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CHAPTER 5
GUAM EMPLOYMENT RELATIONS ACT

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GUAM EMPLOYMENT RELATIONS ACT

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§ 5101. Definitions. When used in this Chapter:

(a) *Person* includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees or receivers.

(b) *Employer* means a person who engages the service of an employee, and includes any person acting on behalf of an employer, but shall not include the government of Guam, or any labor organization or anyone acting in behalf of such organization other than when it is acting as an employer in fact.

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(c) *Employee* includes any person, other than an independent contractor, working for another, for hire, in the territory, and shall not be limited to the employees of a particular employer unless the context clearly indicates otherwise; and includes any individual whose work has ceased solely as a consequence of or in connection with any current labor dispute, or because of any unfair labor practice on the part of an employer and (1) who has not refused or failed to return to work upon the final disposition of a labor dispute or a charge of an unfair labor practice by a tribunal having competent jurisdiction of the same or whose jurisdiction was accepted by the employee or his representative, (2) who has not been found to be committing or a party to any unfair labor practice hereunder, (3) who has not obtained regular and substantially equivalent employment elsewhere, or (4) who has not been absent from his employment for a substantial period of time during which reasonable expectancy of settlement has ceased (except by an employer's unlawful refusal to bargain) and whose place has been filled by another engaged in the regular manner for an indefinite or protracted period and not merely for the duration of a strike or lockout; but shall not include any individual employed in the domestic service of a family or person at his home or any individual employed by his parent or spouse, or any person employed in an executive or supervisory capacity, or any individual employed by any employer employing less than two individuals, or any individual subject to the jurisdiction of the National Labor Relations Act, as amended from time to time; provided, that the term *employee* includes any individual subject to the jurisdiction of the National Labor Relations Act, as amended from time to time, but over whom the National Labor Relations Board has declined to exercise jurisdiction or has indicated by its decisions and policies that it will not assume jurisdiction.

(d) *Representative* includes any person chosen by an employee to represent him.

(e) *Collective bargaining* is the negotiating of an employer and a majority of his employees in a collective bargaining unit (or their representatives) concerning representation of terms and conditions of employment of such employees in a mutually genuine effort tot reach an agreement with reference to the subject under negotiation.

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(f) *Collective bargaining unit* means all of the employees of one employer (employed within the territory), except that where a majority of such employees engaged in a single craft, division, department or plant have voted by secret ballot to constitute such group a separate bargaining unit, they shall be so considered. Two or more collective bargaining units may bargain collectively through the same representative where a majority of the employees in each separate unit have voted by secret ballot so to do.

(g) *Unfair labor practice* means any unfair labor practice as defined in §§ 5105 and 5106.

(h) *Labor dispute* means any controversy between an employer and any of his employees having the formal approval of the majority of his employees in a collective bargaining unit concerning the right or process of details of collective bargaining or the designation of representatives. Any organization with which either the employer or such majority is affiliated may be considered a party to the labor dispute.

(i) *All union agreement* means an agreement between an employer and the representative of his employees in a collective bargaining unit whereby all of the employees in such unit are required to be members of a single labor organization.

(j) *Board* means the Guam Employment Relations Board, provided for by § 5104.

(k) *Election* means a proceeding in which the employees in a collective bargaining unit cast a secret ballot for collective bargaining representatives or for any other purpose specified in this Chapter and shall include elections conducted by the Board, or, unless the context clearly indicates otherwise, by any tribunal having competent jurisdiction or whose jurisdiction was accepted by the parties.

(l) *Secondary boycott* includes combining or conspiring to cause or threaten to cause injury to one (1) with whom no labor dispute exists, whether by (1) withholding patronage, labor or other beneficial business intercourse, (2) picketing, (3) refusing to handle, install, use or work on particular materials, equipment or supplies, or (4) by any other unlawful means, in order to bring him against his will into a concerted plan to coerce or inflict damage upon another.

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(m) *Person employed in an executive or supervisory capacity* means any employee who has the authority to hire or fire other employees whose suggestions and recommendations as to hiring or firing and as to the advancement, promotion or demotion of other employees will be given particular weight.

SOURCE: GC § 56000.

§ 5102. Rights of Employees.

Employees shall have the right of self-organization and the right to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection, and such employees shall also have the right to refrain from any and all such activities, provided, that employees may be required to join a union under an all-union agreement as provided in § 5104.

SOURCE: GC § 56001.

§ 5103. Representatives and Elections.

(a) Representatives chosen for the purposes of collective bargaining by a majority of the employees voting in a collective bargaining unit shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining. Any individual employee or any minority group of employees in any collective bargaining unit shall have the right at any time to present grievances to their employer in person or through representatives of their choosing.

(b) Whenever a question arises concerning the determination of a collective bargaining unit as defined in § 5101, the Board, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Chapter, shall conduct an appropriate hearing upon due notice and it shall decide in each case the unit appropriate for the purpose of collective bargaining.

(c) Whenever a question arises concerning the representation of employees in a collective bargaining unit, the Board shall determine the representatives thereof by taking a secret ballot of employees and certifying in writing the results thereof to the interested parties and to their employer. There shall be included on any ballot for the election of representatives the names of all persons submitted by an employer or group of employees participating in the election, except that the Board may in its discretion exclude from the ballot one who, at the time of the election, stands deprived

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of his rights under this Chapter by reason of a prior adjudication of his having engaged in an unfair labor practice. The ballot shall be so prepared as to permit of a vote against representation by any one named on the ballot. The Board's certification of the results of any election shall be conclusive unless an appeal is taken therefrom under the provision of this Chapter.

(d) Questions concerning the representation of employees may be raised by petition of any employee, or group of employees, or his representative, or labor organization acting in their behalf, or by petition of his employer in the case of jurisdictional disputes or in any case after a union has requested recognition. Where it appears by the petition that an emergency exists requiring prompt action, the Board shall act upon the petition forthwith and hold the election requested within such time as will meet the requirements of the emergency presented. The fact that one election has been held shall not prevent the holding of another election among the same group of employees, if it appears to the Board that sufficient reason therefor exists. In any election where the choices on the ballot do not receive a majority, a run-off shall be conducted, the ballot providing for a selection between the two choices receiving the largest and second largest number of valid votes cast in the election.

SOURCE: GC § 56001.1.

§ 5104. Guam Employment Relations Board.

There is within the government of Guam the Guam Employment Relations Board, composed of five members, consisting of the Director of the Department of Labor, ex officio, two (2) members appointed by the Governor with the advice and consent of the Legislature who shall be representatives from labor and two (2) members appointed by the Governor with the advice and consent of the Legislature who shall be management representatives. The term of office of the appointive members shall be for five (5) years, except that the original appointees shall be appointed for terms of one (1), two (2), three (3) and four (4) years. As their terms expire, new members shall be appointed to fill vacancies and such appointments shall be made for terms of five (5) years. The Board shall have the power to engage its own attorney for the purpose of assisting it in carry out its functions; such attorney to be outside the classified service of the government of Guam.

SOURCE: GC § 56002.

§ 5105. Unfair Labor Practices of Employers.

It shall be an unfair labor practice for an employer individually or in concert with others:

(a) To interfere with, restrain or coerce his employees in the exercise of the rights guaranteed in § 5102;

(b) To initiate, create, dominate or interfere with the formation or administration of any labor organization or contribute financial support to it, but an employer shall not be prohibited from reimbursing employees at their prevailing wage rate for time spent conferring with him, nor from cooperating with representatives of at least a majority of his employees in a collective bargaining unit, at their request, by permitting employee organizational activities on employer premises or the use of employer facilities where such activities or use create no additional expense to the employer;

(c) To encourage or discourage membership in any labor organization by discrimination in regard to hiring, tenure or other terms or conditions of employment. An employer, however, may enter into an all-union agreement with the bargaining representatives of his employees in a collective bargaining unit, unless the Board has certified that at least a majority of such employees have voted to rescind the authority of their bargaining representative to negotiate such all-union agreement within one (1) year preceding the date of such agreement. No employer shall justify any discrimination against any employee for non-membership in a labor organization if he has reasonable grounds for believing that: (1) such membership was not available to the employee on the same terms and conditions generally applicable to other members; (2) or that membership was denied or terminated for reasons other than the failure of the employee to tender periodic dues and the initiation fees uniformly required as a condition for acquiring or retaining membership.

(d) To refuse to bargain collectively with the representative of a majority of his employees in any collective bargaining unit. If an employer files with the Board a petition requesting a determination as to majority representation, he shall not be deemed to have refused to bargain until an election has been held and the result thereof has been certified to him by the Board;

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(e) To bargain collectively with the representatives of less than a majority of his employees in a collective bargaining unit, or to enter into an all-union agreement except in the manner provided in paragraph (b) of this section;

(f) To violate the terms of a collective bargaining agreement;

(g) To refuse or fail to recognize or accept as conclusive of any issue in any controversy as to employment relations, the final determination of the Board or of any tribunal of competent jurisdiction;

(h) To discharge or otherwise discriminate against an employee because he has filed charges or given information or testimony under the provisions of this Chapter;

(i) To deduct labor organization dues or assessments from an employee's earnings, unless the employer has been presented with an individual order therefor, signed by the employee personally;

(j) To employ any person to spy upon employees or their representatives respecting their exercise of any right created or approved by this Chapter;

(k) To make, circulate or cause to be circulated a black list.

SOURCE: GC § 56003.

§ 5106. Unfair labor Practices of Employees.

It shall be an unfair labor practice for an employee individually or in concert with others:

(a) To coerce or intimidate an employee in the enjoyment of his legal rights, including those guaranteed in § 5102;

(b) To coerce, intimidate or induce any employer to interfere with any of his employees in the enjoyment of his legal rights, including those guaranteed in § 5102, or to engage in any practice with regard to his employees which would constitute an unfair labor practice if undertaken by him on his own initiative;

(c) To violate the terms of a collective bargaining agreement;

(d) To refuse or fail to recognize or accept as conclusive of any issue in any controversy as to employment relations the final

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determination of the Board or of any tribunal of competent jurisdiction;

(e) To cooperate in engaging in, promoting or inducing picketing (not constituting an exercise of constitutionally guaranteed freedom of speech), boycotting or any other overt act accompanying a strike, unless a majority in a collective bargaining unit of the employees of an employer against whom such acts are primarily directed have voted by secret ballot to call a strike;

(f) To hinder or prevent, by mass picketing, threats, intimidation, force or coercion of any kind, the pursuit of any lawful work of employment, or to obstruct or interfere with entrance to or egress from any place of employment, or to obstruct or interfere with free and uninterrupted use of public roads, streets, highways, railways, airports or other ways of travel or conveyance;

(g) To engage in a secondary boycott; or to hinder or prevent by threats, intimidation, force, coercion or sabotage, the obtaining, use or disposition of materials, equipment or services; or to combine or conspire to hinder or prevent, by any means whatsoever, the obtaining, use or disposition of materials, equipment or service. Nothing herein shall prevent sympathetic strikes in support of those in similar occupations working for other employees in the same craft;

(h) To take unauthorized possession of property of the employer or to engage in any concerted effort to interfere with production except by leaving the premises in an orderly manner for the purpose of going on strike.

SOURCE: GC § 56004.

§ 5107. Unfair Labor Practices of any Person.

It shall be an unfair labor practice for any person to do or cause to be done, or behalf or in the interest of employers or employees, or in connection with or to influence the outcome of any controversy as to employment relations, any act prohibited by §§ 5104 and 5105.

SOURCE: GC § 56005.

§ 5108. Prevention of Unfair Labor Practices.

(a) Any controversy concerning unfair labor practices may be submitted to the Board in the manner and with the effect provided in this

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Chapter, but nothing herein shall prevent the pursuit of relief in courts of competent jurisdiction.

(b) Any party in interest may file with the Board a written complaint, or a form provided by the Board, charging any person with having engaged in any specific unfair labor practice. The Board shall serve a copy of the complaint upon the person charged, hereinafter referred to as the respondent. If the Board has reasonable cause to believe that the respondent is a member of or represented by a labor union, then service upon an officer of such union shall be deemed to be service upon the respondent. Service may be by delivery to the person or by mail or by telegram. Any other person claiming interest in the dispute or controversy, as an employer, an employee or their representative, shall be made a party upon proof of such interest. The Board may bring in additional parties by service of a copy of the complaint. Only one complaint shall issue against a person with respect to a single controversy, but any complaint may be amended in the discretion of the Board at any time prior to the issuance of a final order based thereon. The respondent may file an answer to the original or amended complaint but the Board may find to be true any allegation in the complaint in the event either no answer is filed or the answer neither specifically denies nor explains such allegation, nor states that the respondent is without knowledge concerning such allegation. The respondent shall have the right to appear in person or otherwise give testimony at the place and time fixed in the notice of hearing. The hearing on the complaint shall be before either the Board or a hearing officer of the Board, as the Board may determine.

The Board shall fix a time for the hearing on such complaint, which shall be not less than ten (10) nor more than forty (40) days after the filing of such complaint or amendment thereof, and notice shall be given to each party by service on him personally or by mailing a copy thereof to him at his last known post office address at least ten (10) days before such hearing. In case a party in interest is located without Guam and has no known post office address within Guam, a copy of the complaint and copies of all notices shall be filed in the office of the Director of Administration and shall also be sent by registered mail to the last known post office address of such party. Such filing and mailing shall constitute sufficient service with the same force and effect as if served upon a party located within Guam. Such hearing may be adjourned from time to time in the discretion of the Board and hearings may be held at such places as the Board shall designate.

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In all proceedings under this Chapter before the Board, each member of the Board may issue subpoenas and administer oaths. Depositions may be taken in the manner prescribed by law. No person shall be excused from attending and testifying or from producing books, records, correspondences, documents or other evidence in obedience to such subpoena on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture under the laws of Guam, but such person shall not be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may testify or produce evidence, documentary or otherwise, in such proceedings. Such person so testifying shall not be exempt, however, from prosecution and punishment for perjury committed in so testifying.

Any person who wilfully and unlawfully fails or neglects to appear or to testify or to produce books, papers and records as required shall upon application to an Superior Court judge, be ordered to appear before the Board, there to testify or produce evidence if so ordered, and failure to obey such order may be punished as a contempt of court.

Each witness who appears before the Board by subpoena shall receive for his attendance the fees and mileage provided for witnesses in civil cases in courts of record, which shall be audited and paid by the government of Guam in the same manner as other expenses are audited and paid, upon the presentation of properly verified vouchers approved by the Board.

(c) A full and complete record shall be kept of all proceedings had before the Board and all testimony shall be taken down by a reporter engaged for such purpose or by use of a mechanical recording device. It shall not be necessary to transcribe the record unless requested for purposes of rehearing or court review. In such proceedings the Board shall not be bound by technical rules of evidence. No hearsay evidence, however, shall be admitted or considered.

(d) After the final hearing, the Board shall promptly make and file an order or decision, incorporating findings of fact upon all the issues involved in the controversy and the determination of the rights of the parties. Pending the final determination of such controversy the Board may, after hearing, make interlocutory orders which may be enforced in the same manner as final orders. Final orders may dismiss the complaint or require the person complained of to cease and desist from the unfair labor practices found to have been committed, suspend his rights immunities, privileges or remedies granted or afforded by this Chapter for not more than one (1) year, and

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require him to take such affirmative action, including reinstatement of employees with or without pay, as the Board may deem proper. Any order may further require such person to make reports from time to time showing the extent to which he had complied with the order.

(e) If any person fails or neglects to obey an order of the Board while the same is in effect, the Board may petition a judge of the Superior Court for the enforcement of such order and for appropriate temporary relief of restraining order, and shall certify and file in court the record in the proceedings, including all documents and papers on file in the matter, the pleading and testimony upon which such order was entered, and the decision and order of the Board. Upon such filing the Board shall cause notice thereof to be served upon such person by mailing a copy to his last known post office address, and thereupon the judge shall have jurisdiction in the premises.

(f) Within fifteen (15) days from the date of the decision or order of the Board, any party aggrieved thereby may petition a judge of the Superior Court for review of the same, subject, however, to the general provisions of law for the calling in of another judge. Such petition shall state the grounds upon which a review is sought and copies thereof shall be served upon the other parties and the Board. Service may be made by mailing such copies to the last known post office address of the parties concerned. If the judge is satisfied that a party in interest has been prejudiced because of exceptional delay in the receipt of a copy of the decision or order, he may extend the time another fifteen (15) days in which such petition may be filed. The Board shall thereupon file in the court the record in the proceedings. The petition may thereupon be brought on for hearing before the judge upon such record by any party on ten (10) days' written notice to the others. Upon such hearing, the judge may confirm, modify or set aside the decision or order of the Board and enter an appropriate decree. No objection that has not been urged before the Board shall be considered by the judge unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of fact made by the Board, if supported by credible, competent and substantial evidence in the record, shall be conclusive. The judge may, in his discretion, grant leave to adduce additional evidence where such evidence appears to be material and reasonable cause is shown for failure to have adduced such evidence in the hearing before the Board

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(g) In any proceedings for review of a decision or order of the Board, the judge shall disregard any irregularity or error unless it is made to appear affirmatively that the complaining party was prejudiced thereby.

(h) Commencement of proceedings under subsection (f) of this section shall not stay enforcement of the Board decisions or order; but the Board, or the reviewing court may order a stay upon such terms as it deems proper.

(i) Petitions filed under this section shall have preference over any civil cause of a different nature pending in the Superior Court, shall be heard expeditiously, and the Superior Court shall always be deemed open for the trial thereof.

(j) Any party may appeal from the decree of a Superior Court judge entered under the provisions of this Chapter to the District Court. Such appeal shall be taken and prosecuted in the same manner and form and with the same effect as is provided in other cases of appeal to the District Court from a decision, judgment, order or decree of a judge of the Superior Court.

(k) A substantial compliance with the procedure of this Chapter shall be sufficient to give effect to the decisions and orders of the Board, and they shall not be declared inoperative, illegal or void for any non-prejudiced irregularity in respect thereof.

(l) No complaints of any specific unfair labor practice shall be considered unless filed within ninety (90) days of its occurrence.

SOURCE: GC § 56006.

§ 5109. Financial Reports to Employees.

Every person acting as the representative of employees for collective bargaining shall keep an adequate record of his financial transactions, and shall present annually, to such employees as may be members of the association with which such representative is connected, within sixty (60) days after the end of his fiscal year, a detailed written financial report thereof in the form of a balance sheet and an operating statement. In the event of failure of compliance with this section, any such employee may petition the Board for an order compelling such compliance. An order of the Board on such petition shall be enforceable in the same manner as other orders of the Board under this Chapter.

SOURCE: GC § 56007.

§ 5110. Rules and Regulations.

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The Board may adopt rules and regulations relative to the exercise of its powers and authority and to govern the proceedings before it in accordance with the provisions of the Administrative Adjudication Act.

SOURCE: GC § 56008.

§ 5111. Public Records and Proceedings.

The complaints, orders and testimony relating to a proceeding instituted by the Board under § 5108 shall be public records and be available for inspection or copying. All proceedings pursuant to § 5108 shall be open to the public.

SOURCE: GC § 56009.

§ 5112. List of Labor Organizations.

The Board shall maintain a list of labor organizations. To be recognized as such and to be included in the list, an organization shall file with the Board a statement of its name, the name and address of its secretary or other officer to whom notices may be sent, the date of its organization and its affiliations, if any, with other organizations. No other qualifications for inclusion shall be required, but every labor organization shall notify the Board promptly of any change of name, or of the name and address of its secretary or other officer to whom notices may be sent, or of its affiliations.

SOURCE: GC § 56010.

§ 5113. Penalty.

Any person who intentionally assaults, resists, prevents, impedes or interferes with any member of the Board or any of its agents or agencies in the performance of duties pursuant to this Chapter shall be guilty of a misdemeanor.

SOURCE: GC § 56010.1. Amended by P.L. 13-187:251.

§ 5114. Construction.

Except as specifically provided in this Chapter, nothing herein shall be construed so as to interfere with or impede or diminish in any way the right to strike or the right of individuals to work, nor shall anything in this Chapter be so construed as to invade unlawfully the right to freedom of speech.

SOURCE: GC § 56010.2.

§ 5115. Conflicting Provisions.

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Wherever the application of the provisions of other laws conflict with the application of the provisions of this Chapter, this Chapter shall prevail, provided that in any situation where the provisions of this Chapter cannot be validly enforced, the provisions of such other laws shall apply.

SOURCE: GC § 56010.3.

§ 5116. Cooperation with National Labor Relations Board.

The Board shall cooperate with the National Labor Relations Board and its agents and representatives.

SOURCE: GC § 56010.4.

§ 5117. Provision for Union Leader Release Time.

(a) Legislative Findings. I Liheslaturan Guåhan finds that existing union contracts with the Guam Community College and the University of Guam provide for release time for the president of the union to address issues related to their collective bargaining unit. I Liheslaturan Guåhan further finds that such release time can be leave without pay and that it is in the interests of the public and the employees that such a policy of permitting release time be uniform throughout the government of Guam.

(b) Authorization for Release time. Any government of Guam employee who is a President or head of a union representing a recognized collective bargaining unit of the government of Guam shall be provided release time for the purpose stipulated in this Section and shall have their assigned work duties adjusted accordingly. This release time does not have to be paid leave and shall be used to conduct union-related business, and to address issues important to their respective collective bargaining units. The President/Union head may not use this release time for union organizing efforts.

SOURCE: Added by P.L. 27-106:VI:35.

ARTICLE 2

EMPLOYMENT PRACTICES: UNLAWFUL DISCRIMINATION

- § 5201. Discriminatory Practices Made Unlawful; Offenses Defined.
- § 5202. Definitions.
- § 5203. Discriminatory Practices Against Disabled Persons Made Unlawful; Offenses Defined.
- § 5204. Exceptions.

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- § 5205. Enforcement Jurisdiction; Power of Department to Prevent Unlawful Discrimination.
- § 5206. Complaint Against Unlawful Discrimination.
- § 5207. Proceeding on Complaint.
- § 5208. Proceeding on Complaint: Hearings Under Administrative Adjudication Law.
- § 5209. Proceeding on Complaint: Findings and Orders Thereon; Requirement that Order Show Rights of Appeal.
- § 5210. Rules and Regulations.
- § 5211. Certain Other Laws Not Affected.
- § 5212. Penalties.

§ 5201. Discriminatory Practices Made Unlawful; Offenses Defined.

It shall be an unlawful employment practice or unlawful discrimination:

(a) For any employer to refuse to hire or employ or to bar or discharge from employment, or otherwise to discriminate against any individual in compensation or in the terms, conditions, or privileges of employment because of race, sex, age, religion, color, or ancestry.

(b) For any employment agency to fail or refuse to refer or employ, or to classify or otherwise to discriminate against any individual because of race, sex, age, religion, color or ancestry.

(c) For any employer or employment agency to print, circulate or cause to be printed or circulated any statement, advertisement or publication or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification or discrimination as to race, sex, age, religion, color or ancestry, unless based on a bona fide occupational qualification;

(d) For any labor organization to exclude or expel from its membership any person or to discriminate in any way against any of its members, employer or employees because of race, sex, age, religion, color or ancestry;

(e) For any employer, labor organization or employment agency to discharge, expel, or otherwise discriminate against any person because he has opposed any practice forbidden by this Chapter, or because he has filed a complaint, testified or assisted in any proceeding

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respecting the employment practices and discrimination prohibited under this Chapter.

(f) For any person whether an employer, employee or not, to aid, abet, incite, compel or coerce the doing of any of the practices forbidden by this Chapter, or to attempt to do so.

(g) for any employer, labor organization or employment agency to require any person to become or remain a member of any labor union or labor organization as a condition of employment or continuation of employment, or to require a person to abstain or refrain from membership in any labor union or labor organization as a condition of employment or continuation of employment, or to require any person to pay dues, fees or other charges of any kind to any labor union or labor organization as a condition of employment.

SOURCE: GC § 56020. Subsection (g) added by P.L. 25-125:3 (5/15/2000)

§ 5202. Definitions.

As used in this Chapter:

(a) *Disability* means any condition or characteristic that renders a person a disabled person as defined in Subsection (b) of this Section.

(b) *Disabled person* means any person who:

(1) has a physical or mental impairment which substantially limits one or more major life activities;

(2) has a history of, or has been classified as having an impairment which substantially limits one or more major life activities;

(3) has a physical or mental impairment that does not substantially limit major life activities but that is treated by others as constituting such a limitation; or

(4) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others as having such an impairment.

(c) *Discriminate* or *discrimination* means to segregate or unreasonably differentiate in treatment, whether intended or unintended, or to act in a manner fair in form but discriminatory in operation based upon disability or use of adaptive devices.

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(d) *Major life activities* means functions such as, but not limited to, caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

(e) *Physical or mental impairment* means:

(1) any physiological disorder or condition, cosmetic disfigurement or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive genito-urinary, hemic and lymphatic, skin and endocrine; or

(2) any mental or physiological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness and specific learning disabilities.

(f) *Use of adaptive device* means the utilization of any item to compensate for a physical or mental impairment, including but not limited to, braces or other supports, wheel chairs, talking boards, hearing aids, corrective lenses or seeing eye dogs.

(g) *Qualified individual* means an individual who can perform the essential functions of the job in question. As applied to a disabled individual, *qualified individual* means an individual who, with reasonable accommodation, can perform the essential functions of the job in question. Receipt or alleged receipt of treatment for a disability, whether physical or mental shall not constitute evidence of a person's inability to perform the essential functions of a particular job or position. In addition, uninsurability or increased cost of insurance under a group or employee insurance plan does not render a disabled person unqualified.

If a disabled person is qualified to perform a particular occupation by reason of training or experience, the nature of that occupation shall not be the basis for exception to the unfair or discriminatory practices prohibited by this Section.

SOURCE: GC § 56020.1. Added by P.L. 17-45:1.

§ 5203. Discriminatory Practices Against Disabled Persons Made Unlawful; Offenses Defined.

It shall be an unlawful employment practice or unlawful discrimination:

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(a) For an employer to refuse to hire or employ or promote or to bar or discharge from employment, any qualified individual because of his disability or use of adaptive devices provided that an employer may refuse to hire an individual for good cause relating to the ability of the individual to perform the work in question;

(b) For an employer to discriminate against any individual in compensation or in the terms, conditions or privileges of employment because of disability or use of adaptive devices;

(c) For an employer or employment agency to print, circulate or cause to be printed or circulated any statement, advertisement or publication or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification or discrimination as to disability or use of adaptive devices, unless based on a bona fide occupational qualification;

(d) For any labor organization to exclude or expel from its membership any person or to discriminate in any way against any of its members, employer or employees because of disability or use of adaptive devices;

(e) For any employer, labor organization or employment agency to discharge, expel or otherwise discriminate against any person because he has opposed any practice forbidden by this Chapter, or because he has filed a complaint, testified or assisted in any proceeding respecting the employment practice and discrimination prohibited under this Chapter; and

(f) For any person whether an employer, employee or not, to aid, abet, incite, compel or coerce the doing of any of the practices forbidden by this Chapter, or attempt to do so.

SOURCE: GC § 56020.2. Added by P.L. 17-45:2.

§ 5204. Exceptions.

(a) An employer shall accommodate a known disability of an employee or applicant for employment unless the employer demonstrates that the accommodations would impose an undue hardship in the conduct or business.

(b) This Chapter shall not apply to the employment of any individual by a parent, spouse or child or of an individual in domestic service, or

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where, as part of his or her employment, the individual resides in the personal residence of the employer or renders a personal service to the employer or members of his or her family.

(c) This Chapter shall not apply to the use of qualifications based upon disability when the qualification is a bona fide occupational qualification, certified by the Office of Equal Employment Opportunity in advance of the use. The exceptions permitted in this Section based on bona fide occupational qualifications shall be strictly construed.

SOURCE: GC § 56020.3. Added by P.L. 17-45:3.

§ 5205. Enforcement Jurisdiction; Power of Department to Prevent Unlawful Discrimination.

The Department of Labor, hereinafter referred to as "Department" shall have jurisdiction over the subject of employment practices and discrimination over the subject of employment practices and discrimination made unlawful by this Chapter. When it shall appear to it that an unlawful employment practice or discrimination may have been committed, the Department shall make a prompt investigation in connection therewith. If it is determined after such investigation that further action is warranted, the Department shall immediately endeavor to eliminate the unlawful employment practice or discrimination complained of, by conference, conciliation and persuasion.

SOURCE: GC § 56021.

§ 5206. Complaint Against Unlawful Discrimination.

An person claiming to be aggrieved by an alleged unlawful employment practice or discrimination, may file with the Department a verified complaint in writing which shall state the name and address of the person, employer, labor organization or employment agency alleged to have committed the unlawful employment practice or discrimination complained of, and which shall set forth the particulars thereof and contain such other information as may be required by the Department. The Attorney General may, in like manner, make, sign and file such complaint.

No complaint shall be filed after the expiration of ninety (90) days after the alleged act of unlawful employment practice or discrimination.

SOURCE: GC § 56022.

§ 5207. Proceeding on Complaint.

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After the filing of any accusation, an investigation shall be made and an attempt to eliminate such practice or discrimination shall be made, unless such attempt has previously been made.

In case of failure to eliminate such practice or discrimination, or in advance thereof, if in the judgment of the Department, circumstances warrant, a written accusation, together with a copy of such complaint, as the same may have been amended, shall be issued and served requiring the person, employer, labor organization or employment agency named in such accusation, hereinafter referred to as "respondent", to answer the charges of such accusation at a hearing.

SOURCE: GC § 56023.

§ 5208. Same: Hearings Under Administrative Adjudication Law.

Hearings held under the provisions of this Chapter shall be conducted in accordance with the Administrative Adjudication Law.

SOURCE: GC § 56024.

§ 5209. Same: Findings and Orders Thereon; Requirement That order Show Rights of Appeal.

If the Department finds that a respondent has engaged in any unlawful employment practice or discrimination as defined in this Chapter, the Department shall state its findings of fact and shall issue and cause to be served on such respondent an order requiring such respondent to cease and desist from such unlawful employment practice or discrimination and to take such affirmative action, including (but not limited to) hiring, reinstatement or upgrading of employees, with or without back pay, or restoration to membership in any respondent labor organization, as, in the judgment of the Department, will effectuate the purpose of this Chapter, and including a requirement for report of the manner of compliance. If the Department finds that a respondent has not engaged in any such unlawful employment practice or discrimination, the Department shall state its findings of fact and shall issue and cause to be served on the complainant an order dismissing the accusation as to such respondent. A copy of its order shall be delivered in all cases to the Attorney General and such other public officers as the Department deems proper.

Any order issued by the Department shall have printed on its face, reference to the provisions of the Administrative Adjudication Law which prescribed the rights of appeal of any party to the proceeding to whose position the order is adverse.

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SOURCE: GC § 56025.

§ 5210. Rules and Regulations.

The Department shall make such rules and regulations, not inconsistent with this Chapter, as in the judgment of the Department seem appropriate for the carrying out of the provision of this Chapter and for the efficient administration thereof, such rules to be issued and promulgated pursuant to the provisions of the Administrative Adjudication law.

SOURCE: GC § 56026.

§ 5211. Certain Other Laws Not Affected.

Nothing contained in this Chapter shall be construed to conflict with the laws relating to child labor, not to prohibit the establishment and maintenance of bona fide occupational qualifications, nor to prevent the termination or change of the employment of any person who is unable to perform his duties, not to interfere with the operation of the terms or conditions of any bona fide retirement, pension, employee benefit, or insurance plan, nor to bar any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, which is operated, supervised or controlled by or in connection with a religious organization, from giving preference to persons of the same religion or denomination or from making such selection as is calculated by such organization to promote the religious principles for which it is established or maintained.

SOURCE: GC § 56027.

§ 5212. Penalties.

Whoever shall intentionally resist, prevent, impede or interfere with the Department or any of its agents or representatives in the performance of duties pursuant to this Chapter, or who shall in any manner intentionally violate an order of the Department, shall be guilty of a misdemeanor.

SOURCE: GC § 56028. Amended by P.L. 13-187:252.

ARTICLE 3
LABOR DISPUTES: JURISDICTION OF COURTS

- § 5301. Court Jurisdiction Restricted.
- § 5302. Statement of Public Policy.
- § 5303. Labor or Employer Organizations; Agreement Against.

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- § 5304. Acts Not Subject to Restraint.
- § 5305. Concert of Acts; Effects on Jurisdiction.
- § 5306. Liability of Association, Officers, Members.
- § 5307. Hearing.
- § 5308. Complainant; Compliance with Legal Obligation; Effort to Settle.
- § 5309. Necessity for Prior Findings of Facts; Limitation of Prohibitions.
- § 5310. Appeal.
- § 5311. Contempt; Speedy and Public Trial.
- § 5312. Contempt; Demand for Retirement of Judge.
- § 5313. When Chapter Applicable: Definitions.
- § 5314. Proceedings Arising Under Employment Relations Act; Court Jurisdiction Over.

§ 5301. Court Jurisdiction Restricted.

No court of the Territory of Guam shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in strict conformity with the provisions of this Chapter; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared herein.

SOURCE: GC § 56030.

§ 5302. Statement of Public Policy.

In the interpretation of this Chapter and in determining the jurisdiction and authority of the courts of the territory, as such jurisdiction and authority are defined and limited in this Chapter, the public policy of the territory is declared as follows:

Under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment; wherefore, though he should be free to declare to associate with his fellows, it is necessary that he have full freedom of association and self-organization, and in the designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-

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organization or in other concerted activities for the purpose of collective bargaining or other activities of mutual aid or protection; therefore, the following definitions of and limitations upon the jurisdiction and authority of the courts of the territory are enacted.

SOURCE: GC § 56031.

§ 5303. Labor or Employer Organizations; Agreement Against.

Any undertaking or promise, such as is described in this section, or any other undertaking or promise in conflict with the public policy declared in § 5302, is declared to be contrary to the public policy of the territory, shall not be enforceable in any court of the territory and shall not afford any basis for the granting of legal or equitable relief by any such court, including specifically the following:

Every undertaking or promise hereafter made, whether written or oral, express or implied, constituting or contained in any contract or agreement of hiring or employment between any individual, firm, company, association, or corporation, and any employee or prospective employee of the same, whereby:

(a) Either party to such contract or agreement undertakes or promises not to join, become or remain a member of any labor organization or of any employer organization; or

(b) Either party to such contract or agreement undertakes or promises that he will withdraw from an employment relation in the event that he joins, becomes, or remains a member of any labor organization or of any employer organization.

SOURCE: GC § 56032.

§ 5304. Acts Not Subject to Restraint.

No court of the territory shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

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(b) Becoming or remaining a member of any labor organization, regardless of any such undertaking or promise as is described in § 5303;

(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;

(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the territory;

(e) Giving publicity to the existence of, or the facts involved in any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in § 5303.

SOURCE: GC § 56033.

§ 5305. Concert of Acts; Effects on Jurisdiction.

No court of the territory shall have jurisdiction to issue a restraining order or temporary or permanent injunction upon the ground that any of the persons participating or interested in a labor dispute constitute or are engaged in an unlawful combination or conspiracy because of the doing in concert of the acts enumerated in § 5304.

SOURCE: GC § 56034.

§ 5306. Liability of Association, Officers, Members.

No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the territory for the unlawful acts of individual officers, members, or agents except upon clear

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proof of actual participation in, or actual authorization of such acts, or of ratification of such acts after actual knowledge thereof.

SOURCE: GC § 56035.

§ 5307. Hearing.

No court of the territory shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as defined in this Chapter, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto if offered, and except after findings of act by the courts, to the effect:

(a) That unlawful acts have been threatened and will be committed unless restrained, or have been committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat or unlawful act excepting against the person or persons, association, or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;

(b) That substantial and irreparable injury to complainant's property will follow;

(c) That as to each item of relief granted, greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;

(d) That the complainant has no adequate remedy at law; and

(e) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection.

Such hearing shall be held after due and personal notice thereof has been given, in such manner as the court shall direct, to all known persons against whom relief is sought, and also to the Director of Public Safety charged with the duty to protect complainant's property; provided, that if a complainant shall also allege that, unless a temporary restraining order shall be issued without notice, a substantial and irreparable injury to complainant's property will be unavoidable, such a temporary restraining order may be issued upon testimony under oath, sufficient, if sustained, to justify the court in issuing a temporary injunction upon a hearing after

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notice. Such a temporary restraining order shall be effective for no longer than five (5) days and shall become void at the expiration of the five (5) days. No temporary restraining order or temporary injunction shall be issued except on condition that complainant shall first file an undertaking with adequate security in an amount to be fixed by the court, sufficient to recompensate those enjoined for any loss, expense, or damage caused by the improvident or erroneous issuance of such order or injunction, including all reasonable costs (together with a reasonable attorney's fee), and expense of defense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the court.

The undertaking mentioned in this section shall be understood to signify an agreement entered into by the complainant and the surety upon which a decree may be rendered in the same suit or proceeding against the complainant and surety, upon a hearing to assess damages of which hearing complainant and surety shall have reasonable notice, the complainant and surety submitting themselves to the jurisdiction of the court for that purpose. But nothing in this section contained shall deprive any party having a claim or cause of action under or upon such undertaking from electing to pursue his ordinary remedy by suit at law or in equity.

SOURCE: GC § 56036.

§ 5308. Complainant; Compliance With legal Obligation; Effort to Settle.

No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration.

SOURCE: GC § 56037.

§ 5309. Necessity for Prior Findings of Fact; Limitation of Prohibitions.

No restraining order or temporary or permanent injunction shall be granted in a case involving or growing out of a labor dispute, except on the basis of findings of fact made and filed by the court in the record of the case prior to the issuance of such restraining order or injunction; and every restraining order or injunction granted in a case involving or growing out of a labor dispute shall include only a prohibition of such specific act or acts as may be expressly complained of in the bill of complaint or petition filed in

such case and as shall be expressly included in the finding of fact made and filed by the court as provided in this Chapter.

SOURCE: GC § 56038.

§ 5310. Appeal.

Whenever the Superior Court of Guam shall issue or deny any temporary injunction in a case involving or growing out of a labor dispute, the court shall, upon the request of any party to the proceedings and on his filing the usual bond for costs, forthwith certify as in ordinary cases the record of the case to the District Court, for its review. Upon the filing of such record in the District Court, the appeal shall be heard and the temporary injunctive order affirmed, modified, or set aside with the greatest possible expedition, giving the proceedings precedence over all other matters except older matters of the same character.

SOURCE: GC § 56039.

§ 5311. Contempt; Speedy and Public Trial.

In all cases arising under this Chapter in which a person shall be charged with contempt in a court of the territory, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the territory; provided, that this right shall not apply to contempt committed in the presence of the court or so near thereto as to interfere directly with the administration of justice or to apply to the misbehavior, misconduct, or disobedience of any officer of the court in respect to the writs, orders, or process of the court.

SOURCE: GC § 56040.

§ 5312. Contempt; Demand for Retirement of Judge.

The defendant in any proceeding for contempt of court may file with the court a demand for the retirement of the judge sitting in the proceeding, if the contempt arises from an attack upon the character or conduct of such judge and if the attack occurred elsewhere than in the presence of the court or so near thereto as to interfere directly with the administration of justice. Upon the filing of any such demand the judge shall thereupon proceed no further, but another judge shall be designated in the same manner as is provided by law. The demand shall be filed prior to the hearing in the contempt proceeding.

SOURCE: GC § 56041.

§ 5313. When Chapter applicable; Definitions.

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When used in this Chapter, and for the purposes of this Chapter:

(a) A *case* shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employees; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a *labor dispute* (as defined in this section) of *persons participating or interested* therein (as defined in this section).

(b) A *person or association* shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

(c) The term *labor dispute* includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

SOURCE: GC § 56042.

§ 5314. Proceedings Arising Under Employment Relations Act; Court Jurisdiction Over.

(a) When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part an order of the Guam Employment Relations Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by this Chapter.

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(b) The Guam Employment Relations Board shall have power, upon the filing of a complaint to petition any court of the territory for appropriate temporary relief or restraining order. Upon the filing of any such petition the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction to grant to the Guam Employment Relations Board such temporary relief or restraining order as it deems just and proper.

(c) Whenever it is charged that any person has engaged in an unfair labor practice, the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investigation, the Guam Employment Relations Board has reasonable cause to believe such charge is true, it shall petition any court of the territory, for appropriate injunctive relief pending the final adjudication of the Guam Employment Relations Board with respect to such matter. Upon the filing of any such petition, the court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law; provided further, that no temporary restraining order shall be issued without notice unless a petition alleges that substantial and irreparable injury to the charging party will be unavoidable and such temporary restraining order shall be effective for no longer than five (5) days and will become void at the expiration of such period. Upon filing of any such petition, the courts shall cause notice thereof to be served upon any person involved in the charge and such person, including the charging party, shall be given an opportunity to appear by counsel and present any relevant testimony. The service of legal process upon such officer or agent shall constitute service upon the labor organization and make such organization a party to the suit.

SOURCE: GC § 56043.

ARTICLE 4
STRIKEBREAKERS

- § 5401. Unlawful Practices.
- § 5402. Advertising.
- § 5403. Penalty.

§ 5401. Unlawful Practices.

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It shall be unlawful for any person:

(a) To recruit, procure, supply, or refer any person for employment in place of an employee involved in a labor dispute in which such person recruiting, procuring, supplying or referring is not directly interested.

(b) When involved in a labor dispute, to employ in place of an employee involved in such labor dispute, any person who customarily and repeatedly offers himself for employment in the place of employees involved in a labor dispute, or to knowingly employ any person in place of an employee involved in a labor dispute who is recruited, procured, supplied or referred for employment by any person not directly involved in the labor dispute.

(c) Who customarily and repeatedly offers himself for employment in place of employees involved in a labor dispute to take or offer to take the place in employment of employees involved in a labor dispute.

(d) Involved in a labor dispute to contract or arrange with any other person to recruit, procure, supply or refer persons for employment in place of employees involved in such labor dispute.

(e) To recruit, solicit, or advertise for employees, or refer persons to employment, in place of employees involved in a labor dispute, without adequate notice to such person, or in such advertisement, that there is a labor dispute at the place at which employment is offered, and that the employment offered is in place of such employees involved in such labor dispute.

SOURCE: GC § 56050.

§ 5402. Advertising.

If any person advertises for, or seeks employees by means of newspapers, posters, letters, radio, television or by means of any employment agency, to work for him or the person for whom he is acting at any shop, plant or establishment, while a strike, lockout, or other labor dispute is still in active progress at such shop, plant or establishment, he shall plainly and explicit mention in such advertisement that a strike, lockout, or other labor dispute exists.

The person inserting any such advertisement or by means of any employment agency, shall insert in such advertisement his own name, and,

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if he is representing another, the name of the person he is representing, and at whose direction, and under whose authority he is inserting the advertisement. The appearance of this name in connection with such advertisement is prima facie evidence as to the person responsible for the advertisement.

SOURCE: GC § 56051.

§ 5403. Penalty.

Any person, or agent or officer thereof, who violates any of the provisions of this Chapter is guilty of a misdemeanor.

SOURCE: GC § 56052. Amended by P.L. 13-187:253.
