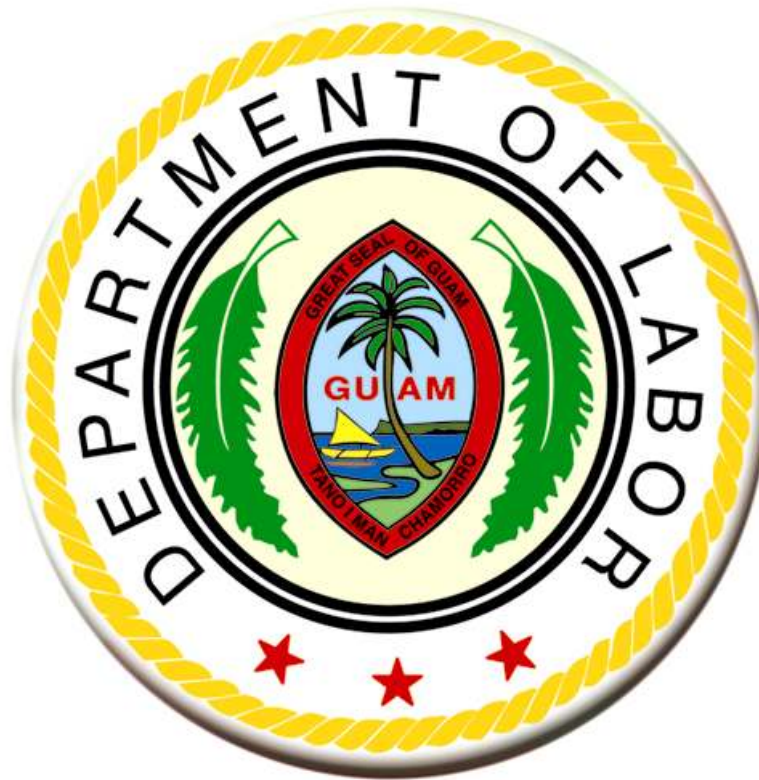


**GUAM
DEPARTMENT OF LABOR**

**Alien Labor
Processing & Certification Division**



**Guam H-2B Program
Compliance Guide**

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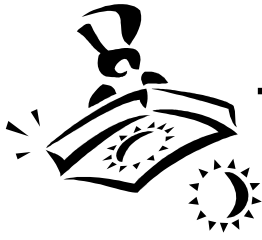
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INTRODUCTION

The Guam Department of Labor has developed this compliance guide to help H-2B employers stay in compliance with the program rules and regulations. In developing this handbook, we strove to make the complex regulations easy to understand and follow. The handbook is formatted to follow the flow in which your experience as an employer would likely be when dealing with the Guam DOL.

It is important to understand that this publication is a guide. Differing circumstances and industries may warrant different application of the rules. This handbook is not intended to supersede federal, local or administrative rules nor is it all inclusive of all the regulations that may apply to you as an employer.

Whenever in doubt, it is always best to contact the Department and seek advice or consultation.



SECTION 1

Temporary Labor Certification

The conditions of employment

The H-2B process starts with the approved Temporary Labor Certification. All the documents you submitted with your application for labor certification are a part of the actual labor certification. Those documents are listed on the Labor Certification Checklist. Employers are expected to meet all assurances and conditions agreed to in documents submitted as a part of the labor certification.

The most important document is the GDOL 750, which contains most of the conditions which you must follow during your H-2B worker's term of employment. The specifics of these conditions may not change without expressed consent of the Government of Guam. We will explore some of the conditions in more detail:

Employer: Certifications are granted for a specific employer. The H-2B worker may only work exclusively for that employer. The worker is not authorized to work part-time or as a sole-proprietor doing "sideline" jobs. The employer is responsible to ensure that this does not occur and may be penalized or required to repatriate the worker should this condition be violated.

It is possible to transfer a worker to another employer however, the new employer must also have an approved labor certification and approval from USCIS to change employers. The process is almost identical to importing a new worker. If transferring, make sure that the worker's authorized stay in the U.S. does not expire. A pending transfer petition will not allow the worker to remain in the U.S. if the original petition expires.

Occupation and Job Duties: The H-2B worker may only perform duties listed on the GDOL 750. Should the worker be observed doing other work duties, the employer may be fined, usually \$500 per worker.

We do recognize the temporary need for a worker to help other workers for short periods of time. One example is during concrete pouring. We understand that all workers are normally needed to handle this function before the concrete hardens. A general rule of thumb is, a worker should not be spending more than 10% of his work time in any given work week doing duties that are not listed on the GDOL 750.

Rate of Pay: The employer must pay the H-2B worker the rate listed on the labor certification. Although it is generally understood that you cannot pay less than the pay rate on the certification, it is also true that employer cannot pay more than is on the labor certification. Employers have often wanted to reward good workers by giving them a raise. This cannot be done because when you advertised the job offer, you specified a pay rate. If you pay more after the H-2 worker arrives, it is possible that a U.S. worker may have wanted the job at the higher rate. By paying more, you have spoiled the labor market testing.

The only acceptable way to pay a worker more is to raise the pay rate when you extend the worker or petition for another job category (like a supervisor or leader position) and promote the worker to that position after doing appropriate petitions with USCIS. This process is similar to a transfer, but instead of changing employers, you're changing occupations.

Address Where Alien Will Work: On the application, we normally allow employers to list the villages where the projects or office is located. For this specific condition, we refer to the Project Summary Sheet. Because almost all labor certifications are for multiple projects, we developed the project summary sheet which gives the specifics of a project at a glance, without having to refer to the project contract.

H-2B workers can only work on projects listed on the project summary sheet. Workers found on projects not listed on the project summary are considered to be working on the project illegally and the employer is subject to fines.

SUMMARY:



-
1. Only use workers on projects authorized by ALPCD.
 2. Workers must only do job duties within their occupation. H-2B workers are not 'multi-trade' workers.
 3. Make sure to pay the proper wage rate listed on the labor certification.



TEMPORARY LABOR CERTIFICATION APPLICATION CHECKLIST

The Application

- Application for Temporary Labor Certification - Form GDOL 750 (See Item #1)
- Form G-28 (for employers using Attorneys to file the application only)

The Job Offer

- Completed Job Order- Form GES 514 (See Item # 2)
- Proof of Recruitment Efforts Made Prior to Filing the Application
- Proposed Three Day Advertisement (called 2nd Ad)
- Proof of Publication of Three Day Advertisement
- Proposed Employment Contract
- Barracks/ Housing Location Sketch

Justification of Need

CONSTRUCTION INDUSTRY

- Project Summary Sheet (See Item #3)
- Project Location Sketch
- Project Contracts – Prime & Sub
- Building Permits
- Written Submittal (only if contractor is also the developer)

NON-CONSTRUCTION

- Audited Financial Statement
- Written Submittal Justifying the Need for Temporary Alien Workers
- Worksite/Office Location

Employer Profile, Assurances and Sureties

- Contractor's License or Business License (for non-construction)
- Articles of Incorporation or Partnership Agreement
- Completed Clearance Sheet
- Notarized Statement of Employer's Assurances (See item #4)
- Wage Bond
- Repatriation Bond
- Statement of Temporary Nature



COMMON CONSTRUCTION PREVAILING WAGE RATES FOR GUAM

Effective from July 28, 2008 to January 15, 2009:

<u>OCCUPATION</u>	<u>HOURLY WAGE RATES</u>
BRICKLAYER	\$16.72
CARPENTER	\$16.14
CEMENT MASON	\$15.32
CONSTRUCTION EQUIPMENT MECHANIC	\$15.33
COOK, CAMP	\$11.85
ELECTRICIAN	\$18.39
HEATING, AIR CONDITIONING & REFRIGERATION MECHANIC	\$15.73
OPERATING ENGINEER (Heavy Equip. Operator)	\$16.39
PAINTER	\$16.89
PIPEFITTER	\$17.80
PLASTERER	\$13.07
PLUMBER	\$17.80
REINFORCING METAL WORKER	\$14.95
SHEET-METAL WORKER	\$18.05
STRUCTURAL STEEL WORKER	\$15.73
SURVEYOR HELPER	\$15.98
WELDER	\$19.15



SECTION 2

Worker Housing Requirements and Issues

An employer who has certification for more than 5 workers, is required to provide housing in workers' dormitory. Should an employer have a certification for 5 workers or less, the employer is not required to provide housing, however, if he does, the housing is still subject to inspection by ALPCD. Sub-standard housing will not be allowed. Should an employer provide sub-standard housing, the employer will be required to make immediate arrangements to house the workers, probably in a hotel type setting until suitable accommodations are secured.

Most commercial apartment units are suitable for housing 5 or less workers. Once worker occupancy in a dwelling exceeds 5 unrelated individuals, the unit becomes a workers' dormitory (also referred to as worker housing, barracks or labor camps) and is subject to numerous regulations from agencies such as OSHA, Department of Public Health, Guam EPA, Department of Land Management and the Department of Public Works. The housing issue is normally addressed during the clearance process before filing for the Temporary Labor Certification.

In many cases, employers have yet to identify the proper housing at the time of labor certification filing. Assurances are normally made that worker housing will be secured and available for inspection at least 2 weeks prior to the arrival of the workers. Each one of these agencies may require an inspection or documentation regarding the housing. Employers must make sure that they meet this obligation or risk having to house workers in a hotel after arrival.

Other agencies are looking at the following issues:

1. DPW – Responsible for the structure of the housing unit.
2. Dept. of Land Management- Is the unit in proper zoning.
3. Dept. of Public Health & Social Svcs- Dormitory Permit & Sanitary Permit for galley.
4. Guam EPA- What kind of sewer or septic system is being used.

Department of Labor inspectors will be looking at the safety and health aspects and the general condition and suitability of the facility. The safety and health standards are located on Appendix C of this handbook.

Dormitories are subject to unannounced inspection and should be kept in good order at all times. The department reserves the right to temporarily close any facility which may adversely affect the health or wellbeing of worker occupants.

Make sure to deduct no more than \$80.00 per week for board and lodging unless you have an approval from DOL to charge more.

Set strict house rules for your workers to follow so that your housing facility stays clean and in good condition. The employer is ultimately responsible for the housing.

SUMMARY:

1. Make sure you have proper housing available 2 weeks before your workers arrive.
2. Follow all health and safety standards as well as those of other government agencies.
3. Keep your worker housing in good condition and ready for inspection at all times.
4. Only deduct authorized amounts for board and lodging.
5. Set rules to guide your workers and post those rules conspicuously.



SECTION 3

Worker Registration Application & Processing

Within 24 hours (excluding weekend and holidays) from the arrival of your H-2B workers on Guam, you must register your workers with ALPCD by submitting an Application for Registration and all supporting documents.

Documents Required Per Worker:

1. Application for Registration
2. Copy of Passport (showing Visa and I-94) *Bring original passport for inspection.*
3. Signed Employment Contract *(In English and Foreign Language Translation)*
4. Cover Letter *(if submitting multiple applications- pls list names being submitted on letter)*
5. I-797 Notice of Approval from Dept. of Homeland Security

Employers must submit applications, in person, at the ALPCD office. It is always a good idea to bring your file copy so we can stamp receive it as proof that you filed. Failure to submit your application on time may result in fines up to \$500.00 of the first offense.

Once the application is received, the application will be reviewed and processed. Once approved, the employer will be contacted and the workers will be scheduled for ID picture taking. You must ensure that you are on time for your scheduled picture taking appointment.

A \$1,000.00 Registration Fee is due at the time of picture taking. Payment must be made in the form of a Cashier's Check or Money Order payable to the "Treasurer of Guam". After checking in at ALPCD, the employer should take the payment to the DOL fiscal office on the 4th floor and receive documentation showing the payment was accepted. ID cards will not be taken unless proof of payment is first presented.

Workers are not permitted to report to the jobsite without first obtaining proper documentation proving that they have been registered.

In cases where ALPCD is unable to issue an ID card in a timely manner (within 7 to 10 days), ALPCD will issue a Temporary Foreign Worker Certificate of Identification. This document must be in the worker's possession at all times when on the job site. The Certificate of Identification will be valid for no more than 30 days and must be renewed at the ALPCD office immediately upon expiration. There is no fee for the certificate.

In cases where workers are being extended, the employer should file for renewal of the ID card immediately after receiving the Notice of Action from DHS approving the extension. The documentation required for extension is the same as for new importation. Contact ALPCD for temporary ID cards while your extensions are pending.

SUMMARY:



1. Register your workers within 24 hours of arrival by turning in documents to DOL.
2. Do not allow workers to report to work without DOL authorization.
3. During extensions, check with DOL for temporary ID cards.



SECTION 4

Job Site Compliance Rules for Workers on the Job

While workers are on the job, they must comply with the following rules:

1. The worker must possess and visibly display their valid H-2 ID card. Possession or display of a copy of the card is not acceptable.
2. Workers must work only in the occupation listed on their ID card.
3. Workers must only work on authorized projects.
4. Workers must work only for the employer on the ID card.

These four rules are the main things ALPCD inspectors look for when on the job site. Any violations of the above rules may result in fines being issued to the employer. ALPCD inspectors will also look for any violations of local or federal law while on the job site and if violations are detected, information may be forwarded to proper federal or local agencies.

ALL workers on the job site should have identification. Those workers who are Lawful Permanent Residents must have their original “green card” in their possession and must present it to inspectors upon request.

We have noticed that many U.S. workers and especially Micronesian workers do not have ID at the job sites. We urge employers to require your workers to have a picture ID when on the job site. Those workers who we are unable to identify may run into problems.

Workers should be advised by the employer as to their responsibilities. For those workers who speak little or no English, they should know that if an inspector or law enforcement officer approaches them, they should stop what they are doing and present their identification.

Workers should be told to never run from an inspector or officer. When this happens, it appears that they are doing wrong or are illegal workers. Law enforcement officers will give chase and apprehend these workers. Many times these running workers are actually legal workers and had no reason to run.

SUMMARY: 

1. Only use workers on projects authorized by ALPCD.
2. Allow your workers to work only in their registered occupation.
3. Allow your workers to work exclusively for you. No sideline work.
4. Follow all safety and health standards defined by OSHA.
5. Make sure the worker display their ID cards at all times on the job site.
6. Workers should be properly briefed by their employers on how to react when approached by inspectors and law enforcement officers.



SECTION 5

Repatriation

Sending your workers home & other issues.

Before workers can be sent home permanently, for vacation or emergencies, the employer must submit Exit Clearance documents as follows:

1. The employer must submit an APPLICATION FOR EXIT CLEARANCE form to ALPCD at least 15 days before the departure of the worker. The application must be accompanied by an Affidavit from the employer attesting to the fact that all wages due to the worker have been paid.
2. After the worker has departed, the employer must submit the NOTIFICATION OF DEPARTURE form, within 10 days, showing the actual departure of the worker and the notification should be accompanied by a copy of the airline ticket.

In cases where the worker must depart immediately, the employer should consult with ALPCD as soon as possible, but in no case should a worker depart without an application for exit clearance being submitted.

Many employers have questioned whether there is a grace period for workers to leave once their visas or authorized extensions have expired. If the worker departs after his authorized stay, the worker has “overstayed”. There is no grace period. If a worker overstays for a certain period of time, the worker may be barred from re-entering the U.S. for periods of 3 to 5 years. New regulations being promulgated by USCIS may contain additional penalties for workers who have overstayed. It is not in the best interest of the employer or the alien that any worker overstays even 1 day.

In the event that a worker absconds or “runs away”, the employer must immediately report the incident. The best practice is as follows:

1. Write a letter to the ALPCD Administrator reporting the worker as being absconded. The letter should have the following information:
 - The worker’s name, date of birth, social security number and/or GDOL ID number, the workers occupation and the workers expiration date.
 - State whether or not the worker is still considered employed by your company.
 - State the circumstances in which you found out that the worker absconded.
 - State any information you have as to where the worker may be residing or working.
 - State that your company will continue to investigate and will forward any and all information to ALPCD that you may discover in the future.

2. Attach a copy of the worker's passport picture and/or GDOL ID. All employers should collect such copies at the beginning of the worker's employment.
3. If an electronic copy or scan is available, email the letter and pictures to ALPCD and deliver the original to the ALPCD office.
4. Deliver a cc copy to the U.S. Immigration and Customs Enforcement office.
5. If the absconder is from the Philippines, deliver a cc copy to the Philippine Consul General.
6. Submit an application for Exit Clearance specifying that the worker has absconded.

By following this procedure, you have notified all necessary law enforcement officials, but keep in mind that until the worker departs, you as the employer bear some responsibility to help find and repatriate the worker. Merely reporting it does not absolve you of the responsibility.

If the worker is a true missing person, immediately report the incident to the Guam Police department and ALPCD. We will give further instructions on what actions to take.

SUMMARY:

1. Make sure to submit Exit Clearances before worker departures.
2. Make sure to properly report "run away" or absconded workers.
3. Report missing persons to GPD and ALPCD immediately.



SECTION 6

Reporting Requirements

What forms you need to turn in and when.

Employer's Workplace Monthly Reports – Due before the 7th of each month

Worker Registration- Due 24 hours after arrival of new workers or due within 1 week from the receipt of your extension approval (form I-797).

Application for Exit Clearance- Due 15 days before the departure of a worker.

Notification of Departure- Due 10 days after worker departs Guam.

Housing Exemptions- When a worker requests to live outside the housing facility, a request must be submitted to and approved by the Director of Labor.

Increases in Board and Lodging Deduction- If charging more than the \$80.00 per week, a request and justification must be submitted to and approved by the Director of Labor.

Absconded Workers- Submit notification and supporting documents to ALPCD

Changes in housing faculties- Notify ALPCD in writing whenever there are any changes in housing.



ALPCD CONTACT INFORMATION

WEBSITE ADDRESS:
www.guamdol.net

FAX NUMBER:
(671) 475-7018

KEY PERSONNEL:

Staff Name	Title	Telephone	Email Address
Greg S. Massey	ALPCD Administrator	(671) 475-7005	alpcd-greg@hotmail.com
Pinky B. Hills	Compliance & Inspection Section Head	(671) 475-7029	pinkyhills@yahoo.com
Rose Benavente	Certification Section Head	(671) 475-7029	rose_benavente@yahoo.com
Angela Tydingco	Prevailing Wage Determination Section Head	(671) 475-7013	atydingco@gmail.com
Dorinda Meno	Administrative Section Head	(671) 475-7013	drmeno3@gmail.com

The Great Seal of the Government of Guam is a circular emblem. It features a central palm tree with a yellow frond, a blue and white sailboat on a blue sea, and a yellow sun. The seal is surrounded by a red border containing the text "GREAT SEAL OF GUAM" at the top and "NO' I MAN CHAMORRO" at the bottom.

**Administrative Rules
& Regulations
of the
Government of Guam
Relative to the Employment
of H-2B Workers**

APPENDIX A

17 GAR- Labor Relations
Div. 1- Department of Labor
CHAPTER 7
TEMPORARY ALIEN WORKERS

- §7101. Authority and Purpose.
- §7102. Definitions.
- §7103. Certification Required; Expiration; Extension.
- §7104. Certification Requirements.
- §7105. Registration of Temporary Alien Workers; Identification Badges.
- §7106. Renewal of Certification and Registration.
- §7107. Exit Clearance.
- §7108. Living Arrangements.
- §7109. Control of Temporary Alien Workers' Behavior and Passports.
- §7110. Employer's Workplace Monthly Report.
- §7111. Notices.
- §7112. Other Laws, Rules and Regulations Applicable.
- §7113. Penalties.
- §7114. Hearings.
- §7115. Petitions.
- §7116. Severability.
- §7117. Interpretation.

§7101. Authority and Purpose. (a) **Authority.** Authority under Guam law for the promulgation of Rules and Regulations affecting labor conditions in Guam by the Director of Labor is contained principally in §48055 of the Government Code (GC), and additional authority for these Regulations is provided by §44017.1(a) and §44025 GC.

(b) **Purpose.** The purpose of these Rules and Regulations is to provide for the orderly control of the process in certifying the lack of available U.S.-resident labor for employment opportunities in Guam, in recruiting Temporary Alien Workers for employment in specific jobs available in Guam, in ensuring that Temporary Alien Workers are accorded fair and safe treatment in their employment and stay in Guam, and in protecting the U.S.- resident labor force from adverse effects due to the employment in Guam of Temporary Alien Workers.

§7102. Definitions. For the purposes of this Chapter, and unless required by context, the following terms shall have the following definitions:

(a) *Department of Labor; Director of Labor* shall mean the Government of Guam Department of Labor and the Director thereof, respectively;

(b) *U.S.-Resident Worker* shall mean any person, whether a citizen or national of the United States of America or a foreign citizen or national, who is legally permitted to reside and work permanently within the United States of America and its Possessions;

(c) *Employer* shall mean any person, firm, corporation or other organization currently located in Guam which hires or which is legally entitled and prepared to hire the labor services of persons and to which U.S.-resident workers may

be referred for employment, or the authorized representative of such person, firm, corporation or other organization. An employer must be duly registered and licensed to conduct business in Guam;

(d) *Employment Position* shall mean any established, paid position within an employer's business organization that is either filled or available to be filled by a person offering labor services to the employer;

(e) *Job Opportunity* shall mean any established employment position which is currently vacant and left unfilled by a qualified worker;

(f) *Temporary Alien Worker* shall mean any person who is not a U.S.-resident worker and who comes temporarily to the United States to perform labor services, but remains a resident of a foreign country and has no intention of abandoning that foreign residency;

(g) *Temporary Labor Certification* shall mean a certification issued and attested to by the Governor of Guam that there is a need and use for Temporary Alien Workers in Guam, and that it has been determined that:

(1) There are no U.S.-resident workers who are available and willing to fill a job opportunity in an employment position established in Guam; and,

(2) The employment of a Temporary Alien Worker in Guam in a particular employment position will not adversely affect wage rates, other compensation, or the working conditions of U.S.- resident workers similarly employed in Guam.

It shall have the same meaning as the term, "Alien Employment Certification;"

(h) *Application* shall mean either the process or the written documents required to be filed, in a form provided by the Department of Labor, in making a request for a Temporary Labor Certification, the Registration of a Temporary Alien Worker, or Exit Clearance for a Temporary Alien Worker; and,

(i) *Registration* shall mean the recording of personal and other officially-required information with the Department of Labor regarding an individual Temporary Alien Worker, and the approval of that individual's authorization to work, on a temporary basis, for a specified period of time and for a specific employer, on a designated project or designated projects in Guam.

§7103. Certification Required; Expiration; Extension.

A Temporary Labor Certification is required before a Temporary Alien Worker can be permitted entry to work in Guam. Such certification shall be valid only for the employer submitting the prerequisite Application for Certification, and only for the specific activity and the occupation for every Temporary Alien Worker covered by the certification, and shall not be transferable. This certification may only be valid for a period of up to one year, and upon expiration, the Temporary Alien Worker must leave Guam. Provided, however, that it shall be possible, under certain conditions,

to extend a certification for additional periods of up to one year, for a total period of certification of an individual Temporary Alien Worker of up to three years.

(a) **Certification: Required.** Each employer seeking to bring a Temporary Alien Worker into Guam for purposes of employment, or to employ such Temporary Worker while in Guam, shall first obtain a certification from the Governor of Guam, through the Department of Labor, that such Temporary Worker's employment in Guam will not:

(1) Adversely affect wages prevailing in Guam in the industry and occupation for which certification for such Temporary Worker is requested;

(2) Adversely affect working conditions in Guam; or,

(3) Displace any U.S.-resident worker from employment or exclude any qualified U.S. resident from any job opportunity within Guam. In addition, such employer shall agree to abide by the laws and regulations of the United States and of Guam for the duration of such Temporary Alien Worker's presence in Guam.

(b) **Certification: Expiration.** Each certification of the need to bring a Temporary Alien Worker into Guam shall expire no more than one calendar year beyond its initial effective date.

(c) **Certification: Extension.** Each extension of a certification shall meet all of the requirements, provisions and conditions that are necessary in obtaining an initial certification for the employment of a Temporary Alien Worker in Guam. In addition, no certification shall be renewed for a period of time that would allow an individual Temporary Alien Worker to enjoy a continuous stay of more than three years in Guam, except that an absence from Guam and the United States for a continuous period of six months shall qualify the Temporary Worker for additional temporary employment in Guam as if the Temporary Worker had not previously worked in the United States.

§7104. Certification Requirements. It is intended in these Regulations that every responsible effort is made to ensure that the objectives of the laws of Guam and the United States regarding the employment of Temporary Alien Workers are met, both in the letter and the spirit of the law. To this end, Temporary Alien Workers may only be certified for full-time Job Opportunities where the Job Opportunity is neither vacant because the former occupant is on strike or is being locked out in the course of a labor dispute, nor at issue in a labor dispute, and an extensive set of requirements must be met to ensure that the labor market for U.S.-resident workers is thoroughly tested before a recommendation can be made by the Department of Labor that a Temporary Labor Certification be issued by the Governor of Guam. These requirements fall into the categories of recruitment, application, verification and recommendation.

(a) **Recruitment.** An employer must make an exhaustive attempt to recruit U.S.-resident workers for any Job Opportunity that it might have among its Employment Positions, which may not require any qualifications or other conditions that would preclude consideration of or otherwise prevent effective recruitment of U.S.-resident workers, before filing an Application for Certification of the need for Temporary

Alien Workers in Guam. Substantially the same terms and conditions of employment must be offered to U.S.-resident workers before the job opportunity is offered to any Temporary Alien Worker, as follows:

(1) **Prevailing Wage Rate.** The Job Opportunity must be offered at the prevailing wage rate, established by the Director of Labor through survey and publication, for those particular skills and level of experience required in the employment position and industry in which the opportunity is offered. Should such prevailing wage rate not be among those published, the Director shall advise the employer of the appropriate prevailing wage rate to offer in recruiting to fill a job opportunity under the requirements of these Regulations.

(2) **Other Compensation.** In addition to other terms and conditions of employment, the employer may offer non-wage compensation to the prospective employee, including but not limited to transportation, board and lodging, health and life insurance, a retirement annuity and bonuses, but all such compensation must be offered to U.S. resident workers to at least the same extent and in the same manner as they are offered or to be offered to Temporary Alien Workers.

(3) **Advertising Job Opportunities.** The employer shall advertise a Job Opportunity for an Employment Position in a publication of general circulation in Guam, such advertisement including all terms and conditions of employment as may be offered for the Job Opportunity and Employment Position, for a period of three consecutive working days, and in such other media and for such period as may be required by the United States government, after submitting an Application for Certification. Such advertising shall direct applicants to the Guam Employment Service of the Department of Labor, and shall not identify the employer's name, address or telephone number.

(4) **Compliance.** The employer shall be in compliance with all other laws and regulations of Guam and the United States during its efforts in the recruitment of Temporary Alien Workers under this Chapter.

(5) **Testing of U.S.-Resident Workers.** No employer shall subject a U.S.-resident worker to testing, either orally or in writing, as an element in the recruitment process in the absence of proof that Temporary Alien Workers are also subject to substantially the same tests, and the tests are based upon established U.S. standards.

(b) **Application.** In order for an Application for Certification to be entertained by the Governor of Guam, it must first be properly submitted to the Department of Labor; the Application for Certification must be submitted to the Department of Labor at least 40 days before the worker's services are needed. The Application shall, at a minimum, meet the following requirements:

(1) **Form and Submission.** Each Application for Certification shall be submitted to the Department of Labor on Form GDOL 750 Part A, provided by the Department of Labor, or a reasonable facsimile; such submission shall be in triplicate, with each copy bearing the original signature of the applicant, and shall include all of the information requested on

the form and required in these Regulations by the Department of Labor; all information included in the Application shall be true and correct. Each Application for Certification may be for the certification for more than one Temporary Alien Worker within a single occupation, but no Application for Certification may include a request for Temporary Labor Certification of Temporary Alien Workers in more than one occupation. An employer applying for Certification for both new recruitment and for the extension of Certification for Temporary Workers already working in Guam within a single occupation must, however, submit an Application for new recruitment and a separate Application for extension for each occupational category.

(2) **Information Required.** In submitting an Application for Certification, the employer shall provide the following information:

(A) The name, permanent address and type of visa held by the Temporary Alien Worker, if the application is for the extension of certification of an alien already registered to work in Guam; if the application is for a new importation of labor, this information may be provided at a later time;

(B) The name, address and telephone number of the employer, and the nature of the employer's business;

(C) The job title, hours of work, work schedule and rate(s) of pay offered for the Employment Position, and a full description of the job to be performed, including whether it is permanent or temporary in nature and whether it is unionized. If the Employment Position is temporary, the number of such positions to be filled by aliens and the exact expected beginning and ending dates of the Job Opportunity must be included;

(D) A detailed description of the employer's efforts to recruit U.S.-resident workers to fill the Employment Position, specifying all sources of recruitment by name, and the results of such efforts; and,

(E) A description of the minimum qualifications necessary for the Employment Position, including education, training, experience and any other special requirements.

(3) **Assurances Required.** In addition to the information required in an Application for Certification, the employer shall provide the following written assurances:

(A) That the recruited alien's agent or attorney has not been and will not be involved in the process of attempting to recruit qualified U.S.- resident workers for the Job Opportunity;

(B) That the Employment Position is temporary, that the Job opportunity actually exists, that no qualified U.S.-resident worker will be displaced or otherwise adversely affected as a result of the approval of the Application for Certification, and that, other things being equal, the Temporary Alien Worker's employment will be terminated before that of any U.S.-resident worker in a

similar position;

(C) That reasonable efforts have been and will continue to be made by the employer to obtain qualified U.S.-resident workers at the Prevailing Wage Rate, benefit levels, terms and conditions of employment, and working conditions no less favorable than those offered to the Temporary Alien Worker, and that the Job Opportunity is open to all qualified U.S.-resident workers without regard to race, color, creed, national origin, age, sex or citizenship, and to U.S.-resident workers with handicaps who are qualified, willing, able and available to perform the job offered;

(D) That the employer has not rejected and will not reject any qualified U.S.-resident worker on the grounds that the employer's supervisory personnel speak a language other than English;

(E) That the Job Opportunity is neither vacant because the former occupant is on strike or is being locked out in the course of a labor dispute, nor at issue in a labor dispute; and,

(F) That the employer will comply with all applicable Guam and U.S. laws and regulations during the period for which the certification is requested.

(4) Additional Documentation to be Attached. In addition to the information and assurances required above, the employer shall attach the following documents to the Application for Certification:

(A) Written documentation of all efforts to recruit U.S.-resident workers for the Employment Position (including clippings of newspaper advertisements and other public notices of the Job Opportunity) and details of the results of such efforts, including the name(s) and Social Security number(s) of any U.S.-resident worker(s) hired or rejected;

(B) One copy of the employer's current license to do business in Guam and (if applicable) the employer's Articles of Incorporation or Partnership Agreement;

(C) One copy each of the Job Orders (forms ESSI 514 and GES 514), exhibiting compliance with Subchapter IV.A., Paragraphs 1., 2. and 3. of this Chapter, for the occupational category covered by the application;

(D) One copy of the employer's Workers' Dormitory Permit (if applicable); if such Permit is not available at the time of Application, it must be submitted prior to a Certification being granted;

(E) A notarized Letter of Assurance in a form approved by the Department of Labor;

(F) A sample copy of the employment contract to be used in recruiting employees for the Employment Position;

(G) Two copies each of the project contract(s) (if applicable) and the building permit(s) (if applicable), provided:

(i) if the employer is a contractor and is the project developer, a statement of the expected project completion date and documented information regarding the means of financing the project (such as a loan approval) shall be included; and,

(ii) if the project is a subcontract, a copy of the prime contract should be included;

(H) One copy each of:

(i) a clear project location sketch; and,

(ii) a clear barracks location sketch;

(I) A completed Project Summary Sheet on a form provided by the Department of Labor;

(J) A Performance and Payment Bond and a Repatriation Bond covering all Temporary Alien Workers and U.S.-resident workers employed in the project;

(K) A notarized Statement of Guarantee that the employer will pay no less than the Prevailing Wage Rate (as established at the time the Application is submitted) to all U.S. and foreign workers employed by the employer, in a form approved by the Department of Labor; and,

(L) If the employer is represented in the application process by an agent or a non-management employee, a letter of authorization including a statement of the extent to which the agent is authorized to make changes to the application. If the agent is an attorney, a copy of INS Form G-28 (Notice of Appearance) must also be attached.

In addition, prior to the issuance of an approved Application for Certification, the employer shall submit a completed Clearance Sheet on a form provided by the Department of Labor indicating the approval of the applicant by the Guam Department of Land Management, the Guam Environmental Protection Agency, the Division of Environmental Health of the Guam Department of Public Health and Social Services, and the Workers Compensation Commission, the Wage and Hour Division, the Guam OSHA Labor Compliance Inspection Section, the Bureau of Labor Statistics and the Fair Employment Practices Division of the Guam Department of Labor.

(5) **Other Requirements.** The Application shall include such other assurances and meet such other criteria as may be required from time to time by the Governor of Guam through the issuance of an applicable Executive Order, and as may be required by the laws or regulations of Guam or the United States.

(c) **Bonds Required.** Upon filing Application for Certification with the Department of Labor, the employer shall provide the Department with both a repatriation bond and a performance and payment bond, or evidence thereof, with the Department of Labor named as a beneficiary. The repatriation bond is to ensure that the costs of transporting a Temporary Alien Worker or a U.S.-

resident worker to his/her point of origin can be met in the event of default or insolvency of the employer; the performance and payment bond is to ensure that the Temporary Worker or U.S.-resident worker is paid in full for all work performed for the employer.

(1) **Repatriation Bond.** A repatriation bond, also referred to as a repatriation guaranty bond, shall be given to the Department of Labor by an employer for every Temporary Alien Worker registered with the Department of Labor by the employer. Such bond shall be in an amount sufficient to guarantee that the Temporary Alien Worker may be expeditiously returned to his/her point of origin upon the termination of the Temporary Worker's employment or eligibility for employment in Guam.

(2) **Performance and Payment Bond.** A performance and payment bond in the amount of four percent of the total cost of the project or projects for which certification is requested shall be given to the Department of Labor for every project for which an employer seeks to employ a Temporary Alien Worker in Guam. This bond shall be given to the Department of Labor upon the Application for Certification of the first Temporary Alien Worker requested for the employer on a given project, and evidence of the bond shall be included with the Application for Certification of each subsequent Temporary Worker requested by the employer for the same project. A request for approval of authorization for the Temporary Worker to work on an additional project shall be accompanied by an additional performance and payment bond in the amount of four percent of the additional project amount.

(3) **Bonding Devices Acceptable.** The sole financial device acceptable as a repatriation bond and performance and payment bond is limited to an Insurance Bond, issued by a carrier licensed to do business in Guam and naming the Department of Labor as a beneficiary. However, any Insurance Bond obtained as a performance and payment bond for any project may be used to satisfy other bonding obligations, except that the Guam Department of Labor shall be included as a beneficiary of such bond. The repatriation bond and the performance and payment bond may be combined in a single instrument, at the discretion of the employer.

(4) **Release of Bonds.** The repatriation bond required shall be released after the employer provides the Department of Labor with a certification from a transportation carrier that the Temporary Alien Worker has departed from Guam; such certification shall include the name of the Temporary Worker, the name of the carrier, the date of departure and the ticket number. The performance and payment bond required may be released when the employer provides evidence of the completion of a project, as shown by a notice of completion and/or an occupancy permit filed with the Guam Department of Labor, and evidence that all Temporary Alien Workers certified for the project either have been repatriated or are certified to work on another project in Guam which has not been completed. To obtain the release of bonds, the employer shall submit a request to the Director of Labor in writing, and shall attach such documentary information as is deemed appropriate to

expedite the release.

(d) **Recruitment Verification.** As the agency principally responsible for regulating employment conditions in Guam, the Department of Labor will verify, to the best of its ability, that the objectives of a Temporary Labor Certification (as indicated in Subchapter II.G.) are met in the recruitment process. The Department of Labor may therefore both verify that information in the Application relating to prior recruitment efforts is accurate and ascertain through its own efforts that the objectives of certification are met.

(1) Any information or other evidence submitted by an employer in an Application for Certification may be verified to be true and correct through whatever means may be deemed necessary by the Department of Labor. The employer shall provide all reasonable assistance in this effort.

(2) The Department of Labor may undertake to recruit a U.S.-resident worker, through whatever means it deems appropriate, for any Job Opportunity offered by an employer submitting an Application for Certification. In the event that this process involves external costs, such as the costs of advertising, such costs shall be paid by the employer.

(3) In the event that the Department of Labor is not able to verify that adequate recruitment efforts were made by the employer submitting an application for Certification, or if the Application is found to not meet the requirements of these Regulations, such Application may not be submitted to the Governor with a recommendation for approval, but shall be returned to the employer with a written notice giving a reason why the Application was rejected. A notice of the right to appeal such rejection shall be included in such notification.

(e) **Recommendation to the Governor.** Upon review and approval of an Application for Certification by the Department of Labor, such Application shall be transmitted to the Governor with a recommendation for certification. The Governor shall have final authority in Guam in the certification, and the decision of the Governor shall not be subject to appeal within the Government of Guam.

(1) **Transmittal to Governor.** Such Application shall be transmitted to the Governor, with appropriate recommendations, within ten days of a determination of recommendation by the Director of Labor, and in no case later than sixty days past the date of submission of the Application.

(2) **Notification of Governor's Decision.** Upon determination whether to certify or to not certify the Application for Certification, the Governor will return the Application to the Department of Labor for notification of the employer.

(A) Upon return by the Governor of a determination to certify an Application for Certification to the Department of Labor, the Department will notify the employer submitting such Application within fifteen working days of the Governor's determination. Such notification shall include the Application for Certification, with a temporary labor certification stamp thereon, all supporting documents submitted as a part of the Application, and the Application shall indicate that the employer should submit all

documents together with the employer's Application to the appropriate Immigration and Naturalization Service office.

(B) In the event that the Governor's determination is to not certify an Application for Certification, the Department of Labor shall provide a reason, in writing, as to why the Application was denied, and advise the employer of the right to appeal the determination to the Immigration and Naturalization Service.

§7105. Registration of Temporary Alien Workers; Identification Badges.

Once certification is obtained by the employer, it shall be the employer's responsibility that each Temporary Alien Worker be registered with the Department of Labor upon arrival in Guam. This process shall require the approval of an Application for registration and the payment of a registration fee, as well as the posting of bonds required to ensure the payment of wages and other compensation to the Temporary Alien Worker and the repatriation of such Temporary Worker, upon termination of employment, to the Temporary Worker's country of residence. Each Temporary Alien Worker authorized to work in Guam under the laws of the United States and Guam and under these Regulations shall be issued an identification badge as evidence of such authorization.

(a) **Registration Required.** Each employer bringing a Temporary Alien Worker into Guam for a Job Opportunity in an established Employment Position shall register such Temporary Worker with the Department of Labor upon the Temporary Worker's arrival in Guam, and prior to the initial employment of such Temporary Worker in Guam.

(b) **Registration Process.** All of the requirements of the registration process shall be met before an identification badge is issued to a Temporary Alien Worker, entitling said Temporary Worker to the right to employment, under restricted conditions, in Guam.

(1) **Time of Registration.** Each employer of a Temporary Alien Worker in Guam shall ensure that such Temporary Worker is registered with the Department of labor within 24 hours (excluding weekends and government of Guam holidays) of such Temporary Worker's physical arrival in Guam, such registration evidenced by the issuance by the Department of Labor of an identification badge to the Temporary Worker.

(2) **Application for Registration.** In order to register a Temporary Alien Worker, an Application for Registration shall be submitted by the employer to the Department of Labor on a form provided by the Department of Labor, and shall be approved by the Director of Labor.

(A) **Information Required.** The following information shall be required upon the form submitted in an Application for Registration:

(i) The surname and given name, height and weight (in standard English units of measure), eye color, date of birth, address and telephone number while in Guam, home address and country, INS Form I-94 AGA number, passport number and arrival date of the Temporary Alien Worker; and,

(ii) The employer's name, telephone number and address in Guam, and the name and telephone number of the Temporary Alien Worker's manager or supervisor.

(B) Assurances Required. In addition to the information required in the Application for Registration, the following written assurances shall be required:

(i) That the employer will comply with all applicable laws and regulations of Guam and the United States for the duration of the Temporary Alien Worker's stay in Guam;

(ii) That the employer will continue to attempt to recruit U.S.-resident workers for its Employment Positions filled by a Temporary Alien Worker for the duration of the Temporary Worker's stay in Guam;

(iii) That the employer participates and will continue to participate in the Apprenticeship Program, as prescribed by the Guam Community College, or such other Apprenticeship Program(s) as may be approved by the Director of Labor;

(iv) That the employer will obtain an Exit Clearance from the Department of Labor prior to the departure of the Temporary Alien Worker from Guam; and,

(v) That no employment contract other than the employment contract submitted with the Application for Registration is in force, either in the U.S. or in any foreign country, that covers the Job Opportunity for which the Temporary Alien Worker is being employed in Guam, and that two copies of the employment contract have been provided to the Temporary Worker, one in English and the other in the language of literacy of the Temporary Worker.

(C) Documents Required. In addition to the information and assurances required above, a complete Application for Registration must have the following documents attached:

(i) Two copies of the employment contract between the employer and the Temporary Alien Worker, one in English and the other in the language of literacy of the Temporary Worker;

(ii) If applicable, a signed authorization from the Temporary Alien Worker to the employer to deduct a specified amount from the Temporary Worker's pay each pay period in compensation for board and lodging actually provided by the employer to the Temporary Worker; and,

(iii) If applicable, a signed authorization from the Temporary Alien Worker to the employer for the employer to hold the Temporary Worker's passport for safekeeping and for other specified purposes, and including a statement of understanding, initialed by the employer, that the passport shall be returned to the Temporary Worker upon request.

(D) In order for an Application for Registration to be considered by the Department of Labor, such Application must also comply with all other requirements established by the Governor of Guam through Executive Order.

(3) **Registration Fee.** A non-refundable fee of Two Hundred Dollars (\$200.00) shall be paid to the Department of Labor upon the registration of any Temporary Alien Worker to be employed by an employer within Guam. If such registration is for a period of less than one year, the amount of this fee shall be prorated to the amount necessary to cover that portion of a year for which the registration is made.

(c) **Testing.** Upon submission of an Application for Registration, the Department of Labor may test or cause to be tested the skills and qualification of a Temporary Alien Worker for the Job Opportunity and Employment Position for which the Temporary Worker is certified. If the Temporary Alien Worker is found not to have the requisite skills or qualifications for the Employment Position, such Temporary Worker shall not be registered, but shall be referred to the U.S. Immigration and Naturalization Service for disposition. In addition, if a Temporary Alien Worker is found not to have the requisite skills or qualifications, the Department of Labor may cause all such Temporary Workers certified to work for the employer to be similarly tested.

(d) **Registration Granted.** Upon successful compliance with the requirements of A., B. and C., above, the Department of Labor will approve the Application for Registration and will authorize the Temporary Alien Worker to work in Guam for a period of up to one year. Evidence of such registration shall consist of a current and valid identification badge issued by the Department of Labor to the Temporary Worker, and such identification badge shall constitute a work permit and a work permit identification card.

(e) **Identification Badges.** The Director of Labor shall issue an identification badge to each Temporary Alien Worker registered with the Department and authorized to work

in Guam. Such identification badge shall have upon it the name of the Temporary Alien Worker, the name of his/her employer, the job category for which the Temporary Worker is certified, a photograph of the Temporary Worker's face, and such other information as may be deemed appropriate by the Director of Labor; it shall bear the signature of the Director of Labor.

(1) **Issuance.** Each Temporary Alien Worker shall be issued an identification badge by the Department of Labor upon completion and approval of registration with the Department.

(2) **Conditions.** Each Temporary Alien Worker registered with the Department of Labor and issued an identification badge shall meet the following conditions:

(A) The Temporary Alien Worker's identification badge shall be retained upon the person of such Temporary Worker (except for necessary and incidental occasions related to personal health and hygiene needs) at all times; and,

(B) Such Temporary Worker shall conspicuously display his/her identification badge at all times during working hours, preferably worn at the collar or breast pocket, but also acceptable at the frontal waistband, sleeve or shirt opening, or attached to the front of the Temporary Worker's safety helmet.

(3) **Replacement.** In the event that a Temporary Alien Worker's identification badge is lost, misplaced, stolen or accidentally destroyed, such incident shall be reported immediately to the Department of Labor, and the Temporary Worker shall immediately seek replacement of the identification badge. In seeking replacement, the Temporary Worker must:

(A) File an affidavit with the Department of Labor describing the circumstances of the loss, misplacement, theft or destruction of the identification badge, and attest that such affidavit is true; and,

(B) Pay Ten Dollars (\$10.00) to cover the costs of replacing the identification badge.

§7106. Renewal of Certification and Registration. In order for an employer to retain the labor services of a Temporary Alien Worker in an Employment Position beyond the period for which the Temporary Worker is registered, the employer must meet all of the requirements of certification and registration of the Job Opportunity and the Temporary Worker as if they were for the initial employment of the Temporary Worker in Guam.

§7107. Exit Clearance. At least 15 days prior to the departure of a Temporary Alien Worker from Guam, the Temporary Worker's employer shall apply with the Department of Labor for exit clearance for the Temporary Worker, and such application shall be approved by the Director of Labor. Before issuing an Exit Clearance, the Director of Labor shall require an affidavit from the employer that all wages and other compensation due and payable to the Temporary Worker(s) have been paid or otherwise given to the Temporary Worker(s) by the employer.

(a) **Application for Exit Clearance.** A completed Application for Exit Clearance shall be filed by every employer of a Temporary Alien Worker preparing to depart from Guam, and such Application shall be filed on a form provided by the Department of Labor.

(b) **Notification of Departure.** Within ten days after the departure of a Temporary Alien Worker from Guam, the employer of that Temporary Worker shall provide the Department of Labor with notice of such departure, and in such notice shall include the name, occupation, citizenship, date of departure, transportation carrier and flight number, point of recruitment and point of return, as well as the ticket number of the departing Temporary Alien Worker.

§7108. Living Arrangements. Any employer having certification for more than five Temporary Alien Workers in Guam shall make lodging and board available to its employees in Guam. Such lodging may be in a workers' dormitory, and each of the employer's employees residing in such workers' dormitory may have a charge for such lodging and board

deducted from his/her pay; such board may include, but not be limited to, the Temporary Worker's meals and personal hygienic needs, and charges for such board provided by the employer may be included in the charge for lodging deducted from the Temporary Worker's pay. Deductions from the Temporary Worker's pay for lodging and board may be made only after authorization by the Temporary Worker for such deductions is filed by the Temporary Worker, in writing, with the Department of Labor. Such lodging and board shall be in compliance with the laws and regulations of Guam and the United States relating to sanitation, health and safety, and the employer's facilities and staff used in providing such lodging and board to Temporary Workers shall be subject to permitting requirements and unimpeded inspection by the Departments of Labor and Public Health and Social Services and the Guam Environmental Protection Agency.

(a) Temporary Alien Workers Required to Live in Group Quarters. Any Temporary Alien Worker employed by an employer required to make lodging and board available to its employees must reside in a workers' dormitory provided by the employer, except that any Temporary Worker planning to live with a relative in Guam or having personally made other living arrangements in Guam may petition the Department of Labor for an exemption from this requirement and, upon providing satisfactory evidence to the Department of Labor that such living arrangement is appropriate and continuously available, may be granted such exemption by the Director of Labor.

(b) Deductions from Pay for Lodging and Board Limited to Actual Costs.

The employer shall be entitled to recover its costs in providing lodging and board to an employee by deducting such amounts from the employee's pay, but such deductions shall not exceed the actual cost incurred by the employer in providing lodging and board to the employee. If such deductions from the pay of a Temporary Alien Worker exceed Eighty Dollars (\$80.00) per week, the employer shall submit records and such other proof as is necessary to satisfy the Department of Labor that such costs were actually incurred; all such costs may be fully allocated by the employer in determining the amount to deduct from an employee's pay.

§7109. Control of Temporary Alien Workers' Behavior and Passports. The activities of a Temporary Alien Worker in Guam are the responsibility of the employer having certification for that Temporary Worker, except that no employer of any Temporary Alien Worker in Guam shall control that Temporary Worker's behavior during non-working hours. In addition, no employer shall withhold the passport of any Temporary Alien Worker in Guam, except that the employer may hold the Temporary Worker's passport for safekeeping and for other purposes when authorized by the Temporary Worker, in writing, to do so, and when a copy of such authorization has been filed with the Department of Labor, but such passport, if so held, shall be returned to the Temporary Worker immediately upon request.

§7110. Employer's Workplace Monthly Report. Every employer having certification for Temporary Alien Workers in Guam shall file a complete monthly report with the Department of Labor on a form provided by the Department. Such report shall be filed no later than the seventh day of each calendar month, and shall be a true and accurate account of the employer's workforce activities for the

calendar month immediately preceding. Such report shall include, but not be limited to:

(a) **Employee Information.** This shall include the full name, address, citizenship, visa category, Social Security number or AGA number, place of residence in Guam and occupation of each Temporary Alien Worker performing labor services for the employer;

(b) **Certification and Registration Information.** This shall include the commencement and termination dates of certification and registration for every Temporary Alien Worker providing labor services for the employer;

(c) **Employment Position Information.** This shall include the nature and type of work and the project or projects for which each Temporary Alien Worker is performing labor services;

(d) **Costs of Benefits; Deductions from Pay.** This shall report the actual, fully-allocated costs to the employer of providing lodging, board, transportation and any other non-wage compensation given to each Temporary Alien Worker providing labor services to the employer, and a true accounting of the deductions from each Temporary Alien Worker's pay taken in exchange for such non-wage compensation;

(e) **Information Regarding Transferred Temporary Alien Workers.** This shall report the name and occupation of every Temporary Alien Worker who has been or is being recruited, certified and registered by another employer, who is now or has within the past three months been an employee of the employer; and,

(f) **Information Regarding the Unplanned Departure of a Temporary Alien Worker from Guam.** In the event that a Temporary Alien Worker registered by the employer permanently leaves Guam, whether in an emergency or for any other reason, and the employer has not had a reasonable opportunity to obtain an Exit Clearance for the Temporary Worker, this shall be reported in the Employer's Workplace Monthly Report.

§7111. Notices. Any notices or Applications to be filed with the Department of Labor in relation to Temporary Alien Workers shall be filed with the Department's Alien Labor Processing and Certification Division. Any notices to be served upon an employer of Temporary Alien Workers in Guam by the Department of Labor shall be served upon the employer at its address on file in Department records, or, if the employer has retained the services of an attorney to act as its agent in the Applications for Certification and Registration required under these Regulations, upon that attorney in his/her office in Guam.

§7112. Other Laws, Rules and Regulations Applicable. All other laws, rules and regulations of Guam and of the United States, applicable in Guam, relating to the employment of persons and the conduct of business, shall be applicable to the employment of Temporary Alien Workers in Guam, and are incorporated by this reference into these Regulations.

§7113. Penalties. Any violation of these Regulations may be subject to administrative penalties under this Chapter, in addition to any other penalty that may be established by law. Penalties

imposed under this Chapter shall be limited to administrative penalties, but there may be other penalties provided under law that apply to additional provisions beyond the scope of these Regulations. Penalties for a violation of these Regulations related to the certification or employment of a Temporary Alien Worker in Guam shall be limited to a fine not exceeding Five Hundred Dollars (\$500.00) for a Simple Violation and for each instance of a violation within a Multiple Violation. Penalties imposed for a Willful Violation or a Persistent Violation shall be no less than One Thousand Dollars (\$1,000.00), nor more than Twenty-Five Thousand Dollars (\$25,000.00); in addition to the fine imposed for a Willful Violation or a Persistent Violation, the case of the offender may be referred to the Attorney General of Guam for criminal prosecution.

In the event of a violation of the provisions of this Chapter, the offender will be served with a notice of violation, and shall have the right to an administrative hearing conducted by the Director of Labor. The offender shall be given a period of fifteen calendar days to meet with the appropriate Division Head(s) within the Department of Labor, at which time the offender will be apprised of the level of the fine imposed for the offense; the offender may either pay the fine at that time, or appeal to the Director of Labor for a hearing to present the case in the offender's defense; the offender shall have a right to counsel during such hearing.

There are four classes of offense under this Chapter. They are:

(a) **Simple Violations.** These are single, isolated violations of these Regulations that apply only to one Temporary Alien Worker and his/her employer, and are not repetitive in nature.

(b) **Multiple Violations.** These are violations by an employer that apply to more than one Temporary Alien Worker, but are not repetitive in nature.

(c) **Willful Violations.** These are violations that are either repetitive in nature, being repeated after an employer has already been cited for the same or a similar violation of the laws or regulations applicable to the employment of Temporary Alien Workers in Guam, or committed in reckless disregard of such laws or regulations.

(d) **Persistent Violations.** These are similar to Level C violations, except that they are willful violations that are repeated within the span of a single year.

In addition to any other penalty under these Regulations or any other law or regulation applicable in Guam, the Director of Labor may refer the violator to the Executive Director of the Guam Contractors Licensing Board, the Assistant U.S. Attorney in Guam and/or the Officer in Charge of the Immigration and Naturalization Service in Guam for prosecution or other disposition of such violator. In addition, and in cases where material misrepresentation, fraud, or a conviction of a criminal offense has occurred, the Director of Labor may disbar an employer from eligibility to participate in the Temporary Labor Certification program for a period of up to three years.

§7114. Hearings. Upon the request and appeal of an employer of any Temporary Alien Worker or such Temporary Worker himself or herself, the Director of Labor shall hold a hearing of the

facts, and shall give the employer or Temporary Worker cited for a violation of these Regulations the opportunity to be heard and to provide rebuttal to any evidence that might be presented. Such hearing shall take place at a time and in a place designated by the Director of Labor, but shall in no case be held less than thirty days after a notice of violation is issued; such notice of violation shall provide specific information about the alleged violation, including a statement of the evidence that such violation has occurred, the penalty proposed, and a statement of the employer's or Temporary Worker's right to present evidence in its or his/her defense.

§7115. Petitions. Any individual shall have the right to submit to the Director of Labor a petition for the establishment or modification of rules and regulations on subjects under the Authority of the Director, and shall have the right to request advisory rulings, consultations or declaratory rulings in relation to existing regulations. Such petitions and requests shall be submitted in writing and on a form provided by the Department of Labor, and shall be acted upon within 60 days by the Director. The Director shall respond to all petitions submitted under this Title in writing.

§7116. Severability. If any part of these Regulations is for any reason declared to be invalid by a court of law, the remaining regulations under this Title shall not be affected thereby, and shall remain valid and enforceable.

§7117. Interpretation. The provisions of these Regulations shall be liberally interpreted to ensure the compliance of Temporary Alien Workers and their employers in Guam with the objectives and purposes of the laws and regulations of Guam and the United States.

APPENDIX B

Excerpts from Guam Code Annotated Title 22, Chapter 7

§ 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.

§ 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.

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.

§ 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.

(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 repatriation transportation of a non-immigrant temporary worker without obtaining exit clearance from the Guam Department of labor.

(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.

§ 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:

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

(ii) 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.

(g) No person will be granted a certification to employ such nonimmigrant 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. SOURCE: Added by P.L. 21-85:1. Subsection (e) amended by P.L. 23-106:3.

§ 7119. Registration Fee.

(a) The Guam Department of Labor is authorized to collect a registration fee of One Thousand Dollars (\$1,000.00) annually per nonimmigrant temporary worker for each calendar year or a fraction thereof from the employer of each non-immigrant temporary worker, payable at the time of registration by the non-immigrant worker.

(b) Funds collected pursuant hereto shall be subject to legislative appropriation, and shall be used solely to support §7120, Chapter 7, 22 GCA (Manpower Development Fund) and Skills Training

Programs for Guam residents in order to eliminate the need to bring non-immigrant temporary workers on Guam. SOURCE: GC § 44018. Added by P.L. 18-43:4. Amended by P.L. 23-106:4 (July 8, 1996), P.L. 29-002:V:VI:1 (May 18, 2007).

§ 7120. Manpower Development Fund.

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 government of Guam. The MDF is created solely for the purpose of receiving territorial, Federal, and private money and revenues from registration fees on non-immigrant temporary workers.

(a) 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:

(1) One Hundred Thousand Dollars (\$100,000.00) shall be allocated annually to produce the quarterly "The Unemployment Situation on Guam" report; and

(2) 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.

(b) Seventy percent (70%) of the annual revenues generated shall be allocated to the Apprenticeship Training Program at the Guam Community College. 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, which shall be expended exclusively to fund the following, which shall be subject to legislative appropriation:

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

(2) the advertising and outreach programs for the promotion of the apprenticeship training programs; and

(3) direct financial assistance to students enrolled in the apprenticeship program. Any unused portion of this allocation under this Subsection shall be returned to the MDF. The MDF shall not be used for any purposes other than those enumerated in this Section. 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).

§ 7124. Prevailing Wages.

The Department of Labor shall disqualify an employer from any nonimmigrant 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 nonimmigrant worker programs for a period of two (2) years plus back wages on any employer found 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. 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. 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. 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 (i) the employer has reported the deficiency to the Department of Labor and (ii) has committed no other violation of this Chapter or any other territorial or Federal labor law. 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.

Appendix C

Safety & Health Criteria for Workers Housing Facilities

1. 29 CFR 1010.142(a) (1)- All sites used for camps shall be adequately drained and not subjected to flooding.
2. 29 CFR 1910.142 (a) (2)- All sites shall be adequate in size to prevent over crowing of necessary structures.
3. 29 CFR 1910.142 (a) (2)- No livestock shall be kept within 500 ft. of sleeping rooms and kitchen/dining facilities.
4. 29 CFR 1910.142 (a) (3)- The shelter surroundings are maintained in a clean and sanitary condition to prevent harborage of rodents and other pests.
5. 29 CFR 1910.142 (b) (2)- Each room used for sleeping purposes contains 50 square feet of floor space for each occupant.
6. 29 CFR 1910.142 (b) (3)- Beds, cots, or bunks, including personal lockers for clothing/personal articles is provided in every sleeping room.
7. 29 CFR 1910.142 (b) (3)- Such beds are spaced not closer than 36 inches for single beds, 48 inches for double-deck bunks, laterally and end to end.
8. 29.CFR 1910.142 (b) (4)- The floors of each shelter shall be constructed of wood, asphalt or concrete. The floors are of smooth finish and easily cleanable.
9. 29 CFR 1910.142 (b) (4)- All wooden floors are elevated not less than 1 foot above ground level to prevent dampness and permit air circulation.
10. 29 CFR 1910.142 (b) (7)- All living quarters are provided with windows structured to be opened for the purposes of ventilation.
11. 29 CFR 1910.142 (b) (8)- Exterior openings are effectively screened with mesh materials. All screen doors shall be equipped with self closing devices.
12. 29 CFR 1910.142 (b) (10)- Cooking facilities are in an enclosed, screened shelter and maintained in a sanitary condition. Sanitary facilities are provided for food storage.
13. 29 CFR 1910.142 (c) (1)- An adequate and convenient water supply is provided in each facility for drinking, cooking, bathing, and laundry purposes

14. 29 CFR 1910.142 (c) (2)- Water Supply in all areas delivers at least 35 gallons per person per day at a peak rate of 2.5 times the average hourly demand.
15. 29 CFR 1910.142 (c) (4)- Where water pressure is adequate, at least one drinking fountain is provided for each 100 occupant load of any fraction thereof.
16. 29 CFR 1910.141 (c) (2) (1)- Each water closet (toilet) has a separate compartment with a door and walls or partitions between fixtures to assure privacy.
17. 29 CFR 1910.142 (d) (2)- Toilet rooms shall have a window not less than 6 square feet in area opening to the outside or be satisfactorily ventilated.
18. 29 CFR 1910.142 (d) (4)- Where the toilet rooms are shared in barracks, separate toilet rooms shall be provided for each sex.
19. 29 CFR 1910.142 (d) (5)- The number of toilet seats provided for each sex shall be in the ratio of one such unit to each 15 persons.
20. 29 CFR 1910.142 (d) (9)- An adequate supply of toilet paper shall be provided in each privy, or toilet compartment.
21. 29 CFR 1910.142 (d) (10)- Privies and toilet rooms shall be kept in a sanitary condition and cleaned daily.
22. 29 CFR 1910.142 (e)- All sewer lines and floor drains from buildings shall be connected thereto.
23. 29 CFR 1910.142 (f)- Laundry, hand washing, and bathing facilities shall be provided: hand wash basin per 6 persons, shower head per 10 persons, and laundry tray, tub or washing machine per 30 persons.
24. 29 CFR 1910.142 (f) (2) Floors are of smooth finish but not slippery materials. Floor drains are provided in all shower baths, shower, or laundry rooms.
25. 29 CFR 1910.142 (f) (3)- An adequate supply of hot and cold running water shall be provided for bathing and laundry purposes.
26. 29 CFR 1910.142 (f)- Facilities for drying clothes shall be provided.
27. 29 CFR 1910.142 (f) (6)- All service buildings shall be kept clean.
28. 29 CFR 1910.142 (i) (1)- The food handling facility shall comply with the requirements of the "Food Service Sanitation Ordinance and Code."
29. 29 CFR 1910.142 (i) (2)- There shall be no direct opening from sleeping quarters into a kitchen or dining room.
30. 29 CFR 1910.142 (k) (1) & (2)- Adequate first aid supplies shall be maintained and a person or persons are trained to administer first aid.

31. 29 CFR 1910.37 (e)- At least two of the exits shall be remote from each other and so arranged as to minimize any possibility that both may be blocked by any one fire or other emergency condition.
32. 29 CFR 1910.37 (f) (1)- Exits and exit access are so arranged that they are readily accessible from all points of exit travel and easily recognizable.
33. 29 CFR 1910.37 (f) (2)- A door from a room to an exit or to a way of exit access shall be of the side-hinged, swinging type.
34. 29 CFR 1910.37 (f) (3)- Exit access do not pass through bathroom or other rooms subject to locking.
35. 29 CFR 1910.37 (f) (6)- The minimum width of any way of exit access shall in no case be less than 28 inches.
36. 29 CFR 1910.37 (g) (2)- Exterior ways of exit access shall have smooth, solid floors, substantially level, and have guards on the unenclosed sides.
37. 29 CFR 1910.37 (g) (5)- An exterior way of exit access shall be so arranged that there are no dead ends in excess of 20 feet.
38. 29 CFR 1910.37 (h) (1)- All exits discharge directly to the street, a yard, court, or there open space that gives safe access to a public way.
39. 29 CFR 1910.37 (i)- Means of egress shall be so designed and maintained with adequate head room with ceiling height not less than 7 ft. 6 in. and no projection from the ceiling less than 6 ft. 8 in. from the floor.
40. 29 CFR 1910.37 (k) (2)- Means of egress shall be continuously maintained free of all obstructions or impediments to full instant use in the case of fire or other emergency.
41. 29 CFR 1910.37 (1) (1)- No furnishings, decorations or other objects are placed as to obstruct exits, access thereto, egress there from or visibility thereof.
42. 29 CFR 1910.37 (1) (2)- No furnishings, decorations of an explosive or highly flammable character shall be used in any occupied areas.
43. 29 CFR 1910.37 (q) (1)- Exit and access to exits shall be marked by readily visible signs in all cases where the exit or way to reach it is not immediately visible to the occupants.
44. 29 CFR 1910.37 (2)- Any door, passage, or stairway which is neither an exit nor a way of exit access that is likely to be mistaken as an exit shall be identified by a sign reading "Not an Exit" or similar designation.
45. 29 CFR 1910.37 (q) (6)- Every exit sign shall be suitably illuminated by a reliable light source not less than 5 foot candles on the illuminated surface.

46. 29 CFR 1910.38 (a) (2) (i)- The emergency escape procedures, escape routes, and emergency call bill for ambulance, fire, and medical help has been promulgated in writing and posted conspicuously in occupied areas.
47. 29 CFR 1910.38 (b) (3)- The employer shall control accumulations of flammable and combustible waste materials and residues so that they do not contribute to a fire emergency.
48. 29 CFR 1910.38 (4) (ii)- The employer has a written fire prevention plan and has reviewed the plan with each occupant those areas of the plan which the occupant must know to protect him/her in event of an emergency or fire.
49. 29 CFR 1910.38 (4) (ii)- The fire prevention plan has been promulgated in writing and posted conspicuously in occupied areas.
50. 29 CFR 1910.157 (c) (1)- Portable fire extinguishers are mounted at least 3-5 feet above floor level, located along normal paths of exit travel, and identified so that they are readily accessible.
51. 29 CFR 1910.157 (c) (4)- Portable fire extinguishers are maintained in a fully charged and operable condition and kept in their designated places at all times.
52. 29 CFR 1910.157 (d) (2)- Portable fire extinguishers are provided and distributed based on the classes of anticipated facility fires and on the size and degree of hazard in which would affect their use.
53. 29 CFR 1910.157 (d) (2) & (4)- The distance to any extinguisher is 75 feet or less in ordinary or low hazard areas and 50 feet or less in high hazard locations.
54. 29 CFR 1910.157 (d) (4)- Extinguishers in kitchen area and around or near flammable liquids such as, paint storage or gas cooking equipment are of the carbon dioxide or multipurpose dry chemical (i.e., CO₂ or dry chemical classes A,B,C types).
55. 29 CFR 1910.157 (e) (2)- Portable fire extinguishers are visually inspected monthly, serviced and tested at least annually. The annual service check date and monthly inspection date is recorded and retain.
56. 29 CFR 1910.157 (f) (2) & (4)- Extinguishers are hydrostatically tested at regular scheduled intervals and whenever they show evidence of corrosion or mechanical defects.
57. 29 CFR 1910.303 (c)- All splices and joints and the free ends of conductors shall be covered with insulation equivalent to that of the conductors or with an insulating device suitable for the purpose.
58. 29 CFR 1910.304 (a) (2)- No conductor may be attached to any terminal or lead so as to reverse polarity.

59. 29 CFR 1910.157 (c) (4)- Portable fire extinguishers are maintained in a fully charged and operable condition and kept in their designated places at all times.
60. 29 CFR 1910.157 (d) (2)- Portable fire extinguishers are provided and distributed based on the classes of anticipated facility fires and on the size and degree of hazard in which would affect their use.
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65. 29 CFR 1910.303 (c)- All splices and joints and the free ends of conductors shall be covered with insulation equivalent to that of the conductors or with an insulating device suitable for the purpose.
66. 29 CFR 1910.304 (a) (2)- No conductor may be attached to any terminal or lead so as to reverse polarity.
67. 29 CFR 1910.305 (g) (iii)- Flexible cords and cables may not be used as a substitute for the fixed wiring of a structure, where run through holes in walls, ceiling, floors, doorways, windows or similar openings and where concealed behind walls, ceilings or floors.
68. 29 CFR 1910.305 (g) (2) (ii)- Flexible cords shall be used only in continuous lengths without splice or tap.
69. 29 CFR 1910.305 (2) (F)- Lamps for general illumination shall be protected from accidental contact or breakage and may have no live parts exposed.
70. 29 CFR 1910.305 (j) (1)- Lighting fixtures, lamps, light switches and receptacles may have no live parts exposed.
71. 29 CFR 1910.141 (3)- The living condition of the housing and/or barracks are maintained in a sanitary condition.



APPENDIX D

GUAM DEPARTMENT OF LABOR
Alien Labor Processing & Certification Division

New H-2B Worker Orientation

The following orientation sheet was developed to help newly arrived H-2B workers gain valuable facts that will help them while employed in Guam.

IDENTIFICATION (for all non-U.S. Citizens)

Always carry picture identification.

- Green Card or Work Authorization (for immigrants)
- DOL ID card (for H-2B workers)
- I-94 and another photo ID (for other types of visa holders)

Government officials will always ask for identification. If you are unable to provide such identification, you may be detained, until such time, you are able to produce proper identification. Passports are the property of the country who issues the passport. Workers may ask employers to hold their passport for safekeeping, but you must make this request in writing and keep a copy for your records. Employers are prohibited from forcefully holding the passports of workers.

WORKER BOARD & LODGING

Cost – The employer may deduct up to \$80.00 per week for board and lodging, however, if the employer's actual cost is more, they may justify as such and a higher rate may be approved by Guam Department of Labor (GDOL).

Housing Complaints- If workers are concerned with their housing arrangements due to safety or sanitary issues, they may report this to GDOL. Our inspectors will look into all complaints.

Company Rules- The employer has the right to set house rules which the workers must follow. It is common for employers to require workers to maintain the cleanliness and order in the workers housing facilities. Workers who don't comply may face termination of employment.

Employer control of worker behavior after working hours- Employers may not control the behavior of workers after working hours, however, workers are expected to follow house rules while in the barracks.

Residing outside of employer housing- Employers are required to provide workers housing if they employ more than 5 H-2B workers, however, if the employer and worker agree, the worker may seek housing on their own. Before this can occur, the proposed living arrangement must be reviewed and approved by GDOL.

PAY & WORKING HOURS

Working Hours- The employer may set whatever working hours are necessary based on his business need. Generally, days consist of 8 hours of work but, this is not required. Time that is compensated is limited to the time that a worker is providing services for the employer. Breaks for meals or rest are not compensable.

Prevailing Wages- H-2B workers are guaranteed a certain pay rate for the occupation which they were hired for. This rate should be reflected in the employment contract and is on the labor certification that was approved before the worker was petitioned. If workers are paid less than the prevailing wage, they may be eligible for back pay and the employer may face strict penalties.

Pay Issues- Overtime pay must be paid for any hours worked in excess of 40 per work week. Overtime is not necessarily payable if you worked over 8 hours on a particular day but, is due if you exceed 40 hours for the work week. The employer may not deduct any wages from your pay unless the worker has authorized the deduction in writing. The employer must provide you a statement of your wages every payday. This is usually a check stub or a print out of your wages, in cases where there is direct deposit into the bank.

Here is a list of contact numbers for local banking institutions:

<u>Banks:</u>	
Bank of Guam	472-5300/477-7406
Bank of Hawaii	479-3500/1-877-553-2424
Bank Pacific	472-6704/472-8593
Citizens Security Bank	479-9000
First Hawaiian Bank	475-7900

* These are the 5 major banking institutions in Guam. There are other banks and credit unions who also provide excellent services. Please refer to the Guam Phone Book for contact information.

Remittances:

Metro Bank	649-9555/6/7
Allied Bank	649-5001
Philippines National Bank	637-4982

EMPLOYMENT CONTRACT

The employment contract which was signed by the worker and employer is on file with GDOL. The contract will be the guiding document GDOL will recognize in dealing with the employment relationship. In cases where there is a dispute that cannot be resolved by GDOL, enforcement of the employment contract must be handled by the courts in a civil law suit.

Terminations & Resignations- The employer has the right to terminate the employment of any worker for whatever reason since the job is "at will" employment, again GDOL will attempt to moderate any problems, but, in the end, the employer has final say as to who they will or will not employ. Workers also have the right to resign. In the case of a resignation, the employer must provide air transportation back to the point of hire.

Manning Agencies- Workers are cautioned to be aware of unscrupulous recruiters or manning agencies in the Philippines. Many times these bad companies charge much more than is allowed by POEA. Workers must protect themselves from being victimized with promises of work in the U.S. It is important to remember that H-2B workers are normally on a yearly contract that can be renewed up to 3 years, but extension is not guaranteed.

Be aware of your expiration date- It is vitally important that workers know when their authorized employment expires. If a worker stays in Guam and is no longer authorized (called "overstay"), the worker may face deportation and possibly being barred from returning to the U.S. for 10 years to life. Never overstay and continue to work. Workers who are caught often must stay in prison for over a month while proper deportation procedures are done.

LIMITATIONS & COMPLIANCE

H-2B ID cards will be issued to each worker, normally within a month from arrival. The workers must display the card during working hours. The employer may be fined for workers who are not in compliance. The worker is limited to doing only the work that he was hired to do. In isolated instances, a worker may be asked to help with job duties not associated with his occupation. For example, a carpenter may be asked to help during concrete pouring because of the urgency to work on the concrete before it cures. As a general measure, a worker should not spend more than 10% of his time doing duties not associated with his occupation. The worker is also limited to specific job sites. The employer must ensure that H-2B workers are used only on those job sites approved by GDOL. H-2B workers must work only for the employer who is listed on their visa. Sideline work is prohibited. Workers caught doing this are violating the terms of their visa and may be terminated and sent back to the Philippines.

WORKER COMPLAINTS & COMMON PROBLEMS

The Department of Labor is available to receive any complaints a worker may have, but, not all matters in which a worker may have issues with are addressable by law. In these cases, we try to help arbitrate to whatever extent possible. In all cases, complaints are investigated and handled as expeditiously as possible. In some cases, investigations may take longer due to high caseloads on our investigators. Here is a list of contact numbers for offices who handle complaints:

Alien Labor Processing & Certification Division	475-7005/29
U.S. Department of Labor (Wage and Hour)	473-9177/8
Guam Department Labor (Wage and Hour)	475-7050/1
OSHA Enforcement	642-0175/6
Guam Police Department	475-8508/9/18/12
Immigration Customs Enforcement	1-866-347-2423
Office of the Governor, Community Affairs	475-9336
Attorney General's Office (Consumer Protection)	475-3324 ext. 133

One problem that does arise often is the filing of frivolous or false complaints. There have been many cases where workers who find out that they will be sent home, have filed complaints alleging non-payment of wages. Our investigators are highly skilled and experienced. False complaints are easily detected and in most cases, we will ask the employer to repatriate workers who misrepresent themselves to the Government of Guam.

Before a worker departs Guam, the employer must report the scheduled departure to the GDOL two weeks prior to the departure date. In cases where an unplanned departure is necessary for emergency reasons, GDOL may waive the time requirement. Normally, the worker will be asked to write a statement or request to justify the waiver.

H-2B workers are required to file tax returns yearly. In order to ensure that proper taxes are paid and that workers do not owe taxes to the Government of Guam, it is suggested that workers file "single 0" on their W-4 form at the beginning of their employment. Taxes are important because workers who have tax problems may not be able to be cleared for future employment or federal services.

HELPFUL TIPS

- Never run from law enforcement. Even if you are legal, officers will chase and handcuff you if you run when being approached. Never be scared. Guam's Law enforcement officers are fair and professional.
- When law enforcement or inspectors come to your jobsite, make sure to provide them with your identification and answer any questions they may have truthfully. Always be respectful.
- Beware of imposters posing as law enforcement. Ask to see identification if you are in doubt. Compliance officers will NEVER ask you for money or to do anything illegal. In these cases, report suspicious activity to GDOL at 475-7005/7029.
- If you have concerns over the proper payment of your wages, report it to DOL immediately. Do not wait until the end of your employment to file a wage complaint.
- Keep your own record of your time and attendance on a daily or weekly basis. If you are in a dispute over wages, this is the most valuable tool you will have to justify your complaint.
- Report any violence in the barracks to the Guam Police and GDOL immediately. Your safety is the most important thing.
- More information and resources are available on our website at www.guamdol.net.

*The Guam Department of Labor welcomes you to Guam and hopes that your future as a temporary worker in Guam is pleasant and rewarding.
You have our thanks in helping Guam become the paradise that it is.*