
- § 7211. Fees.
- § 7212. Prohibitions.
- § 7213. Restitution of Illegal Fees.
- § 7214. Director's Rights.
- § 7215. Revocation and Cancellation.
- § 7216. Reconsideration.
- § 7217. Appeals from Director's Decision.
- § 7218. (Vacant)
- § 7219. Stay of Enforcement.
- § 7220. Rules and Regulations.
- § 7221. Penalties.

§ 7201. Short Title.

This Act may be cited as the *Commercial Employment Agencies Regulatory Law*.

SOURCE: GC § 48300. This entire Article was added by P.L. 13-206, and all source references will be to that Public Law, unless the section involved has been later amended, repealed or is an addition.

22 GCA BUSINESS REGULATIONS
CH. 7 EMPLOYMENT SERVICE LAW

§ 7202. Definitions.

As used in this Chapter:

(a) *Director* means the Director of Labor.

(b) *Employment agency* means any individual, agent, partnership, corporation or association, engaged in the business of providing employment information, procuring employment for applicants or procuring employees for placement with employers upon request, for a fee or other valuable thing, exacted, charged or received, but shall not include the United States or the territory of Guam or instrumentalities thereof.

(c) *Employer* includes any individual, agent, partnership, corporation or association, employing or seeking to employ any person for hire.

(d) *Applicant* means any person who uses the services of an employment agency to secure employment for himself.

(e) *Gross wages, salaries or commissions* means the gross amount of the applicant's actual earnings from employment.

SOURCE: GC § 48301.

§ 7203. License Required.

No employment agency shall engage in business without a license obtained under this Chapter. Further, all licenses shall be issued in accordance with rules and regulations promulgated by the Director of Labor, such rules and regulations shall be in accordance with the Administrative Adjudication Act.

SOURCE: GC § 48302.

§ 7204. License Fee.

Every employment agency shall pay an annual license fee of Twenty-Five Dollars (\$25.00):

(a) The fee shall be paid to the Director of Labor on or before July 1 of each year;

**22 GCA BUSINESS REGULATIONS
CH. 7 EMPLOYMENT SERVICE LAW**

(b) Failure to pay the annual license fee shall constitute a forfeiture of license;

(c) Fees collected by the Director shall be deposited in the General Fund.

SOURCE: GC § 48303

§ 7205. Bond.

Each licensed employment agency shall give and keep in force a bond with the Director of Labor on the penal sum of Five Thousand Dollars (\$5,000.00) with good and sufficient surety or sureties approved by the Director, conditioned:

(a) That the licensee shall not violate the Chapter;

(b) That the licensee shall faithfully, promptly and truly refund all fees illegally or incorrectly obtained from applicant to the Director.

SOURCE: GC § 48304.

§ 7206. Application for License.

Every individual, agent, partnership, corporation or association seeking a license to operate an employment agency shall file a written application with the Director of Labor which shall contain such information and shall be in such form as the Director may prescribe.

SOURCE: GC § 48305.

§ 7207. Issuance of License.

(a) Upon receipt of an application for a license to conduct an employment agency, the Director of Labor may order the issuance of the license provided that the application is complete and in proper form.

(b) Every license issued shall be valid only as to the employment agency and premises named therein. The location of an employment agency shall not be changed without the written consent of the Director and such change of location shall be endorsed on the license.

(c) The license shall not be transferable except on approval of the Director.

**22 GCA BUSINESS REGULATIONS
CH. 7 EMPLOYMENT SERVICE LAW**

SOURCE: GC § 48306.

2018 NOTE: Subsection designations added pursuant to the authority of 1 GCA § 1606.

§ 7208. Termination of License.

Every license to conduct an employment agency shall be valid under the terms set forth in the license. The license shall expire on June 30 of each year.

SOURCE: GC § 48307.

§ 7209. Posting.

Every license to conduct an employment agency together with a copy of the fee schedule shall be posted in a conspicuous place in the main room of the agency.

SOURCE: GC § 48308.

§ 7210. Records and Reports.

Every employment agency shall keep records and make such reports with respect to the operation of the business as the Director of Labor by rule or regulation may prescribe. Such records as required by regulation shall be preserved by the agency and kept in the office of the employment agency for a period of at least two (2) years.

SOURCE: GC § 48309.

§ 7211. Fees.

The Director of Labor shall have the power to make rules and regulations as to the fees that employment agencies may charge. No employment agency shall charge, receive or attempt to collect any fee in excess of that established by the Director, provided that no fee shall be charged unless it shall be stated as a percentage of an amount actually received by an employee.

SOURCE: GC § 48310.

§ 7212. Prohibitions.

No employment agency licensed under this Chapter and no agent or employee of an employment agency shall do, make or cause to be made or done any of the following acts herein prohibited and every such employment agency, its agents and

**22 GCA BUSINESS REGULATIONS
CH. 7 EMPLOYMENT SERVICE LAW**

employees shall do and perform every act, duty or requirement hereinafter prescribed:

(a) No employment agency shall cause to be printed, published or circulated any false, fraudulent, or misleading information, notice or advertisement, nor shall an employment agency give or cause to be made or given any false promise, misrepresentation or misleading statement or information.

(b) No employment agency shall send out any applicant for employment without having first obtained either orally or in writing a bona fide job order from the prospective employer.

(c) No employment agency shall knowingly send out any applicant for employment to any place where a strike, walk-out or other labor dispute exists without first furnishing the applicant with a written statement as to the existence of the labor dispute, and the employment agency shall retain on file for two (2) years after the date thereof, a copy of the statement of fact, signed by the applicant so sent.

(d) No employment agency shall divide or share, or offer to divide or share with any employer, his employees, agents or representatives, any fee, charge or compensation received from any applicant. No employment agency shall cause or attempt to cause the discharge of any person not an employee of the employment agency for the purpose of obtaining other employment through the agency for such person.

(e) No employment agency shall send out any minor or female applicant for employment without making an investigation of the nature of the employment or engagement and the duties thereof and reputation of the employer. No employment agency shall wilfully or knowingly send or direct any female applicant for employment or any minor to any employment of an immoral character. No employment agency shall wilfully or knowingly procure or place or attempt to place any minor in

22 GCA BUSINESS REGULATIONS
CH. 7 EMPLOYMENT SERVICE LAW

any employment in any place where intoxicating liquors are served or sold.

(f) No employment agency shall wilfully or knowingly place or assist in placing any applicant in employment in violation of any law of Guam or any lawful order, rule or regulation prescribed by the Director of Labor.

(g) No employment agency shall require an applicant to pay any advance fee or any other fee, deposit or compensation other than as prescribed in this Chapter.

(h) No employment agency shall display on any sign or window or in any publication the name "United States Employment Service" or "Guam Employment Service."

(i) No employment agency or any person connected therewith shall receive or require any applicant to execute any power of attorney, promissory note, negotiable instrument, assignment of wages or salary, note authorizing a confession of judgment or any instrument or document relating to the liability of the applicant, unless this instrument or other document has been approved both as to form and content by the Director or his authorized representative.

(j) No employment agency may collect any fee or charge for any referral service or any assistance in connection with any persons securing employment with the government of Guam or the Federal government or entrance into any program or job which is partially or totally funded by the government of Guam or the Federal government.

SOURCE: GC § 48311.

§ 7213. Restitution of Illegal Fees.

Whenever in the course of an investigation made pursuant to this Chapter, it is determined that there has been an illegal collection of fees, the employment agency shall refund the fee illegally collected upon the order of the Director of Labor or his authorized representative. Failure to refund the fee shall constitute a violation of this Chapter subject to the penalties provided herein.

22 GCA BUSINESS REGULATIONS
CH. 7 EMPLOYMENT SERVICE LAW

SOURCE: GC § 48312.

§ 7214. Director's Rights.

The Director of Labor and his authorized representatives may enter any office, building, premises or other place in which an employment agency is operated for the purpose of making investigations for the proper enforcement of this Chapter and such rules and regulations as the Director may prescribe. No person shall refuse the Director or his authorized representative admittance to any such office, building, premises or other place. The Director and his authorized representatives shall for the purpose of examination have access to and the right to copy any book, account, receipt, contract or other paper or document relating to the business of conducting an employment agency. Every person shall furnish to the Director or his authorized representative such information relating to the business of conducting and employment Agency. The rights as specified above shall be limited to regular business hours and at such other times as the Director feels will be necessary effectuate to the purpose of this Chapter.

SOURCE: GC § 48313.

§ 7215. Revocation and Cancellation.

Any license may be revoked or canceled for cause at any time by the Director of Labor after affording all interested parties reasonable opportunity for a fair hearing. Cause means violation of this Chapter or rule or regulation of the Director.

SOURCE: GC § 48314.

§ 7216. Reconsideration.

In the absence of appeal and within ten (10) days after mailing or delivery of notice of decision made pursuant to §§ 7207 and 7215 to the parties entitled thereto, the Director of Labor may, for good cause, on his own motion or upon application of any interested party reconsider the decision. Upon an application for reconsideration the Director shall promptly reconsider the decision or, upon his own motion transfer the application to the appeal board. Upon transfer the application

22 GCA BUSINESS REGULATIONS
CH. 7 EMPLOYMENT SERVICE LAW

shall be deemed to constitute an appeal from the Director's decision as of the date of the application.

SOURCE: GC § 48315.

§ 7217. Appeals from Director's Decision.

Any person deeming himself aggrieved by the decision of the Director of Labor made pursuant to this Chapter may appeal from the decision by filing a written notice of appeal within ten (10) days after mailing or delivery of notice of decision with the Superior Court. The Superior Court shall hold a full hearing de novo on the appeal and make its decision in writing which shall be filed with the record of the proceedings.

SOURCE: GC § 48316.

§ 7218. [Vacant].

SOURCE: GC § 48317. Vacant in original Act.

§ 7219. Stay of Enforcement.

In no case shall an application for reconsideration or an appeal to the Superior Court operate as a supersedes or stay unless the Superior Court so orders.

SOURCE: GC § 48318.

§ 7220. Rules and Regulations.

The Director of Labor relations may make, amend, or repeal such rules and regulations as he may deem proper to fully effectuate this Chapter.

SOURCE: GC § 48319.

§ 7221. Penalties.

Any employment agency which violates this Chapter is punishable upon conviction by a fine of not more than One Thousand Dollars (\$1,000.00) or imprisonment for not more than six (6) months, or both.

SOURCE: GC § 48320.
