

GUAM CODE ANNOTATED

TITLE 22

BUSINESS REGULATIONS

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DIVISION 1
LABOR REGULATIONS

CHAPTER 1
DEPARTMENT OF LABOR

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ARTICLE 1
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§ 1101. Title.

This Chapter may be cited as the *Department of Labor Act of Guam*.

SOURCE: GC § 48050.

§ 1102. Definitions.

As used in this Title:

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

(b) *Department* means the Department of Labor.

SOURCE: GC § 48051.

§ 1103. Purpose of Department.

The purpose of the Department shall be to foster, promote, and develop the welfare of the wage earners of Guam, to improve their working and living conditions, and to advance their opportunities for occupational training and profitable employment.

SOURCE: GC § 48052.

§ 1104. Transfer of Functions.

All of the functions, powers, and duties of the existing Department of Labor and Personnel and of the existing Director of Labor and Personnel exercised and performed in the administration of the provisions of Chapter 50, Contracts for Public Works, Title 5 Guam Code Annotated; Chapter 9, Workers' Compensation Law, Title 22 Guam Code Annotated; Chapter 7, Employment Service Law, Title 22 Guam Code Annotated; and Chapter 3, Fair Labor Standards, Title 22 Guam Code Annotated are hereby transferred to, and shall be exercised and performed through, the Department of Labor as created by this Act.

SOURCE: GC § 48053.

§ 1105. Organization and Personnel.

(a) The Director may establish such divisions or other organizational units as he may determine to be necessary for the efficient and effective administration and operation of the Department. Each division and organizational unit shall be subject to the supervision and direction of the Director and shall have jurisdiction of such matters, exercise such powers, and perform such duties as may be assigned to it by the Director or otherwise by applicable law.

(b) The Director may appoint and remove officers and other employees within the Department in accordance with the provisions of the Personnel and Compensation Laws, Title 4 Guam Code Annotated.

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(c) The Director may delegate authority for the performance of any of his powers or duties to any officer or employee under his direction and supervision.

SOURCE: GC § 48054.

§ 1106. General Powers and Duties of Director.

As head of the Department, the Director:

(a) Shall administer the Department;

(b) Shall exercise and discharge the powers and duties of the Department through such divisions or other organizational units as he may establish pursuant to this Chapter or as otherwise provided by law;

(c) Shall enforce the provisions of this Chapter and of any other laws imposing any power, duty or function upon the Department;

(d) May, after notice and opportunity to be heard, make, amend, or repeal substantive or procedural rules and regulations of general application that he may deem necessary or appropriate to carry out the powers and duties vested in him or in the Department; such rules and regulations shall be sent to the Governor, and upon his approval and promulgation by Executive order, shall have the force and effect of law;

(e) May formulate and adopt rules necessary or proper for the internal administration of the Department;

(f) Shall cause proper investigations or inspections to be made of all matters proscribed by this Chapter and by any other laws within the jurisdiction of the Department;

(g) May require any employer, or his agent, who is affected by a law within the jurisdiction of the Department, to submit full and correct statements in writing, including sworn statements with respect to wages, hours, names, addresses, and such other information pertaining to his employees and their employment as the Director may deem necessary or appropriate;

(h) Shall institute, or cause to be instituted, such legal proceedings as may be necessary properly to carry out any of his powers or duties;

(i) Shall inquire into the causes of injuries arising out of and in the course of employment, and advance measures for the prevention of such

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injuries and for the improvement of sanitary conditions in places of employment;

(j) Shall encourage, promote, and develop occupational training opportunities for the citizens of Guam;

(k) May investigate the condition of aliens relative to their employment;

(l) Shall promote friendly and cooperative relations between employers and employees;

(m) May inquire into and report on the cause of all strikes, lockouts, and other labor-management controversies or disputes;

(n) Shall develop, implement, and promote informational and educational programs to acquaint employers, employees, and the public with the purposes and provisions of all labor laws;

(o) Shall submit an annual report to the Governor of the Department's operations, and render such other reports as the Governor shall requires or as may be required by law; and

(p) Shall exercise and discharge such other powers and duties as may be prescribed by this Chapter or by any other law.

SOURCE: GC § 48055.

§ 1107. Research and Statistics.

(a) The Director shall make studies and investigations, collect and compile statistical information, and report upon the conditions of labor generally. Such studies may include, but are not limited to, studies of employment and unemployment, labor supply, manpower development and training, wages and hours, industrial relations, working and living conditions, cost of living and prices.

(b) The Director may, with the approval of the Governor, enter into cooperative arrangements with the Director of the Department of Commerce of the government of Guam for the performance by authorized representatives of the Department of Commerce of any duties prescribed in this section. The performance of duties so delegated to the Department of Commerce shall be subject to the provisions of Title 5, Guam Code Annotated.

SOURCE: GC § 48056.

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2009 COMPILER NOTE: GC §§ 47061-47064 were re-codified by the Compiler at 5 GCA §§ 70106-70108, which sections were subsequently repealed by P.L. 26-076:33 (2002), which repealed 5 GCA Chapter 70.

§ 1108. Power to Enter, Inspect Places, Prohibition of Advance Notice, Record Keeping and Other Requirements.

(a) In order to carry out the purposes of this Title, the Director, or his authorized representative upon presenting appropriate credentials to the owner, operator, or agent in charge is authorized:

(1) To enter without delay and at reasonable times any factory, plant, establishment, construction site, or other area, work place or environment where work is performed by an employee of an employer; and where such entry or inspection is refused, the Director shall have the authority through appropriate legal process in the Superior Court of Guam, to compel such entry and inspection; and

(2) To inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and to question privately any such employer, owner, operator, agent or employee.

(b) In making his inspections and investigations under this Title the Director may require the attendance and testimony of witnesses and the production of evidence under oath. In a case of contumacy, failure or refusal of any person to obey such an order, the Superior Court of Guam, upon the application by the Director shall have jurisdiction to issue such person an order requiring such person to appear to produce evidence if, as, and when so ordered, and to give testimony relating to the matter under investigation or in question. Any failure to obey such order of the Court may be punished by said Court as a contempt thereof.

(c) Records.

(1) Each employer shall make, keep and preserve, and make available to the Department, such records regarding his activities relating to this Title as the Department may prescribe by regulation as necessary or appropriate for the enforcement of this Title or for developing information regarding the causes and prevention of occupational accidents, diseases, and illnesses. Such regulations may include provisions requiring employers to conduct periodic inspec-

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tions. The Department shall also issue regulations requiring that employers, through posting of notices or other appropriate means, keep their employees informed of their protection and obligations under this Title, including the provisions of all applicable standards.

(2) The Department shall prescribe regulations requiring employers to maintain accurate records of, and to make periodic reports on, work-related deaths, injuries, and illnesses other than minor injuries requiring only first-aid treatment and which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job.

(3) The Department shall issue regulations requiring employers to maintain accurate records of employee exposures to potentially toxic materials or harmful physical agents which are required to be monitored or measured under this Title. Such regulations shall provide employees or their representatives with an opportunity to observe such monitoring or measuring, and to have access to the records thereof. Such regulations shall also make appropriate provisions for each employee or former employee to have access to such records as will indicate his own exposure to toxic materials or harmful physical agents. Each employer shall promptly notify any employee who has been or is being exposed to toxic materials or harmful physical agents in concentrations or at levels which exceed those prescribed by an applicable occupational safety and health standard promulgated under this Title and shall inform any employee who is being thus exposed of the corrective action being taken.

(d) Any information obtained by the Director shall be obtained with a minimum burden upon employers, especially those operating small businesses. Unnecessary duplication of efforts in obtaining information shall be reduced to the maximum extent feasible.

(e) Subject to regulations issued by the Director, a representative of the employer and a representative authorized by his employees shall be given an opportunity to accompany the Director or his authorized representative during the physical inspection of any work place under this section for the purpose of aiding such inspection. Where there is no authorized employee representative, the Director or his authorized representative shall consult with a reasonable number of employees concerning matters of health and safety in the work place.

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(f)(1) any employee or representative of employees who believes that a violation of a safety or health standard exists that threatens physical harm, or that an imminent danger exists, may request an inspection by giving notice to the Director or his authorized representative of such violation or danger. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employee or representative of employee, and a copy shall be provided the employer or his agent no later than at the time of inspection, except that, upon the request of the person giving such notice, his name and the names of individual employees referred to therein shall not appear in such copy or in any record published, released or made available pursuant to Subsection (h) of this section. if upon receipt of such notification the Director determines there are reasonable grounds to believe such violation or danger exists, he shall make a special inspection in accordance with the provisions of this section as soon as practicable, to determine if such violation or danger exists. If the Director determines there are no reasonable grounds to believe that a violation or danger exists, he shall notify the employee or representative of employees in writing or such determination.

(2) Prior to or during any inspection of a work place, any employee or representative of employees employed in such a work place may notify the Director or any representative of the Director responsible for conducting the inspection, in writing, of any violation, of this Title which he has reason to believe exists in such work place. The Director shall, by regulation, establish procedures for informal review of any refusal by a representative of the Director to issue a citation with respect to any such alleged violation and shall furnish the employee or representative of employees requesting that such review a written statement of the reasons for the Director's final disposition of the case.

(g) No person shall give advance notice of any inspection to be conducted under this Title, without authority from the Director or his authorized representative, except as provided by 29 C.F.R. Part 1903.6. Any person who gives such advance notice shall be guilty of a petty misdemeanor.

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(h) The Director is authorized to compile, analyze, and publish either in summary or detailed form, all reports or information obtained under this section.

(i)(1) If upon inspection or investigation, the Director or his authorized representative believes that an employer has violated a requirement of § 1204 of this Title, or any standard, rule or order promulgated pursuant to § 1206 of this Title, or of any regulations prescribed pursuant to this Title, he shall with reasonable promptness issue a citation to the employer. Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provision of the Title, standard, rule, regulation or order alleged to have been violated. In addition, the citation shall fix a reasonable time for the abatement of the violation. The Director may prescribe procedures for the issuance of a notice in lieu of a citation with respect to de minimis violations which have no direct or immediate relationship to safety or health.

(2) Each citation issued under this section, or a copy or copies thereof, shall be prominently posted, as prescribed in regulations issued by the Department, at or near such place a violation referred to in the citation occurred.

(3) No citation may be issued under this section after the expiration of six (6) months following the occurrence of any violation.

(j)(1) If, after an inspection or investigation, the Director issues a citation under this section he shall, within a reasonable time after the termination of such inspection or investigation, notify the employer by certified mail of the penalty, if any, proposed to be assessed under § 1116 and that the employer has Twenty (20) calendar days within which to notify the Director that he wishes to contest the citation or proposed assessment of penalty by serving upon the Director a copy of the petition filed with the Superior Court for a review of the citation or proposed assessment of penalty. If, within Twenty (20) calendar days from the receipt of the notice issued by the Director the employer fails to notify the Director that he intends to contest the citation or proposed assessment of penalty and no notice is filed by an employee or representative of employees under Subsection (iii) within such time, the citation and the assessments, as proposed, shall be deemed a final

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order of the Superior Court not subject to review by any court or agency.

(2) If the Director has reason to believe that an employer has failed to correct a violation for which a citation has been issued within the period permitted for its correction (which period shall not begin to run until the entry of a final order by the Superior Court in the case of any review proceedings under this section initiated by the employer in good faith and not solely for delay or avoidance of penalties), the Director shall notify the employer by certified mail of such failure and of the penalty proposed to be assessed under § 1116 by reason of such failure, and that the employer has twenty (20) calendar days within which to notify the Director that he wishes to contest the Director's notification or the proposed assessment of penalty by serving upon the Director a copy of the petition filed with the Superior Court for a review of the notification or the proposed assessment of penalty. If, within twenty (20) calendar days from the receipt of notification issued by the Director, the employer fails to notify the Director that he intends to contest the notification or proposed assessment of penalty, the notification and assessment, as proposed, shall be deemed a final order of the Superior Court not subject to review by any court or agency.

(3) An employee or representative of employees shall notify the Director within twenty (20) calendar days of the issuance of a citation under Subsection (i), that he intends to contest the period of time fixed in the citation for the abatement of the violation as unreasonable, by mailing the Director a copy of the petition filed with the Superior Court for a review of the abatement period fixed in the citation.

A copy of the filed petition shall be prominently posted at or near each place a violation referred to in the citation occurred.

(4) Upon such filing, the Superior Court shall have jurisdiction of the matter and shall afford an opportunity for a hearing (in accordance with the Superior Court's procedures). the Superior Court shall after a hearing, issue its order, based on findings of fact affirming, modifying, or vacating the Director's citation, or proposed penalty, or directing other appropriate relief, and such order shall become final thirty (30) days after its issuance.

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Upon a showing by an employer of a good faith effort to comply with the abatement requirements of citation, and that abatement has not been completed because of factors beyond his reasonable control, the Superior Court after an opportunity for hearing as provided in this subsection, shall issue an order affirming or modifying the abatement requirements in such citation.

The rules of procedure prescribed by the Superior Court shall provide affected employees or representatives of affected employees an opportunity to participate as parties to hearings under this subsection.

(k)(1) Any person adversely affected or aggrieved by any order of the Superior Court under this section may obtain a review of such order in the District Court of Guam by filing in such court within sixty (60) days following the issuance of such order a written petition praying that the order be modified or set aside. A copy of such petition shall be forthwith transmitted by the Clerk of the District Court to the Superior Court, to the Director, and to the other parties, and thereupon the Superior Court shall file in the District Court the record in the proceeding as provided by the District Court's rules of procedures. Upon such filing, the Court shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleading, testimony, and proceedings set forth in such record a decree affirming, modifying, or setting aside in whole or in part, the order of the Superior Court and enforcing the same to the extent that such order is affirmed or modified. The commencement of proceedings under this subsection shall not, unless ordered by the Court, operate as a stay of the order of the Superior Court. No objection that has not been urged before the Superior Court shall be considered by the Court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Superior Court with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If any party shall apply to the Court for leave to adduce additional evidence and shall show to the satisfaction of the Court that such additional evidence is material that there were reasonable grounds for the failure to adduce such evidence in the hearing before the District Court, the Court may order such additional

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evidence to be taken before the Superior Court and to be made a part of the record. The Superior Court may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive, and its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with it, the jurisdiction of the Court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the Supreme Court of the United States, as provided in § 1254 of Title 28 U.S.C.

(2) The Director may also obtain review or enforcement of any final order of the Superior Court by filing a petition for such relief in the District Court of Guam, and the provisions of Subparagraph (i) shall govern such proceedings to the extent applicable. If no petition for review, as provided in Subparagraph (i) is filed within sixty (60) days after service of the Superior Court's order, the Superior Court's findings of fact and order shall be conclusive in connection with any petition for enforcement which is filed by the Director after the expiration of such sixty (60) days period. If any such case, as well as in the case of a non-contested citation or notification by the Director which has become a final order of the Superior Court under Subparagraph (i) or (ii) of Subsection (j), the Clerk of the Court, unless otherwise ordered by the Court, shall forthwith enter a decree enforcing the order and shall transmit a copy of such decree to the Director and the employer named in the petition. In any contempt proceeding brought to enforce a decree of the District Court entered pursuant to this subparagraph or Subparagraph (i), the District Court may assess the penalties provided in § 1116 in addition to invoking any other available remedies.

(l) All information reported or otherwise obtained by the Director or his authorized representative in connection with any inspection or proceeding under this Title which contains or might reveal a trade secret (referred to in § 1905 of Title 18 of the United States Code) shall be considered confidential except that such information may be disclosed to other officers or employees concerned with carrying out this Title or when relevant in any proceeding under this Title. In any such proceeding, the

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Director, the Superior Court, or the District Court, shall issue such orders as may be appropriate to protect the confidentiality of trade secrets.

SOURCE: GC § 48057. Subsection (g) amended by P.L. 13-187:242

§ 1109. Oaths; Hearings; Affidavits; Subpoenas; Witnesses; Immunities.

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

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

The Director and his authorized representative shall not be bound by technical rules of evidence in the conduct of hearings.

SOURCE: GC § 48058.

§ 1110. Duty to Furnish Information and Facilitate Inspections.

The owner, operator, manager, or lessee of any place affected by this Chapter or his agent, superintendent, subordinate or employee, and any person employing or directing any labor affected by such Chapter, shall, when requested by the Director or his authorized representative, furnish any information in his official possession or under his control which the Director deems necessary in the performance of his duties; shall answer completely and truthfully all relevant questions; shall admit the Director or his authorized representative at all reasonable hours to any place which is affected by this Chapter for the purpose of making inspection and performing his other duties and shall render reasonable assistance for a proper inspection.

SOURCE: GC § 48059.

§ 1111. Confidentiality of Trade Secrets.

All information reported to or otherwise obtained by the Director or his authorized representative in connection with any inspection or proceeding under this Title which contains or which might reveal a trade secret shall be considered confidential except that such information may be disclosed to other officers or employees concerned with carrying out this Title or when relevant in any proceeding under this Title. In any such proceeding the Director, the Department, or the court shall issue such orders as may be appropriate to protect the confidentiality of trade secrets.

SOURCE: GC § 48059.1 Added by P.L. 13-187:242.

§ 1112. Pending Proceedings not Affected; Savings Clause.

This Act shall not affect actions or proceedings brought by or against any department, officer or other agency, the functions, powers and duties of which have been transferred by this Act, and pending on the effective date of this Act, but such actions or proceedings may be prosecuted or defended by the Department, officer or agency to which such transfer has been made hereunder, as if the foregoing provisions had not taken effect.

SOURCE: GC § 48060.

§ 1113. Notice of Commencement of Business or Occupancy.

Within one (1) month after any employer directly or indirectly commences business or begins to occupy or control a factory, workshop, warehouse, garage, store, office, or any other place of employment, he shall

notify the Department in writing of such commencement, occupancy or control on such forms and including such information as the Director may prescribe. As a minimum, such notice shall require; if the employer is a corporation, the legal title, names and titles of corporate officers, and the name and address of the individual upon whom service of summons is to be made; and if a firm, the legal title, and the names of each member.

SOURCE: GC § 48061.

§ 1114. Consulting Services, Cooperative Activities, Agreements.

In the performance of his functions, the Director is authorized:

(a) To appoint such advisory committees as he may determine to be necessary for the effective performance of his functions;

(b) To use the services, personnel, and facilities of other public or private agencies and instrumentalities (with the consent of such agencies and instrumentalities), with or without reimbursement therefor; and

(c) To accept and disburse any grants, loans, or other assistance under the terms of any Federal legislation, and to enter into such agreements as may be necessary or appropriate for the receipt of such grants, loans, or other assistance.

SOURCE: GC § 48062.

§ 1115. Mediation of Disputes.

The Governor or his designated agent may investigate and mediate labor-management disputes whenever in the Governor's judgment the interests of industrial peace require it to be done. In pursuance of this function, the Governor may designate as his agent the Director or any other qualified person, and may appoint temporary boards of inquiry or boards of mediation.

SOURCE: GC § 48063.

§ 1116. Penalties.

(a) It shall be unlawful for any employer to hinder the Director or his authorized representative in the performance of his functions, powers, duties or to otherwise violate any provision of this Title, any regulation or standard prescribed or adopted pursuant to this Title.

(b) Any employer who commits an unlawful act as defined by Subparagraph (a) for which no penalty is otherwise provided, may be

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assessed a civil penalty of not more than one Thousand Dollars (\$1,000.00) for each violation.

(c) The Director shall have authority to assess all civil penalties provided in this section, giving due consideration to the appropriateness of the penalty with respect to the size of the business of any employer being charged, the gravity of the violation, the good faith of the person charged, and any history of previous violations.

(d) Civil penalties owed under this Title shall be paid to the Director for deposit in the General Fund and may be recovered in a civil action brought in the Superior Court by the Director or the Attorney General, but all such litigation shall be subject to the control of the Attorney General.

(e) Any employer who wilfully or repeatedly violates the requirements of § 1204 of this Title, any standard, rule, or order promulgated pursuant to § 1206 of this Title, or regulations prescribed pursuant to this Title may be assessed a civil penalty of not more than Ten Thousand Dollars (\$10,000.00) for each violation.

(f) Any employer who fails to correct a violation for which a citation has been issued under § 1108 within the period permitted for its correction may be assessed a civil penalty of not more than One Thousand Dollars (\$1,000.00) for each day during which such failure or violation continues.

(g) Any employer who wilfully violates any standard, rule, or order promulgated pursuant to Section 1206, or any regulations prescribed pursuant to this Title, and that violation caused death to any employee, shall be guilty of a petty misdemeanor and in addition to any other penalty authorized by law shall be subject to a fine of not more than Ten Thousand Dollars (\$10,000). If the conviction is for a violation committed after a first conviction of such person, the offender shall be guilty of a misdemeanor and in addition to any other penalty authorized by law shall be subject to a fine of not more than Twenty Thousand Dollars (\$20,000.00).

(h) Whoever knowingly makes any false statement, representation or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this Title shall be guilty of a misdemeanor.

(i) Whoever forcibly resists, opposes, impedes, intimidates, or interferes with any officer or employee of the Department, while engaged in

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or on account of the performance of his official duties, shall be guilty of a misdemeanor.

(j) Any employer who violates any of the posting requirements prescribed by the Occupational Safety and Health Act of Guam, shall be assessed a civil penalty of up to One Thousand Dollars (\$1,000.00) for each violation.

(k) For purposes of this section, a serious violation shall be deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which exists or from one or more practices, means, methods, operations, or processes which have been adopted or are in use, in such place of employment unless the employer did not, and could not with the exercise of reasonable diligence know of the presence of the violation.

(l) any employer who has received a citation for a serious violation of the requirements of Section 1204 or of any standard, rule, or order promulgated pursuant to Section 1206 or any regulations prescribed pursuant to this Title shall be assessed a civil penalty of up to One Thousand Dollars (\$1,000.00) for each such violation.

(m) Any employer who has received a citation for a violation of the requirements of Section 1204 or of any standard, rule, or order promulgated pursuant to Section 1206 or of regulations prescribed pursuant to this Title and such violation is specifically determined not to be of a serious nature, may be assessed a civil penalty of up to One Thousand Dollars (\$1,000.00) for each such violation.

(n) No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding or because of the exercise by such employee on behalf of himself or others of any right afforded by this Title.

(o) Any employee who believes that he has been discharged or otherwise discriminated against by any person in violation of subsection (n) may, within thirty (30) days after such violation occurs, file a complaint with the Director alleging such discrimination.

(p) Upon receipt of a complaint filed pursuant to subsection (o), the Director shall cause such investigation to be made as he deems appropriate. If upon such investigation, the Director determines that the provisions of subsection (n) have been violated, he shall bring an action in the Superior

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court against such person. In any such action, the Superior court shall have jurisdiction, for cause shown, to restrain violations of subsection (n) and order all appropriate relief including rehiring or reinstatement of the employee of his former position with back pay.

Within ninety (90) days of the receipt of a complaint filed under subsection (o) the Director shall notify the complainant of his determination under subsection (g).

(q) Procedures to counteract imminent dangers.

(1) The Director shall have the power, after a duly authorized investigation, and his review thereof, to restrain any conditions or practices in any place of employment which are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by this Title. Any order issued by the Director under this section may require such steps to be taken as may be necessary to avoid, correct, or remove such imminent danger and prohibit the employment or presence of any individual in locations or under conditions where such imminent danger exists, except individuals whose presence is necessary to avoid, correct, or remove such imminent danger or to maintain the capacity of a continuous process operation to resume normal operation without a complete cessation of operations, or where a cessation of operations is necessary to permit such to be accomplished in a safe and orderly manner.

(2) The Director may file a petition with the Superior Court enforcing any order issued under this section, and said court shall have jurisdiction to grant such injunctive relief or temporary restraining order pending the outcome of an enforcement proceeding pursuant to this Title. No temporary restraining order issued without notice shall be effective for a period longer than five (5 days.)

(3) Whenever, and as soon as an inspector concludes that conditions or practices described above exist in any place of employment, he shall inform the affected employees and employers of the danger and that he is recommending to the Director that relief be sought.

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(4) If the Director arbitrarily or capriciously fails to seek relief under this section, any employee who may be injured by reason of such failure, or the representative of such employees, may bring an action against the Director in the Superior Court for a writ of mandamus to compel the Director to issue an order and for such further relief as may be appropriate.

(5) Exemption. For the purposes enumerated under this section, no civil penalties shall be assessed against the territory of Guam or any political subdivision thereof.

SOURCE: GC § 48064. Subsections (g) through (p) amended by P.L. 13-187:243.

§ 1117. Seal.

The Director shall cause a seal of office to be made for the Department, of such design as the Governor shall approve, and judicial notice shall be taken thereof.

SOURCE: GC § 48065.

§ 1118. Separability.

If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of the Act and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

SOURCE: GC § 48066.

ARTICLE 2
OCCUPATIONAL SAFETY AND HEALTH ACT OF GUAM

- § 1201. Title
- § 1202. Acknowledgment and Declaration of Intent.
- § 1203. Definitions.
- § 1204. Duties.
- § 1205. Agency responsible for Occupational Safety and Health.
- § 1206. Authority of Agency with Respect to Occupational Safety and Health.
- § 1207. Temporary Emergency Standards.
- § 1208. Temporary Variance Order.

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- § 1209. Variance Rule.
- § 1210. Labels, Protective Equipment, Medical Equipment.
- § 1211. Authority of Director.
- § 1212. Division of Occupational Safety and Health.

§ 1201. Title.

This Chapter may be cited as the *Occupational Safety and Health Act of Guam*.

SOURCE: GC 48200.

§ 1202. Acknowledgment and Declaration of Intent.

The government of Guam hereby acknowledges that the provisions of the Act of Congress of December 29, 1970, as now in effect or as hereafter amended, referred to as the Williams-Steiger Occupational Safety and Health Act of 1970 (P.L. 91-596) are applicable to the territory of Guam and declares that the government of Guam shall observe and comply with the requirements of said Act. It is the intent of the Legislature that the territory of Guam shall, in accordance with §18(b) of said Act, assume responsibility for development and enforcement within the territory of Guam of Occupational Safety and Health standards relating to any Occupational Safety and Health issue with respect to which a Federal standard has been promulgated; and to assume responsibility for development and enforcement over any occupational safety and health issue with respect to which no Federal standard is in effect under section 6 of Public Law 91-596. This Act shall apply with respect to employment performed in a work place in the territory of Guam. Nothing in this Act shall apply to working conditions of employees with respect to which other Federal agencies, and territorial agencies acting under §274 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2021), exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health. the Director shall within three (3) years after the effective date of this Act, report to the Legislature his recommendations for legislation to avoid unnecessary duplication and to achieve coordination between this Act and other Federal laws or territorial laws. This Act will take effect immediately upon approval of the territory's 18(b) plan and shall apply with respect to employment performed in a work place in the territory of Guam.

SOURCE: GC § 48201.

§ 1203. Definitions.

(1) *Person*. means one or more individual, partnerships, associations, corporations, business trusts, legal representatives, or any organized group of persons.

(2) *Employer* means a person engaged in a business who has employees, and includes the territory of Guam or any political subdivision thereof.

(3) *Employee* means an employee of an employer including any persons who is suffered or permitted to work in the employer's business.

(4) *Territory* means the island of Guam in the Marianas Islands as defined in the Organic Act of Guam, as amended (Title 48 §§1421 et seq., U.S.C.A.).

(5) *Occupational Safety and Health Standard* means a standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and place of employment.

(6) *Federal standard* includes *national consensus standard* or *established federal standard*, as defined in Section 3 of the Occupational Safety and Health Act of 1970 (P.L. 91-596).

(7) *Department* means the Department of Labor.

(8) *Director* means the Director of Labor, or his authorized representative.

(9) *Court* means the Superior Court of Guam.

(10) *Appellate Court* means the District Court of Guam.

SOURCE: GC § 48202.

§ 1204. Duties.

Each employer (1) shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees;

(2) shall comply with Occupational Safety and Health Standards promulgated under this Act, and all applicable rules issued thereunder.

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Each employee shall comply with Occupational Safety and Health standards and all rules, regulations and orders issued pursuant to this Act which are applicable to his own actions and conduct.

SOURCE: GC § 48203.

§ 1205. Agency Responsible for Occupational Safety and Health.

The Department is hereby designated as the agency of Guam responsible for developing and administering a plan in accordance with the provisions of §18(c) of said Act, and in accordance with any rules, regulations, standards, or guidelines relating to such plans promulgated or published by the United States Department of Labor pursuant to said Act. the Department is hereby vested with the authority to enter into an agreement with the United States Department of Labor which provides for interim enforcement of Occupational Safety and health Standards by the territory of Guam pursuant to §18(h) of said Act.

SOURCE: GC § 48204.

§ 1206. Authority of Agency with Respect to Occupational Safety and Health.

(a) The Department is hereby vested with the authority to make, update, publish, and enforce, for the purpose of the §18(b) plan, Occupational Safety and Health Standards for the territory of Guam which meet the indices of equal effectiveness as published by the United States Department of Labor. The Division of Occupational Safety and Health within the Department, as the designated representative of the Department, shall enforce these standards. With respect to such standards no notice and opportunity to be heard need be given, if such standards have been afforded the opportunity for a hearing at the Federal level before adoption as a Federal standard pursuant to Section 6 of the Williams-Steiger Occupational Safety and Health Act of 1970.

(b) The Director, in promulgating standards dealing with toxic materials or harmful physical agents under this subsection, shall set the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment or health or function capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life. Development of standards under this subsection shall be based upon research, demonstrations, experiments, and such other information as

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may be appropriate. In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws. Whenever practicable, the standard promulgated shall be expressed in terms of objective criteria and of the performance desired.

(c) Nothing in this section shall be construed to limit the authority of the Department to make, update, publish, and enforce standards for application in the territory of Guam for such other occupational safety and health issues with respect to which no Federal standard is in effect; provided however, that notice and an opportunity for a hearing must be given to such additional standards.

(d) The Department has the authority to make, update, publish and enforce standards that are different from Federal standards, but which will be at least as effective as Federal standards for application in the territory of Guam.

(e) The government of Guam will, to the extent permitted by law, establish and maintain an effective and comprehensive occupational safety and health program applicable to all government of Guam employees, which program shall be as effective as the standards contained in an approved plan.

SOURCE: GC § 48205.

§ 1207. Temporary Emergency Standards.

The Director shall provide for emergency temporary standards to take immediate effect, upon publication, if he determines (a) That employees are exposed to grave danger from exposure to substances or agents determined to be toxic or physically harmful or from new hazards, and (b) that such emergency standard is necessary to protect employees from such danger.

Such emergency temporary standards shall be effective until superseded by a permanent standard promulgated in accordance with the procedures prescribed in this subsection.

The Director shall promulgate a permanent standard, no later than six (6) months, after publication of the emergency temporary standard, after notice of an opportunity for a hearing on the permanent standard is held.

SOURCE: GC § 48206

§ 1208. Temporary Variance Order.

(a) Any employer may apply to the Director for a temporary order granting a variance from a standard or any provision thereof promulgated under § 1206. Such temporary order shall be granted only if the employer files an application which meets the requirements of clause (b) hereof and establishes that:

(i) He is unable to comply with a standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date;

(ii) He is taking all available steps to safeguard his employees against the hazards covered by the standard; and

(iii) He has an effective program for coming into compliance with the standard as quickly as practicable.

Any temporary order issued under this paragraph shall prescribe the practices, means, methods, operations, and processes which the employer must adopt and use while the order is in effect and state in detail his program for coming into compliance with the standard. Such a temporary order may be granted only after notice to employees and an opportunity for a hearing; provided, however, that the Director may issue one interim order to be effective until a decision is made on the basis of the hearing. No temporary order may be in effect for longer than the period needed by the employer to achieve compliance with the standard, or one (1) year, whichever is shorter, except that such an order may be renewed not more than twice.

(I) So long as the requirements of this paragraph are met; and

(II) If an application for renewal is filed at least ninety (90) days prior to the expiration date of the order no interim renewal of an order may remain in effect for longer than one hundred eighty (180) days.

(b) An application for a temporary order under this paragraph shall contain:

(i) A specification of the standard or portion thereof from which the employer seeks a variance;

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(ii) A representation by the employer, supported by representations from qualified person having first-hand knowledge of the facts represented, that he is unable to comply with the standard or portions thereof and a detailed statement of the reasons therefor;

(iii) A statement of the steps he has taken and will take (with specific dates) to protect employees against the hazard covered by the standard;

(iv) A statement of when he expects to be able to comply with the standard and what steps he has taken and what steps he will take (with dates specified) to come into compliance with the standard; and

(v) A certification that he has informed his employees of the application by giving a copy thereof to their authorized representative, posting a statement giving a summary of the application and specifying where a copy may be examined at the place or places where notices to employees are normally posted, and by other appropriate means.

A description of how employees have been informed shall be contained in the certification. The information to employees shall also inform them of their right to petition the Director for a hearing.

SOURCE: GC § 48207.

§ 1209. Variance Rule.

Any affected employer may apply to the Director for a rule or order for a variance from a standard promulgated under this section. Affected employees shall be given notice of each such application and an opportunity to participate in a hearing. The Director shall issue such rule or order if he determines on the record, after opportunity for an inspection where appropriate and a hearing, that the proponent of the variance has demonstrated by a preponderance of the evidence that the conditions, practices, means, methods, operations or processes used or proposed to be used by an employer will provide employment and places of employment to his employees which are as safe and healthful as those which would prevail if he complied with the standard. The rule or order so issued shall prescribe the conditions the employer must maintain, and the practices, means, methods, operations, and processes which he must adopt and utilize to the extent they differ from the standard in question. Such rule or order may be modified or revoked upon application by an employer, employees, or by the

Director on his own motion, in the manner prescribed by this subsection at any time after six (6) months from its issuance.

SOURCE: GC § 48208.

§ 1210. Labels, Protective Equipment, Medical Equipment.

Any standard promulgated under § 1206 shall prescribe the use of labels or other appropriate forms of warning as are necessary to ensure that employees are apprised of all hazards to which they are exposed, relevant symptoms and appropriate emergency treatment, and proper conditions and precautions of safe use or exposure. Where appropriate, such standards shall also prescribe suitable protective equipment and control or technological procedures to be used in connection with such hazards and shall provide for monitoring or measuring employee exposure at such locations and intervals, and in such manner as may be necessary for the protection of employees. In addition, where appropriate any such standard shall prescribe the type and frequency of medical examinations or other tests which shall be made available by the employer or at his cost, to employees exposed to such hazards in order to most effectively determine whether the health of such employees is adversely affected by such exposure. The results of such examinations or tests shall be furnished only to the Director, and, at the request of the employee to his physician. The Director, may by rule promulgated, after notice and an opportunity to be heard make appropriate modifications in the foregoing requirements relating to the use of labels or other forms of warning, monitoring or measuring and medical examinations, as may be warranted by experience, information, or medical technological developments acquired subsequent to the promulgation of the relevant standard.

SOURCE: GC § 48209.

§ 1211. Authority of Director.

There is hereby granted to the Director the authority to adopt, to prescribe, to publish and to enforce any such rules, regulations, or procedures as he may deem necessary to carry out his responsibility under this Act. The Director may bring an action in court to enforce any of his orders or to restrain or prevent any person from committing any unlawful act as defined by this Act.

SOURCE: GC § 48210.

§ 1212. Division of Occupational Safety and Health.

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(a) There is hereby established within the Department a division of Occupational Safety and Health whose function it shall be to investigate and inquire into the causes of injuries or sickness and to assist in the preparation of such occupational safety and health standards as are necessary to aid in the prevention of such injuries or sickness. Further, the Division of Occupational Safety and Health shall be responsible for distributing to employers in the territory information regarding any occupational safety and health standards and the duties of the employer with respect to reporting to the Department all information required to assist the Department in administering and enforcing such occupational safety and health standards. The Division of Occupational Safety and Health shall be responsible for assisting in the preparation of any reports the Department is required to file with the United States Department of Labor. In this connection, the Director shall make such reports to the Secretary of Labor in accordance with 29 CFR Part 1902.3(L), and as the Secretary shall from time to time require. Finally, the Director shall provide for the establishment and supervision of programs to encourage voluntary compliance by employers and employees by such means as conducting training and consultation with employers and employees.

(b) The Director may appoint an Industrial Hygienist, a Safety Officer, Safety Inspectors, an Administrative Assistant, and such additional officers and personnel in the Division of Occupational Safety and Health as may be required to perform its functions. Such officers and personnel shall have full authority to act in the name of the Director to the extent authorized by him.

SOURCE: GC § 48211.
