Office of the Speaker
BENJAMIN J.F. CRUZ
I Mina'trentai Kuåtro na Liheslaturan Guåhan
Committee on Appropriations and Adjudication

CJ 2018 APR 26 AM 10:32

April 26, 2018

MEMORANDUM

To: **Clerks & The Committee on Rules**
34th Guam Legislature

From: **Office of Speaker Benjamin J.F. Cruz**

Re: **Transmittal of Rules and Regulations**

Håfa Adai!

Our office in receipt of the ***"Department of Labor Rules at 17 GAR Chapter 6, Article 1&2,"*** received today, Thursday, April 26,2018 at 10:00 AM. Please address this matter expeditiously.

This memorandum shall constitute a formal transmission of the documents and discs receive by my office.

Attachments

Item 1: This is a Transmittal to I Liheslaturan Guahan of Proposed Rules and Regulations Pursuant to the Administrative Adjudication Law. Department of Labor Rules at 17 GAR Chapter 6, Article 1&2

Item 2: Disc 1 – Final Draft Rules (Clean) *Disc inspected
- PDF
- Word

Item 3: Disc 2 – FEPO Draft Rules Complete Agency Record *Disc inspected

1803

Address: Guam Congress Building 163 Chalan Santo Papa, Hagåtña, Guam 96910
Phone: 671-477-2520 / Email: Senator@SenatorBjCruz.com / Website: SenatorBjCruz.com

DEPARTMENT OF
LABOR
DIPÅTTMENTON HUMOTNÅT • Sam Mabini, Ph.D., Director • Cecile B. Suda, Deputy Director

EDDIE BAZA CALVO
Governor

RAY TENORIO
Lieutenant Governor

April 25, 2018

GL# 34-18-1803
Speaker Benjamin J.F. Cruz

APR 26 2018
Time: 10:00 [X] AM [ ] PM File No.
Received By:

Honorable Benjamin J.F. Cruz
Speaker
I Mina'trentai Kuattro Na Liheslaturan Guahan
Guam Congress Building
163 Chalan Santo Papa
Hagatna, Guam 96910

RE: This is a Transmittal to I Liheslaturan Guahan of Proposed Rules and Regulations Pursuant to the Administrative Adjudication Law

Department of Labor Rules at 17 GAR Chapter 6, Article 1 & 2

Dear Speaker Cruz:

The Guam Department of Labor has completed all the prerequisites for rulemaking as mandated in the Administrative Adjudication Law and are hereby transmitting the final draft rules, the full Agency Record (with electronic copies) and the formal approval letters from the Governor of Guam and the Attorney General.

We have endeavored to thoughtfully consider and include input from the public, in the final draft and we feel that we have adequately addressed any concerns brought up during the public hearing. We anxiously look forward to the final promulgation of these rules in the near future and seek your kind support toward that end.

Should you have any questions, the central point of contact on this matter is Mr. Greg Massey and he can be reached via email at greg.massey@dol.guam.gov or at 475-8005.

Sincerely,

CBSuda

CECILE B. SUDA
Acting Director

Mailing Address: P.O. Box 9970 • Tamuning, Guam 96931
Physical Address: 414 West Soledad Avenue • Suite 400, GCIC Building • Hagåtña, Guam 96910
Telephone: (671) 475-7044 • **Facsimile:** (671) 475-6811
Website: dol.guam.gov • hireguam.com

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DEPARTMENT OF
LABOR
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EDDIE BAZA CALVO
Governor

RAY TENORIO
Lieutenant Governor

CERTIFICATION OF AGENCY RECORD

Administrative Rules and Regulations of the Government of Guam
Title 17, Chapter 6

This certification is relative to the official record of the actions taken by the Department of Labor as we followed the requirements in the Administrative Adjudication Law to promulgate regulations regarding unlawful discriminatory employment practices and the newly passed Fair Chance Hiring Process Act.

The Agency record includes:

PRINTED DOCUMENTS

1. Approval from Governor of Guam
2. Approval from the Attorney General of Guam
3. Final Draft Rules – without change annotations
4. Final Draft Rules – with change annotations
5. Written Testimony
6. Public Hearing Sign In Sheet
7. Transcription of Hearing
8. Audio & Video Recording of Hearing (Disk # 3)
9. Pre-Hearing Draft Rules
10. Copy of Public Hearing Notice- Newspaper
11. Screenshot of Required Website Posting
12. Preliminary Cost Impact Statement
13. Existing GAR Version from Compiler Website
14. Copy of Fair Chances Hiring Practice Act

ELECTRONIC MEDIA

Disk 1. Final Draft Rules (with no annotations) in PDF and Word formats
Draft Rules (with annotations) in PDF and Word formats

Disk 2. Complete Agency Record in PDF format

The Department has completed all rulemaking requirements and has obtained approval from the Attorney General of Guam and the Governor of Guam as required by law.

I hereby certify that the agency record is accurate and complete.

CBSuda

CECILE B. SUDA
Acting Director of Labor

4/25/18
Date

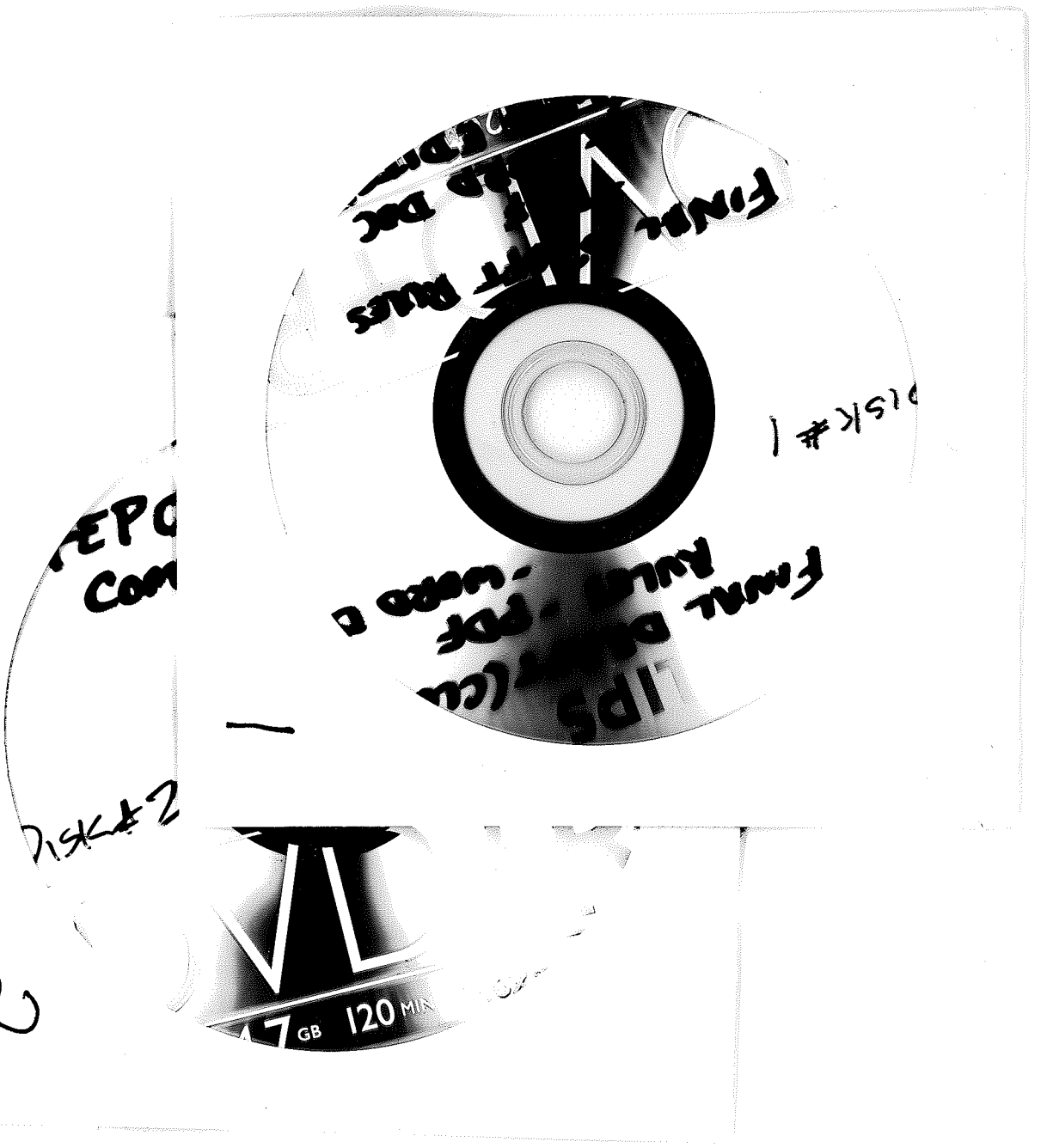
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ELECTRONIC COPIES

Disk 1 – Draft Rules

Disk 2 – Complete Agency Record



Doc. No. 34GL-18-1803.

Agency Record:

Rulemaking for 17GAR Chapter 6
Under the Administrative Adjudication Act Process

RECEIVED
APR 24 2018

EDDIE BAZA CALVO
Governor

RAY TENORIO
Lieutenant Governor

Office of the Governor of Guam

APR 19 2018

RECEIVED
APR 24 2018
DOL
DIRECTOR

1

Memorandum

To: Sam Mabini, Ph.D.
Director
Department of Labor

From: Governor of Guam

Subject: Guam Department of Labor Fair Employment Practice Rules and Regulations

Title 22 G.C.A. Section 3305 and Section 5210 authorizes the Director of the Guam Department of Labor to issue such rules and regulations as may be necessary or appropriate to prohibit age discrimination and unlawful discrimination in employment practices. Pursuant to these authorities, DOL has prepared a set of administrative rules and regulations relative to ensuring fair employment practices and hiring, said rules which have been duly approved by the Attorney General of Guam pursuant to 5 G.C.A. Section 9303.

In accordance with the Administrative Adjudication Law [5 G.C.A. Section 9303(a)], I hereby approve the attached version of the proposed Rules and Regulations, and further approve them for submittal to the Legislative Secretary of the Guam Legislature.

EDDIE BAZA CALVO

DEPARTMENT OF
LABOR
DIPÅTTMENTON HUMOTNÅT • Sam Mabini, Ph.D., Director • Cecile B. Suda, Deputy Director

EDDIE BAZA CALVO
Governor

RAY TENORIO
Lieutenant Governor

OFFICE OF THE Governor
CENTRAL FILE
RECEIVED
DATE 3/30/18
2:55pm

COPY

MEMORANDUM

TO: Governor of Guam

VIA: Governor's Legal Counsel

FROM: Director of Labor

SUBJECT: Review of Administrative Rules & Regulations
Re: Fair Chances Hiring Process Act
Guam Administrative Rules & Regulations Title 17, Chapter 6

The Guam Department of Labor has completed a draft for Administrative Rules & Regulations which would amend the existing Chapter 6 of Title 17. The existing rules would be designated as Article 1, relative to discrimination and create a new Article 2 relative to the Fair Chances Hiring Process. Although this rulemaking was initiated in compliance with the rulemaking mandate in Public Law 34-22, the Department saw the need for an update of the entire chapter as it appears that there has been no revision in decades.

Article 1 primarily deals with covered class discrimination and employment discrimination based on disability. The updates to this article were minor technical corrections and dealt more with updating terms to modernize the regulations versus changing any of the existing policies already in place.

New Article 2 is an entirely new Article which deals with the enforcement of provisions of the Fair Chances Hiring Process Act at 22 GCA Chapter 6, Division 1.

A Public Hearing was properly noticed pursuant to the Administrative Adjudication Act and a hearing was held on February 12, 2018 at 2:00 p.m. at the Guam Department of Labor's 3rd floor conference room. Members of the public were present at the hearing and were given opportunity to provide oral and written testimony and such testimony was considered in developing the final draft. A copy of the entire agency record is attached to this memorandum.

Mailing Address: P.O. Box 9970 • Tamuning, Guam 96931
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Website: dol.guam.gov • hireguam.com

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We are hereby transmitting our proposed regulations to you in accordance with Public law 34-32 for your review and written approval as conformance with policy, as required in the statute. We have simultaneously transmitted the proposed regulations to the Office of the Attorney General for their approval as to constitutionality, compliance with the act and statutory authority for rulemaking.

Thank you in advance for your attention to this matter. The statutory deadline for the promulgation of the rules was in early February 2018 and we are trying our best to expedite the process with the resources available to us. Clarification and questions may be directed to Mr. Greg Massey via email at greg.massey@dol.guam.gov or by phone at 475-8005.

DR. SHIRLEY "SAM" MABINI

Enclosures

cc. Attorney General

Office of the Attorney General of Guam

590 S. Marine Corps Dr., Ste. 901, Tamuning, Guam 96913

2

April 16, 2018

Elizabeth Barrett-Anderson
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ext. 5015/ 5030
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puntalan@guamag.org

Sam Mabini, Ph.D., Director
Department of Labor
414 W. Soledad Ave., Suite 400
Hagatna, Guam 96910

Subject: Attorney General Approval of Proposed Rules of the Guam Department of Labor (Ref: DOL 18-0178)

Dear Director Mabini:

The Office of the Attorney General has completed its review of the proposed Rules and Regulations of the Guam Department of Labor submitted to this office on March 30, 2018.

Pursuant to the Administrative Adjudication Law (AAL), 5 GCA § 9303, I hereby approve the attached version of the proposed Rules as to form, constitutionality, compliance with the applicable requirements of the AAL, and compliance with your agency's statutory authority to promulgate rules.

Please be reminded that the current rule-making procedures require your agency to file the proposed Rules with the Speaker of *I Liheslatura* in a format and manner specified in 5 GCA § 9303 as amended by P.L. 34-032 (July 13, 2017). Further, no rule shall become effective until after ninety (90) calendar days have elapsed from the date of filing with the Speaker of *I Liheslatura* during which time and within seventy-five (75) calendar days from the date of filing of the rules with the Speaker the legislative committee with oversight of the subject matter or the Committee of the Whole shall have conducted one or more public hearings on the proposed rules. After the public hearing and within the 90-day time period, *I Liheslatura* may approve, disapprove, or amend the proposed rules by the passage of a bill into law. In the event *I Liheslatura* declines to formally approve, disapprove, or amend the proposed rules by the passage of a bill into law, the Speaker may certify and the Legislative Secretary may attest to the default approval of compliant rules.

If you have any questions, please contact Deputy Attorney General of the Solicitor Division Karl P. Espaldon at (671) 475-3324, extension 3115.

Sincerely,

ELIZABETH BARRETT-ANDERSON
Attorney General

Attachment

DEPARTMENT OF
LABOR
DIPÅTTMENTON HUMOTNÅT • Sam Mabini, Ph.D., Director • Cecile B. Suda, Deputy Director

EDDIE BAZA CALVO
Governor

RAY TENORIO
Lieutenant Governor

RECEIVED
OFFICE OF THE ATTORNEY GENERAL
ADMINISTRATION
COPY

COPY

MEMORANDUM

TO: Attorney General of Guam

FROM: Director of Labor

SUBJECT: Review of Administrative Rules & Regulations
Re: Fair Chances Hiring Process Act
Guam Administrative Rules & Regulations Title 17, Chapter 6

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New Article 2 is an entirely new Article which deals with the enforcement of provisions of the Fair Chances Hiring Process Act at 22 GCA Chapter 6, Division 1.

A Public Hearing was properly noticed pursuant to the Administrative Adjudication Act and a hearing was held on February 12, 2018 at 2:00 p.m. at the Guam Department of Labor's 3rd floor conference room. Members of the public were present at the hearing and were given opportunity to provide oral and written testimony and such testimony was considered in developing the final draft. A copy of the entire agency record is attached to this memorandum.

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americanjobcenter GUAM

We are hereby transmitting our proposed regulations to you in accordance with Public law 34-32 for your review and written approval as to constitutionality, compliance with the act and statutory authority for the promulgation of the rules. We are also simultaneously transmitting our submittal to the Governor of Guam for written approval as to policy, as required in the statute.

Thank you in advance for your attention to this matter. The statutory deadline for the promulgation of the rules was in early February 2018 and we are trying our best to expedite the process with the resources available to us. Clarification and questions may be directed to Mr. Greg Massey via email at greg.massey@dol.guam.gov or by phone at 475-8005.

DR. SHIRLEY "SAM" MABINI

Enclosures

cc. Governor's Legal Counsel

Guam Department of Labor

Administrative Rules:

17 GAR Chapter 6

Article 1 & Article 2

Final Draft

After Public Hearing

Doc. No. 34GL-18-1803.

FINAL DRAFT

3

0017 GAR - LABOR RELATIONS
DIV. 1 - DEPARTMENT OF LABOR
CHAPTER. 6
FAIR EMPLOYMENT PRACTICE

Article 1. Fair Employment Practices
2. Fair Chances Hiring Process

Article 1
Fair Employment Practices

§6101. Authority.
§6102. Statement of Policy.
§6103. Purpose.
§6104. Definitions.
§6105. Complaint.
§6106. Same: Form and Contents; Time for Filing.
§6107. Same: Filing.
§6108. Same: Service, Amendment or Withdrawal.
§6109. Investigation of Complaints
§6110. Conciliation.
§6111. Dismissal of Complaints.
§6112. Predetermination Settlement.
§6113. Reconsideration of Decision for Dismissal.
§6114. Department's Order.
§6115. Hearings.

NOTE: Rule-making authority cited for Director of the Department of Labor, 22 GCA §3305 and §5210.

§6101. Authority. By virtue of the authority vested in it by 22 GCA Chapter 3 and §5210, the Department of Labor hereby issues these Rules and Regulations, which it finds necessary in order to carry out its responsibilities in the administration and enforcement of the provisions of the law as it relates to Unlawful Employment Practice and/or Discrimination. These Rules and Regulations shall be liberally construed to accomplish the purposes of the law and the policies of the Department and shall be in force and effect until such time that it is amended or rescinded by rules and regulations hereafter made and published by the Department of Labor.

§6102. Statement of Policy. It is the public policy government of Guam to protect and safeguard the civil rights of all individuals to seek, have access to, obtain and hold employment without discrimination because of race, religious creed, color, national origin, ancestry, physical

handicap, medical condition, marital status, sex and/ or age, sexual orientation and/ or gender identity. Employment practices should treat all individuals equally, evaluating each individual only on the basis of bona fide occupational qualification, unless pursuant to permissible defense as enumerated in the law.

§6103. Purpose. The intended purpose and objectives of the law and these Rules and Regulations are to promote equal employment opportunity and to assist all individuals in understanding their rights, duties and obligations, so as to effectuate compliance with the law.

§6104. Definitions. (a) ***Person*** shall mean one or more individuals, partnerships, associations, corporations, legal representatives, business trustees, receivers or any organized group of persons.

(b) ***Employer*** shall mean any person employing an individual within the territory of Guam.

(c) ***Employee*** shall mean an individual employed by a person, but shall not include any individual employed in the domestic service of any family or person at his private home, or any individual employed by his/her parent, spouse or child.

(d) ***Complainant*** shall mean the individual who has filed a complaint.

(e) ***Complaint*** shall mean a verified written statement filed with the Department pursuant to these Rules and Regulations alleging unlawful employment practice or discrimination within the meaning of the law.

(f) ***Department*** shall mean the Department of Labor, government of Guam.

(g) ***Director*** shall mean the Director of the Department of Labor, government of Guam.

(h) ***Investigating Officer*** shall mean the person duly designated by the Department to conduct an investigation of a verified complaint filed with the Department.

(i) ***Representative*** shall mean any person duly designated by one or more individuals and acting on behalf of the designator.

(j) ***Respondent*** shall mean any person or employer against whom a complaint has been filed alleging unlawful employment practice or discrimination with the meaning of the law.

(k) ***Days*** shall mean consecutive calendar days unless otherwise specified.

(l) ***Verified*** shall mean sworn to or affirmed before a notary public or other person duly authorized by the Director to administer oaths and take acknowledgments.

(m) ***Employment Agency*** shall mean any person regularly undertaking, with or without compensation, to procure employees for an employer, or to procure for employees' opportunities to work for an employer, and includes an agent of such person.

(n) ***Labor Organization*** shall mean any organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining or of dealing with employers regarding grievances, terms or conditions of employment, or of providing other mutual aid protection.

(o) The term ***because of sex or on the basis of sex*** shall mean to include sexual harassment or because of or on the basis of pregnancy, childbirth or related medical conditions, unless pursuant to permissible defense as enumerated in the law.

(p) ***Party or Parties*** shall mean the complainant and/or the respondent.

(q) ***Law*** shall mean 22 GCA Chapter 3 and 22 GCA Chapter 7.

(r) ***Fair Employment Practice Office*** - shall mean the Fair Employment Practice Division (FEPD) of the Guam Department of Labor, commonly referred to as FEPO.

(s) ***Conciliation*** shall mean, bringing two opposing sides together to reach a compromise in an attempt to avoid taking a case to trial.

§6105. Complaint.

(a) Who May File:

(1) Any individual claiming to be aggrieved by an alleged unlawful employment practice or discrimination may make, sign and file a complaint with the Department.

(2) Any person claiming to have been discharged, expelled, refused employment or otherwise discriminated against by any person, employer, labor organization or employment agency because he has opposed unlawful employment practice or discrimination or because he has filed a complaint, testified or assisted in any proceeding under the law may make, sign and file a complaint with the Department.

(3) The Attorney General may make, sign and file a complaint whenever he has reason to believe that a person, employer, employment agency or labor organization has engaged or is engaging in an unlawful employment practice or discrimination.

(b) Complaint Filing Assistance. Assistance in the filing of complaints is available to complainants at the Department's Fair Employment Practice Office.

(c) Complainants shall receive an update on the status of their complaint within 60 days of their filing with FEPD. The update shall bear the signature of the Director of Labor or the Director's designee.

§6106. Same: Form and Contents; Time for Filing.
(a)Complaint Form. All complaints shall be on an official Department form approved by the Director of Labor.

(b) Contents of Complaint. Each complaint shall contain the following:

(1) The full name, address and telephone number (if any) of the complainant.

(2) The full name, address and telephone number (if any, and if known) of the respondent.

(3) A plain and concise statement of the facts constituting the alleged unlawful employment practice or discrimination.

(4) The date and place the alleged unlawful employment practice or discrimination occurred.

(5) Such other information as may be required by the Department.

(6) A sworn statement that the information in the complaint is true and correct.

§6107. Same: Filing. (a) Time Limitation for Filing Complaint. No complaint shall be filed after the expiration of ninety (90) days from the date upon which the alleged act of unlawful employment practice or discrimination occurred.

(b) Manner and Place of Filing:

(1) The complaint shall be filed by personal delivery, fax or email to the Department's Fair Employment Practice Office. Complaints submitted via fax and/or email must be notarized.

(2) The Department may not accept complaint if it finds it to be lacking necessary information to appropriately conduct investigation and/or other
action necessary to render appropriate decision.

(3) After verifying the identity of a complainant and witnessing the signature on the complaint form, any employee of the Department who is authorized by the Director, in writing, to enforce the labor laws of Guam may acknowledge a verified complaint filing.

(c) Filing Date. The complaint shall be deemed filed as of the date of receipt of the complaint at the Department's Fair Employment Practice Office. Receipts of the complaint shall be acknowledged by the Department's Fair Employment Practice Office by means of a date-time-stamp or other acceptable means and shall be initialed or signed by a staff of such office. The Fair Employment Practice Office may also send return email verifying receipt for complaints filed electronically. Return email shall serve as official receipt of complaint.

§6108. Same: Service, Amendment or Withdrawal. (a) Service of Complaint. Within fifteen (15) days after a complaint is filed with the Department, the Department shall personally serve upon the respondent a notice of the complaint, including the date, place and general description of the alleged unlawful employment practice or discrimination. Service of notice may also be effected via Email, to the email address of record Fax, to the fax number of record United States Postal Service Certified Mail, to the mailing address of record or by leaving a copy of the accusation and accompanying papers at their usual place of residence, or at their place of business, with some person of suitable age and discretion residing or working therein.

(1) Notice shall be considered served if any combination of two of the four methods have been made.

(b) Amendment of Complaint. The complainant shall be permitted to make amendments to his complaint as considered reasonable and fair, prior to issuance of a Department's order under 17 GAR §61111. All such amendments related to or growing out of the subject matter of the original complaint shall be deemed to relate back to the original filing date. A complaint may be amended:

(1) To cure technical defects of omissions, including, but not limited to, failure to verify the complaint.

(2) To clarify and/or amplify allegations. Service of complaint amendment. Within fifteen (15) days after the amendment is filed, the Department shall serve a notice of the amended complaint upon the respondent by certified mail, return receipt requested or by personal delivery. Receipt of the amendment shall be acknowledged as in 17 GAR §6105.

(c) Withdrawal of Complaint:

(1) Upon request of the complainant, a complaint, or any part thereof, may be withdrawn only on conditions as hereinafter set forth:

(A) If the request for withdrawal is received in the Department prior to the issuance of Department's order under the provisions of 17 GAR §6111, only upon written consent of the Fair Employment Practice Officer.

(B) If the request for withdrawal is received after the issuance of the Department's order under the provisions of 17 GAR §61111, only upon written consent of the Director.

(2) The request for withdrawal of the complaint shall be in writing, and shall set forth fully the reasons for such request. The request must be signed and verified by the complainant. If the request is approved, the Department shall promptly notify the respondent of such action. The Attorney General shall be provided a copy of the Department's notice of withdrawal.

§6109. Investigation. (a) After the filing of a complaint, the Department shall assess the complaint and if reasonable cause exists, may open an investigation into the allegations contained in the complaint. The Investigating Officer shall have authority to request for records, interview persons and/or require statements necessary to make a fair determination. In cases where parties are uncooperative, the Department may issue a subpoena to obtain witness testimony or the production of necessary records pursuant to 22 GCA § 1109.

(b) Determination of No Reasonable Cause. If after investigation of the complaint, the investigating officer determines that no reasonable cause exists to believe that the respondent has engaged in an unlawful employment practice or discrimination within the meaning of the law, then the Department shall dismiss the complaint. Notice of the dismissal shall be given to the complainant and the respondent in accordance with 17 GAR §6108.

(c) Determination of Reasonable Cause. If after investigation of the complaint, the investigating officer finds reasonable cause to believe that an unlawful employment practice or discrimination has occurred or is occurring, the Department shall immediately endeavor to eliminate the unlawful practice by conference, conciliation and persuasion.

§6110. Conciliation. (a) Conference. The Department may require any or all of the parties to an informal conciliation conference for the purpose of attempting to informally resolve the matter. All parties shall be reasonably notified of the time, date and the place of the informal conciliation conference.

(b) Conciliation Efforts. In attempting to conciliate a case after a determination of reasonable cause has been made, the investigating officer shall endeavor to achieve a just resolution of all violations found and to obtain agreement that the respondent will eliminate the unlawful employment practice and provide appropriate relief.

(c) Successful Conciliation. Where such conciliation efforts are successful, the terms of such conciliation agreement shall be reduced to writing and shall be signed by all parties and the Director of Labor or his designee, provided that the agreement provides, in the judgment of the Fair Employment Practice Officer or his designee, full and fair relief to the parties. A copy of the signed conciliation agreement shall be sent to all parties and the Attorney General.

(d) Termination of Conciliation Efforts. Should a respondent fail or refuse to confer and otherwise cooperate with the Department or its representative, or fail or refuse to make a good faith effort to informally resolve any dispute, and the Department is unable to eliminate the unlawful employment practice or discrimination through informal conference, conciliation and persuasion, and it appears to the Department that further efforts at conciliation would be futile and non-productive, the Department shall terminate its conciliation efforts and proceed with issuing the Department's order as provided under 17 §6111.

(e) Compliance Reports. If conciliation efforts is successful, proof of respondent's compliance with the law in accordance with the terms of the conciliation agreement shall be obtained by the

Department before the case is closed. In order to obtain such proof, the Department may require any party to submit to it such reports as the Department deems necessary to show the manner of compliance with the terms of the conciliation agreement.

§6111. Dismissal of Complaints. (a) The Department shall dismiss the complaint under the following conditions:

(1) If it is determined that the Department does not have jurisdiction over the complaint.

(2) If it is determined after investigation that reasonable cause does not exist to believe that the alleged unlawful employment practice or discrimination has been committed.

(3) If the complainant has failed or refused to appear for interviews or conferences, provide requested information, the Department deems necessary or in any way refused or failed to fully cooperate in the investigation or conciliation to the extent that the Department is unable to resolve the complaint, and the Department has received no response from the complainant within thirty (30) days after the notice to the complainant of the Department's intent to dismiss the complaint.

(4) If the complainant cannot be located, provided that reasonable efforts have been made to locate the complainant and the complainant has not responded within thirty (30) days to a notice sent by the Department to the complainant's last known address.

(5) If the respondent has made a predetermination settlement offer as described in 17 GAR §6109, which is in writing and specific in its terms, and the complainant refuses to accept the offer, provided, that the offer would, as determined by the Department, afford full relief for the harm alleged by the complainant and the complainant fails to accept such an offer within thirty (30) days after notice of the offer is made.

(b) Notice of Dismissal:

(1) In the event of any dismissal of a complaint, the complainant shall be notified by certified mail, return receipt requested or by personal delivery, of the reason or reasons for dismissal and of his right to apply to the Director for reconsideration of such dismissal as provided by 17 GAR §6110. The respondent shall be notified, in like manner, of the dismissal of any complaint filed against him and of the reasons therefor.

§6112. Predetermination Settlement. (a) Settlement of all complaints at the earliest stage of the complaint processing is recommended and encouraged. The following action is suggested in endeavoring predetermination settlement:

(1) At any time after the filing of a complaint, but prior to the issuance of a determination, the Fair Employment Practice Officer or his designee may encourage the parties to resolve the complaint through a predetermination settlement.

(2) If the complainant and the respondent agree to the terms of settlement, the same must be reduced in writing, signed by the parties and the investigating officer.

(3) If so approved, the case will be closed without a finding on the merits of the complaint and a copy of the final predetermination settlement shall be sent by certified mail, return receipt requested or personal delivery, to the complainant the respondent.

(b) Effect on Other Complaints. A predetermination settlement shall not affect the processing of any other complaint, including, but not limited to, complaints in which the allegations are like or related to the individual allegations settled.

(c) Department's General Policy in Predetermination Settlement. In any predetermination settlement discussion, the general policies of the Department shall include, but not be limited to the following:

(1) If a settlement is achieved, no determination will be made as to whether or not reasonable cause exists to believe that the allegations of the complaint are true;

(2) The Department shall not subject either party to prejudice as a result of the party's either participating or refusing to participate in a predetermination settlement attempt;

(3) Participation by respondent in a predetermination settlement attempt will not be construed as evidence of a violation of the law or a waiver of the right to a Departmental determination on the issues raised by the complaint if a settlement cannot be achieved; and

(4) If a predetermination settlement is achieved, the terms thereof shall not attribute fault to any of the parties involved.

§6113. Reconsideration of Decision for Dismissal. (a) Request by Complainant. A complainant may submit to the Director a request for reconsideration of the dismissal of his complaint. Such request must be in writing, state specifically the grounds upon which it is based, and be filed with the Department within thirty (30) days from the date of the mailing of the notice of dismissal on which reconsideration is being requested.

(b) Director's Actions on Request for Reconsideration.
Whenever a request for reconsideration is made, the Director shall review the entire file, and may, in his discretion, grant or deny such request. If a request is granted, the Director shall refer the entire matter, together with his recommendation, to the Fair Employment Practice Officer for re-evaluation in light of the Director's action. If the request for reconsideration is denied, the Director shall notify the complainant, in writing, of his determination by certified mail, return receipt requested or by personal delivery.

§6114. Department's Order. (a) Issuance of Order. After determination is made that the respondent has engaged in unlawful employment practice or discrimination as defined in the law,

and conciliation efforts terminated, the Department shall state its findings of facts and shall issue and cause to be served on respondent an order requiring such respondent to cease and desist from such unlawful practice and/or discrimination and to take such affirmative action to include, but not limited to those enumerated in the law, as, in the judgment of the Department, will effectuate the purpose of the law.

(b) Notice of Rights of Hearing. In all cases where an order is issued, it shall include a notice to the respondent, advising him of his rights to a hearing in conformance with the Administrative Adjudication Law.

(c) Copy of Order to Attorney General. In all cases where an order is issued, a copy of such order shall be provided the Attorney General.

§6115. Hearings. (a) Request for Hearing. In all cases where the respondent objects and/or opposes the order of the Department, in whole or in part, the respondent may request for a hearing on the case. Such request shall be in writing, signed by or on behalf of the respondent. The request must be received by the Department within fifteen (15) days from the date the Department's order is served upon the respondent. Failure to submit request within the time allotted will constitute a waiver of respondent's right to a hearing. In such instances, the Department's decision as enumerated in the Department's order shall be final.

(b) Department's Action on the Request for Hearing. Within ten (10) days upon receipt of a request for a hearing, the Department shall forward a copy of the request and a complete copy of the case to the Attorney General for his appropriate action.

(c) Assignment of Hearing Officer. Upon receipt of the request and the cases filed from the Department, the Attorney General shall assign a hearing officer to hear the case.

(d) Scheduling of Hearing. The hearing officer shall schedule the hearing on the case.

(e) Notice of Hearing. Upon establishing the time, date and place for the hearing, the hearing officer shall serve notice upon all parties. The notice shall inform all parties of the time, date and place of the hearing. Such notice shall be served upon all parties at least ten (10) days prior to the hearing.

(f) Conduct of Hearing. The hearing officer shall conduct the hearing in conformance with the Administrative Adjudication Law.

(g) Decision. Upon completion of the hearing, the hearing officer shall serve upon all parties and to the Department a copy of the decision rendered upon the case Heard,

(h) Conformity with the Administrative Adjudication Law. All procedures and action taken as relates to hearings and appeals shall be in conformance with the Administrative Adjudication Law.

DRAFT

0017 GAR - LABOR RELATIONS
DIV. 1 - DEPARTMENT OF LABOR

Article 2
Fair Chances Hiring Process

§6201. Definitions.
§6202. Fair Chances Hiring Process.
§6203. Signage Posting Compliance.
§6204. Inspections & Investigations.
§6205. Penalties.
§6206. Hearings.
§6207. Advisory Opinions.
§6208. Public Posting of Repeat Offenders.
§6209. Petitions.
§6210. Severability.
§6211. Interpretation.

§6201. Definitions – These definitions shall be used for the purposes of administering the Fair Chances Hiring Process.

(a) ***Applicant*** means any person considered for, or who requests to be considered for, employment by an employer; or, any employee considered for, or who requests to be considered for, another employment position, by the employer.

(b) ***Arrest*** means being apprehended, detained, taken into custody, held for investigation, or restrained by a law enforcement agency due to an accusation or suspicion that a person committed a crime.

(c) ***Conditional offer*** of employment means an oral or written offer by an employer to employ an individual in a job, or placement in a staffing agency's staffing pool, that is conditioned solely on the employer's evaluation of the individual's criminal history.

(d) ***Court Clearance*** means a document from a state, territorial, federal or foreign government which identifies information regarding an individual, concerning a court case that has not been dismissed or expunged.

(e) ***Criminal history*** means any conviction, plea of nolo contendere, or deferred adjudication arising from felony criminal accusation, or any misdemeanor criminal accusation, made under local or federal law, or a comparable law of a state of the United States. This does not include dismissed, expunged, or sealed cases.

(f) ***Employer*** means any person, company, corporation, general contractor, firm, labor organization, or association, including the government of Guam, that employs more than fifteen (15) employees in Guam.

(g) ***Employment*** means any occupation, vocation, job, or work for pay, including temporary or seasonal work, contracted work, contingent work, and work through the services of a temporary or other employment agency; or, any form of vocational or educational training with pay, where the physical location of the employment is in whole or in substantial part, within Guam.

(h) ***Fair Employment Practice Office*** - shall mean the Fair Employment Practice Division (FEPD) of the Guam Department of Labor, commonly referred to as FEPO.

(i) ***Inquiry*** means any direct or indirect conduct intended to gather criminal history information from or about the applicant, candidate, or employee, using any method, including application forms, interviews, and criminal history or background checks.

(j) ***Interview*** means any direct contact by the employer with the applicant in person, or by telephone or video-teleconferencing, to discuss the employment being sought or the applicant's qualifications.

(k) ***Police Clearance*** means a document from a state, territorial, federal or foreign government which identifies information, regarding an individual concerning an arrest which resulted in a filed criminal case.

(l) ***Reasonable*** means applying judgement expected of a typical person exercising ordinary prudence which is considered to be rational, appropriate, ordinary, or usual in the circumstances

§6202. Fair Chances Hiring Process (a) An employer shall not request or require a court clearance from an applicant prior to making a conditional offer of employment to the applicant.

(1) Complaints: Persons wishing to file a complaint for a violation of the Fair Chances Hiring Process may file such complaint with the Department of Labor Fair Employment Practice Office.

(A) Complaints and statements must be filled out on a Departmental complaint form.

(B) Complainant shall provide valid photo identification with their complaint.

(C) FEPD may assist complainant with obtaining information from the employer, as allowed in the statute.

(2) Investigations: An investigation may be triggered as a result of a complaint, fact finding process from a separate case, or the result of a formal inspection.

(A) When requesting information from an employer, the Department may require that such information be submitted within 15 calendar days.

(B) An employer may request an extension of this 15 day deadline. An extension must be approved in writing by the Department and shall not exceed 30 calendar days after the initial 15 day period.

(C) FEPD Investigators may interview employees at a jobsite and may also inspect employer records at the employer's establishment. Failure to allow reasonable access to FEPD investigators

constitutes a violation and may subject an employer to civil penalties pursuant to 22GCA§6104(b).

(D) FEPD investigators may refer a matter or coordinate with other local or federal agencies when appropriate.

(3) Findings: FEPD investigators shall consider documents, statements and other pertinent information during fact finding investigations and formulate a report to the Director.

(A) The report shall contain a synopsis of the situation and recommendation to the Fair Employment Practice Officer on action.

(B) Findings shall take into consideration information gained during fact finding, exemptions in the statute and/or statements of denial issued by the employer.

(C) Fair Employment Practice Officer shall approve the synopsis prior to submission to the Director.

(4) Withdrawal of Conditional Offer: Should a conditional offer be proffered to an applicant, written notice must be given to the applicant no later than 15 calendar days, after the applicant provides Police and/or Court clearances, detailing the result of the employer's decision on whether the applicant has been hired or not.

(A) Following the extension of a conditional offer of employment, an employer may only withdraw the conditional offer to an applicant for a legitimate business reason. The employer's determination of a legitimate business reason must also be reasonable in light of the following factors:

(i) the specific duties and responsibilities necessarily related to the employment sought or held by the person;
(ii) the bearing, if any, that the pending criminal case or criminal history will have on the applicant's fitness or ability to perform one or more such duties and responsibilities;
(iii) the time which has elapsed since the occurrence of the pending criminal case or criminal history;
(iv) the age of the person at the time of the pending criminal case or criminal history;
(v) the frequency and severity of the pending criminal case or criminal history; and
(vi) any information produced by the person, or produced on his/her behalf, in regard to his/her rehabilitation and good conduct since the occurrence of the pending criminal case or criminal history.

(B) An employer may lawfully withdraw a conditional offer if the applicant fails to submit the required court/police clearance within 10 calendar days.

(C) Employer may request additional information from an applicant upon receipt of court/police clearances.

(D) An applicant has 90 days to file a complaint with the Department if they feel that the employer's proffered job offer was rescinded unjustly.

(E) Employer shall provide an applicant with a stamp received copy of an applicant's court clearance or a written notice acknowledging receipt of the clearance.

(F) Should the Department be unable to conclusively determine the day the clearances were submitted to the employer, the date of the applicant's clearances shall be used as the 1st day of the 90 day complaint period.

(G) Electronic transmittal may be considered a valid means of submittal of clearances to the employer and communication of the status of the conditional job offer to the applicant.

(b) An employer may not make reference to any requirement for Police and/or Court Clearances in a job advertisement, job posting, interview, or by any other means, prior to extending a conditional offer of employment, unless the specific job is exempt from the Fair Chances Hiring Process Act as stated in 22GCA§6102(e). Such reference shall constitute a violation of the Act.

§6203. Signage Posting Compliance.

(a) All employers shall have a visible FEPD posting present in their place of business. Any employer who fails to meet this requirement may be found in violation of the rules and may be subject to civil penalties at 22GCA§6104(b).

(1) Posting must be in a format designed and approved by FEPD.

(2) Posting may not be smaller than an 8 ½" x 11" document.

(3) Posting must be placed in a conspicuous location where it may be viewed by a majority of the company's employees, including but not limited to, employee break-rooms, Human Resource offices, jobsites, or other places where employees congregate.

§6204. Inspections & Investigations The staff and management personnel of the FEPD division may conduct site inspections and investigations as permitted by 22GCA Chapter 1 §1108.

(a)Inspections may be unannounced and at random.

(b) Inspections may be performed for purposes of monitoring compliance with required signage postings, or other fact-finding purposes.

(c) Inspections may be performed in conjunction with other divisions of the department, local government and/or federal government agencies should it be determined necessary.

§6205. Penalties.

(a) In the event of a violation of this section of the Rules, the employer shall be served with a notice of violation, commonly referred to as a "citation", which details the violation and the level of fine to be imposed. The citation shall be signed and approved by the Fair Employment Practice Officer.

(1)The "citation" shall be prepared on an official Departmental form approved by the Director of Labor.

(2) A violation of the rules may subject the employer to civil penalties. Penalties may be determined using factors such as: size of the company (total number of employees), FEPD penalty scale, and circumstances. Fines shall not exceed what is allowable pursuant to 22GCA§6104(b).

(3) Initial Penalty Scale chart shall be approved by the Director of Labor, and may be subsequently amended as deemed necessary by the Director of Labor.

(4) Penalties enumerated on the FEPD penalty scale shall be used as a general guide to determine assessed penalty on a citation. The Department may elect to exercise discretion and may deviate on a case by case basis.

(5) To be consistent with the statutory definition of employer, the monetary cap for employers who employ (16) Sixteen to (30) Thirty employees may be subject to a fine of not more than ($1,000) One Thousand Dollars per violation.

(b) Non-Monetary Penalties

(1) The civil penalty on a citation may be conditioned by completion of certain required trainings. An employer may be required to attend and provide proof of completion of training activities which may consist of, but are not limited to Department trainings, One-on-one employer trainings, or designated Conferences. All external costs of training activities shall be borne by the employer.

(2) Re-Training – The employer may be required to re-take previously completed trainings at the discretion of the Department.

(3) Verification of compliance – Employer must provide verifiable documentation showing that required training has been completed.

(4) Penalties for non-compliance - If an employer does not complete required training within the specified period, then the non-monetary penalty shall be deferred and the maximum penalty allowable by statute shall be immediately due.

(c) The employer shall have the right to an administrative hearing conducted by the Director of Labor. The offender may either pay the fine, or appeal in writing, within fifteen (15) calendar days from the receipt of the notice of violation, to the Director of Labor, requesting a hearing to present facts and law in defense of the offender. The offender shall have the right to representation of counsel during the hearing and the rules of evidence shall not apply.

(d) Unpaid Penalties – The Department may request action from licensing authorities, as authorized in statute.

§6206. Appeals Hearings.

(a) Upon the filing of a timely request of an appeal of a violation, the Director of Labor shall hold a hearing of the facts, and shall give the employer the opportunity to be heard and to provide testimony in their defense or to present rebuttal evidence. Such hearing shall take place at a time and in a place to be designated by the Director of Labor.

(b)The Director may opt to convene a panel to hear testimony. However, the final decision rests with the Director of Labor as the Hearing Officer.

§6207. Advisory Opinions:
(a)The Department may issue advisory opinions upon request. Requests for advisory opinions must be in writing and clearly state the issue with specificity. The Department may request additional information as needed, but at a minimum, the request must state the name and address of the requestor.

(1) In general, advisory opinions should be completed within 60 days, however should external legal opinions be necessary, the Department is not obligated to any specific time period.

(2) The Director of Labor may, at his/her discretion, decline to address a request for advisory opinion. Reasons for refusal of an advisory opinion may include, but are not limited to the following:
(A) Frivolous requests.
(B) Situations that may require an Attorney General opinion.
(C) Repetitive or redundant requests which have already been addressed.
(D) Requests which are already clear in plain reading of the statute.
(E) Requests that have no bearing to the statute or rules.

§6208. Public Posting of Repeat Offenders: (a) Employers who have been cited for more than one violation of an Unlawful Withdrawal of a Conditional Offer, have their information posted on the Department's website for a period of seven years, in compliance with the statute at 22GCA§6105(b).

(1) No Appeal – Should the employer choose not to appeal their citation; or should the employer fail to submit a timely appeal of their issued citation within the given 15 day appeal period, the employer's information shall be posted on the Department's website the first day after the deadline has past.

(2) Appeal – If a citation is appealed, the employer's information shall be posted on the Department's website after the case has been heard and a decision / Order has been rendered by the Hearing Officer.

(A) Posting of the employer's information shall remain on the Department's website for a period of seven (7) years.

§6209. Petitions. (a) 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.

§6210. Severability. (a) 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.

§6211. Interpretation. (a) The provisions of these Regulations shall be liberally interpreted to ensure the compliance of employers in Guam with the objectives and purposes of the Fair Chances Hiring Process Act.

FINAL DRAFT

After Public Hearing
-Changes Visible-

0017 GAR - LABOR RELATIONS
DIV. 1 - DEPARTMENT OF LABOR
~~CH. 6 - FAIR EMPLOYMENT PRACTICE~~
CHAPTER. 6
FAIR EMPLOYMENT PRACTICE

4

~~CHAPTER 6~~
~~FAIR EMPLOYMENT PRACTICES~~

Article 1. Fair Employment Practices
2. Fair Chances Hiring Process

Article 1
Fair Employment Practices

Legend:

Red = Newly added text

~~Strikeout~~ = Deleted text

§6101. Authority.
§6102. Statement of Policy.
§6103. Purpose.
§6104. Definitions.
§6105. Complaint.
§6106. Same: Form and Contents; Time for Filing.
§6107. Same: Filing.
§6108. Same: Service, Amendment or Withdrawal.
§6109. Investigation of Complaints
§6110. Conciliation.
§6111. Dismissal of Complaints.
§6112. Predetermination Settlement.
~~§6112.~~ §6113. Reconsideration of Decision for Dismissal.
~~§6113.~~ §6114. Department's Order.
~~§6114.~~ §6115. Hearings.

NOTE: Rule-making authority cited for Director of the Department of Labor, 22 GCA §3305 and §5210.

§6101. Authority. By virtue of the authority vested in it by 22 GCA Chapter 3 and §5210, the Department of Labor hereby issues these Rules and Regulations, which it finds necessary in order to carry out its responsibilities in the administration and enforcement of the provisions of the law as it relates to Unlawful Employment Practice and/or Discrimination. These Rules and Regulations shall be liberally construed to accomplish the purposes of the law and the policies of the Department and shall be in force and effect until such time that it is amended or rescinded by rules and regulations hereafter made and published by the Department of Labor.

§6102. Statement of Policy. It is the public policy government of Guam to protect and safeguard the civil rights of all individuals to seek, have access to, obtain and hold employment without discrimination because of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, sex and/ or age, sexual orientation and/ or gender identity. Employment practices should treat all individuals equally, evaluating each individual only on the basis of bona fide occupational qualification, unless pursuant to permissible defense as enumerated in the law.

§6103. Purpose. The intended purpose and objectives of the law and these Rules and Regulations are to promote equal employment opportunity and to assist all individuals in understanding their rights, duties and obligations, so as to effectuate compliance with the law.

§6104. Definitions. (a) ***Person*** shall mean one or more individuals, partnerships, associations, corporations, legal representatives, business trustees, receivers or any organized group of persons.

(b) ***Employer*** shall mean any person employing an individual within the territory of Guam.

(c) ***Employee*** shall mean an individual employed by a person, but shall not include any individual employed in the domestic service of any family or person at his private home, or any individual employed by his/her parent, spouse or child.

(d) ***Complainant*** shall mean the individual who has filed a complaint.

(e) ***Complaint*** shall mean a verified written statement filed with the Department pursuant to these Rules and Regulations alleging unlawful employment practice or discrimination within the meaning of the law.

(f) ***Department*** shall mean the Department of Labor, government of Guam.

(g) ***Director*** shall mean the Director of the Department of Labor, government of Guam.

(h) ***Investigating Officer*** shall mean the person duly designated by the Department to conduct an investigation of a verified complaint filed with the Department.

(i) ***Representative*** shall mean any person duly designated by one or more individuals and acting on behalf of the designator.

(j) ***Respondent*** shall mean any person or employer against whom a complaint has been filed alleging unlawful employment practice or discrimination with the meaning of the law.

(k) ***Days*** shall mean consecutive calendar days unless otherwise specified.

(l) ***Verified*** shall mean sworn to or affirmed before a notary public or other person duly authorized by the Director to administer oaths and take acknowledgments.

(m) ***Employment Agency*** shall mean any person regularly undertaking, with or without compensation, to procure employees for an employer, or to procure for employees' opportunities to work for an employer, and includes an agent of such person.

(n) ***Labor Organization*** shall mean any organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining or of dealing with employers regarding grievances, terms or conditions of employment, or of providing other mutual aid protection.

(o) The term ***because of sex or on the basis of sex*** shall mean to include sexual harassment or because of or on the basis of pregnancy, childbirth or related medical conditions, unless pursuant to permissible defense as enumerated in the law.

(p) ***Party or Parties*** shall mean the complainant and/or the respondent.

(q) ***Law*** shall mean 22 GCA Chapter 3 and 22 GCA Chapter 7.

(r) ***Fair Employment Practice Office*** - shall mean the Fair Employment Practice Division (FEPD) of the Guam Department of Labor, commonly referred to as FEPO.

(s) ***Conciliation*** shall mean, bringing two opposing sides together to reach a compromise in an attempt to avoid taking a case to trial.

§6105. Complaint.

(a) Who May File:

(1) Any individual claiming to be aggrieved by an alleged unlawful employment practice or discrimination may make, sign and file a complaint with the Department.

(2) Any person claiming to have been discharged, expelled, refused employment or otherwise discriminated against by any person, employer, labor organization or employment agency because he has opposed unlawful employment practice or discrimination or because he has filed a complaint, testified or assisted in any proceeding under the law may make, sign and file a complaint with the Department.

(3) The Attorney General may make, sign and file a complaint whenever he has reason to believe that a person, employer, employment agency or labor organization has engaged or is engaging in an unlawful employment practice or discrimination.

(b) Complaint Filing Assistance. Assistance in the filing of complaints is available to complainants at the Department's Fair Employment Practice Office.

(c) Complainants shall receive an update on the status of their complaint within 60 days of their filing with FEPD. The update shall bear the signature of the Director of Labor or the Director's designee.

§6106. Same: Form and Contents; Time for Filing.
(a)Complaint Form. All complaints shall be on ~~a~~ an official Department form approved by the Director of Labor. ~~and in number of copies as obtained at the Department's Fair Employment Branch.~~

(b) Contents of Complaint. Each complaint shall contain the following:

(1) The full name, address and telephone number (if any) of the complainant.

(2) The full name, address and telephone number (if any, and if known) of the respondent.

(3) A plain and concise statement of the facts constituting the alleged unlawful employment practice or discrimination.

(4) The date and place the alleged unlawful employment practice or discrimination occurred.

(5) Such other information as may be required by the Department.

(6) A sworn statement that the information in the complaint is true and correct.

§6107. Same: Filing. (a) Time Limitation for Filing Complaint. No complaint shall be filed after the expiration of ninety (90) days from the date upon which the alleged act of unlawful employment practice or discrimination occurred.

(b) Manner and Place of Filing:

(1) The complaint shall be filed by personal delivery, fax or email to the Department's Fair Employment Practice Office. Complaints submitted via fax and/or email must be notarized.

(2) The Department may not accept complaint if it finds it to be lacking necessary information to appropriately conduct investigation and/or other
action necessary to render appropriate decision.

(3) After verifying the identity of a complainant and witnessing the signature on the complaint form, any employee of the Department who is authorized by the Director, in writing, to enforce the labor laws of Guam may acknowledge a verified complaint filing.

(c) Filing Date. The complaint shall be deemed filed as of the date of receipt of the complaint at the Department's Fair Employment Practice Office. Receipts of the complaint shall be acknowledged by the Department's Fair Employment Practice Office by means of a date-time-

stamp or other acceptable means and shall be initialed or signed by a staff of such office. The Fair Employment Practice Office may also send return email verifying receipt for complaints filed electronically. Return email shall serve as official receipt of complaint.

§6108. Same: Service, Amendment or Withdrawal. (a) Service of Complaint. Within fifteen (15) days after a complaint is filed with the Department, the Department shall personally serve upon the respondent a notice of the complaint, including the date, place and general description of the alleged unlawful employment practice or discrimination. Service of notice may also be effected via Email, to the email address of record Fax, to the fax number of record United States Postal Service Certified Mail, to the mailing address of record or by leaving a copy of the accusation and accompanying papers at their usual place of residence, or at their place of business, with some person of suitable age and discretion residing or working therein.

(1) Notice shall be considered served if any combination of two of the four methods have been made.

(b) Amendment of Complaint. The complainant shall be permitted to make amendments to his complaint as considered reasonable and fair, prior to issuance of a Department's order under 17 GAR §61111. All such amendments related to or growing out of the subject matter of the original complaint shall be deemed to relate back to the original filing date. A complaint may be amended:

(1) To cure technical defects of omissions, including, but not limited to, failure to verify the complaint.

(2) To clarify and/or amplify allegations. Service of complaint amendment. Within fifteen (15) days after the amendment is filed, the Department shall serve a notice of the amended complaint upon the respondent by certified mail, return receipt requested or by personal delivery. Receipt of the amendment shall be acknowledged as in 17 GAR §6105.

(c) Withdrawal of Complaint:

(1) Upon request of the complainant, a complaint, or any part thereof, may be withdrawn only on conditions as hereinafter set forth:

(A) If the request for withdrawal is received in the Department prior to the issuance of Department's order under the provisions of 17 GAR §6111, only upon written consent of the Fair Employment Practice Officer.

(B) If the request for withdrawal is received after the issuance of the Department's order under the provisions of 17 GAR §61111, only upon written consent of the Director.

(2) The request for withdrawal of the complaint shall be in writing, and shall set forth fully the reasons for such request. The request must be signed and verified by the complainant. If

the request is approved, the Department shall promptly notify the respondent of such action. The Attorney General shall be provided a copy of the Department's notice of withdrawal.

§6109. Investigation. (a) After the filing of a complaint, the Department shall assess the complaint and if reasonable cause exists, may ~~cause to make~~ open an investigation into ~~of~~ the allegations contained in the complaint. The ~~Department's investigator~~ Investigating Officer shall have authority to request for records, interview persons and/or require statements necessary to make a fair determination. In cases where parties are uncooperative, the Department may issue a subpoena to obtain witness testimony or the production of necessary records pursuant to 22 GCA § 1109.

(b) Determination of No Reasonable Cause. If after investigation of the complaint, the investigating officer determines that no reasonable cause exists to believe that the respondent has engaged in an unlawful employment practice or discrimination within the meaning of the law, then the ~~investigating officer~~ Department shall dismiss the complaint. Notice of the dismissal shall be given to the complainant and the respondent in accordance with 17 GAR §6108.

(c) Determination of Reasonable Cause. If after investigation of the complaint, the investigating officer finds reasonable cause to believe that an unlawful employment practice or discrimination has occurred or is occurring, the ~~investigating officer~~ Department shall immediately endeavor to eliminate the unlawful practice by conference, conciliation and persuasion.

§6110. Conciliation. (a) Conference. The ~~investigating officer~~ Department may require any or all of the parties to an informal conciliation conference for the purpose of attempting to informally resolve the matter. All parties shall be reasonably notified of the time, date and the place of the informal conciliation conference.

(b) Conciliation Efforts. In attempting to conciliate a case after a determination of reasonable cause has been made, the investigating officer shall endeavor to achieve a just resolution of all violations found and to obtain agreement that the respondent will eliminate the unlawful employment practice and provide appropriate relief.

(c) Successful Conciliation. Where such conciliation efforts are successful, the terms of such conciliation agreement shall be reduced to writing and shall be signed by all parties and the Director of Labor or his designee, provided that the agreement provides, in the judgment of the Fair Employment Practice Officer or his designee, full and fair relief to the parties. A copy of the signed conciliation agreement shall be sent to all parties and the Attorney General.

(d) Termination of Conciliation Efforts. Should a respondent fail or refuse to confer and otherwise cooperate with the Department or its representative, or fail or refuse to make a good faith effort to informally resolve any dispute, and the Department is unable to eliminate the unlawful employment practice or discrimination through informal conference, conciliation and persuasion, and it appears to the Department that further efforts at conciliation would be futile

and non-productive, the Department shall terminate its conciliation efforts and proceed with issuing the Department's order as provided under 17 §6111.

(e) Compliance Reports. If conciliation efforts is successful, proof of respondent's compliance with the law in accordance with the terms of the conciliation agreement shall be obtained by the Department before the case is closed. In order to obtain such proof, the Department may require any party to submit to it such reports as the Department deems necessary to show the manner of compliance with the terms of the conciliation agreement.

§6111. Dismissal of Complaints. (a) The ~~investigating officer~~ Department shall dismiss the complaint under the following conditions:

(1) If it is determined that the Department does not have jurisdiction over the complaint.

(2) If it is determined after investigation that reasonable cause does not exist to believe that the alleged unlawful employment practice or discrimination has been committed.

(3) If the complainant has failed or refused to appear for interviews or conferences, provide requested information, the Department deems necessary or in any way refused or failed to fully cooperate in the investigation or conciliation to the extent that the Department is unable to resolve the complaint, and the Department has received no response from the complainant within thirty (30) days after the notice to the complainant of the Department's intent to dismiss the complaint.

(4) If the complainant cannot be located, provided that reasonable efforts have been made to locate the complainant and the complainant has not responded within thirty (30) days to a notice sent by the Department to the complainant's last known address.

(5) If the respondent has made a predetermination settlement offer as described in 17 GAR §6109, which is in writing and specific in its terms, and the complainant refuses to accept the offer, provided, that the offer would, as determined by the Department, afford full relief for the harm alleged by the complainant and the complainant fails to accept such an offer within thirty (30) days after notice of the offer is made.

(b) Notice of Dismissal:

(1) In the event of any dismissal of a complaint, the complainant shall be notified by certified mail, return receipt requested or by personal delivery, of the reason or reasons for dismissal and of his right to apply to the Director for reconsideration of such dismissal as provided by 17 GAR §6110. The respondent shall be notified, in like manner, of the dismissal of any complaint filed against him and of the reasons therefor.

§6112. Predetermination Settlement. (a) Settlement of all complaints at the earliest stage of the complaint processing is recommended and encouraged. The following action is suggested in endeavoring predetermination settlement:

(1) At any time after the filing of a complaint, but prior to the issuance of a determination, the Fair Employment Practice Officer or his designee may encourage the parties to resolve the complaint through a predetermination settlement.
(2) If the complainant and the respondent agree to the terms of settlement, the same must be reduced in writing, signed by the parties and the investigating officer.

(3) If so approved, the case will be closed without a finding on the merits of the complaint and a copy of the final predetermination settlement shall be sent by certified mail, return receipt requested or personal delivery, to the complainant the respondent.

(b) Effect on Other Complaints. A predetermination settlement shall not affect the processing of any other complaint, including, but not limited to, complaints in which the allegations are like or related to the individual allegations settled.

(c) Department's General Policy in Predetermination Settlement. In any predetermination settlement discussion, the general policies of the Department shall include, but not be limited to the following:

(1) If a settlement is achieved, no determination will be made as to whether or not reasonable cause exists to believe that the allegations of the complaint are true;

(2) The Department shall not subject either party to prejudice as a result of the party's either participating or refusing to participate in a predetermination settlement attempt;

(3) Participation by respondent in a predetermination settlement attempt will not be construed as evidence of a violation of the law or a waiver of the right to a Departmental determination on the issues raised by the complaint if a settlement cannot be achieved; and

(4) If a predetermination settlement is achieved, the terms thereof shall not attribute fault to any of the parties involved.

~~§6112.~~ §6113. Reconsideration of Decision for Dismissal. (a) Request by Complainant. A complainant may submit to the Director a request for reconsideration of the dismissal of his complaint. Such request must be in writing, state specifically the grounds upon which it is based, and be filed with the Department within thirty (30) days from the date of the mailing of the notice of dismissal on which reconsideration is being requested.

(b) Director's Actions on Request for Reconsideration.
Whenever a request for reconsideration is made, the Director shall review the entire file, and may, in his discretion, grant or deny such request. If a request is granted, the Director shall refer

the entire matter, together with his recommendation, to the Fair Employment Practice Officer for re-evaluation in light of the Director's action. If the request for reconsideration is denied, the Director shall notify the complainant, in writing, of his determination by certified mail, return receipt requested or by personal delivery.

~~§6113.~~ **§6114. Department's Order.** (a) Issuance of Order. After determination is made that the respondent has engaged in unlawful employment practice or discrimination as defined in the law, and conciliation efforts terminated, the Department shall state its findings of facts and shall issue and cause to be served on respondent an order requiring such respondent to cease and desist from such unlawful practice and/or discrimination and to take such affirmative action to include, but not limited to those enumerated in the law, as, in the judgment of the Department, will effectuate the purpose of the law.

(b) Notice of Rights of Hearing. In all cases where an order is issued, it shall include a notice to the respondent, advising him of his rights to a hearing in conformance with the Administrative Adjudication Law.

(c) Copy of Order to Attorney General. In all cases where an order is issued, a copy of such order shall be provided the Attorney General.

~~§6114.~~ **§6115. Hearings**. (a) Request for Hearing. In all cases where the respondent objects and/or opposes the order of the Department, in whole or in part, the respondent may request for a hearing on the case. Such request shall be in writing, signed by or on behalf of the respondent. The request must be received by the Department within fifteen (15) days from the date the Department's order is served upon the respondent. Failure to submit request within the time allotted will constitute a waiver of respondent's right to a hearing. In such instances, the Department's decision as enumerated in the Department's order shall be final.

(b) Department's Action on the Request for Hearing. Within ten (10) days upon receipt of a request for a hearing, the Department shall forward a copy of the request and a complete copy of the case to the Attorney General for his appropriate action.

(c) Assignment of Hearing Officer. Upon receipt of the request and the cases filed from the Department, the Attorney General shall assign a hearing officer to hear the case.

(d) Scheduling of Hearing. The hearing officer shall schedule the hearing on the case.

(e) Notice of Hearing. Upon establishing the time, date and place for the hearing, the hearing officer shall serve notice upon all parties. The notice shall inform all parties of the time, date and place of the hearing. Such notice shall be served upon all parties at least ten (10) days prior to the hearing.

(f) Conduct of Hearing. The hearing officer shall conduct the hearing in conformance with the Administrative Adjudication Law.

(g) Decision. Upon completion of the hearing, the hearing officer shall serve upon all parties and to the Department a copy of the decision rendered upon the case Heard,

(h) Conformity with the Administrative Adjudication Law. All procedures and action taken as relates to hearings and appeals shall be in conformance with the Administrative Adjudication Law.

~~CHAPTER 6~~
~~FAIR EMPLOYMENT PRACTICES~~

Article 2
Fair Chances Hiring Process

§6201. Definitions.
§6202. Fair Chances Hiring Process.
§6203. Signage Posting Compliance.
§6204. Inspections & Investigations.
§6205. Penalties.
§6206. Hearings.
§6207. Advisory Opinions.
§6208. Public Posting of Repeat Offenders.
§6209. Petitions.
§6210. Severability.
§6211. Interpretation.

§6201. Definitions – These definitions shall be used for the purposes of administering the Fair Chances Hiring Process.

(a) ***Applicant*** means any person considered for, or who requests to be considered for, employment by an employer; or, any employee considered for, or who requests to be considered for, another employment position, by the employer.

(b) ***Arrest*** means being apprehended, detained, taken into custody, held for investigation, or restrained by a law enforcement agency due to an accusation or suspicion that a person committed a crime.

(c) ***Conditional offer*** of employment means an oral or written offer by an employer to employ an individual in a job, or placement in a staffing agency's staffing pool, that is conditioned solely on the employer's evaluation of the individual's criminal history.

(d) ***Court Clearance*** means a document from a state, territorial, federal or foreign government which identifies information regarding an individual, concerning a court case that has not been dismissed or expunged.

(e) ***Criminal history*** means any conviction, plea of nolo contendere, or deferred adjudication arising from felony criminal accusation, or any misdemeanor criminal accusation, made under local or federal law, or a comparable law of a state of the United States. This does not include dismissed, expunged, or sealed cases.

(f) ***Employer*** means any person, company, corporation, general contractor, firm, labor organization, or association, including the government of Guam, that employs more than fifteen (15) employees in Guam.

(g) ***Employment*** means any occupation, vocation, job, or work for pay, including temporary or seasonal work, contracted work, contingent work, and work through the services of a temporary or other employment agency; or, any form of vocational or educational training with pay, where the physical location of the employment is in whole or in substantial part, within Guam.

(h) ***Fair Employment Practice Office*** - shall mean the Fair Employment Practice Division (FEPD) of the Guam Department of Labor, commonly referred to as FEPO.

(i) ***Inquiry*** means any direct or indirect conduct intended to gather criminal history information from or about the applicant, candidate, or employee, using any method, including application forms, interviews, and criminal history or background checks.

(j) ***Interview*** means any direct contact by the employer with the applicant in person, or by telephone or video-teleconferencing, to discuss the employment being sought or the applicant's qualifications.

(k) ***Police Clearance*** means a document from a state, territorial, federal or foreign government which identifies information, regarding an individual concerning an arrest which resulted in a filed criminal case.

(l) ***Reasonable*** means applying judgement expected of a typical person exercising ordinary prudence which is considered to be rational, appropriate, ordinary, or usual in the circumstances

§6202. Fair Chances Hiring Process (a) An employer shall not request or require a court clearance from an applicant prior to making a conditional offer of employment to the applicant.

(1) Complaints: Persons wishing to file a complaint for a violation of the Fair Chances Hiring Process may file such complaint with the Department of Labor Fair Employment Practice Office.

(A) Complaints and statements must be filled out on a Departmental complaint form.

(B) Complainant shall provide valid photo identification with their complaint.

(C) FEPD may assist complainant with obtaining information from the employer, as allowed in the statute.

(2) Investigations: An investigation may be triggered as a result of a complaint, fact finding process from a separate case, or the result of a formal inspection.

(A) When requesting information from an employer, the Department may require that such information be submitted within 15 calendar days.

(B) An employer may request an extension of this 15 day deadline. An extension must be approved in writing by ~~DOL~~ the Department and shall not exceed 30 calendar days after the initial 15 day period.

(C) FEPD Investigators may interview employees at a jobsite and may also inspect employer records at the employer's establishment. Failure to allow reasonable access to FEPD investigators constitutes a violation and may subject an employer to civil penalties pursuant to 22GCA§6104(b).

(D) FEPD investigators may refer a matter or coordinate with other local or federal agencies when appropriate.

(3) Findings: FEPD investigators shall consider documents, statements and other pertinent information during fact finding investigations and formulate a report to the Director.

(A) The report shall contain a synopsis of the situation and recommendation to the Fair Employment Practice Officer on action.

(B) Findings shall take into consideration information gained during fact finding, exemptions in the statute and/or statements of denial issued by the employer.

(C) Fair Employment Practice Officer shall approve the synopsis prior to submission to the Director.

(4) Withdrawal of Conditional Offer: Should a conditional offer be proffered to an applicant, written notice must be given to the applicant no later than 15 calendar days, after the applicant provides Police and/or Court clearances, ~~when requested~~ detailing the result of the employer's decision on whether the applicant has been hired or not.

(A) Following the extension of a conditional offer of employment, an employer may only withdraw the conditional offer to an applicant for a legitimate business reason. The employer's determination of a legitimate business reason must also be reasonable in light of the following factors:

(i) the specific duties and responsibilities necessarily related to the employment sought or held by the person;
(ii) the bearing, if any, that the pending criminal case or criminal history will have on the applicant's fitness or ability to perform one or more such duties and responsibilities;
(iii) the time which has elapsed since the occurrence of the pending criminal case or criminal history;
(iv) the age of the person at the time of the pending criminal case or criminal history;
(v) the frequency and severity of the pending criminal case or criminal history; and
(vi) any information produced by the person, or produced on his/her behalf, in regard to his/her rehabilitation and good conduct since the occurrence of the pending criminal case or criminal history.

(B) An employer may lawfully withdraw a conditional offer if the applicant fails to submit the required court/police clearance within 10 calendar days.

(C) Employer may request additional information from an applicant upon receipt of court/police clearances.

(D) An applicant has 90 days to file a complaint with the Department if they feel that the employer's proffered job offer was rescinded unjustly.

~~(E) The 1st day of the 90 day period shall begin on the day the employer receives the applicant's court clearance~~. (Removed completely and re-lettered)

(E) Employer shall provide an applicant with a stamp received copy of an applicant's court clearance or a written notice acknowledging receipt of the clearance.

(F) Should the Department be unable to conclusively determine the day the clearances were submitted to the employer, the date of the applicant's clearances shall be used as the 1st day of the 90 day complaint period.

(G) Electronic transmittal may be considered a valid means of submittal of clearances to the employer and communication of the status of the ~~proffered~~ conditional job offer to the applicant.

(b) An employer may not make reference to any requirement for Police and/or Court Clearances in a job advertisement ~~or~~ , job posting, interview, or by any other means, prior to extending a conditional offer of employment, unless the specific job is exempt from the Fair Chances Hiring Process Act as stated in 22GCA§6102(e)~~, and~~ Such reference shall constitute a violation of the Act.

§6203. Signage Posting Compliance.

(a) All employers shall have a visible FEPD posting present in their place of business. Any employer who fails to meet this requirement may be found in violation of the rules and may be subject to civil penalties at 22GCA§6104(b).

(1) Posting must be in a format designed and approved by FEPD.

(2) Posting may not be smaller than an 8 ½" x 11" document.

(3) Posting must be placed in a conspicuous location where it may be viewed by a majority of the company's employees, including but not limited to, employee break-rooms, Human Resource offices, jobsites, or other places where employees congregate.

§6204. Inspections & Investigations The staff and management personnel of the FEPD division may conduct site inspections and investigations as permitted by 22GCA Chapter 1 §1108.

(a)Inspections may be unannounced and at random.

(b) Inspections may be performed for purposes of monitoring compliance with required signage postings, or other fact-finding purposes.

(c) Inspections may be performed in conjunction with other divisions of the department, local government and/or federal government agencies should it be determined necessary.

~~(d) Other non-Labor Law Enforcement Specialist (LLES) FEPD personnel, may partake in job site inspections while under the guidance and supervision of designated personnel. With a~~

~~qualified to perform basic inspection & investigation duties, provided that Fair Employment Practice Officer attests to their competency in writing.~~ (Removed completely)

§6205. Penalties.

(a) In the event of a violation of this section of the Rules, the ~~offender~~ employer shall be served with a notice of violation, commonly referred to as a "citation", which details the violation and the level of fine to be imposed. The citation shall be signed and approved by the ~~FEPD Officer~~ Fair Employment Practice Officer.

(1)The "citation" shall be prepared on an official Departmental form approved by the Director of Labor.

(2) A violation of the rules may subject the employer to civil penalties. Penalties may be determined using factors such as: size of the company (total number of employees), FEPD penalty scale, and circumstances. Fines shall not exceed what is allowable ~~under the law~~ pursuant to 22GCA§6104(b).

(3) Initial Penalty Scale chart shall be approved by the Director of Labor, and may be subsequently amended as deemed necessary by the Director of Labor.

(4) Penalties enumerated on the FEPD penalty scale shall be used as a general guide to determine assessed penalty on a citation. The Department may elect to exercise discretion and may deviate on a case by case basis.

(5) To be consistent with the statutory definition of employer, the monetary cap for employers who employ (16) Sixteen to (30) Thirty employees may be subject to a fine of not more than ($1,000) One Thousand Dollars per violation.

(b) Non-Monetary Penalties

(1) The civil penalty on a citation may be conditioned by completion of certain required trainings. An employer may be required to attend and provide proof of completion of training activities which may consist of, but are not limited to Department trainings, One-on-one employer trainings, or designated Conferences. All external costs of training activities shall be born by the employer.

(2) Re-Training – The employer may be required to re-take previously completed trainings at the discretion of the Department.

(3) Verification of compliance – Employer must provide verifiable documentation showing that required training has been completed.

(4) Penalties for non-compliance - If an employer does not complete required training within the specified period, then the non monetary penalty shall be deferred and the maximum penalty allowable by statute shall be immediately due.

(c) The ~~offender~~ employer shall have the right to an administrative hearing conducted by the Director of Labor. The offender may either pay the fine, or appeal in writing, within fifteen (15) calendar days from the receipt of the notice of violation, to the Director of Labor, requesting a hearing to present facts and

law in defense of the offender. The offender shall have the right to representation of counsel during the hearing and the rules of evidence shall not apply.

(d) Unpaid Penalties – The Department may request action from licensing authorities, as authorized in statute.

§6206. Appeals Hearings.
(a) Upon the filing of a timely request of an appeal of a violation, the Director of Labor shall hold a hearing of the facts, and shall give the employer the opportunity to be heard and to provide testimony in their defense or to present rebuttal evidence. Such hearing shall take place at a time and in a place to be designated by the Director of Labor.

(b)The Director may opt to convene a panel to hear testimony. However, the final decision rests with the Director of Labor as the Hearing Officer.

§6207. Advisory Opinions:
(a)The Department may issue advisory opinions upon request. Requests for advisory opinions must be in writing and clearly state the issue with specificity. The Department may request additional information as needed, but at a minimum, the request must state the name and address of the requestor.

(1) In general, advisory opinions should be completed within 60 days, however should external legal opinions be necessary, the Department is not obligated to any specific time period.

(2) The Director of Labor may, at his/her discretion, decline to address a request for advisory opinion. Reasons for refusal of an advisory opinion may include, but are not limited to the following:
(A) Frivolous requests.
(B) Situations that may require an Attorney General opinion.
(C) Repetitive or redundant requests which have already been addressed.
(D) Requests which are already clear in plain reading of the statute.
(E) Requests that have no bearing to the statute or rules.

§6208. Public Posting of Repeat Offenders: (a) Employers who have been cited for more than one violation of an Unlawful Withdrawal of a Conditional Offer, ~~within two years from the issuance of the first citation,~~ shall have their information posted on the ~~Guam DOL~~ Department's website for a period of seven years, in compliance with the statute at 22GCA§6105(b).

(1) No Appeal – Should the employer choose not to appeal their citation; or should the employer fail to submit a timely appeal of their issued citation within the given 15 day appeal period, the employer's information shall be posted on the Department's website the first day after the deadline has past.

(2) Appeal – If a citation is appealed, the employer's information shall be posted on the Department's website after the case has been heard and a decision / Order has been rendered by the Hearing Officer.

(A) Posting of the employer's information shall remain on the Department's website for a period of seven (7) years.

§6209. Petitions. (a) 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.

§6210. Severability. (a) 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.

§6211. Interpretation. (a) The provisions of these Regulations shall be liberally interpreted to ensure the compliance of employers in Guam with the objectives and purposes of the Fair Chances Hiring Process Act.

Fair Chances Administrative Rules:

Public Hearing 02/12/18

1. Draft Version w/ Testimony
2. Written Testimony
3. Transcription
4. Video Recording of Public Hearing

GUAM DEPARTMENT OF LABOR

Jeffrey Sablan <jeffrey.sablan@dol.guam.gov>

Fair Chances Hiring Process Act: Proposed Rules

Katherine Dote <kdote@pacificstarguam.com>
Reply-To: kdote@pacificstarguam.com
To: Jeffrey Sablan <jeffrey.sablan@dol.guam.gov>

Wed, Feb 14, 2018 at 12:23 PM

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Hi Jeff,

Thank you for accepting input from SHRM Guam Chapter earlier this week. As stated by both attorneys, it would help to provide definitions and be consistent in terminology throughout the document.

As I mentioned in the informal Q&A after the public hearing, I am concerned about the level of detail expected in an employer's Notice of Denial that an applicant may request.

It would help me if I understood better the purpose this document serves. Is it intended to be a summary confirmation that the employer completed their analysis of the conviction in light of the six factors listed on page 12 of Version 4.1 and determined that the risk was sufficient to rescind the offer? Or are we to provide a detailed line of reasoning for each of the six factors (i-vi) shown on page 12 of Version 4.1? Would the employer need to describe the risk vulnerabilities in detail?

In other words, are we confirming our decision in writing, or are we sharing our thought process in detail?

It would help if this were made clear.

Sincerely,

Katherine Dote, SPHR, SHRM-SCP

Director of Human Resources

Pacific Star Resort & Spa

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GUAM DEPARTMENT OF LABOR

Jeffrey Sablan <jeffrey.sablan@dol.guam.gov>

Administrative Rules: Fair Chance in Hiring Act

Joann Muna <joann.muna@guamcc.edu> Wed, Feb 14, 2018 at 3:01 PM
Reply-To: joann.muna@guamcc.edu
To: Jeffrey Sablan <jeffrey.sablan@dol.guam.gov>

Hafa Adai Jeff,

Thank you for giving SHRM the opportunity to testify on the "Proposed Administrative Rules and Regulations: Fair Chances on Hiring Process Act". As presented through formal AAA process, attached is a copy of SHRM written testimony given by Dana Gutierrez, Vice President of Legislative Affairs.

Please thank Director Mabini for giving us one final opportunity to submit testimony. I believe SHRM has provided valuable input both in **writing and through our voices**.

One final comment I would like to reiterate is the critical need for a clear definition at the beginning of the Administrative Rules. As mentioned, another example is the use of the word "offender" in subsection 6204(c).

As the SHRM President Rose Morales stated, *"we want to work with DOL and assist, because it is we the HR Professionals who have to work with this process".*

Thank you to Greg for informing us of the expected long time line for the approval of the FINAL Administrative Rules due the government of Guam's AAA process. Unfortunately, I do understand and feel your pain with the limited resources afforded to DOL.

Regards,

SHRM Pacific Council State Director

Joann Waki Muna, *SHRM-SCP, SPHR*

Human Resources Administrator

Guam Community College

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AFFILIATE OF SHRM SOCIETY FOR HUMAN RESOURCE MANAGEMENT

SOCIETY FOR HUMAN RESOURCE MANAGEMENT
GUAM CHAPTER

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February 12, 2018

VIA HAND DELIVERY

Shirley "Sam" Mabini
Director
GUAM DEPARTMENT OF LABOR
414 West Soledad Ave.
Ste. 400, GCIC Bldg.
Hagåtña, Guam 96910

Re: Testimony on Proposed Administrative Rules and Regulations; Fair Chances Hiring Process Act

Dear Director Mabini:

My name is Dana Gutierrez and I am the Vice President of Legislative Affairs for the Society for Human Resource Management, or SHRM, Guam Chapter, and it is in that capacity that I provide this testimony. My testimony is limited to the proposed administrative rules and regulations to implement the Fair Chances Hiring Process Act, designated as Title 17, Guam Administrative Rules, §6201 to §6210.

Generally, the laws passed by the Guam Legislature do not go into detail about how the law is to be applied and enforced, or about the procedures to be used to implement the law. For this reason, the public relies on government of Guam agencies, such as the Guam Department of Labor, to promulgate and administer rules and regulations that govern how the law will be carried out. These rules and regulations should fill-in the gaps left by the statutory law and make it easier for the public to understand the law and how it will be enforced and implemented. For this reason, administrative rules should be clear and concise.

In reviewing the proposed rules, some overall comments include the following.

First, there is a lack of a definitions section in the proposed administrative rules. Administrative rules should be capable of standing alone without the need for members of the public to constantly refer to the statute to understand basic concepts such as the definition of words or terms. For instance, who do the administrative rules apply to? There is no definition of employer provided. The administrative rules should contain a definitions section.

Further, if a term is to be used in the administrative rules which have not been defined in the statute, the rules should define the term. For instance, the term, "court clearance" is used in the rules but there is no corresponding definition in the statute. If employers are allowed to request "court clearances" upon a conditional offer of employment being provided to an applicant, then the employer should know what constitutes a "court clearance." What employers

are allowed to request post-offer, or prohibited from requesting post-offer, should be clearly stated in the administrative rules.

After the Guam Department of Labor presented at the SHRM Guam Chapter Breakfast Briefing on February 7, 2018, employers who attended were still uncertain what documents or information is allowed post-offer or in the event they meet an exemption under the statute. As a result, the administrative rules must provide clear direction in order for employers to comply with statutory requirements.

Second, if the short-form or abbreviated version of a word or term is to be used in the administrative rules, then the word or term should be used once in its entirety, then the short-form or abbreviated term should later be noted. For example, at §6201(a)(2)(B), the administrative rules reference "DOL" without any explanation of its meaning. Although many may know that the abbreviation "DOL" means "Department of Labor," not every member of the public has this knowledge. Further, because "DOL" is associated with the federal Department of Labor, it may be best to use the abbreviation, "GDOL."

Third, there should be consistency in references to words or terms. We note that there are references to "Department of Labor," "Department" and "DOL" all in the same document. Plus, although the administrative rules refer to the Fair Employment Practice Office, the abbreviation "FEPD" is referred to throughout the documentation, which we assume means Fair Employment Practice Division. Though we understand that the administrative rules will be reviewed prior to finalizing, we note these issues to assist with revision.

Specific comments I have regarding the proposed administrative rules include the following.

1. At §6201(a)(2)(C) and §6202(a), the administrative rules provide that civil penalties may be imposed upon employers. However, there is no information on what penalties may be imposed or how such penalties may be imposed.

2. §6201(a)(3)(A) references the Fair Employment Practice Officer but it is not clear what position this refers to--is this the Fair Employment Practice Administrator or some other position?

3. §6201(a)(4) does not contain the limitation provided in Title 22, Guam Code Annotated ("GCA"), §6102(g) that an applicant must make the request for information regarding the termination of a conditional offer on the basis of a pending criminal case or criminal history within thirty (30) days of the termination. There is no time limit stated to make the request.

4. The language of §6201(a)(4)(E) regarding when the first day of the 90-day period to file a complaint with the Guam Department of Labor begins to run contradicts the language of 22 GCA §6103(c). 22 GCA§6103(c) provides that any administrative complaint based on a violation of the statute must be made within ninety (90) days of notification of denial of employment by an employer, not ninety (90) days from the date the employer receives a copy of the applicant's court clearance.

5. With regard to §6201(b), although it is clear under the statute that an employer may not inquire or require that an applicant disclose information regarding a pending case or criminal history pre-offer, it is not clear that the statute prohibits employers from informing applicant's that such information will be required post-offer. In other words, are employers prohibited from informing applicants that information regarding a pending criminal case or criminal history may be required post-offer? SHRM members have requested that the Guam Department of Labor clarify this issue.

6. With regard to unannounced and random inspections discussed at §6203(a), this ability on the part of the Guam Department of Labor appears to be unnecessary and overly intrusive. As there are no safety issues involved, it appears that notice and the ability to conduct inspections at a reasonable time agreed upon by the employer, is more in line with the intent of the statute. Generally, other government enforcement agencies provide notice and schedule a reasonable time to conduct a site visit to an employer's workplace.

7. The language of §6203(d) appears to still be in draft as the reference to "OJT" is not defined anywhere in the administrative rules. It is not clear what the difference is between those who are "Labor Law Enforcement Specialists" and those who are not, and the significance of such difference on investigations into possible violations of the Fair Chances Hiring Process Act.

8. With regard to the penalties stated in §6204, the list of penalties should be clearly stated in the administrative rules. The public should not have to refer back to the statute in order to see the list of possible penalties.

9. Under §6207, if an employer receives a second citation within three (3) years, is the information still posted on the Guam Department of Labor website? In other words, if more than two (2) years have passed, is the employer's name still placed on the website? This is not clear based on the proposed language of §6207.

The SHRM Guam Chapter understands that the drafting of administrative rules is difficult. The SHRM Guam Chapter remains committed to assisting the Guam Department of Labor with the drafting of the administrative rules to implement the Fair Chances Hiring Process Act.

Thank you for the opportunity to provide testimony on the proposed Fair Chances Hiring Process Act administrative rules.

Very truly yours,

Dana Alfuterra

DANA A. GUTIERREZ
Vice President of Legislative Affairs

Cc: SHRM Guam Chapter Board

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Guam Department of Labor
17 GAR Chapter 6 - Fair Employment Practice
Administrative Rules Regulations Public Hearing
Monday, February 12, 2018 - 2:00 p.m.

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Doc. No. 34GL-18-1803.

Guam Department of Labor
17 GAR Chapter 6 - Fair Employment Practice
Administrative Rules Regulations Public Hearing
Monday, February 12, 2018 - 2:00 p.m.

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Doc. No. 34GL-18-1803.

Guam Department of Labor
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Doc. No. 34GL-18-1803

DEPARTMENT OF LABOR

Fair Employment Practice Division

Fair Chances Hiring Process Act – Public Hearing Transcription
February 12, 2018
2:00 PM

Panel:
Dr. Shirley "Sam" Mabini – Director of Labor
Jeff Sablan – FEPD Administrator
Greg Massey – ALPCD Administrator

Persons Testifying:
Georgette Concepcion – Private Attorney
Dana Gutierrez - SHRM Representative

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CALL TO ORDER:

(Shirley Mabini) Thank you. I have barely have my voice again this afternoon, I apologize. I'll go ahead and call the meeting to order, I have 2:04pm, if my watch is correct and well go ahead and begin the public hearing to hear the GARs or the Fair Employment Practice Act. I would like to thank everybody who had signed up and also who will be presenting written and or verbal testimony. I believe we have two individuals who will be coming up to do a verbal testimony and like Greg had mentioned this is a time for us to receive information / feedback which will be concerning us of course as we move forward to finalizing the rules. So without further ado, I'll go ahead and call up Ms. Georgette Conception.

(Georgette Concepcion) I'll go after Dana.

(Shirley Mabini) Oh, Dana... Yeah you can both come up. This will be a good time. We are recording and we are taking notes as well, thank you.

Dana Gutierrez - Testimony

(Dana Gutierrez) Hi. Good Afternoon Director Mabini, Mr. Sablan, and Mr. Massey. We did submit written testimony the Society for Human Resource Management or SHRM Guam chapter and I will read the written testimony to the record. Good afternoon my name is Dana Gutierrez and I am Vice president of legislative affairs for the SHRM Guam chapter, and it is in that capacity that I provide this testimony. My testimony is limited to those Administrative Rules and Regulations to implement the Fair Chances Hiring Process Act designated as title 17 Guam Administrative Rules section 6201 to 6210. Unfortunately we have not had a chance to look at the first set of rules that are being proposed but we will try and do that as well and provide some comments. Now with regards to the Administrative Rules from the Fair Chances Hiring Process Act, you know, generally the laws passed by the Guam legislature do not go into detail about how the laws would be applied and enforced or about the procedures to be used to implement the law. For this reason, the public relies on Government of Guam agencies such as the Guam Department of Labor to promulgate and administer rules and regulations that govern how the law

will be carried out. These rules and regulations should fill in the gaps left by the statutory law and make it easier for the public to understand the law and how do we enforce and implement it. For this reason, Administrative Rules should be clear and concise. In reviewing the proposed rules some overall comments include the following.

First there's a lack of a definition section in the proposed Administrative Rules. Administrative Rules should be capable of standing alone without the need for members of the public to constantly refer to the statutes to understand basic concepts such as the definition of words or terms. For instance, who do the administrative rules apply to? There is no definition of employer provided. The Administrative Rules should contain a definition section. Further, if the term is to be used in the Administrative Rules which have not been defined in the statutes, the rules should define the term. For instance, the term "Court Clearance" is used in the rules but there is no corresponding definition in the statute. If employers are allowed to request court clearances upon a conditional offer of employment being provided to an applicant, then the employer should know what constitutes a court clearance. When employers are allowed to request, post offer, or are prohibited from requesting post offer should be clearly stated in the Administrative Rules. After the GDOL presented at the SHRM Guam Chapter breakfast briefing on February 7, 2018, employers who attended were still uncertain what documents or information is allowed post offer or in the event they need an exemption under the statute. As a result the Administrative Rules must provide clear direction in order for employers to comply with the statutory requirements.

Second, if a short form or abbreviated version of a word or term is to be used in the Administrative Rules, then the word or term should be used once in its entirety then the short form or abbreviated term should later be noted. For example, at section 6201(a)(2)(B) the administrative rules reference DOL without any explanation of its meaning. Although many may know that the abbreviation DOL means Department of Labor not every member of the public has this knowledge. Further because DOL is associated with Federal Department of Labor it may be best to use the abbreviation GDOL.

Third, should there be.... sorry. Third, there should be consistency in reference to words or terms we know that there are references to Department of Labor, Department and DOL all in the same document, plus all though the Administrative Rules refer to the Fair Employment Practice Office, the abbreviation FEPD is referred to through documentation which we assume means Fair Employment Practice Division. Though we understand that the Administrative Rules be reviewed prior to finalizing, we note these issues to assist with revision.

Specific Comments I have regarding the proposed Administrative Rules to include the following:

At section 6201(a)(2)(C) and 6202(a), the Administrative Rules provide that civil penalties may be imposed upon employers. However, there is no information on what penalties may imposed or how such penalties shall be imposed. And these are penalties, I assume, aside from the ones that are already in the statute?

Second, 6201(a)(3)(A) references the Fair Employment Practice Officer but it is not clear what position this refers to. Is this the Fair employment practice administrator or some other position? Section 6201(a)(4) does not contain the limitation provided in Title 22 Guam Code Annotated section 6102(g) that an applicant must make the request for information regarding the termination of the conditional offer on the basis of a pending criminal case or criminal history within 30 days of the termination of the offer. There are no time limits needed to make the request.

Fourth, the language of section 201(a)(4)(E) regarding when the first day of the 90 day period to file a complaint with the Guam Department of Labor begins to run contradicts the language of 22GCA section 6103(c). 22GCA section 6103(c) provides that any administrative complaint based on a violation of the statute must be made within 90 days of the notification of denial of employment by an employer, not 90 days from the day the employer receives a copy of the applicant's court clearance. With regards to section 6201(b), although it is clear under the statute that an employer may not inquire or require that an applicant discloses information regarding a pending case or criminal history pre-offer, it is not clear that the statute prohibits employers from informing applicants that such information will be required post offer. In other words, are employers prohibited from informing applicants that the information regarding a pending criminal case or criminal history may be required post offer? SHRM members have requested that the Guam Department of Labor clarify this issue.

With regards to unannounced and random inspection discussed that section 6302(a), this ability on the part of the Guam Department of Labor appears to be unnecessary and overly intrusive as there are no safety issues involved. It appears that notice and the ability to conduct inspections at a reasonable time agreed upon by the employer is more in line with the intent of the statute. Generally other government enforcement agencies provide notice and schedule a reasonable time to conduct the site visits to an employer's workplace. The language of section 6203(b), it appears to still be in draft, as a reference to OJT is not defined anywhere in the Administrative Rules. It is not clear what the difference is between those who are Labor Law Enforcement Specialist and those who are not. And the significance of such difference on investigations into possible violations of the Fair Chances Hiring Process Act.
With regard to the penalties stated in section 6204, the list of penalties should be clearly stated at the Administrative Rules. The public should not have to refer back to the statute in order to see the list of possible penalties.

Under section 6207, if an employer receives a second citation within 3 years is the information still posted on the Guam Department of Labor website? In other words, if more than 2 years have passed is the employers name still placed on the website? This is not clear based on the proposed language of section 6207.

The SHRM Guam chapter understands that the drafting the administrative rules is difficult. The SHRM Guam Chapter remains committed to assisting the Guam Department of Labor with the drafting of Administrative Rules to implement the Fair Chances Hiring Process Act. Thank you for the opportunity to provide testimony on the proposed Fair Chances Hiring Act administrative rules.

(Greg) Next...

Georgette Concepcion – Testimony

Good afternoon, I'm not as organized as Ms. Gutierrez here.

Good afternoon my name is Georgette Concepcion and I am an Attorney with the law firm of Brooks Concepcion Law and I am here today in my capacity as an attorney, because our firm represents several employers and we do employment law. Ms. Gutierrez, covered more of the general concerns that I also had, but I would just like to point out some specifics.

In terms of the definitions, I think the *"conciliation"* should be defined, at least shortly, because it's kind of... if it's meant to mean a settlement then it should to be defined as such. And that's one of the words that should be defined.

And then also... so the only thing that would trigger an investigation by your department would be the filing of a written complaint? So, I am not sure if that is the intent; that you can only do it with a written complaint?

(G. Massey) Which section are you talking about?

(Georgette) I'm sorry... I'm talking about the first part, the 6105... yes, the Division 1. I'm sorry. And then with regard to 6108 subsection(c), it states that under sub section (c)(2)... I'm sorry (c)(A), (c)(1)(A), it says here that if a request for withdrawal is received by the department prior to the issuance of the departments order under provisions of 17GAR section 6101, only upon written consent of the Fair Employment Practice Officer. So, the only time the complainant can withdraw the complaint is first gives the department notice and then the Director the Fair Employment Practice Officer has to have written consent.

I'm not sure if that would send a chilling effect to the employees knowing that they're going to have through the specific process to withdraw their complaint.

(Greg Massey) Okay just to clarify, which section are we talking about?

(Georgette) 6108 subsection (c), under the Withdrawal of Complaint.

(Greg Massey) C(A)?

(Georgette) (c)(1)(A), yeah.

(Greg Massey) Okay just for clarification, that's an existing rule already, we didn't make any changes to that. So... we could look at adding a change, but that's already an existing law.

(Georgette) Yeah, so I'm just letting you know that to me that just might have a chilling effect on the complainants. And then under (c)(2), it says a request for withdrawal and then it says that the Attorney General shall be provided a copy of the department's notice of withdrawal. Kind of wondering what the purpose of that would be, if it is going to be handled at an administrative level? Because if it is withdrawn, its withdrawn right?

And then under 6109 subsection (a); I think there is a typo there, so it says after the filing of complaint the department shall "cause to make an investigation". I think you should delete "to make" and use shall cause an investigation and allegations contained in the complaint.

Okay and then under 6110 where it talks about conciliation, subsection (c), the last sentence it says that a copy of the signed conciliation agreement shall be sent to all parties and the Attorney General. What's the purpose of sending it to the Attorney General? Is it to have the Attorney General's office approve the settlement? If that's so, then I think that it should state there that it's subject to the Attorney General's approval so that the parties know that its... once they've achieved a settlement agreement it's not necessarily settled.

So I am not sure what is the intent of sending it to the Attorney General's office, it's just something for you guys to think about.

(Greg Massey) Again that's, that's an existing rule that we didn't write so we'll take that into... we'll look at that again and see if we can make some changes.

(Georgette) Then just make it more clear that it is subject to the A.G's. approval.

(Georgette discussing with Dana Gutierrez) No, I'm not done.

(Georgette) And then under 6111, Dismissal of Complaints, subsection (a)(1) it says "if it is determined that a department does not have jurisdiction over the complaint". So, what will it be? Maybe you could clarify what is the basis of the department not having jurisdiction. Is it because it is not an unlawful practice specific to this Act in terms of the Fair Chances Act, or you know, so maybe you can make it more clear or have some kind of set standard as to why you wouldn't have jurisdiction.

Usually you don't have jurisdiction because?...

(Greg Massey) Well for section 1, keep in mind that Division 1 is not Fair Chances. Division 1 is all... it's pretty much age, sex, discrimination, disability...

(Georgette) So then just maybe clarify then I guess.

(Greg Massey) As where to why we don't have jurisdiction?

(Georgette) I'm sorry...(flipping through pages of the rules)

(Greg Massey) Just for clarification, typically this stuff that, under Division 1 would typically only apply to companies with below fifteen (15) workers. Fifteen (15) and above would go to FEPA.

(Georgette) And then, with regard to Division 2, same comments as Dana, you should have a definitions section with the ones that she had mentioned.

Now, 6201(a) capital letter subsection (C), it says FEPD investigators may interview employees at the jobsite and also inspect employee records at employer's establishments. Failure to allow reasonable access to the investigation constitutes a violation and may subject an employer to civil penalties. Are you allowed to go there without giving the employer any kind of notice? I would think that there might be a due process issue there.

(Greg Massey) There's a section... but not in this statute. In statute, "Powers of the Director". But I'm sorry, I'm not supposed to be answering questions.

(Georgette) No, no, no, no, no, I, yeah,

(Greg Massey) I'm not supposed to be answering questions, but, yes we can.

(Georgette) I know but I'm just, yeah but you can still make it more specific right?

(Greg Massey) Um,...I guess we could. Yeah.

(Georgette) What does it say in the statute? I read the statute before I made comments...

(Dana) You're saying it's the... not in the Fair Employment Practice statute, your saying it's under your...

(Greg Massey) In 22 GCA Chapter 1 under the "Powers of the Director" and their authority to inspect.

(Georgette) And what's reasonable access?

(Greg Massey) The law says that we can go any reasonable time, on any place of business.

(Georgette) So maybe you might want to cite the, the other provision that allows you to do that.

And then the signage posting compliance, the section 6202; I think you should just make it more clear that your office will be the one to produce or design it, and then you could either have it on your website and they can just print it off of, because it's not clear here. It just says its "approved by" and the statute says that your office "shall".

Uh, again the inspections being unannounced and are at random. I know you're saying that its permitted, but I have to still look at that.

And then under 6204 under Penalties, you have non-monetary penalties. Does that only apply if you have... if it's your first offense, that you would be eligible for non-monetary penalties? So, I would just make that more clear.

And then... that's all I have. But mine were more specific compared than Dana's.

(Dana) I think I just have one comment under... I didn't have an opportunity to review it, but just under, I guess chapter 6 Division 1, just in the Statement of Policy because we had some changes recently to the protected classifications under Guam law. You know it's difficult to amend the Administrative Adjudication Administrative Rules because we have to follow the triple A. I don't know if it's something that's possible, but consideration, you know. To add in a kind of a catch all that just says any other protected classification under Guam law. Just so the next time we make a change or the legislature makes a change, we don't have to amend the rules again. That's my one comment right now but we'll try and get you some comments back to you on the first part.

What might be... I guess we will have to look, but our understanding then, is this is just a minor update to what's existing already for Division 1 in the Guam Administrative Rules? It's just a minor update?

(Greg Massey) Yeah, just on Division 1, it basically was just a technical updating to make it... I mean these things were drawn up like in the eighties. So what we added in was really small, I mean, maybe about 4 or 5 things we added maybe just a little bit more... I think the most we did was on 6108 Service and Amendment where we said you can do it by fax. There was no fax back then when this thing was drawn up. So, very small, small changes...

(Georgette) So, to follow up with that... so when you do rule making and if you're going to amend wherever you going to add stuff you should probably underline that so you can identify real quickly, "oh that's how you're changing the statute", because I don't think that anything is underlined here

right? But you said that you made a change. Yeah, so that's what I would recommend, is that you... before you send it to the Attorney General's office, you underline where you added, what you added to the statute or to the rules.

(Greg Massey) Yeah, we expect there is going to be a little bit more detail on the draft.

(Georgette) Yeah, but so that we would've known like what was changed.

(Greg Massey) Ok. Are you guys done?

(Georgette & Dana) Yes.

(Greg Massey) And then we have only one more person signed up to testify. Veronica Ocampo? If you could come up and have a seat Veronica. While Veronica is coming up, we'll leave the... for written testimony, we'll leave it open for three days, so...

(Veronica Ocampo) Actually... good afternoon (turns microphone on)... Good afternoon. Actually, I'm not testifying verbally, I'm just here to listen and participate.

(Greg Massey) Oh, ok.

Ok, so we'll leave it open for written testimony until Thursday, close of business. And you can submit it by email or in person, it's up to you. Send it to Jeff.

Anyone else want to testify before we adjourn?

(Miscellaneous voice from the crowd) So no, no opportunity for questions and answers?

(Additional voice from the audience) Off the record (loud whisper).

(Greg Massey) Off the record?

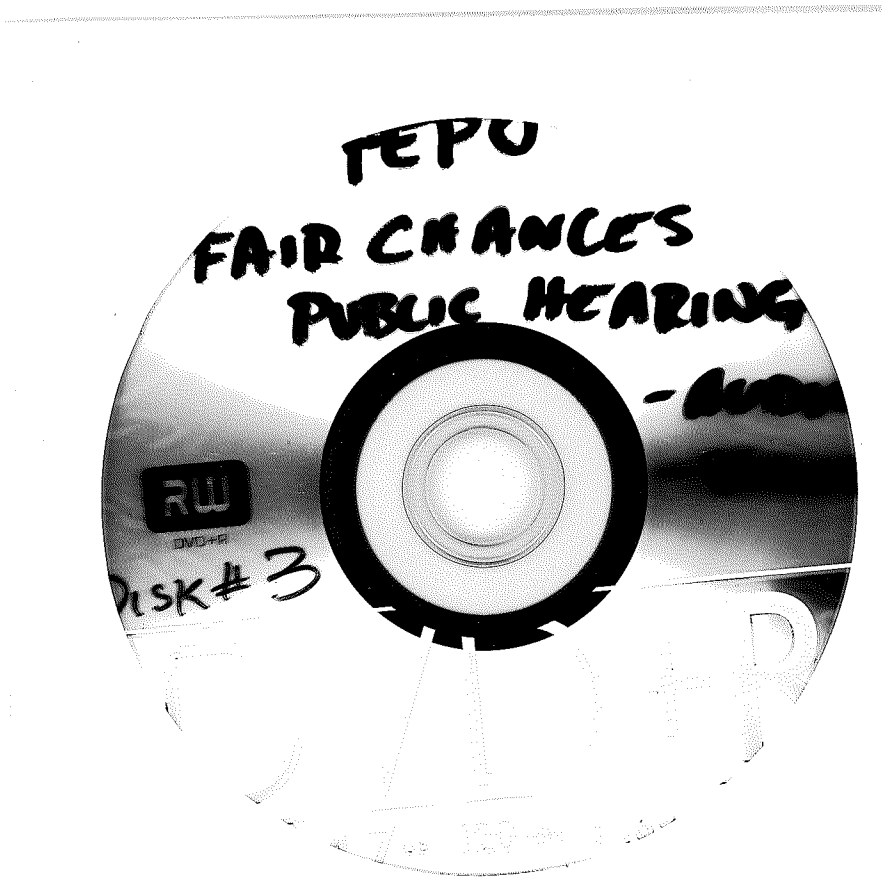
(Member of the audience) We can do it off the record.

ADJOURNED:
Public Hearing is concluded at 2:27pm.

TRANSCRIPTION:
I have reviewed this transcription of the Public Hearing and attest to it being an accurate representation of the audio recording made on February 12, 2018 at 2:00pm at the Guam DOL 3rd floor Conference Room.

Scott Anderson
ALPCD, LLES II

03/29/18
Date


TEPU
FAIR CHANCES
PUBLIC HEARING
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Pre-Hearing AAA Requirements:

1. 17 GAR Chapter 6 Article 2 – 1st Draft
2. Website Posting
3. Preliminary Economic Statement
4. Copy of Advertisement

CHAPTER 6
FAIR EMPLOYMENT PRACTICES

§6101. Authority.
§6102. Statement of Policy.
§6103. Purpose.
§6104. Definitions.
§6105. Complaint.
§6106. Same: Form and Contents; Time for Filing.
§6107. Same: Filing.
§6108. Same: Service, Amendment or Withdrawal.
§6109. Investigation of Complaints
§6110. Conciliation.
§6111. Dismissal of Complaints.
§6112. Predetermination Settlement.
§6112. Reconsideration of Decision for Dismissal.
§6113. Department's Order.
§6114. Hearings.

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NOTE: Rule-making authority cited for Director of the Department of Labor, 22 GCA §3305 and §5210.

§6101. Authority. By virtue of the authority vested in it by 22 GCA Chapter 3 and §5210, the Department of Labor hereby issues these Rules and Regulations, which it finds necessary in order to carry out its responsibilities in the administration and enforcement of the provisions of the law as it relates to Unlawful Employment Practice and/or Discrimination. These Rules and Regulations shall be liberally construed to accomplish the purposes of the law and the policies of the Department and shall be in force and effect until such time that it is amended or rescinded by rules and regulations hereafter made and published by the Department of Labor.

§6102. Statement of Policy. It is the public policy government of Guam to protect and safeguard the civil rights of all individuals to seek, have access to, obtain and hold employment without discrimination because of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, age, sex, sexual orientation and/or gender identity. Employment practices should treat all individuals equally, evaluating each individual only on the basis of bona fide occupational qualification, unless pursuant to permissible defense as enumerated in the law.

§6103. Purpose. The intended purpose and objectives of the law and these Rules and Regulations are to promote equal employment opportunity and to assist all individuals in understanding their rights, duties and obligations, so as to effectuate compliance with the law.

§6104. Definitions. (a) Person shall mean one or more individuals, partnerships, associations, corporations, legal representatives, business trustees, receivers or any organized group of persons.

(b) Employer shall mean any person employing an individual within the territory of Guam.

(c) Employee shall mean an individual employed by a person, but shall not include any individual employed in the domestic service of any family or person at his private home, or any individual employed by his/her parent,
spouse or child.

(d) Complainant shall mean the individual who has filed a complaint.

(e) Complaint shall mean a verified written statement filed with the Department pursuant to these Rules and Regulations alleging unlawful employment practice or discrimination within the meaning of the law.

(f) Department shall mean the Department of Labor, government of Guam.

(g) Director shall mean the Director of the Department of Labor, government of Guam.

(h) Investigating Officer shall mean the person duly designated by the Department to conduct an investigation of a verified complaint filed with the Department.

(i) Representative shall mean any person duly designated by one or more individuals and acting on behalf of the designator.

(j) Respondent shall mean any person or employer against whom a complaint has been filed alleging unlawful employment practice or discrimination with the meaning of the law.

(k) Days shall mean consecutive calendar days unless otherwise specified.

(l) Verified shall mean sworn to or affirmed before a notary public or other person duly authorized by the Director to administer oaths and take acknowledgments.

(m) Employment Agency shall mean any person regularly undertaking, with or without compensation, to procure employees for an employer, or to procure for employees' opportunities to work for an employer, and includes an agent of such person.

(n) Labor Organization shall mean any organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining or of dealing with employers regarding grievances, terms or conditions of employment, or of providing other mutual aid protection.

(o) The term because of sex or on the basis of sex shall mean to include sexual harassment or because of or on the basis of pregnancy, childbirth or related medical conditions, unless pursuant to permissible defense as enumerated in the law.

(p) Party or Parties shall mean the complainant and/or the respondent.

(q) FEPO shall mean the Fair Employment Practice Office of the Guam Department of Labor.

§6105. Complaint.

(a) Who May File:

(1) Any individual claiming to be aggrieved by an alleged unlawful employment practice or discrimination may make, sign and file a complaint with the Department.

(2) Any person claiming to have been discharged, expelled, refused employment or otherwise discriminated against by any person, employer, labor organization or employment agency because he has opposed unlawful employment practice or discrimination or because he has filed a complaint, testified or assisted in any proceeding under the law may make, sign and file a complaint with the Department.

(3) The Attorney General may make, sign and file a complaint whenever he has reason to believe that a person, employer, employment agency or labor organization has engaged or is engaging in an unlawful employment practice or discrimination.

(b) Complaint Filing Assistance. Assistance in the filing of complaints is available to complainants at the Department's Fair Employment Practice Office.

(c) Complainants shall receive an update on the status of their complaint within 60 days of their filing with FEPO. The update shall bear the signature of the Director of Labor or the Director's designee.

§6106. Same: Form and Contents; Time for Filing.

(a)Complaint Form. All complaints shall be on an official Department form approved by the Director of Labor.

(b) Contents of Complaint. Each complaint shall contain the following:

(1) The full name, address and telephone number (if any) of the complainant.

(2) The full name, address and telephone number (if any, and if known) of the respondent.

(3) A plain and concise statement of the facts constituting the alleged unlawful employment practice or discrimination.

(4) The date and place the alleged unlawful employment practice or discrimination occurred.

(5) Such other information as may be required by the Department.

(6) A sworn statement that the information in the complaint is true and correct.

§6107. Same: Filing. (a) Time Limitation for Filing Complaint. No complaint shall be filed after the expiration of ninety (90) days from the date upon which the alleged act of unlawful employment practice or discrimination occurred.

(b) Manner and Place of Filing:

(1) The complaint shall be filed by personal delivery, fax or email to the Department's Fair Employment Practice Office. Complaints submitted via fax and/or email must be notarized.

(2) The Department may not accept complaint if it finds it to be lacking necessary information to appropriately conduct investigation and/or other action necessary to render appropriate decision.

(3) After verifying the identity of a complainant and witnessing the signature on the complaint form, any employee of the Department who is authorized by the Director, in writing, to enforce the labor laws of Guam may acknowledge a verified complaint filing.

(c) Filing Date. The complaint shall be deemed filed as of the date of receipt of the complaint at the Department's Fair Employment Practice Office. Receipts of the complaint shall be acknowledged by the Department's Fair Employment Practice Office by means of a date-timestamp or other acceptable means and shall be initialed or signed by a staff of such office. The Fair Employment Practice Office may also send return email verifying receipt for complaints filed electronically. Return email shall serve as official receipt of complaint.

§6108. Same: Service, Amendment or Withdrawal. (a) Service of Complaint. Within fifteen (15) days after a complaint is filed with the Department, the Department shall personally serve upon the respondent a notice of the complaint, including the date, place and general description of the alleged unlawful employment practice or discrimination. Service of notice may also be effected via Email, to the email address of record Fax, to the fax number of record United States Postal Service Certified Mail, to the mailing address of record or by leaving a copy of the accusation and accompanying papers at their usual place of residence, or at their place of business, with some person of suitable age and discretion residing or working therein.

(A) Notice shall be considered served if any combination of two of the four methods have been made.

(b) Amendment of Complaint. The complainant shall be permitted to make amendments to his complaint as considered reasonable and fair, prior to issuance of a Department's order under 17 GAR §61111. All such amendments related to or growing out of the subject matter of the original complaint shall be deemed to relate back to the original filing date. A complaint may be amended:

(1) To cure technical defects of omissions, including, but not limited to, failure to verify the complaint.

(2) To clarify and/or amplify allegations. Service of complaint amendment. Within fifteen (15) days after the amendment is filed, the Department shall serve a notice of the amended complaint upon the respondent by certified mail, return receipt requested or by personal delivery. Receipt of the amendment shall be acknowledged as in 17 GAR §6105.

(c) Withdrawal of Complaint:

(1) Upon request of the complainant, a complaint, or any part thereof, may be withdrawn only on conditions as hereinafter set forth:

(A) If the request for withdrawal is received in the Department prior to the issuance of Department's order under the provisions of 17 GAR §6111, only upon written consent of the Fair Employment Practice Officer.

(B) If the request for withdrawal is received after the issuance of the Department's order under the provisions of 17 GAR §61111, only upon written consent of the Director.

(2) The request for withdrawal of the complaint shall be in writing, and shall set forth fully the reasons for such request. The request must be signed and verified by the complainant. If the request is approved, the Department shall promptly notify the respondent of such action. The Attorney General shall be provided a copy of the Department's notice of withdrawal.

§6109. Investigation. (a) After the filing of a complaint, the Department shall cause to make an investigation of the allegations contained in the complaint. The Department's investigator shall have authority to request for records, interview persons and/or require statements necessary to make a fair determination. In cases where parties are uncooperative, the Department may issue a subpoena to obtain witness testimony or the production of necessary records pursuant to 22 GCA § 1109.

(b) Determination of No Reasonable Cause. If after investigation of the complaint, the investigating officer determines that no reasonable cause exists to believe that the respondent has engaged in an unlawful employment practice or discrimination within the meaning of the law,
then the Department shall dismiss the complaint. Notice of the dismissal shall be given to the complainant and the respondent in accordance with 17 GAR §6108.

(c) Determination of Reasonable Cause. If after investigation of the complaint, the investigating officer finds reasonable cause to believe that an unlawful employment practice or discrimination has occurred or is occurring, the Department shall immediately endeavor to eliminate the unlawful practice by conference, conciliation and persuasion.

§6110. Conciliation. (a) Conference. The Department may require any or all of the parties to an informal conciliation conference for the purpose of attempting to informally resolve the matter. All parties shall be reasonably notified of the time, date and the place of the informal conciliation conference.

(b) Conciliation Efforts. In attempting to conciliate a case after a determination of reasonable cause has been made, the investigating officer shall endeavor to achieve a just resolution of all violations found and to obtain agreement that the respondent will eliminate the unlawful employment practice and provide appropriate relief.

(c) Successful Conciliation. Where such conciliation efforts are successful, the terms of such conciliation agreement shall be reduced to writing and shall be signed by all parties and the Director of Labor or his designee, provided that the agreement provides, in the judgment of the Fair Employment Practice Officer or his designee, full and fair relief to the parties. A copy of the signed conciliation agreement shall be sent to all parties and the Attorney General.

(d) Termination of Conciliation Efforts. Should a respondent fail or refuse to confer and otherwise cooperate with the Department or its representative, or fail or refuse to make a good faith effort to informally resolve any dispute, and the Department is unable to eliminate the
unlawful employment practice or discrimination through informal conference, conciliation and persuasion, and it appears to the Department that further efforts at conciliation would be futile and non-productive, the Department shall terminate its conciliation efforts and proceed with issuing the Department's order as provided under 17 §6111.

(e) Compliance Reports. If conciliation efforts is successful, proof of respondent's compliance with the law in accordance with the terms of the conciliation agreement shall be obtained by the Department before the case is closed. In order to obtain such proof, the Department may require any party to submit to it such reports as the Department deems necessary to show the manner of compliance with the terms of the conciliation agreement.

§6111. Dismissal of Complaints. (a) The Department shall dismiss the complaint under the following conditions:

(1) If it is determined that the Department does not have jurisdiction over the complaint.

(2) If it is determined after investigation that reasonable cause does not exist to believe that the alleged unlawful employment practice or discrimination has been committed.

(3) If the complainant has failed or refused to appear for interviews or conferences, provide requested information, the Department deems necessary or in any way refused or failed to fully cooperate in the investigation or conciliation to the extent that the Department is unable to resolve the complaint, and the Department has received no response from the complainant within thirty (30) days after the notice to the complainant of the Department's intent to dismiss the complaint.

(4) If the complainant cannot be located, provided that reasonable efforts have been made to locate the complainant and the complainant has not responded within thirty (30) days to a notice sent by the Department to the complainant's last known address.

(5) If the respondent has made a predetermination settlement offer as described in 17 GAR §6109, which is in writing and specific in its terms, and the complainant refuses to accept the offer, provided, that the offer would, as determined by the Department, afford full relief for the harm alleged by the complainant and the complainant fails to accept such an offer within thirty (30) days after notice of the offer is made.

(b) Notice of Dismissal:

(1) In the event of any dismissal of a complaint, the complainant shall be notified by certified mail, return receipt requested or by personal delivery, of the reason or reasons for dismissal and of his right to apply to the Director for reconsideration of such dismissal as provided by 17 GAR §6110. The respondent shall be notified, in like manner, of the dismissal of any complaint filed against him and of the reasons therefor.

§6112. Predetermination Settlement. (a) Settlement of all complaints at the earliest stage of the complaint processing is recommended and encouraged. The following action is suggested in endeavoring predetermination settlement:

(1) At any time after the filing of a complaint, but prior to the issuance of a determination, the Fair Employment Practice Officer or his designee may encourage the parties to resolve the complaint through a predetermination settlement.

(2) If the complainant and the respondent agree to the terms of settlement, the same must be reduced in writing, signed by the parties and the investigating officer.

(3) If so approved, the case will be closed without a finding on the merits of the complaint and a copy of the final predetermination settlement shall be sent by certified mail, return receipt requested or personal delivery, to the complainant the respondent.

(b) Effect on Other Complaints. A predetermination settlement shall not affect the processing of any other complaint, including, but not limited to, complaints in which the allegations are like or related to the individual allegations settled.

(c) Department's General Policy in Predetermination Settlement. In any predetermination settlement discussion, the general policies of the Department shall include, but not be limited to the following:

(1) If a settlement is achieved, no determination will be made as to whether or not reasonable cause exists to believe that the allegations of the complaint are true;

(2) The Department shall not subject either party to prejudice as a result of the party's either participating or refusing to participate in a predetermination settlement attempt;

(3) Participation by respondent in a predetermination settlement attempt will not be construed as evidence of a violation of the law or a waiver of the right to a Departmental determination on the issues raised by the complaint if a settlement cannot be achieved; and

(4) If a predetermination settlement is achieved, the terms thereof shall not attribute fault to any of the parties involved.

§6112. Reconsideration of Decision for Dismissal. (a) Request by Complainant. A complainant may submit to the Director a request for reconsideration of the dismissal of his complaint. Such request must be in writing, state specifically the grounds upon which it is based, and be filed with the Department within thirty (30) days from the date of the mailing of the notice of dismissal on which reconsideration is being requested.

(b) Director's Actions on Request for Reconsideration.
Whenever a request for reconsideration is made, the Director shall review the entire file, and may,in his discretion, grant or deny such request. If a request is granted, the Director shall refer the entire matter, together with his recommendation, to the Fair Employment Practice Officer for re-evaluation in light of the Director's action. If the request for

reconsideration is denied, the Director shall notify the complainant, in writing, of his determination by certified mail, return receipt requested or by personal delivery.

§6113. Department's Order. (a) Issuance of Order. After determination is made that the respondent has engaged in unlawful employment practice or discrimination as defined in the law, and conciliation efforts terminated, the Department shall state its findings of facts and shall issue and cause to be served on respondent an order requiring such respondent to cease and desist from such unlawful practice and/or discrimination and to take such affirmative action to include, but not limited to those enumerated in the law, as, in the judgment of the Department, will effectuate the purpose of the law.

(b) Notice of Rights of Hearing. In all cases where an order is issued, it shall include a notice to the respondent, advising him of his rights to a hearing in conformance with the Administrative Adjudication Law.

(c) Copy of Order to Attorney General. In all cases where an order is issued, a copy of such order shall be provided the Attorney General.

§6114. Hearings. (a) Request for Hearing. In all cases where the respondent objects and/or opposes the order of the Department, in whole or in part, the respondent may request for a hearing on the case. Such request shall be in writing, signed by or on behalf of the respondent. The request must be received by the Department within fifteen (15) days from the date the Department's order is served upon the respondent. Failure to submit request within the time allotted will constitute a waiver of respondent's right to a hearing. In such instances, the Department's decision as enumerated in the Department's order shall be final.

(b) Department's Action on the Request for Hearing. Within ten (10) days upon receipt of a request for a hearing, the Department shall forward a copy of the request and a complete copy of the case to the Attorney General for his appropriate action.

(c) Assignment of Hearing Officer. Upon receipt of the request and the cases filed from the Department, the Attorney General shall assign a hearing officer to hear the case.

(d) Scheduling of Hearing. The hearing officer shall schedule the hearing on the case.

(e) Notice of Hearing. Upon establishing the time, date and place for the hearing, the hearing officer shall serve notice upon all parties. The notice shall inform all parties of the time, date and place of the hearing. Such notice shall be served upon all parties at least ten (10) days prior to the hearing.

(f) Conduct of Hearing. The hearing officer shall conduct the hearing in conformance with the Administrative Adjudication Law.

(g) Decision. Upon completion of the hearing, the hearing officer shall serve upon all parties and to the Department a copy of the decision rendered upon the case Heard,

(h) Conformity with the Administrative Adjudication Law. All procedures and action taken as relates to hearings and appeals shall be in conformance with the Administrative Adjudication Law.

CHAPTER 6
Division 2
FAIR EMPLOYMENT PRACTICES UNDER FAIR CHANCES HIRING PROCESS ACT

NOTE: Rule-making authority cited for Director of the Department of Labor, 22 GCA §6104.

§6201. Fair Chances Hiring Process
§6202. Signage Posting Compliance
§6203. Inspections & Investigations
§6204. Penalties.
§6205. Hearings.
§6206. Advisory Opinions.
§6207. Public Posting of Repeat Offenders.
§6208. Petitions.
§6209. Severability.
§6210. Interpretation.

§6201. Fair Chances Hiring Process

(a) An employer shall not request or require a court clearance from an applicant prior to making a conditional offer of employment to the applicant.

(1) Complaints: Persons wishing to file a complaint for a violation of the Fair Chances Hiring Process may file such complaint with the Department of Labor Fair Employment Practice Office.

(A) Complaints and statements must be filled out on a Departmental complaint form.

(B) Complainant shall provide valid photo identification with their complaint.

(C) FEPO may assist complainant with obtaining information from the employer, as allowed in the statute.

(2) Investigations: An investigation may be triggered as a result of a complaint, fact finding process from a separate case, or the result of a formal inspection.

(A) When requesting information from an employer, the Department may require that such information be submitted within 15 calendar days.

(B) An employer may request an extension of this 15 day deadline. An extension must be approved in writing by DOL and shall not exceed 30 calendar days after the initial 15 day period.

(C) FEPO Investigators may interview employees at a jobsite and may also inspect employer records at the employer's establishment. Failure to allow reasonable access to FEPO investigators constitutes a violation and may subject an employer to civil penalties.

(D) FEPO investigators may refer a matter or coordinate with other local or federal agencies when appropriate.

(3) Findings: FEPO investigators shall consider documents, statements and other pertinent information during fact finding investigations and formulate a report to the Director.

(A) The report shall contain a synopsis of the situation and recommendation to the Fair Employment Practice Officer on action.

(B) Findings shall take into consideration information gained during fact finding, exemptions in the statute and/or statements of denial issued by the employer.

(C) Fair Employment Practice Officer shall approve the synopsis prior to submission to the Director.

(4) Withdrawal of Conditional Offer: Should a conditional offer be proffered to an applicant, notice must be given to the applicant detailing the result of the employer's decision on whether the applicant has been hired or not.

(A) Following the extension of a conditional offer of employment, an employer may only withdraw the conditional offer to an applicant for a legitimate business reason. The employer's determination of a legitimate business reason must also be reasonable in light of the following factors:

(i) the specific duties and responsibilities necessarily related to the employment sought or held by the person;
(ii) the bearing, if any, that the open criminal case or criminal history will have on the applicant's fitness or ability to perform one or more such duties and responsibilities;
(iii) the time which has elapsed since the occurrence of the pending criminal case or criminal history;
(iv) the age of the person at the time of the pending criminal case or criminal history;
(v) the frequency and severity of the pending criminal case or criminal history; and
(vi) any information produced by the person, or produced on his/her behalf, in regard to his/her rehabilitation and good conduct since the occurrence of the pending criminal case or criminal history.

(B) An employer may lawfully withdraw a conditional offer if the applicant fails to submit the required court clearance within 10 calendar days.

(C) Employer may request additional information from an applicant upon receipt of court clearances.

(D) An applicant has 90 days to file a complaint with the Department if they feel that the employer's proffered job offer was rescinded unjustly.

(E) The 1st day of the 90 day period shall begin on the day the employer receives the applicant's court clearance.

(F) Employer shall provide an applicant with a stamp received copy of an applicant's court clearance or a written notice acknowledging receipt of the clearance.

(G) Should the Department be unable to conclusively determine the day the clearances were submitted to the employer, the date of the applicant's clearances shall be used as the 1st day of the 90 day period.

(H) Electronic transmittal may be considered a valid means of submittal of clearances to the employer and communication of the status of the proffered job offer to the applicant.

§6202. Signage Posting Compliance.

(a) All employers shall have a visible FEPO posting present in their place of business. Any employer who fails to meet this requirement may be found in violation of the rules and may be subject to civil penalties.

(1) Posting must be in a format designed and approved by FEPO.

(2) Posting may not be smaller than an 8 ½" x 11" document.

(3) Posting must be placed in a conspicuous location where it may be viewed by a majority of the company's employees, including but not limited to, employee break-rooms, Human Resource offices, jobsites, or other places where employees congregate.

§6203. Inspections & Investigations The staff and management personnel of the FEPO division may conduct site inspections and investigations as permitted by 22 GCA Chapter 1 §1108.

(a) Inspections may be unannounced and at random.

(b) Inspections may be performed for purposes of monitoring compliance with required signage postings, or other fact-finding purposes.

(c) Inspections may be performed in conjunction with other divisions of DOL, local government and/or federal government agencies should it be determined necessary.

(d) Other non LLES (Labor Law Enforcement Specialist) FEPO personnel, may partake in job site inspections while under the guidance and supervision of designated personnel. With a minimum of 6 months of OJT, non LLES staff may be considered able and qualified to perform basic inspection & investigation duties, provided that Fair Employment Practice Officer attests to competency in writing.

§6204. Penalties.

(a) In the event of a violation of this section of the Rules, the offender shall be served with a notice of violation, commonly referred to as a "citation", which details the violation and the level of fine to be imposed. The citation shall be signed and approved by the FEPO Officer.

(1)The "citation" shall be prepared on an official Departmental form approved by the Director of Labor.

(2) A violation of the rules may subject the employer to civil penalties. Penalties may be determined using factors such as: size of the company (total number of employees), FEPO penalty scale, and circumstances. Fines shall not exceed what is allowable under the law.

(3) Initial Penalty Scale chart shall be approved by the Director of Labor, and may be amended as deemed necessary.

(4) Penalties enumerated on the FEPO penalty scale shall be used as a general guide to determine assessed penalty on a citation. The Department may elect to exercise discretion and may deviate on a case by case basis.

(5) To be consistent with the statutory definition of employer, the monetary cap for employers who employ (16) Sixteen to (30) Thirty employees may be subject to a fine of not more than ($1,000) One Thousand Dollars per violation.

(b) Non-Monetary Penalties

(1) The civil penalty on a citation may be conditioned by completion of certain required trainings. An employer may be required to attend and provide proof of completion of training activities which may consist of, but are not limited to Department trainings, One-on-one employer trainings, or designated Conferences. All external costs of training activities shall be born by the employer.

(2) Re-Training – The employer may be required to re-take previously completed trainings at the discretion of the Department.

(3) Verification of compliance – Employer must provide verifiable documentation showing that required training has been completed. Penalties for non-compliance - If an employer does not complete required training within the specified period, then the non monetary penalty shall be deferred and the maximum penalty allowable by statute shall be immediately due.

(c) The offender shall have the right to an administrative hearing conducted by the Director of Labor. The offender may either pay the fine, or appeal in writing, within fifteen (15) calendar days from the receipt of the notice of violation, to the Director of Labor, requesting a hearing to present facts and law in defense of the offender. The offender shall have the right to representation of counsel during the hearing and the rules of evidence shall not apply.

(d) Unpaid Penalties – The Department may request action from licensing authorities, as authorized in statute.

§6205. Appeals Hearings.

(a) Upon the filing of a timely request of an appeal of a violation, the Director of Labor shall hold a hearing of the facts, and shall give the employer the opportunity to be heard and to provide testimony in their defense or to present rebuttal evidence. Such hearing shall take place at a time and in a place to be designated by the Director of Labor.

(b)The Director may opt to convene a panel to hear testimony. However, the final decision rests with the Director of Labor as the Hearing Officer.

§6206. Advisory Opinions:

(a)The Department may issue advisory opinions upon request. Requests for advisory opinions must be in writing and clearly state the issue with specificity. The Department may request additional information as needed, but at a minimum, the request must state the name and address of the requestor.

(1) In general, advisory opinions should be completed within 60 days, however should external legal opinions be necessary, the Department is not obligated to any specific time period.

(2) The Director of Labor may, at his/her discretion, decline to address a request for advisory opinion. Reasons for refusal of an advisory opinion may include, but are not limited to the following:

(A) Frivolous requests.
(B) Situations that may require an Attorney General opinion.
(C) Repetitive or redundant requests which have already been addressed.

(D) Requests which are already clear in plain reading of the statute.
(E) Requests that have no bearing to the statute or rules.

§6207. Public Posting of Repeat Offenders: Employers who have been cited for more than one violation of an Unlawful Withdrawal of a Conditional Offer, within two years from the issuance of the first citation, shall have their information posted on the Guam DOL website for a period of seven years, in compliance with the statute.

§6208. 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.

§6209. 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.

§6210. Interpretation. The provisions of these Regulations shall be liberally interpreted to ensure the compliance of employers in Guam with the objectives and purposes of the Fair Chances Hiring Process Act.

guampdn.com Pacific Daily News Thursday, February 1, 2018



A floral wreath is presented during a memorial ceremony at the Chagui'an massacre site in Yigo on Aug. 8. RICK CRUZ/PDN

Massacre

Continued from Page 1

know the company commander had to log down every day, hour by hour," said Blaz, a retired Army sergeant major who once was director of the local Veterans Affairs office.

Blaz said Marines and the U.S. Army in August 1944 were sweeping north, clearing the island of Japanese during the liberation of Guam.

He said the documents he received on disc from the Marine Corps historical branch contained the complete history of the 21st Marines on Guam, but provided no information about the location of the Chagui'an mass burial site.

However, the accounts from the Marines in the field describe something no one here knew about, Blaz said – the discovery of the bodies of seven beheaded Chamorro men, not affiliated with the Salisbury site.

According to Blaz, the Japanese at the time had marched Chamorro men north from concentration camps in order to deliver supplies to the Japanese command post in Yigo. They were beheaded, he said, so they could not reveal the location of the Japanese general.

He speculated that the seven men who were beheaded before the Chagui'an massacre had been assigned to work on the Japanese fortifications and were killed so they could not disclose their location.

Blaz said the names of the Chagui'an massacre victims are known, primarily because of survivor Enrique Taitano Cruz, who knew all the men and identified the heads found at the massacre site.

But Blaz said residents often ask him about relatives killed during the war whose names are not mentioned as being part of the Chagui'an massacre.

The goal now, Blaz said, is

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NOTICE OF PUBLIC HEARING

The Guam Department of Labor (GDOL) is seeking public input on the proposed administrative rules for the Fair Chances Hiring Process Act (PL 34-22).

A public hearing will be conducted on **Monday, February 12, 2018, at 2:00 p.m., in GDOL conference room, located on the 3rd floor of the GCIC building in Hagåtña.** The public is invited to attend and provide testimony.

Copies of the proposed administrative rules are on file and available for examination a the GDOL Director's Office located on the 4th floor of the GCIC Building in Hagåtña (St 400) and on GDOL's website at dol.guam.gov.

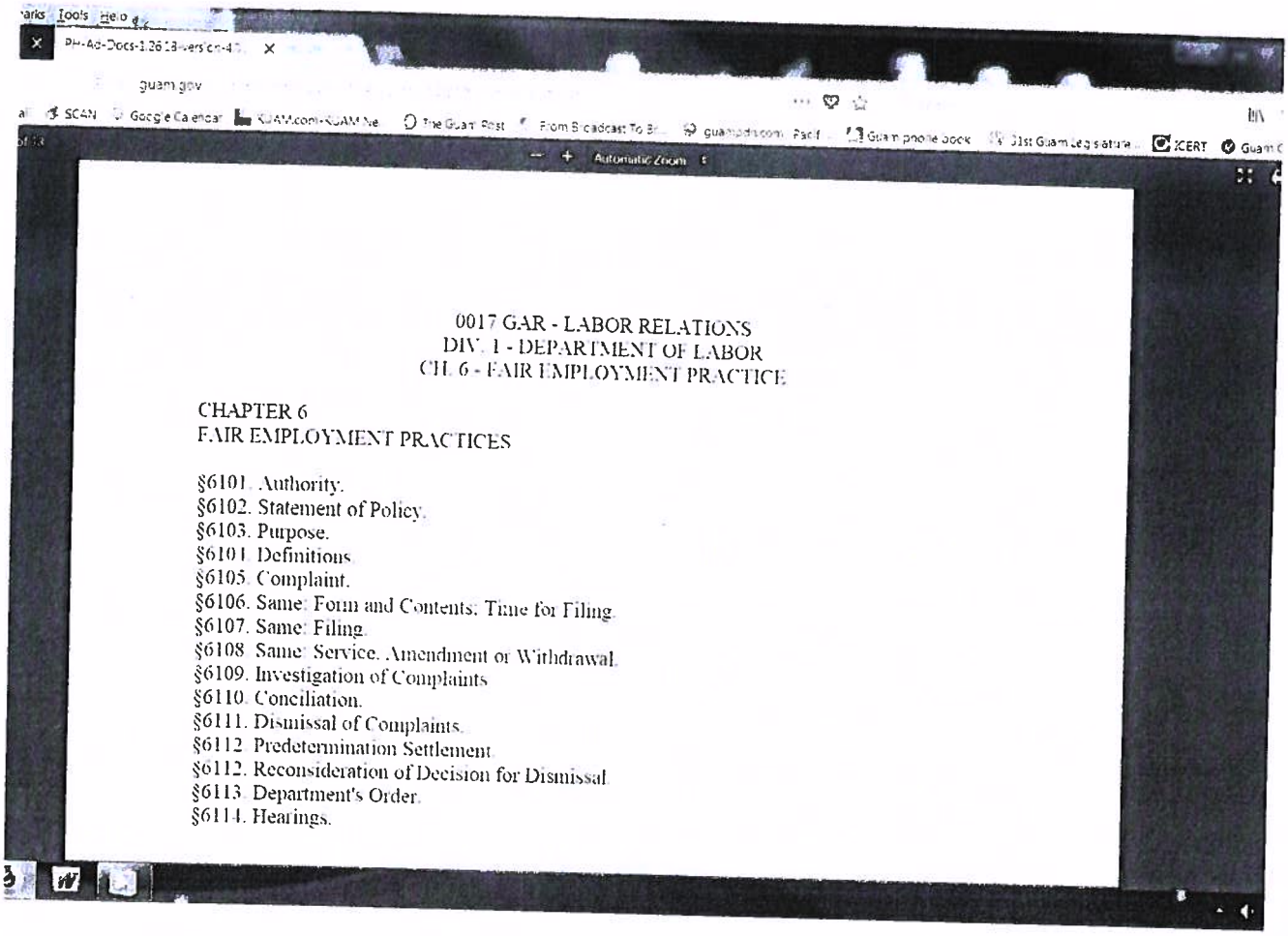
For more information, please contact GDOL's Fair Employment Practice Office at 300-4544/5 or 475-7037. Requests for reasonable accommodations must be made at lea 72 hours in advance.

/s/ Dr. Shirley "Sam" Mabini
Director of Labor

This ad is paid with government funds by the Guam Department of Labor.



Doc. No. 34GL-18-1803.



0017 GAR - LABOR RELATIONS
DIV. 1 - DEPARTMENT OF LABOR
CH. 6 - FAIR EMPLOYMENT PRACTICE

CHAPTER 6
FAIR EMPLOYMENT PRACTICES

§6101. Authority.
§6102. Statement of Policy.
§6103. Purpose.
§6101 Definitions.
§6105. Complaint.
§6106. Same: Form and Contents; Time for Filing.
§6107. Same: Filing.
§6108. Same: Service. Amendment or Withdrawal.
§6109. Investigation of Complaints.
§6110. Conciliation.
§6111. Dismissal of Complaints.
§6112. Predetermination Settlement.
§6112. Reconsideration of Decision for Dismissal.
§6113. Department's Order.
§6114. Hearings.

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Web posting of draft Rules.

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Preliminary Cost Impact Assessment
For
Proposed Rulemaking
Amending the Existing Guam Administrative Rules and Regulations Title 17, Chapter 6, Division 1 and Adding a New Division 2 Relative to the Fair Chances Hiring Process Act

The Department of Labor was mandated to conduct rulemaking pursuant to the passage of the Fair Chances Hiring Process Act (FCHPA). During the drafting of the Administrative Rules for the FCHPA, GDOL officials noted that the existing rules in 17 GARR Chapter 6, which covered existing covered classes from discrimination, were outdated and needed some updating.

The draft rules being considered contain technical updates to the existing rules which were done pre-1990 in Division 1 of the rules and a new Division 2 was created to address the FCHPA.

The proposed rules for the FCHPA do not contain any mandate which would require an employer to purchase of any equipment or hire any additional staff outside of what would normally be required to handle normal human resource responsibilities within the company. The proposed rules, on their own merits, do not impart any additional cost outside of what is mandated in the statute.

Small business (those who employ 15 workers or less) are unaffected by the FCHPA and the changes to existing rules in Division 1 are mostly internal process type changes which should pose no financial no burden on the employer outside of the normal course of business.

12

In assessing the cost impact, the Department considered the following:

1. The Fiscal Note for Bill 40-34 (COR)

The Fiscal Note provided to the legislature, dated 3/23/17 reported a maximum impact of $142,816.

2. Preliminary Cost Impact Assessment from BBMR

Impact of $110,816 was determined by BBMR in their memorandum to the Director of Labor, dated 12/15/17, regarding Preliminary Cost Impact Assessment on P.L. 34-33.

Mailing Address: P.O. Box 9970 • Tamuning, Guam 96931
Physical Address: 414 West Soledad Avenue • Suite 400, GCIC Building • Hagåtña, Guam 96910
Telephone: (671) 475-7044 • **Facsimile:** (671) 475-6811
Website: dol.guam.gov • hireguam.com

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Exemptions to the requirement for an economic impact statement for the promulgation of rules are contained in Subsection (i) as follows:

> (i) Exemptions. Any proposed rule, change of rule, regulation or request to impose or raise fees or rates *shall* be exempted from the economic impact statement requirements of Subsection (d), (e), (f), (g), and (h) of this Section if the annual economic impact to the general public is Five Hundred Thousand Dollars ($500,000) or less, as determined by a preliminary cost impact assessment performed by the Bureau of Budget and Management Research, or the department, agency, autonomous agency, office or instrumentality proposing the rule, change of rule, regulation or request to impose or raise fees.

As BBMR has indicated in their fiscal note and cost impact statements impacts below the $500,000 threshold, the proposed rule shall be exempted from the impact statement requirement.

Director's Review:
The proposed rules effectuate a process to handle complaints and to investigate violations. The procedures in the proposed rules do not, in themselves, impart any measurable economic impact separate and aside from the mandate in the enabling statutes.

Pursuant to 9 GCA §9301(i), the Department has determined that the cost impact of the proposed FCHPA rules and technical updates to existing rules in 17 GARR Chapter 6 do not exceed $500,000 and is exempt from the Economic Impact Statement requirement in 5 GCA Chapter 9 §9301(h).

f/: CBSuda
Dr. Shirley "Sam" Mabini
Director of Labor

BUREAU OF BUDGET & MANAGEMENT RESEARCH

OFFICE OF THE GOVERNOR
Post Office Box 2950, Hagatña Guam 96932

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GOVERNOR

RAY TENORIO
LIEUTENANT GOVERNOR

LESTER L. CARLSON, JR.
ACTING DIRECTOR

DEC 18 2017

RECEIVED
2:48 PM
DEC 18 2017
DIRECTOR

MEMORANDUM

To: Director, Department of Labor

From: Acting Director, Bureau of Budget and Management Research

Subject: Preliminary Cost Impact Assessment

The Bureau has reviewed your request for a preliminary fiscal (cost) impact assessment pursuant to P.L. No. 34-33. The Bureau is only able to, at this time, provide the direct fiscal impact to the Department of Labor (DOL), based upon information provided in the submission of its Fiscal Note for Bill No. 40-34 (COR). The Bureau has determined that a potential fiscal impact of approximately $126,816 would exist to the DOL-GF appropriation based on the anticipated need to hire additional staff to manage this program. Such potential fiscal impact would be minimized from prospective revenues generated as the result of employer fines. It is anticipated that such revenue may reach a maximum of $16,000 during the ensuing years of this program. Therefore, the net potential fiscal impact as the result of the passage of this Bill is estimated at $110,816 per year. This fiscal analysis provided at this time is not an economic impact assessment; but, a fiscal assessment that could potentially impact DOL directly.

Based on the provisions of the law, both the BBMR and the department are granted the discretion to conduct a preliminary cost impact assessment relative to the proposed change in rule, regulation, fee, or increase of fees or services as mandated by P.L. No. 34-22. Due to the Bureau's limited staff expertise and funding resources, it is recommended that the DOL conduct its own preliminary cost impact analysis to determine if the estimated impact to the general public exceeds $500,000. This is recommended as the DOL has a chief economist on-staff. Should the DOL elect to conduct its own preliminary cost impact assessment, separate and apart from BBMR's fiscal assessment, it may do so at the agency's discretion and as outlined by law.

Should you have any questions on this matter, please contact the Bureau at (671) 475-9412.

LESTER L. CARLSON, JR.

2:48pm

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Lieutenant Governor

November 28, 2017

RECEIVED
NOV 29 2017
Bureau of Budget and Management Research

To: Lester L. Carlson, Jr.
Director of BBMR, Acting

From: Director, Guam Department of Labor

Subject: Preliminary Cost Impact Assessment

Dear Mr. Carlson:

In light of the recent passage of P.L. 34-22, Fair Chance Hiring Process Act, our Department has completed its first draft on Administrative Rule Making for the Act. However, pursuant to Public Law 34-33, "relative to increasing public awareness of the economic impact of rules and regulations", we request a preliminary cost impact assessment to be performed by Bureau of Budget and Management Research. We hope that this request can be completed expeditiously as we are looking into announcing a public hearing in mid-December. Please advise if the PCIA can be completed by December 7, 2017.

Attached is the following information:

- Draft Rules – 17GAR Chap. 6
- Fair Chance Act Law - P.L. 34-22 / Fiscal Notes -
- Copy – P.L. 34-33

Should you have any questions please feel free to contact Jeff Sablan, Fair Employment Practice Officer at 300-4544/45 or email jeffrey.sablan@dol.guam.gov.

Sincerely,

Sam Mabini, Ph.D.
Director

Mailing Address: P.O Box 9970 • Tamuning, Guam 96931
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COPY

November 28, 2017

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Director of BBMR, Acting

From: Director, Guam Department of Labor

Subject: Preliminary Cost Impact Assessment

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Sincerely,

Sam Mabini, Ph.D.
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17 GAR Chapter 6: Existing Version

On Compiler of Laws Website

March 2018

CHAPTER 6
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§6113. Department's Order.
§6114. Hearings.

NOTE: Rule-making authority cited for Director of the Department of Labor, 22 GCA §3305 and §5210.

§6101. Authority. By virtue of the authority vested in it by 22 GCA Chapter 3 and §5210, the Department of Labor hereby issues these Rules and Regulations, which it finds necessary in order to carry out its responsibilities in the administration and enforcement of the provisions of the law as it relates to Unlawful Employment Practice and/or Discrimination. These Rules and Regulations shall be liberally construed to accomplish the purposes of the law and the policies of the Department and shall be in force and effect until such time that it is amended or rescinded by rules and regulations hereafter made and published by the Department of Labor.

§6102. Statement of Policy. It is the public policy of the territorial government of Guam to protect and safeguard the civil rights of all individuals to seek, have access to, obtain and hold employment without discrimination because of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, sex and/or age. Employment practices should treat all individuals equally, evaluating each individual only on the basis of bona fide occupational qualification, unless pursuant to permissible defense as enumerated in the law.

§6103. Purpose. The intended purpose and objectives of the law and these Rules and Regulations are to promote equal employment opportunity and to assist all

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individuals in understanding their rights, duties and obligations, so as to effectuate compliance with the law.

§6104. Definitions. (a) *Person* shall mean one or more individuals, partnerships, associations, corporations, legal representatives, business trustees, receivers or any organized group of persons.

(b) *Employer* shall mean any person employing an individual within the territory of Guam.

(c) *Employee* shall mean an individual employed by a person, but shall not include any individual employed in the domestic service of any family or person at his private home, or any individual employed by his/her parent, spouse or child.

(d) *Complainant* shall mean the individual who has filed a complaint.

(e) *Complaint* shall mean a verified written statement filed with the Department pursuant to these Rules and Regulations alleging unlawful employment practice or discrimination within the meaning of the law.

(f) *Department* shall mean the Department of Labor, government of Guam.

(g) *Director* shall mean the Director of the Department of Labor, government of Guam.

(h) *Investigating Officer* shall mean the person duly designated by the Department to conduct an investigation of a verified complaint filed with the Department.

(i) *Representative* shall mean any person duly designated by one or more individuals and acting on behalf of the designator.

(j) *Respondent* shall mean any person or employer against whom a complaint has been filed alleging unlawful employment practice or discrimination with the meaning of the law.

(k) *Days* shall mean consecutive calendar days unless otherwise specified.

(l) *Verified* shall mean sworn to or affirmed before a notary public or other person duly authorized by the Director to administer oaths and take acknowledgments.

(m) *Employment Agency* shall mean any person regularly undertaking, with or without compensation, to

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procure employees for an employer, or to procure for employees opportunities to work for an employer, and includes an agent of such person.

(n) *Labor Organization* shall mean any organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining or of dealing with employers regarding grievances, terms or conditions of employment, or of providing other mutual aid or protection.

(o) The term *because of sex or on the basis of sex* shall mean to include sexual harassment or because of or on the basis of pregnancy, childbirth or related medical conditions, unless pursuant to permissible defense as enumerated in the law.

(p) *Party or Parties* shall mean the complainant and/or the respondent.

(q) *Law* shall mean 22 GCA Chapter 3 and 22 GCA Chapter 7.

§6105. Complaint. (a) Who May File:

(1) Any individual claiming to be aggrieved by an alleged unlawful employment practice or discrimination may make, sign and file a complaint with the Department.

(2) Any person claiming to have been discharged, expelled, refused employment or otherwise discriminated against by any person, employer, labor organization or employment agency because he has opposed unlawful employment practice or discrimination or because he has filed a complaint, testified or assisted in any proceeding under the law, may make, sign and file a complaint with the Department.

(3) The Attorney General may make, sign and file a complaint whenever he has reason to believe that a person, employer, employment agency or labor organization has engaged or is engaging in an unlawful employment practice or discrimination.

(b) **Complaint Filing Assistance**. Assistance in the filing of complaints is available to complainants at the Department's Fair Employment Practice Branch.

§6106. Same: Form and Contents; Time for Filing. (a) **Complaint Form.** All complaints shall be on a form and in

number of copies as be obtained at the Department's Fair Employment Practice Branch.

(b) **Contents of Complaint**. Each complaint shall contain the following:

(1) The full name, address and telephone number (if any) of the complainant.

(2) The full name, address and telephone number (if any, and if known) of the respondent.

(3) A plain and concise statement of the facts constituting the alleged unlawful employment practice or discrimination.

(4) The date and place the alleged unlawful employment practice or discrimination occurred.

(5) Such other information as may be required by the Department.

§6107. Same: Filing. (a) **Time Limitation for Filing Complaint.** No complaint shall be filed after the expiration of ninety (90) days from the date upon which the alleged act of unlawful employment practice or discrimination occurred.

(b) Manner and Place of Filing:

(1) The complaint shall be filed by personal delivery to the Department's Fair Employment Practice Branch.

(2) The Department may not accept complaint if it finds it to be lacking necessary information to appropriately conduct investigation and/or other action necessary to render appropriate decision.

(c) **Filing Date.** The complaint shall be deemed filed as of the date of receipt of the complaint at the Department's Fair Employment Practice Branch. Receipts of the complaint shall be acknowledged by the Department's Fair Employment Practice Branch by means of a date-time-stamp or other acceptable means and shall be initialed or signed by a staff of such office.

§6108. Same: Service, Amendment or Withdrawal. (a) Service of Complaint. Within fifteen (15) days after a complaint is filed with the Department, the Department shall serve upon the respondent a notice of the complaint, including the date, place and general description of the alleged unlawful employment practice or discrimination.

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(b) **Amendment of Complaint.** The complainant shall be permitted to make amendments to his complaint as considered reasonable and fair, prior to issuance of a Department's order under 17 GAR §61111. All such amendments related to or growing out of the subject matter of the original complaint shall be deemed to relate back to the original filing date.

A complaint may be amended:

(1) To cure technical defects of omissions, including, but not limited to, failure to verify the complaint.

(2) To clarify and/or amplify allegations.

Service of complaint amendment. Within fifteen (15) days after the amendment is filed, the Department shall serve a notice of the amended complaint upon the respondent by certified mail, return receipt requested or by personal delivery. Receipt of the amendment shall be acknowledged as in 17 GAR §6105.

(c) Withdrawal of Complaint:

(1) Upon request of the complainant, a complaint, or any part thereof, may be withdrawn only on conditions as hereinafter set forth:

(A) If the request for withdrawal is received in the Department prior to the issuance of Department's order under the provisions of 17 GAR §6111, only upon written consent of the Fair Employment Practice Officer.

(B) If the request for withdrawal is received after the issuance of the Department's order under the provisions of 17 GAR §61111, only upon written consent of the Director.

(2) The request for withdrawal of the complaint shall be in writing, and shall set forth fully the reasons for such request. The request must be signed and verified by the complainant. If the request is approved, the Department shall promptly notify the respondent of such action. The Attorney General shall be provided a copy of the Department's notice of withdrawal.

§6109. Investigation. (a) After the filing of a complaint, the Department shall cause to make an investigation of the allegations contained in the complaint.

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(b) **Determination of No Reasonable Cause**. If after investigation of the complaint, the investigating officer determines that no reasonable cause exists to believe that the respondent has engaged in an unlawful employment practice or discrimination within the meaning of the law, then the investigating officer shall dismiss the complaint. Notice of the dismissal shall be given to the complainant and the respondent in accordance with 17 GAR §6108.

(c) **Determination of Reasonable Cause**. If after investigation of the complaint, the investigating officer finds reasonable cause to believe that an unlawful employment practice or discrimination has occurred or is occurring, the investigating officer shall immediately endeavor to eliminate the unlawful practice by conference, conciliation and persuasion.

§6110. Conciliation. (a) Conference. The investigating officer may require any or all of the parties to an informal conciliation conference for the purpose of attempting to informally resolve the matter. All parties shall be reasonably notified of the time, date and the place of the informal conciliation conference.

(b) **Conciliation Efforts**. In attempting to conciliate a case after a determination of reasonable cause has been made, the investigating officer shall endeavor to achieve a just resolution of all violations found and to obtain agreement that the respondent will eliminate the unlawful employment practice and provide appropriate relief.

(c) **Successful Conciliation**. Where such conciliation efforts are successful, the terms of such conciliation agreement shall be reduced to writing and shall be signed by all parties and the investigating officer, provided that the agreement provides, in the judgment of the investigating officer, full and fair relief to the parties. A copy of the signed conciliation agreement shall be sent to all parties and the Attorney General.

(d) **Termination of Conciliation Efforts**. Should a respondent fail or refuse to confer and otherwise cooperate with the Department or its representative, or fail or refuse to make a good faith effort to informally resolve any dispute, and the Department is unable to eliminate the unlawful employment practice or discrimination through informal conference, conciliation and persuasion, and it appears to the Department that further efforts at conciliation would be futile and non-productive, the

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Department shall terminate its conciliation efforts and proceed with issuing the Department's order as provided under 17 §6111.

(e) **Compliance Reports**. If conciliation efforts is successful, proof of respondent's compliance with the law in accordance with the terms of the conciliation agreement shall be obtained by the Department before the case is closed. In order to obtain such proof, the Department may require any party to submit to it such reports as the Department deems necessary to show the manner of compliance with the terms of the conciliation agreement.

§6111. Dismissal of Complaints. (a) The investigating officer shall dismiss the complaint under the following conditions:

(1) If it is determined that the Department does not have jurisdiction over the complaint.

(2) If it is determined after investigation that reasonable cause does not exist to believe that the alleged unlawful employment practice or discrimination has been committed.

(3) If the complainant has failed or refused to appear for interviews or conferences, provide requested information, the Department deems necessary or in any way refused or failed to fully cooperate in the investigation or conciliation to the extent that the Department is unable to resolve the complaint, and the Department has received no response from the complainant within thirty (30) days after the notice to the complainant of the Department's intent to dismiss the complaint.

(4) If the complainant cannot be located, provided that reasonable efforts have been made to locate the complainant and the complainant has not responded within thirty (30) days to a notice sent by the Department to the complainant's last known address.

(5) If the respondent has made a predetermination settlement offer as described in 17 GAR §6109, which is in writing and specific in its terms, and the complainant refuses to accept the offer, provided, that the offer would, as determined by the Department, afford full relief for the harm alleged by the complainant and the complainant fails to accept such

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an offer within thirty (30) days after notice of the offer is made.

(b) Notice of Dismissal:

(1) In the event of any dismissal of a complaint, the complainant shall be notified by certified mail, return receipt requested or by personal delivery, of the reason or reasons for dismissal and of his right to apply to the Director for reconsideration of such dismissal as provided by 17 GAR §6110. The respondent shall be notified, in like manner, of the dismissal of any complaint filed against him and of the reasons therefor.

§6112. Predetermination Settlement. (a) Settlement of all complaints at the earliest stage of the complaint processing is recommended and encouraged. The following action is suggested in endeavoring predetermination settlement:

(1) At any time after the filing of a complaint, but prior to the issuance of a determination, the investigating officer may encourage the parties to resolve the complaint through a predetermination settlement.

(2) If the complainant and the respondent agree to the terms of settlement, the same must be reduced in writing, signed by the parties and the investigating officer.

(3) If so approved, the case will be closed without a finding on the merits of the complaint and a copy of the final predetermination settlement shall be sent by certified mail, return receipt requested or personal delivery, to the complainant the respondent.

(b) **Effect on Other Complaints.** A predetermination settlement shall not affect the processing of any other complaint, including, but not limited to, complaints in which the allegations are like or related to the individual allegations settled.

(c) **Department's General Policy in Predetermination Settlement.** In any predetermination settlement discussion, the general policies of the Department shall include, but not be limited to the following:

(1) If a settlement is achieved, no determination will be made as to whether or not reasonable cause

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exists to believe that the allegations of the complaint are true;

(2) The Department shall not subject either party to prejudice as a result of the party's either participating or refusing to participate in a predetermination settlement attempt;

(3) Participation by respondent in a predetermination settlement attempt will not be construed as evidence of a violation of the law or a waiver of the right to a departmental determination on the issues raised by the complaint if a settlement cannot be achieved; and

(4) If a predetermination settlement is achieved, the terms thereof shall not attribute fault to any of the parties involved.

§6112. Reconsideration of Decision for Dismissal. (a) Request by Complainant. A complainant may submit to the Director a request for reconsideration of the dismissal of his complaint. Such request must be in writing, state specifically the grounds upon which it is based, and be filed with the Department within thirty (30) days from the date of the mailing of the notice of dismissal on which reconsideration is being requested.

(b) **Director's Actions on Request for Reconsideration.** Whenever a request for reconsideration is made, the Director shall review the entire file, and may, in his discretion, grant or deny such request. If a request is granted, the Director shall refer the entire matter, together with his recommendation, to the investigating officer for reevaluation in light of the Director's action. If the request for reconsideration is denied, the Director shall notify the complainant, in writing, of his determination by certified mail, return receipt requested or by personal delivery.

§6113. Department's Order. (a) **Issuance of Order.** After determination is made that the respondent has engaged in unlawful employment practice or discrimination as defined in the law, and conciliation efforts terminated, the Department shall state its findings of facts and shall issue and cause to be served on respondent an order requiring such respondent to cease and desist from such unlawful practice and/or discrimination and to take such affirmative action to include, but not limited to those enumerated in the law, as,

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in the judgment of the Department, will effectuate the purpose of the law.

(b) **Notice of Rights of Hearing**. In all cases where an order is issued, it shall include a notice to the respondent, advising him of his rights to a hearing in conformance with the Administrative Adjudication Law.

(c) **Copy of Order to Attorney General.** In all cases where an order is issued, a copy of such order shall be provided the Attorney General.

§6114. Hearings. (a) Request for Hearing. In all cases where the respondent objects and/or opposes the order of the Department, in whole or in part, the respondent may request for a hearing on the case. Such request shall be in writing, signed by or on behalf of the respondent. The request must be received by the Department within fifteen (15) days from the date the Department's order is served upon the respondent. Failure to submit request within the time allotted will constitute a waiver of respondent's right to a hearing. In such instances, the Department's decision as enumerated in the Department's order shall be final.

(b) **Department's Action on the Request for Hearing**. Within ten (10) days upon receipt of a request for a hearing, the Department shall forward a copy of the request and a complete copy of the case to the Attorney General for his appropriate action.

(c) **Assignment of Hearing Officer**. Upon receipt of the request and the cases filed from the Department, the Attorney General shall assign a hearing officer to hear the case.

(d) **Scheduling of Hearing.** The hearing officer shall schedule the hearing on the case.

(e) **Notice of Hearing**. Upon establishing the time, date and place for the hearing, the hearing officer shall serve notice upon all parties. The notice shall inform all parties of the time, date and place of the hearing. Such notice shall be served upon all parties at least ten (10) days prior to the hearing.

(f) **Conduct of Hearing.** The hearing officer shall conduct the hearing in conformance with the Administrative Adjudication Law.

(g) **Decision**. Upon completion of the hearing, the hearing officer shall serve upon all parties and to the

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Department a copy of the decision rendered upon the case heard.

(h) **Conformity with the Administrative Adjudication Law**. All procedures and action taken as relates to hearings and appeals shall be in conformance with the Administrative Adjudication Law.

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22 GCA Chapter 6:
Fair Chances Hiring Process Act

From Compiler of Laws Website

March 2018

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CHAPTER 6
FAIR CHANCES HIRING PROCESS ACT

SOURCE: Entire chapter added by P.L. 34-022:2 (July 17, 2017), effective 210 days after enactment.

2017 NOTE: As enacted, this chapter included article designations, as follows: Article 1 "General Provisions" for §§ 6101-6102; Article 2 Guam Department of Labor Administration and Enforcement Role" for §§ 6103-6105; Article 3 "Employer Protections and Incentives" for §6106; and Article 4 "Miscellaneous Provisions" for §§ 6107-6108. The article designations were omitted by the Compiler pursuant to the authority of 1 GCA § 1606.

§ 6101. Definitions.
§ 6102. General Policy.
§ 6103. Complaint Process.
§ 6104. Administrative Responsibilities.
§ 6105. Reporting Requirements.
§ 6106. Negligent Hiring Immunity.
§ 6107. Severability.
§ 6108. Effective Date.

§ 6101. Definitions.

As used in this Chapter:

(a) *Applicant* means any person considered for, or who requests to be considered for, employment by an employer; or, any employee considered for, or who requests to be considered for, another employment position, by the employer.

(b) *Arrest* means being apprehended, detained, taken into custody, held for investigation, or restrained by a law enforcement agency due to an accusation or suspicion that a person committed a crime.

(c) *Conditional offer of employment* means an oral or written offer by an employer to employ an individual in a job, or placement in a staffing agency's staffing pool, that is conditioned solely on the employer's evaluation of the individual's criminal history.

(d) *Criminal history* means any conviction, plea of nolo contendere, or deferred adjudication arising from felony criminal accusation, or any misdemeanor criminal accusation, made under

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local or federal law, or a comparable law of a state of the United States. This does not include dismissed, expunged, or sealed cases.

(e) *Employer* means any person, company, corporation, general contractor, firm, labor organization, or association, including the government of Guam, that employs more than fifteen (15) employees in Guam.

(f) *Employment* means any occupation, vocation, job, or work for pay, including temporary or seasonal work, contracted work, contingent work, and work through the services of a temporary or other employment agency; or, any form of vocational or educational training with pay, where the physical location of the employment is in whole or in substantial part, within Guam.

(g) *Inquiry* means any direct or indirect conduct intended to gather criminal history information from or about the applicant, candidate, or employee, using any method, including application forms, interviews, and criminal history or background checks.

(h) *Interview* means any direct contact by the employer with the applicant in person, or by telephone or video-teleconferencing, to discuss the employment being sought or the applicant's qualifications.

§ 6102. General Policy.

(a) An employer *shall not* request that a police clearance or a court clearance be provided as part of the application for employment; however, upon a conditional offer, an employer may request an employee provide evidence as to any pending criminal cases or criminal history, in accordance with this Chapter.

(b) For purposes of this Chapter, The Guam Police Department and the Superior Court of Guam *shall not* reveal any information concerning an arrest that did not result in a filed criminal case, or concerning a court case that has been dismissed, whether it has been expunged or not, and whether or not it was dismissed with prejudice or without prejudice, except to the person whose record it is, or to a licensed attorney representing that person, or upon order of the Court.

(c) An employer *shall not* make any inquiry about, or require the disclosure of, an applicant's arrest record or criminal cases which resulted in dismissal, expungement, sealing, or did not result in a

conviction. This prohibition, however, *shall not* apply into inquiry about pending criminal cases against the applicant, which may be inquired about according to the guidelines below.

(d) An employer *may* only inquire about or require the disclosure of an applicant's criminal history or pending criminal cases after or upon making a conditional offer of employment.

(e) The prohibition of this Section *shall not* apply:

(1) where any federal or local law or regulation requires the consideration of an applicant's criminal history for the purpose of employment;

(2) to any position designated by the employer as part of a federal or local government position or obligation that is designed to encourage the employment of those with criminal histories; or

(3) to any position which requires that employee to work in close proximity of or provides programs, services, or direct care to minors.

(f) Following the extension of a conditional offer of employment, an employer may only withdraw the conditional offer to an applicant for a legitimate business reason. The employer's determination of a legitimate business reason must also be reasonable in light of the following factors:

(1) the specific duties and responsibilities necessarily related to the employment sought or held by the person;

(2) the bearing, if any, that the open criminal case or criminal history will have on the applicant's fitness or ability to perform one (1) or more such duties and responsibilities;

(3) the time which has elapsed since the occurrence of the pending criminal case or criminal history;

(4) the age of the person at the time of the pending criminal case or criminal history;

(5) the frequency and severity of the pending criminal case or criminal history; and

(6) any information produced by the person, or produced on his/her behalf, in regard to his/her rehabilitation and good conduct

since the occurrence of the pending criminal case or criminal history.

(g) If an applicant's conditional offer is terminated or an adverse action is taken against an applicant on the basis of the pending criminal case or criminal history, the applicant may request that the employer provide the applicant within thirty (30) days:

(1) a copy of any and all records procured by the employer in consideration of the applicant or employee, including criminal records; and

(2) a written Statement of Denial which:

(A) articulates a legitimate business reason for the denial;

(B) specifically demonstrates consideration of each of the factors set forth in Subsection (f) of this Section; and

(C) advises the applicant of his or her opportunity to file an administrative complaint with the Guam Department of Labor.

(3) Failure to provide a written Statement of Denial upon request as set forth in this Subsection *shall* create a rebuttable presumption that no legitimate business reason exists for denying the applicant employment or taking an adverse action against an employee on the basis of a criminal history.

§ 6103. Complaint Process.

(a) A person claiming to be aggrieved by a violation of this Chapter may file an administrative complaint with the Guam Department of Labor (Department), in accordance with procedures set forth by the Department.

(b) The administrative remedies outlined in Subsection (a) of this Section are exclusive. A person claiming to be aggrieved by a violation of this Chapter *shall not* have a private cause of action in any court based on a violation of this Chapter.

(c) Any administrative complaint made under the provisions of this Chapter must be made within ninety (90) days of notification of denial of employment by an employer.

§ 6104. Administrative Responsibilities.

(a) The Guam Department of Labor *shall* develop administrative rules and regulations in accordance with outlining the procedures by which it will accept, investigate, and adjudicate complaints of Fair Chances Hiring Process Act violations, and the enforcement of provisions of the Act. All rules and regulations *shall* comply with the Administrative Adjudication Law, as required in Chapter 9 of Title 5, Guam Code Annotated.

(1) The Director of Labor *shall* be the Hearing Officer in any appeals relative to enforcement actions initiated by the Fair Employment Practice Office.

(2) The Fair Employment Practice Office *shall* have all necessary enforcement and investigative powers to enforce provisions of this Act.

(3) The Department may refer any unpaid penalties to the Department of Revenue and Taxation, or other appropriate licensing entities, who *shall* require that all penalties under this Act be paid in full before renewing a business license.

(b) In the development and application of rules and regulations, the Department *shall* take into consideration penalties ranging from training, retraining, written warning, and financial penalties. The Guam Department of Labor is hereby authorized to issue fines for violations of this Act in accordance with the following monetary caps:

(1) for employers that employ fifteen (15) to thirty (30) employees, a fine of up to, but not more than, One Thousand Dollars ($1000.00) per violation;

(2) for employers that employ thirty-one (31) to ninety-nine (99) employees, a fine of up to, but not more than, Two Thousand Dollars ($2000.00) per violation; and

(3) for employers that employ one hundred (100) or more employees, or for any government of Guam agency, a fine of up to, but not more than, Four Thousand Dollars ($4000.00) per violation.

(c) The Guam Department of Labor may develop a training program and/or a plan for providing training resources for employers and their representatives, such as hiring authorities or human resource officers. The program may include a mandatory posting in each

employer's premises, developed by the Department, which notifies employees of this Act and other labor laws.

(d) Any penalty fines for violations of this Act *shall* be collected by the Department of Labor. 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 training programs and enforcement operations within the Fair Employment Practice Office. The Director of Labor *shall* submit an annual report of all expenditures and activities under this Subsection to *I Liheslatura* (the Legislature).

(e) An employer may request for an advisory opinion from the Fair Employment Practice Office with regards to a specific situation related to this Act; provided, however, that the Director may decline to entertain such requests at his or her discretion.

§ 6105 Reporting Requirements.

(a) The Guam Department of Labor Compliance Office *shall* maintain data on the number of complaints filed pursuant to this Act, demographic information on the complainants, the number of investigations it conducts, and the disposition of every complaint and investigation, complete with a summary as to the Department's compliance with its rules and regulations.

(b) In the event that an employer is found to have more than one (1) violation of this Act, the Guam Department of Labor Compliance Office *shall* post the name of the employer on the Guam Department of Labor official website. Employers found to be in violation of this Act *shall not* be posted for their first violation, but *shall* be posted for all subsequent violations. The names of applicants impacted by an employer violation *shall not* be named. This posting *shall* be made on the Guam Department of Labor official website, and *shall* include the date of the violation. Violating employers *shall* be listed on the official website for a period of seven (7) years after they are found in violation, and removed after that time period.

(c) Data maintained by the Guam Department of Labor regarding Subsection (a) of this Section *shall* be posted on its official website annually beginning one (1) year from the effective date of the Fair Chances Hiring Process Act.

§ 6106. Negligent Hiring Immunity.

(a) A cause of action may not be brought against an employer for negligently hiring or failing to adequately supervise an employee, based on evidence that the employee has a pending criminal case or criminal history.

(b) This Section does not preclude a cause of action for negligent hiring or the failure of an employer to provide adequate supervision of an employee, if:

(1) the employer knew or should have known of the pending criminal case or criminal history; and

(2) the employee was convicted of an offense that was committed while performing duties substantially similar to those reasonably expected to be performed in the employment, or under conditions substantially similar to those reasonably expected to be encountered in the employment, taking into consideration the factors listed in § 6102(d) of Article 1 of this Chapter.

(c) This Section does not create a cause of action or expand an existing cause of action.

§ 6107. Severability.

If any provision of this Act or its application to any person or circumstance is found to be invalid, or contrary to law, such invalidity *shall not* affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

§ 6108. Effective Date.

This Act *shall* be effective two hundred ten (210) days after enactment.
