

TITLE 175: COMMONWEALTH CASINO COMMISSION REGULATIONS

SUBCHAPTER 175-10.3 PERSONNEL REGULATIONS

Part 001

GENERAL PROVISIONS

- § 175-10.3-001 General
- § 175-10.3-005 Applicability
- § 175-10.3-010 Purpose
- § 175-10.3-015 Definitions
- § 175-10.3-020 Types of Employment

Part 100

STAFFING AND ADMINISTRATION

- § 175-10.3-101 Recruitment and Selection Procedures
- § 175-10.3-105 Disqualification of Applicants
- § 175-10.3-110 Nepotism
- § 175-10.3-115 Effective Dates
- § 175-10.3-120 Duty Station and Work Assignments
- § 175-10.3-125 Compensation and Work Schedules
- § 175-10.3-130 Acting Appointment
- § 175-10.3-135 Work Hours
- § 175-10.3-140 Work Hours Recognized Holidays with Pay

Part 200

EMPLOYEE BENEFITS

- § 175-10.3-201 Expatriation and Repatriation [Reserved]
- § 175-10.3-205 Housing [Reserved]
- § 175-10.3-210 Annual Leave
- § 175-10.3-215 Sick Leave
- § 175-10.3-220 Administrative Leave with Pay

- § 175-10.3-225 Holidays
- § 175-10.3-230 Advance Leave
- § 175-10.3-235 Court Leave
- § 175-10.3-240 Compassionate Leave
- § 175-10.3-245 Miscarriage Leave
- § 175-10.3-250 Pregnancy Disability Leave
- § 175-10.3-255 Maternity and Paternity Leave
- § 175-10.3-260 Military Leave
- § 175-10.3-265 FMLA Leave
- § 175-10.3-270 Leave without Pay
- § 175-10.3-275 Unauthorized Absence or Absent Without Leave (AWOL)
- § 175-10.3-280 Part-Time Accrual
- § 175-10.3-285 Transfers within Government
- § 175-10.3-290 Insurance and Retirement Benefits

Part 300

EMPLOYEE CONDUCT AND OBLIGATIONS

- § 175-10.3-301 Grievance Procedure(s)
- § 175-10.3-305 Termination of Services
- § 175-10.3-310 Non-Discrimination Policy
- § 175-10.3-315 Non-Tolerance of Sexual Harassment
- § 175-10.3-320 Anti-Bullying Policy
- § 175-10.3-325 Alcohol and Drug Free Workplace Policy
- § 175-10.3-330 Disciplinary Actions
- § 175-10.3-335 Vehicle Policy
- § 175-10.3-340 Outside and Dual Employment
- § 175-10.3-345 Safety Programs
- § 175-10.3-350 Whistleblower Policy
- § 175-10.3-355 Utilization of Sister Agencies

Subchapter Authority: 4 CMC § 2314.

Modified, 1 CMC § 3806(g).

Subchapter History: Adopted 41 Com. Reg. 42023 (June 28, 2019); Proposed 41 Com. Reg. 41438 (Mar. 28, 2019).

Part 001 - GENERAL PROVISIONS

§ 175-10.3-001 General

(a) This chapter provides the regulations to appoint, reassign or transfer, promote or demote, or otherwise change status of, and to remove from service, employees who are employed by the Commonwealth Casino Commission (Commission).

TITLE 175: COMMONWEALTH CASINO COMMISSION REGULATIONS

(b) Public Law 18-56, enacted July 11, 2014, exempted the staff of the Commission from the Civil Service. The Commission has the authority to promulgate rules and regulations to regulate personnel matters. See 4 CMC § 2316(a). Pursuant to this authority, the Commission promulgates the following Personnel Regulations, to be administered by the Executive Director.

History: Adopted 41 Com. Reg. 42023 (June 28, 2019); Proposed 41 Com. Reg. 41438 (Mar. 28, 2019).

§ 175-10.3-005 Applicability

(a) The regulations in this chapter shall apply to employment of personnel in all positions within the Commission. However, nothing in these regulations shall be construed to apply to Members of the Commission unless specifically stated otherwise.

(b) It is not the intention of the regulations in this chapter to create any legally protected property interests in employment with the Commission or any employment right or benefit not explicitly stated in these regulations or the employment contract. Notwithstanding any other regulation, policy, or practice to the contrary, all commission staff employment may be terminated at the will of the employee and/or employer pursuant to the terms of the contract and these regulations.

History: Adopted 41 Com. Reg. 42023 (June 28, 2019); Proposed 41 Com. Reg. 41438 (Mar. 28, 2019).

§ 175-10.3-010 Purpose

The regulations in this subchapter establish regulatory direction for employing, compensating, providing employee benefits, and effecting other personnel actions for Commission employees. These regulations shall be construed and applied to promote the following underlying purposes and policies:

(a) Simplify, clarify, and modernize the employment policies and practices of the Commission.

(b) Establish consistent employment policies and practices among various divisions and activities of the Commission.

(c) Create increased public confidence in the procedures followed in Commission employment.

(d) Ensure the fair and equitable treatment of employees within Commission.

(e) Provide safeguards for the maintenance of an employment system of quality and integrity.

History: Adopted 41 Com. Reg. 42023 (June 28, 2019); Proposed 41 Com. Reg. 41438 (Mar. 28, 2019).

§ 175-10.3-015 Definitions

TITLE 175: COMMONWEALTH CASINO COMMISSION REGULATIONS

For purposes of this subchapter, the following terms shall be defined as follows:

- (a) “Dependent(s)” means Spouse, minor children, unmarried and under 21 years of age, physically or mentally handicapped children incapable of supporting themselves, regardless of age, wholly dependent parents of employee or spouse, or minor children by previous marriage, unmarried and under 21 years of age, for whom the employee or spouse have legal custody. Children by a previous marriage who are primarily domiciled by court order in other than the employee’s household are not considered dependents.
- (b) “CNMI” means the Commonwealth of the Northern Mariana Islands.
- (c) “Commission” means the Commonwealth Casino Commission established by PL 18-56.
- (d) “Commission Employee” means An employee holding a position within the Commission, pursuant to a Commission Service Contract or other contract, and further pursuant to the laws and regulations of the Commonwealth.
- (e) “Commission Service Contract” means Employment contract entered into by the employee and employer for a term not to exceed five years, subject to the availability of funds, budgeted FTEs (if applicable), and any statutory limitations.
- (f) “Commissioner” means the commission member of the Commission appointed and confirmed pursuant to PL 18-56.
- (g) “Commonwealth” means the Commonwealth of the Northern Mariana Islands.
- (h) “Members” mean the Commissioners of the Commonwealth Casino Commission.
- (i) “Employer” means the Commonwealth Casino Commission; or, if the context so requires, the hiring official.
- (j) “Executive Director” means the Executive Director of the Commonwealth Casino Commission appointed pursuant to PL 18-56, or his or her designee.
- (k) “FTE” means Full-time employee.
- (l) “Willful Abandonment” means when a Commission employee is absent without authorized leave for a combined total of ten days without valid reason during a twelve-month period.
- (m) “Termination for Cause” means Termination for cause before the end of the contract term may be for any of the following reasons:
 - (1) Failure or inability to perform competently;
 - (2) Willful misconduct;

TITLE 175: COMMONWEALTH CASINO COMMISSION REGULATIONS

- (3) Willful abandonment of job;
- (4) Substantial or repeated violation of law, or of this subchapter, or of Division or Commission rules or policies;
- (5) Willful failure or inability to plan, manage, or evaluate employee or unit performance in a timely or effective manner;
- (6) Conviction of a felony or other crime involving moral turpitude;
- (7) Other good cause that adversely affects the employee's ability to perform the job or that may have an adverse effect on the Division or Commission if employment is continued.

Modified, 1 CMC § 3806(f), (g).

History: Adopted 41 Com. Reg. 42023 (June 28, 2019); Proposed 41 Com. Reg. 41438 (Mar. 28, 2019).

§ 175-10.3-020 Types of Employment

The type of employment is dependent upon the position that is being filled. The Executive Director shall consider how best to accommodate and balance the present and expected future needs of the Commission with available and projected resources in determining the type of employment.

(a) Employment Contract – Employment Contract employees shall be hired on a contractual basis. Employment Contract employees shall be hired for a period of one to five years and are entitled to all the benefits of employment, including annual and sick leave, and are eligible for health and life insurance and the 401(a). Employees under this status are subjected to the Offer Letter of Employment from the Executive Director, the Commission Service Contract, and the additional Terms and Conditions of Employment promulgated by the Executive Director.

(1) Part-time Employment Contract employees may be hired for one or* five years and do not receive annual or sick leave and are not eligible for health and life insurance or the 401(a) program.

(2) The contracts of all contract employees shall contain a 90-day probationary period. The Executive Director should try to provide periodic feedback so that the employee is aware of any deficiencies he or she needs to correct prior to the end of the 90-day period. The Executive Director may promulgate a feedback form for this purpose. An employee who receives all or primarily all “unsatisfactoriness” on the evaluative criteria should assume he or she will be separated from service. The Executive Director may provide a letter that the employee either has or has not successfully passed his or her probationary period. The employee who has not received a letter about passing the probationary period should request one. Once the employee successfully completes the probationary period, or extended probationary period(s), he or she can be terminated with or without cause, as may be allowed by the Commission Service Contract.

(3) No contract employee shall have an expectation of renewal of any contract and my* not rely on any such expectation.

(b) Provisional Appointment – Provisional Appointment employees are hired by short term contract on no more than a 90-day period to fulfill an urgent need of the

TITLE 175: COMMONWEALTH CASINO COMMISSION REGULATIONS

Commission. This is usually done in order to allow time to obtain a full-time permanent employee for the position. If the Commission still needs the services of the provisional employee and the position has not yet permanently been filled, the Executive Director may extend the provisional employee another 90 days but the employment of a provisional employee shall not exceed 180 consecutive days. Provisional employees receive annual and sick leave and are eligible for health and life insurance but cannot use any annual leave during the first 90-day period. If the employee is then converted to a full-time position, he or she still has to complete the 90-day probationary period.

(c) Limited Term Appointment – Limited Term Appointment employees may be hired by short term contract to work on programs funded through federal or Commonwealth grants. The terms of these employees shall be congruent with the budget cycle of the grant. Limited Term Appointment employees receive annual and sick leave and are eligible for health and life insurance but cannot use any annual leave during the first 90-day period.

(d) Temporary Appointment – Temporary Appointment employees are employees who are hired by a short-term contract for a period of less than one year. While their terms may be extended, there should be no expectation of and reliance upon an extension. Temporary employees do not receive annual or sick leave and are not eligible for health and life insurance or the 401(a) program.

* So in original.

History: Adopted 41 Com. Reg. 42023 (June 28, 2019); Proposed 41 Com. Reg. 41438 (Mar. 28, 2019).

Part 100 - STAFFING AND ADMINISTRATION

§ 175-10.3-101 Recruitment and Selection Procedures

(a) When the Executive Director seeks to fill a vacant position, he or she will first ensure the availability of funds by checking with the Department of Finance or otherwise. Executive Director will authorize a vacancy announcement to initiate a search for a qualified and suitable person. The terms for the position shall be in accordance with the position description. The recruitment and selection process will follow procedures established by Executive Director.

(b) An existing position is deemed to be vacant upon expiration or termination of the present or last employment contract. The position can be announced sixty days before the end-date of the current employment contract if the intent is not to renew the incumbent, or some shorter time should the intent to renew occur at a date closer to the expiration of the contract.

(c) There is no requirement for the employer to renew a Commission Service Contract. If the employer, through the Executive Director, elects to renew the employment contract of a Commission Employee, the employer, through the Executive Director, may waive the announcement of the position.

(d) Newly established or otherwise unfilled positions will be announced. Provided, however, when necessary for the provision of essential services, the Executive Director may waive the requirement of a vacancy announcement for selection of a candidate for any position within the Commission. However, prior to waiving the vacancy announcement, the Executive Director shall obtain certification of the availability of funds for the position to be filled.

(e) Upon selection of an applicant the Executive Director will cause a Commission Service Contract, with Terms and Conditions, to be routed. The selected candidate will not be authorized to begin work until the contract has been fully routed and approved, a negative report has been received for the pre-employment drug test, all other requirements have been met, and the Executive Director has made payroll certification that the employee has been employed in accordance with relevant statutes and regulations.

History: Adopted 41 Com. Reg. 42023 (June 28, 2019); Proposed 41 Com. Reg. 41438 (Mar. 28, 2019).

§ 175-10.3-105 Disqualification of Applicants

(a) The Executive Director may refuse to examine an applicant, or after examination may refuse to place his or her name on an eligible list, or may remove his or her name from an eligible list, or may refuse to certify any person on an eligible list who:

- (1) Has failed to submit a complete and accurate application or failed to submit within the prescribed time limit;
- (2) Is found to lack any of the minimum qualifications in the recruitment announcement or examination for the position;
- (3) Has applied for a position as an “in-house” applicant, but whose last performance evaluation was below average;
- (4) Has received any disciplinary action (other than an oral reprimand, warning, or counseling) from the Commission (or any other branch, agency or instrumentality of the Commonwealth government) within a 12-month period preceding application and it has not been rescinded;
- (5) Is found to have been convicted for violation of the law of the CNMI or federal government within the past two years. Conviction includes guilty, “nolo” and “*Alford*” pleas.
- (6) Has been convicted of any crime involving violence or dishonesty within the last two years;
- (7) Has withheld information of material fact or made a false statement of material fact in regard to the application for employment;
- (8) Has ever been dismissed from the Commission or from other employer for disciplinary reasons or resigned in lieu of termination;
- (9) Has used or attempted to use bribery to secure an advantage in the examination or appointment;
- (10) Has directly or indirectly obtained information regarding examinations to which the applicant is not entitled; or

TITLE 175: COMMONWEALTH CASINO COMMISSION REGULATIONS

(11) Is disqualified under other sections of these rules or the laws, regulations or policies of the CNMI Government or the Commission.

History: Adopted 41 Com. Reg. 42023 (June 28, 2019); Proposed 41 Com. Reg. 41438 (Mar. 28, 2019).

§ 175-10.3-110 Nepotism

There shall be no limit to the number of members of the same household who may be employed under other appointments, provided:

- (a) No member of the same household may supervise another.
- (b) All other qualifications for employment are met.
- (c) No costs other than for salary and employment benefits as provided by regulation, shall accrue to the Commission as a result of hiring persons from a household containing another employee.

History: Adopted 41 Com. Reg. 42023 (June 28, 2019); Proposed 41 Com. Reg. 41438 (Mar. 28, 2019).

§ 175-10.3-115 Effective Dates

- (a) **Employment Start Date.** Employment for all Commission Employees, whether residing inside or outside the Commonwealth at the time of hire, shall be effective on the first day the employee reports to work. Expatriation travel time is outside the employment period and will not be compensated.
- (b) **Contract Completion.** Completion of the term of employment shall be effective on the last day of the term of the employment contract.
- (c) **Early Termination.** Early termination of employment, with or without cause, shall be effective on the date of termination stated in the termination letter. Repatriation travel time is outside the employment period and will not be compensated.

History: Adopted 41 Com. Reg. 42023 (June 28, 2019); Proposed 41 Com. Reg. 41438 (Mar. 28, 2019).

§ 175-10.3-120 Duty Station and Work Assignments

- (a) Duty station is primarily defined as Saipan, CNMI Duty Station may also, at the discretion of the Executive Director, include Rota, Tinian, the Northern Islands, or as otherwise assigned as the duties and responsibilities of the Commission may be expanded by legislation or executive order.
- (b) The employee is assigned to a specific duty station as identified in the employment contract. However, with the employee's consent, the employee may be assigned to another duty station, based upon the needs of the Commission.

TITLE 175: COMMONWEALTH CASINO COMMISSION REGULATIONS

(c) If the transfer of duty station involves a permanent move for a period in excess of six months to another island within the CNMI, the employee shall be entitled to transportation for self and dependents, if any, and shipment of household effects, not to exceed 1,500 pounds for a single status employee or 3,000 pounds for an employee with dependents. This benefit is available only in cases where the transfer is initiated by the Commission.

(d) Temporary assignments to another duty station for periods of not more than ten consecutive workdays do not require the employee's approval, if the assignment is required by the needs of the Commission.

Modified, 1 CMC § 3806(g).

History: Adopted 41 Com. Reg. 42023 (June 28, 2019); Proposed 41 Com. Reg. 41438 (Mar. 28, 2019).

§ 175-10.3-125 Compensation and Work Schedules

(a) The salary will be subject fiscal availability (and to budget appropriations, if applicable) and will be expressed in terms of the gross amount to be paid during a twelve-month annual period, and for each of the twenty-six bi-weekly pay periods.

(b) Periods of compensable time shall include time worked during the assigned work schedule, overtime for overtime-eligible employees, legal holidays, and approved annual, sick, administrative and other leaves, as defined herein or subject to the Executive Order of the Governor. Periods of absence without leave (AWOL) and leave without pay (LWOP) will not be compensated and will be subject to appropriate timekeeping and administrative action.

(c) The employee's specific workday and workweek may differ from the standard workweek on a permanent basis, or vary from time to time, according to the needs of the Commission. Every effort shall be made to maintain a reasonable five-day, forty-hour work schedule, but the schedule is subject to variation, to include required overtime for overtime-eligible employees, extra hours for overtime-exempt employees, shifts of differing duration, and broken periods of duty, according to the needs of the Commission.

(d) All employees are covered by the Federal Fair Labor Standards Act (FLSA). Employees cannot waive their rights under FLSA. An employee will be designated as overtime-eligible or overtime-exempt based upon the duties performed and in accordance with the federal FLSA. Such designated executive, administrative, and professional employees are exempt from, and shall not be paid, overtime payment. These terms have the meanings given them in the federal Fair Labor Standards Act. The employee's overtime eligibility status is stated in the employment contract.

(e) Overtime for overtime-eligible employees shall be approved in accordance with a procedure established by the Executive Director. The Executive Director shall also establish a policy to address administrative actions for unauthorized overtime work. However, prohibition of unauthorized overtime does not relieve the employer of the

TITLE 175: COMMONWEALTH CASINO COMMISSION REGULATIONS

requirement to pay for time actually worked. Overtime is that time a non-exempt employee is directed or permitted to work in excess of the 40 hours during a standard work week (40 hours in seven consecutive days). Employers may apply different work periods for health care employees, or different work periods and overtime thresholds for law enforcement employees as permitted by federal law. Such overtime hours are paid at 1.5 times the regular rate of pay, as defined in the Fair Labor Standards Act.

(f) Compensatory time-off can be used to replace monetary payment for overtime-eligible employees, at the discretion of the Executive Director. In such cases replacement will be at the rate of one and one-half hours of compensatory time-off for each one hour of overtime worked. The employee's acceptance of employment serves as an agreement to receive compensatory time-off in lieu of paid overtime. The employer can require the employee to use the compensatory time-off that they have earned, rather than allowing it to excessively accumulate or paying it as overtime. Restated, this means that the Executive Director can schedule compensatory time-off periods and require the employee to take that time-off. This does not prevent an employee from also scheduling time off at a time of his or her choosing, as long as approving the request does not unduly disrupt the Commission's operations.

(g) Compensatory time accrued must be taken within the year that it was earned.

(h) The Executive Director may approve compensatory time or extra payment to an overtime-exempt employee, in exceptional situations. Such situations will be considered the exception, not the rule, and will be limited to declared emergencies and extraordinary work requirements. In such cases compensatory time-off or extra payment will be on a one-to-one regular base pay basis.

History: Adopted 41 Com. Reg. 42023 (June 28, 2019); Proposed 41 Com. Reg. 41438 (Mar. 28, 2019).

§ 175-10.3-130 Acting Appointment

(a) An acting appointment is made when an employee may be required to serve temporarily and accept responsibilities for work in a vacant higher-level position which the Executive Director has determined cannot be left vacant for any but the shortest period of time. This type of appointment gives the acting appointed employee no advantage in competition for regular filling of this position. However, time in acting appointment may be counted toward experience for the class of position concerned.

(b) All acting appointments require the written approval of the Executive Director. Any employee who is acting for a period in excess of 90 days will receive acting pay effective the 91st day in acting capacity. If the employee does not meet the minimum qualifications of the position for which he or she is in acting capacity, the acting pay will be at least 10% more than the employee was earning immediately prior to accepting the acting role but not more than the pay level for the position the employee is filling.

History: Adopted 41 Com. Reg. 42023 (June 28, 2019); Proposed 41 Com. Reg. 41438 (Mar. 28, 2019).

TITLE 175: COMMONWEALTH CASINO COMMISSION REGULATIONS

§ 175-10.3-135 Work Hours

- (a) Regular Hours of Work.
 - (1) Regular working hours of the Commission employees shall consist of a five-day week, eight hours a day, 40 hours per workweek from 8:00 am to 5:00 pm. The standard workweek shall consist of the period from midnight Sunday to the following midnight Sunday.
 - (2) The Commission is a 24-hour operation. In the Division(s) that operate outside of normal business hours, the Manager of the Division together with the Executive Director shall make a schedule for the employees who work hours other than the standard work week. The Executive Director shall promulgate a Time Clock / Biometric Timekeeping Policy for the hours of all units operating outside of the standard work week.
- (b) Evening and Night Shift Differential. (RESERVED)
- (c) On-Call Employees (RESERVED)
- (d) Time and Attendance Record. All Commission employees shall sign a Time and Attendance Record such as may be required by the Executive Director. The Executive Director shall review and approve Time and Attendance Records. The Commission pay periods shall be identical with those of the CNMI Government. Executive, managerial, professional and exempt employees are expected to work the regular 40 hours a week of employment but need not time-in or time-out.
- (e) Payment of Salary. All Commission employees shall be paid within two weeks after end of every pay period.
- (f) Temporary Schedule. Temporary shifting of employee's working hours to meet routine needs may be done as necessary and if approved by the Division Manager or the Executive Director. Changes in temporary schedule for more than one-week duration require at least one week's advance notice to employees except in emergency situations, or when the employees waive the need for notice.
- (g) Lunch Period. For most positions, lunch shall be one-hour unpaid time, usually from 11:30 am to 12:30 pm. Deviation from the standard lunch time requires the approval of the employee's Supervisor or the Executive Director. If employee is on a shift schedule, lunch or dinner break should be complied accordingly based on existing policy.
- (h) Rest Periods. Employees are entitled to rest periods of fifteen minutes during the first four hours of work and another fifteen minutes during the second four hours of work. The responsibility for scheduling break periods rests with the immediate supervisor. The 30 minutes allotted for break time may not be used to lengthen lunch hours or shorten working days. Rest periods shall not be used to cover late arrivals nor may they be accumulated for scheduled time-off.

TITLE 175: COMMONWEALTH CASINO COMMISSION REGULATIONS

(i) Changes of Permanent Schedule. All long-term changes to the established work schedules shall be provided to the employees affected at least one week's notice prior to the change, if possible, except in emergency situations or when the employees waive the need for notice.

Modified, 1 CMC § 3806(e).

History: Adopted 41 Com. Reg. 42023 (June 28, 2019); Proposed 41 Com. Reg. 41438 (Mar. 28, 2019).

§ 175-10.3-140 Work Hours Recognized Holidays with Pay

(a) Holidays with Pay. The following days will be recognized as holidays with pay for all employees. These holidays are subject to change pursuant to Executive Order of the CNMI Governor or by statute.

New Year's Day (January 1)

Martin Luther King, Jr. Day (3rd Monday in January)

President's Day (3rd Monday of February)

Covenant Day (3rd Friday in March)

Good Friday (as designated by the Catholic Church calendar)

Memorial Day (last Monday in May)

Independence Day (July 4)

Labor Day (September 4)

Commonwealth Cultural Day (2nd Monday in October)

Citizenship Day (November 4)

Veteran's Day (November 11)

Thanksgiving Day (last Thursday in November)

Constitution Day (December 8)

Christmas Day (December 25)

(b) Holiday Falling on Saturday or Sunday. When a recognized holiday falls on a Saturday, the preceding Friday shall be recognized as the holiday. When a recognized holiday falls on a Sunday, the Monday following shall be recognized as the holiday.

(c) Computation of Holiday Pay

(1) Employees shall receive their regular straight time rate of pay for recognized holidays if they do not work.

(2) Employees who are not managers but who work on the holiday shall receive at the rate of one compensatory time-off hour for each one hour of holiday hours worked. Managers who work on a holiday shall receive a compensatory day off.

(3) Holiday during annual, or sick leave. A recognized holiday occurring during the employee's annual or sick leave shall not be counted as a day of annual or sick leave.

(d) Forfeiture of Holiday Pay. Employees shall forfeit their right to payment for any holiday if they are on leave without pay (LWOP) or absent without leave authorization (AWOL) for the entire shift on the last regular work day preceding such holiday or on the next regular work day following such holiday.

TITLE 175: COMMONWEALTH CASINO COMMISSION REGULATIONS

(e) Pay for Employees who Work on a Holiday. Employees who perform work on a holiday will be compensated straight time pay in addition to the holiday pay. Overtime rate will be applied for hours worked beyond the 40-regular work hours. A work hour is defined as actual hours of performance. Holiday hours are not counted as regular work hours.

Modified, 1 CMC § 3806(g).

History: Adopted 41 Com. Reg. 42023 (June 28, 2019); Proposed 41 Com. Reg. 41438 (Mar. 28, 2019).

Part 200 - EMPLOYEE BENEFITS

§ 175-10.3-201 Expatriation and Repatriation [Reserved]

History: Adopted 41 Com. Reg. 42023 (June 28, 2019); Proposed 41 Com. Reg. 41438 (Mar. 28, 2019).

§ 175-10.3-205 Housing [Reserved]

History: Adopted 41 Com. Reg. 42023 (June 28, 2019); Proposed 41 Com. Reg. 41438 (Mar. 28, 2019).

§ 175-10.3-210 Annual Leave

(a) Annual leave, or vacation, shall be granted for the purpose of rest and relaxation. Except as provided in this section, employees who have less than three years of creditable service shall earn annual leave at the rate of four hours per pay period. Employees with three but less than six years of creditable service shall earn annual leave at the rate of six hours per pay period. Employees with six or more years of creditable service shall earn annual leave at the rate of eight hours per pay period.

(b) Activity or division heads, attorneys, executive directors and assistant executive directors shall earn annual leave at the rate of eight hours per pay period.

(c) Annual leave accrual rate per pay period for Commission Employees with advanced degrees and/or exceptional skills or experience shall be at a rate not to exceed eight hours, and:

(1) Based, specific to each employee, upon:

(i) The critical need to fill the position;

(ii) The availability of qualified applicants; and

(iii) The amount and quality of related education, training, and experience possessed by the employee.

(2) An employee employed in the first year of the initial contract shall not be entitled to use annual leave during the first ninety days of employment. Annual leave earned during this period will be credited to the employee upon completion of this initial period. This restriction does not apply to employees employed on an immediately subsequent contract.

TITLE 175: COMMONWEALTH CASINO COMMISSION REGULATIONS

(d) Commission Employees shall accrue annual leave at the rate set forth in their employment contract. If the employee takes leave without pay (LWOP) or is in an absence without leave (AWOL) status there will be no leave accrual for that pay period.

(e) Annual leave may be used only upon prior written approval of the employer and will be scheduled based upon the needs of the employer. Annual leave requests must be made in advance, except in cases of bona fide emergencies, on a leave request form provided by the Executive Director. All annual leave requests must be approved by the Executive Director. The employer will approve all properly submitted leave requests unless the needs of the government prevent the absence of the employee.

(f) Annual leave must be utilized during the contract period. Except as provided in subsections (g), (h), and (i) below, any annual leave not utilized will be converted to sick leave at the end of the employment term. No cash payment will be made for unused annual leave, except as provided for in subsection (i) below.

(g) If an offer and acceptance for a new employment contract is agreed upon, or if a civil or excepted service employee accepts a contract with the Commission, accrued and unused annual leave credits from the prior period of employment, not to exceed 360 hours, shall be carried over to the new employment contract. Unused annual leave in excess of the limits cited above will be converted to sick leave.

(h) Employees converting from the civil service or excepted service status will be authorized to carry over not more than 360 hours of annual leave. Hours in excess of this amount will be converted to sick leave if not used prior to conversion.

(i) The Executive Director may, with the concurrence of the Chairman, approve a lump-sum cash payment of up to 360 hours of unused annual leave in cases of involuntary separation due to reasons of bona fide personal emergency beyond the control of the employee or as otherwise permitted by the regulations or the Executive Director.

History: Adopted 41 Com. Reg. 42023 (June 28, 2019); Proposed 41 Com. Reg. 41438 (Mar. 28, 2019).

§ 175-10.3-215 Sick Leave

Accumulation of sick leave is allowed primarily for the purpose of providing an employee with an economic cushion to be used in the event of an illness or lengthy absence for legitimate medical reason. In addition, in accordance with PL 15-69, as repealed in part by PL 15-115, an employee may use sick leave to care for a sick spouse or child. In this case, “sick” means a serious or life-threatening illness. Approval of the Executive Director is required to use sick leave in this way. A doctor’s certification will be required.

(a) Sick leave shall accrue to the employee at the rate of four hours per pay period, provided the employee has been in pay status as required by the employment contract. If

TITLE 175: COMMONWEALTH CASINO COMMISSION REGULATIONS

the employee takes leave without pay (LWOP) or is in an absence without leave (AWOL) status the sick leave accrual shall be prorated for that pay period.

(b) The employee is entitled to use accrued sick leave from the time sick leave is first earned. An employee who is absent from work for a reason for which Sick Leave may be used shall inform his or her immediate supervisor of the fact and reason, and failure to do so within a reasonable time may be cause for disciplinary action. Notification in this context shall mean notification no later than an hour after the accident, emergency or injury, or advance notice if medical and/or dental appointment is being sought.

(c) Any absence on sick leave where the employee misses more than three continuous days of work must have the illness verified by a note from a medical doctor in order to claim sick leave.

(d) The employee is not entitled to any payment for accrued and unused sick leave upon completion of an employment contract or termination of employment.

(e) If an offer and acceptance for a new period of employment is agreed upon under a new employment contract/appointment, all accrued and unused sick leave credits from the prior contract/appointment will be carried over, provided that if the employee is separated from government service for a period longer than three years, the employee shall be divested of accumulated sick leave.

(f) If the Executive Director has reasonable grounds to believe that the employee is misusing sick leave, or requesting sick leave for purposes other than illness, the Executive Director may request proof of illness from a health care professional for any period of illness. If the certification is not provided, or is unpersuasive, the supervisor may deny the sick leave request. Disallowed sick leave shall be charged as Annual Leave, if available, or AWOL.

(g) Sick leave may be accumulated without limit.

(h) Commission Employees are eligible for the sick leave bank program pursuant to applicable regulations adopted on October 16, 1997 and published in the Commonwealth Register, Vol. 19, No. 11, on November 15, 1997, at pages 15748-15757. (See NMIAC title 100, chapter 50).

(i) Sick Leave Bank

(1) Donation. The Commission hereby establishes a Sick Leave Bank. Employees may donate sick leave either to a designated employee or to the Sick Leave Bank in general. Employees may donate as much sick leave as they want to the Bank but no more than 160 hours to any specific employee.

(2) Use. Employees must be approved by the Executive Director to use the Sick Leave Bank. In order to be eligible, employees must have a serious or life-threatening illness or accident that precludes the employee from working. The employee must have exhausted all other leave, including advanced leave, prior to using the Sick Leave Bank.

TITLE 175: COMMONWEALTH CASINO COMMISSION REGULATIONS

Employees using either designated time or general Sick Leave Bank time may use no more than 160 hours total during the course of their employment.

(j) Transfer-In of Sick Leave from other CNMI Government Agencies. The Commission will accept up to 500 hours of sick leave from other CNMI Government agencies.

(k) For employees with serious medical conditions resulting in prolonged illness or disability as documented by his or her physician, unpaid sick leave may be requested under the Family Medical Leave Act (FMLA).

History: Adopted 41 Com. Reg. 42023 (June 28, 2019); Proposed 41 Com. Reg. 41438 (Mar. 28, 2019).

§ 175-10.3-220 Administrative Leave with Pay

Administrative leave with pay may be granted by the Governor or the Executive Director for a public purpose.

History: Adopted 41 Com. Reg. 42023 (June 28, 2019); Proposed 41 Com. Reg. 41438 (Mar. 28, 2019).

§ 175-10.3-225 Holidays

Unless the Executive Director determines that the Commission Employee must, due to the services provided by the employee, report to work on a legal holiday, the employee shall be released from work on all legal holidays, except during emergencies.

History: Adopted 41 Com. Reg. 42023 (June 28, 2019); Proposed 41 Com. Reg. 41438 (Mar. 28, 2019).

§ 175-10.3-230 Advance Leave

Where, for good reason, the employee requires an advance of annual or sick leave, the Executive Director may grant leave in advance up to a maximum of one-half of the total earnable leave credits for one year from the date the request is approved or for the remainder of the employment contract/appointment, whichever is shorter. Subsequent leave earnings shall serve to replace the amount of advance leave taken. In the event an employee resigns from his or her employment, any annual or sick leave overdraft must be paid as part of the final clearance.

History: Adopted 41 Com. Reg. 42023 (June 28, 2019); Proposed 41 Com. Reg. 41438 (Mar. 28, 2019).

§ 175-10.3-235 Court Leave

The Commission encourages its employees to fulfill their obligations as citizens and residents of the Commonwealth and the federal government. Thus, employees who are called upon to serve as jurors and witnesses may, at their option, be granted court leave for such period as required by the court. Employees who are called to jury duty or as witnesses shall present their summons to their immediate supervisor together with a

TITLE 175: COMMONWEALTH CASINO COMMISSION REGULATIONS

completed request for leave for his or her signature and processing. Employees using court leave to cover the period of absence shall turn over to the Commission such jury or witness fees (as distinct from expense allowances) as they receive from the court or summoning party. Expense allowances paid the employee for whatever purpose may be retained by the employee to defray the expenses for which granted.

History: Adopted 41 Com. Reg. 42023 (June 28, 2019); Proposed 41 Com. Reg. 41438 (Mar. 28, 2019).

§ 175-10.3-240 Compassionate Leave

Full-time Commission Employees may be granted compassionate leave of no more than five workdays, not necessarily consecutive, in cases of death in the immediate family of the employee. For the purpose of this section, the term immediate family shall include a mother, father, brother, sister, spouse, immediate offspring (natural and culturally or legally adopted), stillborn child, grandfather, grandmother, grandchild, mother-in-law, or father-in-law. Compassionate leave must be taken within eighteen days after the death of the immediate family member.

History: Adopted 41 Com. Reg. 42023 (June 28, 2019); Proposed 41 Com. Reg. 41438 (Mar. 28, 2019).

§ 175-10.3-245 Miscarriage Leave

Miscarriage leave shall be granted to a Commission Employee who is absent from work because of miscarriage or the subsequent convalescence. Such miscarriage leave shall not exceed five work days, and shall be in addition to any accumulated sick leave. An employee who wishes to claim miscarriage leave must have the miscarriage verified by a note from a medical doctor in order to claim miscarriage leave. Any additional leave taken after five work days shall be charged against accumulated sick leave.

History: Adopted 41 Com. Reg. 42023 (June 28, 2019); Proposed 41 Com. Reg. 41438 (Mar. 28, 2019).

§ 175-10.3-250 Pregnancy Disability Leave

Pregnancy disability leave shall be granted to a Commission Employee who is absent from work because of childbirth or the subsequent convalescence. Such pregnancy disability leave shall not exceed thirteen work days, shall be in addition to any maternity leave or accumulated sick leave, and shall be any thirteen work days encompassing the date of childbirth. Any additional leave taken for such childbirth purposes shall be charged against accumulated sick leave. Pregnancy disability leave shall be available to a Commission Employee who suffers a still birth.

History: Adopted 41 Com. Reg. 42023 (June 28, 2019); Proposed 41 Com. Reg. 41438 (Mar. 28, 2019).

§ 175-10.3-255 Maternity and Paternity Leave

Maternity or paternity leave shall be granted to a Commission Employee who is absent from work because of the employee or the employee's spouse giving birth. Such leave

TITLE 175: COMMONWEALTH CASINO COMMISSION REGULATIONS

shall also be available for absences due to the cultural or legal adoption of a child. Such maternity or paternity leave shall not exceed two work-days and shall be taken within one week of the date of childbirth or the adoption.

History: Adopted 41 Com. Reg. 42023 (June 28, 2019); Proposed 41 Com. Reg. 41438 (Mar. 28, 2019).

§ 175-10.3-260 Military Leave

(a) Any employee who is involuntarily enlisted, drafted or is called into active service in the armed service of the United States shall be granted military service leave in accordance with this Section and applicable Federal Law. Upon discharge from such service, the employee shall be re-employed with such seniority, status and pay as would have been attained if employment had continued with the Commission without interruption, provided that the employee's absence has not voluntarily exceeded two years and application for re-employment was made within 30 days of release from active military service.

(b) In accordance with local and federal laws, any employee who enlists or is called to federal active duty, territorial active military service or training duty as a Reserve of the Armed Forces or a member of the National Guard will be granted up to 120 hours of unpaid military leave for the period of active duty upon presentation of Orders into service to the Executive Director or his or her designee. This leave shall be granted solely for the purpose of and will continue only for the time stated in the Orders into service and that said employee is actually performing said military service.

(c) Any employee who is a veteran of a branch of the United States Armed Services will be excused from work duties without loss of pay for the time necessary, not to exceed eight hours in any one day, to participate as an active pall bearer or as a member of a firing squad or honor guard in a funeral ceremony for a member of the Armed Forces of the United States whose remains final interment is in the Commonwealth.

(d) Extended military leave shall be granted to employees pursuant to the federal Uniformed Services Employment and Reemployment Rights Act (USERRA).

Modified, 1 CMC § 3806(g).

History: Adopted 41 Com. Reg. 42023 (June 28, 2019); Proposed 41 Com. Reg. 41438 (Mar. 28, 2019).

§ 175-10.3-265 FMLA Leave

Leave under the federal Family and Medical Leave Act of 1993 (FMLA) shall be granted to employees as provided in FMLA.

History: Adopted 41 Com. Reg. 42023 (June 28, 2019); Proposed 41 Com. Reg. 41438 (Mar. 28, 2019).

§ 175-10.3-270 Leave without Pay

TITLE 175: COMMONWEALTH CASINO COMMISSION REGULATIONS

The Executive Director or his or her designee shall be the approving authority for Leave without Pay (LWOP). It is the responsibility of the employee to apply for leave without pay. If LWOP is not authorized, it is characterized on the employee's payroll as Absent without Leave (AWOL). If an employee believes he or she has been adjudged AWOL improperly, he or she needs to clear that issue with the Executive Director within the next pay period after having received the AWOL. Leave and benefits shall not accrue during leave without pay except as provided in this section. The employer-employee relationship is maintained during a period of leave without pay, but the Commission shall pay no other compensation.

History: Adopted 41 Com. Reg. 42023 (June 28, 2019); Proposed 41 Com. Reg. 41438 (Mar. 28, 2019).

§ 175-10.3-275 Unauthorized Absence or Absent Without Leave (AWOL)

(a) Absence without Leave is defined as leave without approval and may subject the employee to discipline. For purposes of this section, AWOL will be evaluated per calendar year. Previous years' AWOL will not apply to subsequent years for disciplinary purposes. Such leave is unpaid.

(1) Discipline may be as follows:

- (i) Employees who accrue AWOL hour(s) during any one pay period shall be issued a reprimand.
- (ii) Employees who accrue an additional hour(s) after reprimand in any following pay period shall receive a five-day suspension without pay.
- (iii) Employees who accrue an additional hour(s) after a five-day suspension shall be terminated.
- (iv) Employees who accrue 80 hours of AWOL in one year shall be terminated.

(b) Abandonment of Position. Any employee AWOL for a consecutive total of 10 working days shall be deemed to have resigned without notice by abandonment of position. Employees will be responsible to submit leave applications prior to the leave being taken or immediately upon return to work. Failure by the employee to submit leave applications may result in AWOL. For circumstances that are beyond the control of the employee, AWOL may be amended. The AWOL assessed may only be amended on the following payroll. Amendments will not be allowed on the second pay period following the AWOL assessment.

History: Adopted 41 Com. Reg. 42023 (June 28, 2019); Proposed 41 Com. Reg. 41438 (Mar. 28, 2019).

§ 175-10.3-280 Part-Time Accrual

Part-time or intermittent employees with regular scheduled tours* of duty of forty to less than eighty hours during a biweekly period will accrue annual leave and sick leave at a prorated amount of the full-time benefit, rounded off to the nearest quarter hour per pay period, and will be eligible for other paid leaves, provided in this part, at this rate. Part-time or intermittent employees with regular scheduled tours of duty of less than forty hours during a biweekly pay period will not accrue annual or sick leave or be eligible for the other paid leave benefits. If a part-time or intermittent employee takes leave without

TITLE 175: COMMONWEALTH CASINO COMMISSION REGULATIONS

pay (LWOP) or is in an absence without leave (AWOL) status for a scheduled duty period there will be no leave accrual for that pay period.

* So in original.

History: Adopted 41 Com. Reg. 42023 (June 28, 2019); Proposed 41 Com. Reg. 41438 (Mar. 28, 2019).

§ 175-10.3-285 Transfers within Government

(a) If a Commission Employee transfers to another position within the executive branch, the new employer may assume all liability for the payment or transfer of all earned contractual benefits. Transfers to similar positions within the executive branch with no change in salary may be affected by the employer with or without the employee's permission.

(b) If a Commission Employee transfers to another government entity, the receiving entity may assume any liability for the payment or transfer of all earned contractual benefits. Similarly, the Commission may assume a similar liability for the payment or transfer of all earned contractual benefits if it accepts the transfer of an employee contractually entitled to such benefits from another government entity.

History: Adopted 41 Com. Reg. 42023 (June 28, 2019); Proposed 41 Com. Reg. 41438 (Mar. 28, 2019).

§ 175-10.3-290 Insurance and Retirement Benefits

(a) Insurance Benefits. Employees who are scheduled to work at least 40 hours each week may participate in insurance and medical benefit programs made available and, in the manner, provided under the Life and Health Insurance Programs (GLHIP) administered through the Department of Finance. Such benefits shall continue to be in effect during absences due to paid leave, up to three months of family and medical leave, and approved leave without pay when the employee pays the insurance premium.

(b) Retirement Benefits.

(1) Employees currently grandfathered in to the NMI Settlement Fund will be able to retire consistent with the NMISF regulations.

(2) Full time employees not part of the NMISF will be allowed to participate in the CNMI's 401(a) plan to the same extent as employees of the central government.

Modified, 1 CMC § 3806(e).

History: Adopted 41 Com. Reg. 42023 (June 28, 2019); Proposed 41 Com. Reg. 41438 (Mar. 28, 2019).

Part 300 - EMPLOYEE CONDUCT AND OBLIGATIONS

§ 175-10.3-301 Grievance Procedure(s)

(a) A Commission Employee may submit a grievance regarding any matter involving the interpretation, application, or alleged violation of any Policy, Rule or Regulation or

any other matter concerning general conditions of employment. The aggrieved employee shall first discuss the grievance with the immediate supervisor in an attempt to resolve the issue. If the issue cannot be resolved with the immediate supervisor or manager, the employee should contact the Executive Director or his or her designee. The Executive Director or his or her designee will attempt to satisfactorily resolve the grievance. The employee may appeal an unsatisfactory determination of the designee to the Executive Director. If the matter has been addressed by the Executive Director, the employee shall not seek contravention of that decision by the Commission or any individual Member of the Commission; the decision of the Executive Director shall be treated as a final agency decision.

(b) Commission Employees may seek dispute resolution to resolve conflicts and disputes by means of a mediation procedure as provided by the Executive Director and pursuant to available resources.

History: Adopted 41 Com. Reg. 42023 (June 28, 2019); Proposed 41 Com. Reg. 41438 (Mar. 28, 2019).

§ 175-10.3-305 Termination of Services

An employee may be separated from employment with the Commission by resignation, retirement, involuntary termination (either with or without cause), or lay off.

(a) Resignation.

(1) An employee should submit a written resignation at least 60 calendar days notice prior to the effective date of separation to the Executive Director. The period of notice may be reduced or waived by the Executive Director.

(2) Withdrawal of Resignation. An employee may withdraw his or her resignation only with the written approval of the Executive Director. Approval shall be obtained before the effective date stated in the resignation.

(3) Failure to give adequate notice. Failure to give adequate notice of resignation may be considered separation not in “good standing” and may preclude consideration for future employment with the Commission.

(4) Effective Date of Separation. The effective date of separation shall be at the close of business on the last day on which the employee works or uses approved leave.

(b) Retirement. Employees retiring from the Commission are required to provide a written notice the same as if they were resigning. This advance time is needed so that retirement benefits can begin as soon as possible following date of retirement and to allow management to plan for the departure of the retiring employee. Employees should submit a letter indicating the date of retirement to the Executive Director accompanied by a letter from the Northern Mariana Island Settlement Fund indicating eligibility for retirement.

(c) Austerity/Reduction in Hours. If the need arises for austerity, employees may have their hours reduced. The Notice shall be given 30 days in advance of the beginning of the austerity. The Governor or Executive Director may exclude certain positions from

TITLE 175: COMMONWEALTH CASINO COMMISSION REGULATIONS

the austerity. Neither the Governor's nor the Executive Director's decisions to exclude or not to exclude positions for austerity are grievable.

(d) Payment upon Separation.

(1) Employees may be paid out for unused annual leave. Employees should be aware of their leave balances and plan to exhaust their annual leave prior to their separation date. If an employee has leave that he or she is not able to use due to short staffing or some other emergent condition, the employee shall seek the approval of Executive Director to get approval to have those funds paid out.

(2) Moneys the employee owes the Commission or any agency or instrumentality of the Commonwealth Government shall be deducted from the final paycheck. Deductions from accrued leave pay may be made for the replacement value or fair market value of the Commission's property not returned by the employee on or before the effective date of separation

(3) Final paycheck for separation on account of death of employee shall include final wages or salary and other payments the Commission owes the employee, e.g., reimbursable travel advances and other similar payments made by the employee on behalf of the Commission.

(4) Final paycheck shall be paid only to the beneficiary designated in writing filed by the employee before death or to the employee's estate. Commonwealth law does not recognize common-law spouses. If no beneficiary has been designated final payment should be made to surviving legal spouse; if no legal spouse, to surviving children, or guardian of any minor children in equal shares; otherwise to father and/or mother in equal shares; if parents are not living, then to brothers and sisters in equal shares; if no surviving next of kin, payment should be made to the Commission as escheat.

(e) Medical Separation. An employee who is unable to return to work or has been determined by a licensed physician or medical professional as unable to perform the essential duties of the job, in accordance with federal and CNMI laws and Commission policies (sick leave, annual leave, and FMLA leave) shall be separated from employment.

(f) Termination

(1) The Executive Director may terminate the employee without cause upon written notice sixty days in advance of the date of termination of employment. This time may be shortened only by specifying in the employment contract a lesser period of advance notice. Such notice shall specify the date of termination and be delivered in person to the employee, or by certified mail if the employee is otherwise unavailable for personal delivery. Payment of salary comprising the sixty-day (or contractually shortened) notice period may be made in lieu of notice.

(2) The Executive Director may terminate the employee with cause upon written notice seven days in advance of termination of employment. Payment of salary comprising the seven-day notice period may be made in lieu of notice.

History: Adopted 41 Com. Reg. 42023 (June 28, 2019); Proposed 41 Com. Reg. 41438 (Mar. 28, 2019).

§ 175-10.3-310 Non-Discrimination Policy

TITLE 175: COMMONWEALTH CASINO COMMISSION REGULATIONS

(a) It is the policy of the Commission that discrimination, for or against any employee, because of race, creed, color, gender (including sexual harassment), sexual orientation, national origin, age, religion, political affiliation, organizational membership, veteran status, disability, or genetic information is prohibited and will not be tolerated. No adverse action or hiring decision shall be made on the basis of any of the above factors except that veteran status may be considered positively as permitted by law.

(b) The Commission shall maintain every workplace free from unlawful harassment, including sexual harassment. Any employee or official who engages in any act of discrimination or harassment on the basis of any of the above factors violates Commission policy, and such misconduct will subject the employee to corrective action ranging from counseling to disciplinary action up to and including termination. Such harassment by a non-employee (for example, a client or contractor) is also prohibited. The Commission shall not tolerate any such outside harassment and shall take necessary action to prevent its continuation or recurrence.

(c) Any employee who feels that he or she has been discriminated against on the basis of any of the above factors, or sexually harassed, should immediately report such incidents to a supervisor at any level without fear of reprisal. Confidentiality will be maintained to the extent permitted by the circumstances.

(d) Any Commission employee who receives a claim of discrimination or harassment in violation of this policy shall take such complaint seriously and immediately advise the Executive Director or the Commonwealth Equal Employment Opportunity (EEO) Coordinator of the situation. The Executive Director, with the assistance of the EEO Coordinator, if sought, will ensure that it is investigated promptly, privately, and with as much confidentiality as possible, consistent with the need to determine the facts. The investigation will be documented by an investigative report that will be retained in a confidential file by the Executive Director or EEO Coordinator. Any person accused of a violation shall be allowed the opportunity to rebut the charges.

(e) After determining the facts through the investigation, the Executive Director shall take corrective action as required by the circumstances. This may include counseling any employee, whether or not a violation has occurred; imposing an appropriate sanction, including disciplinary action; making sure that this policy is reiterated to all employees or any group. An employer, or any supervisory staff, who does not take appropriate action also violates this policy and exposes the Commonwealth government to liability.

History: Adopted 41 Com. Reg. 42023 (June 28, 2019); Proposed 41 Com. Reg. 41438 (Mar. 28, 2019).

§ 175-10.3-315 Non-Tolerance of Sexual Harassment

(a) **Applicability.** This policy and procedures applies to all Commission Employees and Members of the Commission.

(b) **Purpose.** This policy and procedure will establish the Commission's policy of non-tolerance of sexual harassment of any form, by its Members or employees, toward its

TITLE 175: COMMONWEALTH CASINO COMMISSION REGULATIONS

Members or employees, or by non-governmental agents against the Commission's Members or employees. It will also provide guidance for the education and training of Members and employees to recognize, avoid and prevent sexual harassment in the workplace. This policy and procedure will provide steps for reporting, investigating, and taking administrative action in situations involving sexual harassment.

(c) Definitions

(1) Sexual harassment is an unwelcome sexual advance, request for sexual favors, or other verbal or physical conduct of a sexual nature. Sexual harassment occurs when:

(i) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, or

(ii) Submission or rejection of such conduct by an individual is used as a basis for employment decisions affecting such individual, or

(iii) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.

(2) Sexual harassment can be divided into two basic types of misconduct:

(i) When an employee or Member suffers or is threatened with a quid pro quo (this for that) situation. This form of sexual harassment occurs when a supervisor or someone else with authority over the victim makes a put out or get out demand, such as "submit to my sexual requests or you will be fired, demoted, passed over for promotion, or in some other way made miserable on the job." This type of sexual harassment can be committed only by someone in the organization structure who has the power to control the victim's job destiny.

(ii) When behavior in the workplace creates a hostile environment. This form of sexual harassment occurs when a supervisor, co-worker, or someone else with whom the victim comes into contact on the job creates an abusive work environment or interferes with the employees work performance through words or deeds because of the victim's gender. The following kinds of behavior have been recognized by the courts as contributing to a sexually hostile environment:

(A) Discussing sexual activities;

(B) Telling off-color jokes;

(C) Unnecessary touching;

(D) Commenting on physical attributes;

(E) Displaying sexually suggestive pictures;

(F) Using demeaning or inappropriate terms, such as babe, honey, etc.;

(G) Using indecent gestures;

(H) Sabotaging the victims work;

(I) Engaging in hostile physical conduct;

(J) Granting job favors to those who participate in consensual sexual activity;

(K) Using crude and offensive language; or

(L) Wearing provocative, sensual attire, i.e. tight, skimpy, short-length, etc.

(iii) The above listed behaviors can create a liability for the government and any such conduct must be addressed and corrected at its earliest stage before it becomes severe or pervasive.

TITLE 175: COMMONWEALTH CASINO COMMISSION REGULATIONS

- (3) A workplace environment is considered sexually hostile when conduct occurs that meets the following two conditions:
- (i) It must be subjectively perceived as abusive by the person(s) affected, and
 - (ii) It must be objectively severe or pervasive enough to create a work environment that a reasonable person would find hostile or abusive.
- (iii) A determination of whether or not a situation would be construed as sexual harassment should also take into consideration the following factors:
- (A) The victim as well as the harasser may be a woman or a man. The victim does not have to be of the opposite sex;
 - (B) The harasser can be the victim's supervisor, an agent of the employer, a supervisor in another area, a co-worker, or a non-employee;
 - (C) The victim does not have to be the person harassed, but could be anyone affected by the offensive conduct;
 - (D) Unlawful sexual harassment may occur without economic injury to the victim;
 - (E) The harassers conduct must be unwelcome.
- (4) Sexual discrimination is distinguished from sexual harassment in that it reflects biases in employment actions based upon gender, but does not involve the abusive behavior described in subsection (c) above.

(d) Policy

- (1) It is the policy of the Commission that all Members and employees shall enjoy a work environment free from sexual harassment and all forms of discrimination. Sexual harassment is illegal, under Title VII of the Civil Rights Act of 1964, as amended and as implemented by 29 CFR 1604.11, and is prohibited under this chapter and Article 1, Section 6, of the Commonwealth Constitution.
- (2) Sexual harassment is specifically prohibited and will not be tolerated in any form, regardless of whether the offensive conduct is committed by Members, supervisors, managers, non-supervisors (co-workers), or nonemployees (consultants, contractors, general public).
- (3) All employees are encouraged to report any violation of this policy. If management is not aware of specific incidents of sexual harassment in the workplace it cannot properly address them. If an employee observes or is subjected to sexually discriminatory or harassing behavior in the workplace, it should be reported immediately to the Executive Director so it can be resolved at the earliest possible time. Employees will not be retaliated against for making truthful statements about perceived harassment.
- (4) No employee will be denied or will receive employment opportunities and/or benefits because of a sexual relationship with a Member, co-worker or supervisor. No Member, employee or non-employee shall imply to an employee, an applicant for employment, or a client of a government activity, that conduct of a sexual nature will have an effect on that person's employment, assignment, advancement, other condition of employment, or any other relationship with the government. Any incidents of this type, upon verification by investigation, will be subject to disciplinary and corrective action.
- (5) The employer, at all supervisory levels, is responsible for the occurrence of acts of sexual harassment in the work place when they know or should have known of the prohibited conduct. As an official of an autonomous agency of the Commonwealth government, a supervisor's improper action or failure to act creates a liability on the part

TITLE 175: COMMONWEALTH CASINO COMMISSION REGULATIONS

of the government. All incidents of sexual harassment will be immediately reported to the Equal Employment Opportunity Coordinator or Executive Director, for guidance. Supervisors and managers who knowingly allow harassing behavior to occur, or participate in such behavior, will be subject to disciplinary action up to and including termination.

(6) The Director of Personnel, as the Deputy Commonwealth Equal Employment Officer, should be immediately informed by the Executive Director of any incident of sexual harassment reported within the Commission, or of any charges received from the Equal Employment Opportunity Commission (EEOC).

(7) The Executive Director will ensure that all sexual harassment complaints receive swift and thorough investigations. Appropriate action will be taken in situations where the complaint is validated to correct the situation and appropriately discipline the harasser. Complaints determined to be deliberate false accusations will also be treated as potential disciplinary situations. Situations where the victim requests that no investigation be conducted or action taken must also be investigated and acted upon to avoid future liability and to effect consistent enforcement of the Commission's policy of non-tolerance for sexual harassment.

(8) Complaints of sexual harassment should be filed immediately upon occurrence to facilitate a timely response and to minimize the time that an employee would be subjected to such treatment. However, per EEOC statutes complaints may be filed anytime within one-hundred and eighty days of an incident's occurrence.

(9) Incidents of harassment due to an employee's sexual orientation, while not covered by law as an Equal Employment Opportunity violation, are a violation of the Commission's policy of ensuring that every employee is provided with a work environment that is safe, non-threatening, and non-discriminatory. Incidents of this nature comprise misconduct and will be subject to disciplinary action up to and including termination.

(10) The hiring of an employee with a known history of sexual harassment or misconduct could result in government liability for negligent hiring. No applicant for employment with such a history will be employed without a complete background investigation and the specific approval of the Executive Director.

(11) The Executive Director is required to distribute this policy to every employee under his or her authority and to ensure that this policy is posted in an accessible location at all times.

(12) All supervisors will be provided training on identifying and preventing sexual harassment in the workplace. They will also receive training on how to conduct a limited administrative investigation and the reporting procedures for allegations of harassment.

(e) Procedures

(1) Any Commission Employee who is aware of an incident or situation involving sexual harassment must report it immediately to his or her Equal Employment Opportunity Coordinator, supervisor, or the Executive Director. The Commonwealth government has legal liability for any action where a government official subjects an employee to sexual harassment, or is aware that an employee subjects another employee to sexual harassment and fails to take corrective action.

TITLE 175: COMMONWEALTH CASINO COMMISSION REGULATIONS

(2) Any employee who is personally subjected to sexual harassment, or is aware that other employees are being subjected to sexual harassment, should report the incident or situation immediately to his or her departmental Equal Employment Opportunity Coordinator, supervisor, or the Executive Director. If the employee does not feel comfortable bringing it to the attention of any of these parties, or supervisor, or the Executive Director is somehow involved in the harassment, he or she should immediately contact the Commonwealth Equal Employment Coordinator at the Office of Personnel Management, or the Director of Personnel directly. The initial contact does not have to be in writing.

(3) If the sexual harassment incident involves a physical assault, such as rape, attempted rape, assault, or other actions involving physical contact, either the employee or the official who becomes aware of the incident should report it immediately to the Department of Public Safety for immediate processing and investigation. Any physical evidence should not be disturbed until the arrival of the Department of Public Safety.

(4) All incidents of alleged sexual harassment must be immediately reported to the Executive Director and the Commission's designated Commonwealth Equal Employment Opportunity Coordinator or directly to the Director of Personnel as soon as the employer, or other senior official in case of the employer's unavailability, becomes aware of it. The complaining employee should be interviewed by the departmental Equal Employment Coordinator, legal counsel, or the Executive Director to determine the basic facts of the allegation. The Director of Personnel or the Commonwealth Equal Employment Opportunity Coordinator will then be consulted to determine if the investigation will be conducted at the departmental level or if an outside investigator will be appointed.

(5) Due to the potential legal liabilities resulting from sexual harassment situations, the Executive Director or the Director of Personnel will assume responsibility for the investigation and assign the investigating official (selected EEO official, manager, or legal counsel) or unit (Office of the Attorney General or Department of Public Safety).

(6) All allegations of sexual harassment from employees or perceptions of sexual harassment from third parties or management staff will be reported to the Executive Director or Director of Personnel and will be investigated. Those situations where the victim requests that no investigation be conducted or action taken must also be investigated and acted upon to avoid future liability and to effect consistent enforcement of the Commission's policy of non-tolerance for sexual harassment.

(7) The division(s) involved in the complaint and the official or unit appointed to conduct the investigation will cooperate fully with the Executive Director or Office of Personnel Management in the process of investigating, reporting, and resolving the complaint.

(8) The division(s) involved in the complaint and the Executive Director or Office of Personnel Management will ensure that no retaliation is taken against the complainant or any witnesses by the alleged harasser or by any other employees.

(9) In the process of investigating the complaint, the following guidance will be followed at all times:

(i) All complaints will be taken seriously.

(ii) Guilt should not be presumed on either party. The rights of both parties must be protected.

TITLE 175: COMMONWEALTH CASINO COMMISSION REGULATIONS

- (iii) Both parties should be afforded the opportunity to state their side.
 - (iv) Confidentiality must be maintained at all times.
 - (10) An administrative investigation will be completed as expeditiously as possible. The final report will be delivered to the Executive Director or Director of Personnel in the following format:
 - (i) Summary of Incident
 - (ii) Findings of Fact
 - (iii) Discussion
 - (iv) Conclusions
 - (v) Recommendations
 - (11) The Executive Director or Director of Personnel will review the investigative report to ensure that the facts support the conclusions and that the recommendations are reasonable and consistent with the Commission's disciplinary policy. The Office of the Attorney General will be consulted to ensure that the resolution is legally appropriate.
 - (12) The Executive Director or Director of Personnel will forward the final report to the Department/employer with the Executive Director's or Office of Personnel Management's recommendations for the resolution of the complaint.
 - (13) (i) Depending upon the severity of the incident of sexual harassment, the resolution of the situation could involve the following administrative actions:
 - (A) Conference/counseling
 - (B) Oral or written warning
 - (C) Letter of reprimand
 - (D) Suspension
 - (E) Demotion
 - (F) Termination
 - (ii) Any administrative actions are separate from and not contingent upon any civil or criminal court actions.
 - (14) The employer will resolve the complaint/grievance based upon the investigation and the recommendation of the Executive Director or Office of Personnel Management. If the division head/employer disagrees with the recommended resolution, he or she must immediately meet with the Executive Director or Director of Personnel to resolve their differences. If both parties cannot reach agreement, the case may be brought before the Governor for a final decision.
 - (15) Either the complainant or the respondent may appeal the final resolution to the Executive Director or Director of Personnel, not later than fifteen days after receiving notice of the final resolution. The complainant may appeal the final resolution to the Executive Director or Director of Personnel, not later than fifteen days after receiving notice of the final resolution.
 - (16) The Executive Director or Director of Personnel will conduct a hearing on the appeal and make a final decision on the matter.
 - (17) Incidents or situations of sexual discrimination that do not involve acts of harassment will be processed through the normal grievance procedure utilized for other Equal Employment Opportunity complaints.
- (f) Records and Reports

TITLE 175: COMMONWEALTH CASINO COMMISSION REGULATIONS

(1) The Executive Director or Office of Personnel Management will maintain records of all allegations of sexual harassment to include copies of investigative reports.

(2) Records of on-going investigations will be kept in a confidential file separate from the official personnel folder. Upon resolution of the complaint, appropriate records of the resolution or disciplinary action will be placed in the appropriate official personnel folder.

(3) The Executive Director or Office of Personnel Management will report to the Governor annually in its annual personnel report on the number of sexual harassment cases and their resolution.

(g) Responsibilities

(1) All employees will be familiar with the Commission's Equal Employment Opportunity and Non-tolerance of Sexual Harassment Policies and will comply with these policies to create a safe, non-threatening, and non-discriminatory workplace.

(2) All Members, supervisors, managers, and directors will develop and maintain a work environment that is safe, non-threatening, and non-discriminatory. They will ensure that all employees know that sexual harassment will not be tolerated and will ensure that any incident of sexual harassment is reported as directed by this policy.

(3) All Equal Employment Program counselors must be knowledgeable concerning equal employment opportunity laws, regulations and policies, both federal and Commonwealth, and will strive to remain up-to-date on current EEO trends and activities. They will make themselves readily available to listen to EEO-related complaints from their department or activity and provide counseling and assistance to affected employees. They will coordinate with the Executive Director or department/activity EEO Coordinator.

(4) The Executive Director and all division/activity Equal Employment Coordinators must be knowledgeable concerning Equal Employment Opportunity laws, regulations, and policies, both federal and Commonwealth and will strive to remain up-to-date on current EEO trends and activities. The coordinators will provide EEO expertise and assistance to the department/activity EEO counselors and management staff. They will coordinate with the Commonwealth EEO Coordinator.

(5) The Executive Director and all division/ Activity heads, as activity Equal Employment Officers, will issue an Equal Employment Opportunity policy statement and establish a departmental Equal Employment Opportunity Program that includes a policy of nontolerance of sexual harassment. They will hold their supervisors, managers, and directors accountable for developing and maintaining a work environment that is safe, nonthreatening, and nondiscriminatory. They will enforce the Commonwealths policy of non-tolerance of sexual harassment and take reasonable and consistent action in resolution of any sexual harassment situation.

(6) The Director of Personnel, as the Deputy Equal Employment Officer for the Commonwealth, will ensure the development and maintenance of a viable Commonwealth wide Equal Employment Opportunity Program that includes training at all levels in prevention and resolution of sexual harassment situations. The Executive Director or the Director of Personnel will initiate administrative investigations for all allegations of sexual harassment and will ensure their appropriate resolution in accordance with this policy and procedure.

TITLE 175: COMMONWEALTH CASINO COMMISSION REGULATIONS

(7) The Governor, as the Equal Employment Officer for the Commonwealth, will establish and promote a policy of non-tolerance of sexual harassment in any form. The Governor will hold all Department and Activity Heads accountable for their active support of the Commonwealths Equal Employment Opportunity and non-tolerance of sexual harassment policies, and for their fulfillment of the responsibilities assigned in this policy and procedure.

(h) Equal Employment Opportunity Commission

(1) If an employee's sexual harassment complaint is not acted upon to his or her satisfaction, the employee has the option of filing a complaint with the Equal Employment Opportunity Commission (EEOC). It should be noted that there is a statutory limitation of 180 days from the harassing/discriminatory incident during which the complaint may be filed. For more information, please visit www.eeoc.gov.

(2) Although the Commonwealth government would like to resolve all complaints through its administrative processes, employees will not be subjected to any retaliatory actions for filing a complaint with the Equal Employment Opportunity Commission.

Modified, 1 CMC § 3806(g).

History: Adopted 41 Com. Reg. 42023 (June 28, 2019); Proposed 41 Com. Reg. 41438 (Mar. 28, 2019).

§ 175-10.3-320 Anti-Bullying Policy

(a) The Commission is committed to providing all Members and employees a healthy and safe work environment. It is the policy of the government that workplace bullying will not be tolerated. All agencies shall maintain every workplace free from bullying. This policy shall apply to all Commission Members and Employees, regardless of his or her employment status.

(b) Bullying is defined as persistent, malicious, unwelcome, severe, and pervasive mistreatment that harms, intimidates, offends, degrades, or humiliates an employee, whether verbal, physical, or otherwise, at the place of work and/or in the course of employment.

(1) The following types of behavior have been interpreted to constitute workplace bullying. This list is not meant to be exhaustive and is only offered by way of example:

- (i) Staring, glaring, or other nonverbal demonstrations of hostility;
- (ii) Exclusion or social isolation;
- (iii) Excessive monitoring or micro-managing;
- (iv) Work-related harassment (work-overload, unrealistic deadlines, meaningless tasks);
- (v) Being held to a different standard than the rest of an employee's work group;
- (vi) Consistent ignoring or interrupting of an employee in front of co-workers;
- (vii) Personal attacks (angry outbursts, excessive profanity, or name-calling);
- (viii) Encouragement of others to tum against the targeted employee;
- (ix) Sabotage of an employee's work product or undermining of an employee's work performance;
- (x) Stalking;

TITLE 175: COMMONWEALTH CASINO COMMISSION REGULATIONS

- (xi) Repeated infliction of verbal abuse, such as the use of derogatory remarks, insults, epithets;
 - (xii) Conduct that a reasonable person would find hostile, offensive, and unrelated to the employer's legitimate business interests.
- (2) Workplace bullying must be addressed and corrected at its earliest stage before it becomes severe or pervasive.
- (c) Any Member or employee who feels that he or she has been bullied should immediately report such incidents to a supervisor at any level without fear of reprisal.
- (d) An employer who receives a claim of bullying in violation of this policy shall take such complaint seriously and immediately advise the Executive Director or Director of Personnel or the Commonwealth Equal Employment Opportunity (EEO) Coordinator of the situation. The employer, with the assistance of the EEO Coordinator, will ensure that it is investigated promptly, privately, and with as much confidentiality as possible, consistent with the need to determine the facts. The investigation will be documented by an investigative report that will be retained in a confidential file by the EEO Coordinator. Any person accused of a violation shall be allowed the opportunity to rebut the charges.
- (e) After determining the facts through the investigation, the employer shall take corrective action as required by the circumstances. This may include counseling any employee, whether or not a violation has occurred; imposing an appropriate sanction, including disciplinary action; making sure that this policy is reiterated to all employees or any group. An employer, or any supervisory staff, who does not take appropriate action also violates this policy and exposes the Commonwealth government to liability.

History: Adopted 41 Com. Reg. 42023 (June 28, 2019); Proposed 41 Com. Reg. 41438 (Mar. 28, 2019).

§ 175-10.3-325 Alcohol and Drug Free Workplace Policy

- (a) Policy. As an employer, the Commission recognizes it has a responsibility to its employees and the public it serves to take reasonable steps to assure safety in the workplace and in the community. Furthermore, the Commission is concerned about the adverse effect alcohol and drug abuse has on safe and productive job performance. It also recognizes that any employee, whose ability to perform safely and productively is affected by the use of alcohol and other drugs, jeopardizes the integrity of the workplace and the achievement of the government's mission. The government realizes that alcoholism, problem drinking, and drug addiction are treatable illnesses. The government, therefore, encourages employees who have problems with drugs or alcohol to utilize all available resources to resolve their problems before those problems affect their job performance.
- (b) Definitions. For the purposes of this section, the following definitions apply:
- (1) "Accident." An event which causes:
 - (i) A fatality,
 - (ii) An injury to a person requiring professional medical treatment beyond simple at-scene first aid, or

TITLE 175: COMMONWEALTH CASINO COMMISSION REGULATIONS

- (iii) An economic loss, including property damage, greater than \$2,500.00.
- (2) “Assessment.” A determination of the severity of an individual’s alcohol or drug use problem and an analysis of the possible courses of treatment, made by an expert in the field of substances abuse.
- (3) “Breath Alcohol Concentration” (“B.A.C.”). The alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath testing device (E.B.T.).
- (4) “Breath Alcohol Technician” (“B.A.T.”). An individual authorized to collect breath specimens under subsection (g)(2) and who operates an E.B.T.
- (5) “Consulting Physician.” A licensed physician retained or employed by the government to advise on drug testing.
- (6) “Drug.” A substance:
 - (i) Recognized in the official United States Pharmacopoeia, the official Homeopathic Pharmacopoeia of the United States, or the official National Formulary, or any supplement to any of them; or
 - (ii) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals; or
 - (iii) Other than food, minerals, or vitamins, intended to affect the structure or any function of the body of a human or other animal; or
 - (iv) Intended for use as a component of any article specified in subsection (b)(6)(i), (ii), or (iii) above.Devices or their components, parts, or accessories are not considered drugs under this definition.
- (7) “Evidential Breath Testing Device” (“E.B.T.”). A device which is
 - (i) Approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath; and
 - (ii) Is on the NHTSAs Conforming Products List of E.B.T.s; and
 - (iii) Conforms with the model specifications available from the NHTSA, Office of Alcohol and State Programs.
- (8) “Illegal Drug.” A drug that:
 - (i) Is not possessed or obtained legally; or
 - (ii) Is knowingly used for other than the prescribed purpose or in other than the prescribed manner; or
 - (iii) Is a designer drug or drug substance not approved for medical or other use by the U.S. Drug Enforcement Administration or the U.S. Food and Drug Administration.
- (9) “Invalid Test.” A breath or urine test that has been declared invalid by a Medical Review Officer (M.R.O.), including a specimen that is rejected for testing by a laboratory for any reason. An invalid test shall not be considered either a positive or a negative test result.
- (10) “Medical File.” The file containing an employee’s medical examination form, mental health referrals, alcohol and drug test results, and other health related documents, maintained by the Office of Personnel Management separate from an employee’s official personnel folder.
- (11) “Medical Review Officer” (“M.R.O.”). A licensed physician, appointed by the government, with specialized training in substance abuse disorders and in the use and evaluation of drug test results. The M.R.O. shall be the only person authorized to receive

TITLE 175: COMMONWEALTH CASINO COMMISSION REGULATIONS

laboratory drug test results and shall be the primary contact for technical inquiries to the drug testing laboratory.

(12) “Reasonable Suspicion.” A perception based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of an individual or on specific facts, circumstances, physical evidence, physical signs and symptoms, or on a pattern of performance or behavior that would cause a trained supervisor to reasonably conclude that the individual may be under the influence of alcohol or illegal drugs while on duty.

(13) “Safety-sensitive.” A word describing activities which directly affect the safety of one or more persons, including the operation of motor vehicles or heavy machinery or the carrying of firearms. Each department, entity, or organization head, in conjunction with the Director of Personnel Management, shall identify all positions to be considered safety-sensitive positions due to the amount of time the employee spends performing safety sensitive functions.

(14) “Statement of Fitness for Duty.” A written statement from a Substance Abuse Professional (S.A.P.), certifying that the named employee is not dependent on alcohol or any drug to the extent such dependence will affect safe and productive work.

(15) “Substance Abuse Professional” (“S.A.P.”). A physician, psychologist, psychiatrist, or social worker with knowledge of and clinical experience in the diagnosis and treatment of drug and alcohol related disorders; or a counselor certified by the National Association of Alcoholism and Drug Abuse Counselors.

(16) “Under the Influence.” A condition where a person’s behavior, attention, or ability to perform work in the usual careful fashion has been adversely affected by the use of alcohol or drugs; intoxicated.

(17) “Vehicle.” A device in, upon, or by which any person or property is or may be propelled or moved on a highway, on a waterway, or through the air.

(c) Prohibited Conduct

(1) Sale, Purchase, Possession with Intent to Deliver, or Transfer of Illegal Drugs. No employee of the Commission shall

(i) Sell, purchase, or transfer;

(ii) Attempt to sell, purchase or transfer; or

(iii) Possess with the intent to deliver, any illegal drug while on government or Commission property, in any government or Commission vehicle, or on any government or Commission business. It is a defense to this provision that the employee is employed by a law enforcement agency and the conduct occurs as part of the employee’s assigned duties for the purpose of investigating illegal drug trafficking or the violation of any applicable law or regulation.

(2) Possession of Illegal Drugs. No employee of the Commission shall possess any illegal drug on government or Commission property, in any government or Commission vehicle, or while on government or Commission business. It is a defense to this provision that the employee is employed by a law enforcement agency and the conduct occurs as part of the employees assigned duties for the purpose of investigating illegal drug tracking or the violation of any applicable law or regulation.

(3) Possession of Open Containers of Alcohol. No employee of the Commission shall possess an open container of alcohol in any vehicle while on duty or in any government

TITLE 175: COMMONWEALTH CASINO COMMISSION REGULATIONS

or Commission vehicle at any time. No employee shall possess an open container of alcohol while at his or her workplace.

(4) Under the Influence of Alcohol or Illegal Drugs. No employee of the Commission shall be under the influence of alcohol or any illegal drug when at work, or reporting to work with the intention of working. As used in this subsection, alcohol includes any alcohol found in any prescription or non-prescription drug such as cough syrup. An employee is presumed to be under the influence of alcohol or an illegal drug if:

- (i) The employee has a B.A.C. of 0.02 or more;
- (ii) The employee has a detectable amount of any illegal drug in his or her urine;
- (iii) The employee uses alcohol or any illegal drug while on call when the employee knows he or she may be called upon to perform safety-sensitive functions;
- (iv) The employee uses alcohol or any illegal drug within four hours prior to reporting to work and expects to perform a safety-sensitive duty.

(5) Refusal to Be Tested. No employee of the Commission required to be tested for drugs or alcohol under any provision of this section refuse to be tested. The following conduct shall be considered a refusal to be tested:

- (i) Refusing in writing to submit to testing after receiving clear and specific written notice of the requirement to be tested;
- (ii) Refusing verbally, in front of at least two witnesses, to submit to testing after receiving clear and specific written notice of the requirement to be tested;
- (iii) Failing to timely provide an adequate specimen for testing, without a valid medical explanation, after receiving clear and specific written notice of the requirement to be tested. An M.R.O. or consulting physician shall determine if there is any medical reason for failure to provide an adequate urine sample (shy bladder) or an adequate breath sample (shy lung);
- (iv) Engaging in conduct that clearly obstructs the specimen collection process;
- (v) Failing to remain available for post-accident testing, or leaving the scene of an accident before a testing decision is made. An employee may leave the scene of an accident only to obtain necessary medical care or assistance in responding to the accident. If the employee leaves the scenes the employee must notify his or her supervisor as soon as possible of his or her location and reason for leaving the scene;
- (vi) Consuming alcohol or illegal drugs after an accident and before a testing decision is made;
- (vii) Failing to report, during the work shift in which an accident occurred, an accident which could have resulted in a testing decision; and
- (viii) Failing to report to the specimen collection site timely after being informed of the requirement to be tested.

(6) Giving False Information. No employee of the Commission shall give false information about a urine specimen or attempt to contaminate or alter the specimen.

(7) Refusal to Comply with Treatment Recommendations. No employee of the Commission shall fail to comply with recommendations for treatment or after-care made by an M.R.O. or S.A.P. as a consequence of a prior positive drug or alcohol test result.

(8) Failure to Notify Executive Director of Conviction. No employee of the Commission shall fail to notify the Executive Director of any criminal drug statute conviction, within five days of such conviction, if the violation of the criminal drug

TITLE 175: COMMONWEALTH CASINO COMMISSION REGULATIONS

statute occurred while the employee was conducting Commission business, or while on or using Commission property.

(9) Supervisors' Responsibility for Confidentiality. No employer shall knowingly disregard an employee's right to confidentiality in matters relating to alcohol or drug testing or otherwise neglect his or her responsibilities under this section.

(d) Penalties and Consequences

(1) Disciplinary Action. An employee of the Commission committing any act prohibited by subsection (c) shall be subject to an appropriate form of discipline, depending on the circumstances, up to and including termination.

(i) Generally. Where an employee commits an act prohibited by subsection (c) without valid reason, the employee shall be disciplined up to and including removal. At a minimum, the employee shall receive a formal reprimand. If the prohibited act committed by the employee relates to the use or possession of alcohol or illegal drugs, the employee shall be referred to an S.A.P. for assessment and treatment.

(ii) First offense, under the influence. An employee found to be under the influence of alcohol or illegal drugs in violation of subsection (c)(4), for a first offense, shall not be subject to removal solely for being under the influence of alcohol or illegal drugs. However, if the person is also involved in an accident depending on the circumstances, the employer may decide to initiate a disciplinary action for removal, even on a first offense.

(iii) Serious offenses. The following acts, even for a first offense, will result in an immediate disciplinary action for removal:

(A) The sale, purchase, possession with intent to deliver, or transfer of illegal drugs, or the attempt to sell, purchase, or transfer illegal drugs in violation of subsection (c)(1);

(B) Being involved in an accident resulting in a fatality while under the influence of alcohol or illegal drugs, in violation of subsection (c)(4);

(C) While performing and about to perform duties in a safety sensitive position, being under the influence of alcohol or illegal drugs, in violation of subsection (c)(4);

(D) An unexcused refusal to be tested, in violation of subsection (c)(5);

(E) Giving false information, contaminating, or attempting to contaminate a urine sample, in violation of subsection (c)(6);

(F) Failing to notify the proper authority of conviction for a drug offense in violation of subsection (c)(8);

(G) Testing positive for alcohol or illegal drugs within five years of a prior positive test; and

(H) Breaching any term of a return to duty contract executed under the provisions of subsection (e)(2).

(2) Information Concerning Treatment Options. Those employees not removed from service after committing any act prohibited by subsection (c) shall be informed of resources available for evaluating and resolving problems associated with the use of alcohol and illegal drugs. At a minimum, the Executive Director or Office of Personnel Managements' Alcohol and Drug Free Workplace Coordinator shall give the names addresses, and telephone numbers of local S.A.P.s and substance abuse counseling or treatment programs. The employees will then be required to fulfill all the specified steps of treatment before being considered ready for return to duty.

TITLE 175: COMMONWEALTH CASINO COMMISSION REGULATIONS

(3) Report to Department of Public Safety. An employee committing any act prohibited by subsection (c)(1) or (c)(2) shall be reported, by the employer, to the Department of Public Safety for the purpose of possible criminal prosecution.

(4) Duty/Pay Status Pending Disciplinary Action. Unless the employee was involved in an accident resulting in a fatality, an employee subject to a disciplinary action for committing any act prohibited by subsection (c), except for subsection (c)(7), shall be allowed to remain on the job pending resolution of any proposed disciplinary action but shall not be allowed to perform a safety-sensitive function, even if that means assigning the employee duties the employee would not otherwise be performing. An employee subject to a disciplinary action for committing any act prohibited by subsection (c) who was involved in a fatal accident shall be placed on leave without pay pending resolution of the disciplinary action for removal.

(e) Return to Work Procedures

(1) Prerequisites to Returning to Duty. No employee who has tested positive for the presence of alcohol or illegal drugs shall be allowed to return to work until the employee has:

(i) Complied with treatment recommendations of an M.R.O. or S.A.P. and been released for work by an S.A.P. in consultation, when appropriate, with the M.R.O. or a consulting physician;

(ii) Tested negative in a subsequent test paid for by the employee for the presence of alcohol, if the removal from duty was due to alcohol use; or cocaine, marijuana, opiates, amphetamines, and phencyclidine, if the removal from duty was due to drug use; and

(iii) Agreed to execute a return to duty contract.

(2) Return to Duty Contract. The return to duty contract shall include the following provisions:

(i) Aftercare. An agreement to comply with aftercare and follow up treatment recommendations for one to five years, as determined appropriate by the employees S.A.P.;

(ii) Follow-up testing. An agreement to unannounced alcohol or drug testing, depending on the substance which resulted in the removal from duty, paid for by the employee, for one to five years, as determined appropriate by the employees S.A.P., but there shall be no fewer than six tests in the first year after the employee returns to work;

(iii) Compliance with rules. An agreement to comply with government rules, policies, and procedures relating to employment;

(iv) Term. An agreement that the terms of the contract are effective for five years after the employees return to duty; and

(v) Breach of contract. An agreement that violation of the return to duty contract is grounds for termination.

(f) Testing Occasions

(1) Pre-employment Testing. At the time of application, persons applying for any position within the Commission will be notified that any offer of employment is contingent upon a negative urine test. After receiving an offer of employment, the candidate shall be tested for the presence of cocaine, marijuana, opiates, amphetamines, phencyclidine, as well as any other controlled-or banned substance required by the

TITLE 175: COMMONWEALTH CASINO COMMISSION REGULATIONS

Executive Director, in the urine. The test shall be paid for by the candidate. Testing shall be in compliance with subsection (h), below. Applicants who were previously employed by the government and applicants who have had an offer for government employment withdrawn due to a previous positive urine test result, must also provide a written release of drug testing history for the two years immediately preceding the application date.

(i) No new Commission Employee may be assigned to work in any position until he or she presents the results of a urine test, taken after the offer for employment has been made, that shows negative for the presence of cocaine, marijuana, opiates, amphetamines, phencyclidine as well as any other controlled or banned substance required by the Executive Director.

(ii) If the candidate's test result is positive for the presence of a tested drug, without a legitimate explanation, the offer of employment will be withdrawn.

(iii) If the candidate presents a drug testing history showing a positive drug test within two years prior to the application date, the offer of employment will be withdrawn unless the candidate submits a statement of fitness for duty and agrees to execute an agreement similar to a return to duty contract described in subsection (e)(2).

(2) Reasonable Suspicion Testing. Where there is a reasonable suspicion that an employee is under the influence of alcohol or drugs while at work or about to begin work, he or she shall submit to a breath or urine test for the presence of alcohol, cocaine, marijuana, opiates, amphetamines, and phencyclidine, upon written notice from the employee's supervisor or the Executive Director. Except as otherwise provided, the Commission shall pay for the testing.

(i) Properly trained supervisor. Only a supervisor or a designated employee with government-approved training in the physical, behavioral, and performance indicators of probable drug and alcohol use is permitted to make reasonable suspicion testing decisions.

(ii) Objective inquiry. The properly trained supervisor or a designated employee will observe the employee suspected of being under the influence of alcohol or illegal drugs. A decision to request testing shall be based on eye witness reports, facts of the event, and observed physical and behavioral characteristics of the employee. Prior to making the decision to require testing, the supervisor will question the employee in a private area to ascertain whether there are any reasons other than alcohol or drug use for any behavior observed.

(iii) Verification. No employee shall be required to submit to a drug or alcohol test based on reasonable suspicion unless the need for the test is verified by a second properly trained Commission employee. The regained verification shall be done in person.

(iv) Transportation assistance. The employee shall be accompanied to the collection site by a supervisor or manager, and shall be provided transportation home from the collection site. If the individual refuses and demands to drive his or her vehicle, the supervisor or manager shall notify the Department of Public Safety.

(v) Duty pending test results. Until the results of the drug and alcohol test are complete and verified, no employee tested based upon reasonable suspicion shall be allowed to perform or continue to perform a safety-sensitive duty.

(vi) Report. The supervisor ordering reasonable suspicion testing shall put in writing, in detail, the facts leading to the decision. This report shall be considered confidential and will be maintained in the employee's medical file, which is confidential, until needed for

TITLE 175: COMMONWEALTH CASINO COMMISSION REGULATIONS

a disciplinary action. Only at that time will the report be filed in the employee's official personnel folder.

(3) Post-accident Testing. As soon as practical after an accident any Commission Employee whose action or inaction may have contributed to the accident must submit to breath and urine tests for the presence of alcohol, cocaine, marijuana, opiates, amphetamines, phencyclidine as well as any other controlled or banned substance required by the Executive Director, upon written notice from the employee's supervisor. Except as otherwise provided, the Commission shall pay for the testing.

(i) Supervisor training. Only a supervisor or a designated employee with government-approved training in the physical, behavioral, and performance indicators of probable drug and alcohol use is permitted to make post-accident testing decisions.

(ii) Objective inquiry. A supervisor or a designated employee's decision to request testing shall be based on eye witness reports, facts of the event, and observed physical and behavioral characteristics of the employee. Specifically, the properly trained supervisor or a designated employee shall require the driver of any Commission vehicle or the operator of any Commission equipment involved in the accident to be tested.

(iii) Transportation assistance. The employee shall be accompanied to the collection site by a supervisor or manager, and shall be provided transportation home from the collection site. If the individual refuses and demands to drive his or her vehicle, the supervisor or manager shall notify the Department of Public Safety.

(iv) Duty pending test results. Until the results of the drug and alcohol test are complete and verified, no employee reasonably suspected of having been under the influence of alcohol or drugs at the time of the accident shall be allowed to perform or continue to perform a safety-sensitive duty.

(v) Report. The supervisor ordering post-accident testing shall put in writing, in detail, the facts leading to the decision. This report shall be considered confidential and will be maintained in the employee's medical file, which is confidential, until needed for a disciplinary action. Only at that time will the report be filed in the employee's official personnel folder.

(4) Random Testing. During each calendar year, randomly-selected employees will be required to submit to breath tests for alcohol and urine tests for cocaine, marijuana, opiates, amphetamines, phencyclidine as well as any other controlled or banned substance required by the Executive Director. The testing will be done during on-duty time. Except as otherwise provided, the Commission shall pay for the testing.

(i) Method of selection. Employees of the Commission will be selected by a statistically valid method such as a random-number table or computer-based random number generator that is matched with employee Social Security numbers, payroll identification numbers, or other comparable identifying numbers.

(ii) Number to be tested. No more than twenty-five percent of all employees performing safety-sensitive functions in each division each year shall be required to submit to breath alcohol testing and no more than fifty percent shall be required to submit to urine testing. The actual percentage may be determined at the beginning of each fiscal year by the Executive Director in consultation with the Office of Personnel Managements Alcohol and Drug Free Workplace Coordinator and the M.R.O. after reviewing the Commission staffs prior positive testing rates, reasonable suspicion and post accident events, and referrals for service.

TITLE 175: COMMONWEALTH CASINO COMMISSION REGULATIONS

(g) Collecting and Testing Breath Specimens

(1) Collection Site. Breath specimens shall be collected only at a site approved by the Executive Director or Director of Personnel Management or at the scene of an accident if proper equipment and personnel can be made immediately available.

(2) Collection Protocol. Breath specimens shall be collected only by a B.A.T. trained in the collection of breath specimens at a course approved by the United States Department of Transportation in accordance with standard collection protocols as specified in 49 CFR, Part 40(C) Procedures for Transportation Workplace Drug Testing Programs - Alcohol Testing, except as otherwise provided in this section. However, the M.R.O. or a consulting physician, when requested, may assist in facilitating the collection for post-accident testing.

(3) Confirming Test. Breath specimens shall first be subjected to a screening test for alcohol. If that test indicates a probable breath alcohol concentration of 0.02 or greater, a second test confirming the first and providing quantitative data of alcohol concentration, shall be performed. No alcohol test shall be considered positive unless both the screening test and the confirming test show a B.A.C. of 0.02 or greater.

(4) Results. The breath test results shall be transmitted by the B.A.T., in a manner to assure confidentiality, to the employee, to the employee's employer, and to the Director of Personnel Management.

(5) Confidentiality. Other than as specified above, no person involved in the testing process shall release the results of breath tests to any other individual without a written release from the tested employee.

(6) Invalid Test. If the Executive Director or Director of Personnel Management determines the test is invalid, using the factors found at 49 CFR, Part 40.79, the test result shall be reported as negative.

(7) Statistical Reporting. The B.A.T. shall compile statistical data that is not name specific, related to testing results. The B.A.T. shall release the statistical data to the Executive Director or Director of Personnel Management upon request.

(h) Collecting and Testing Urine Specimens

(1) Collection Site. Urine specimens shall be collected only at a site approved by an appropriate government agency, and identified by the Executive Director or Director of Personnel Management.

(2) Collection Protocol. Urine specimens shall be collected by persons trained in the collection process developed by the Substance Abuse and Mental Health Service Administration, United States Department of Health and Human Services, in accordance with standard collection protocols as specified in 49 CFR, Part 40(8), Procedures for Transportation Workplace Drug Testing Programs - Drug Testing, except as otherwise provided in this section. However, the M.R.O. or a consulting physician, when requested, may assist in facilitating the collection for post-accident testing.

(3) Confirming Test. Urine specimens shall first be subjected to a screening test. Only if the screening test shows positive for the presence of a prohibited drug, will a second test be conducted on the same urine specimen to identify the presence of a specific drug or metabolite, using a gas chromatography/mass spectrometry (GC/MS) test. No drug test

TITLE 175: COMMONWEALTH CASINO COMMISSION REGULATIONS

shall be considered positive unless both the screening test and the confirming test show the presence of one or more of the drugs tested for.

(4) Results. The laboratory conducting the urine test shall give the results only to the M.R.O. The M.R.O. shall discuss the test result with the tested individual.

(5) Invalid Test. If the M.R.O. decides that the test is invalid, the candidate shall immediately submit another urine specimen for testing.

(6) Alternative Explanations for Positive Test Results.

(i) Upon receiving a report of a positive test results the M.R.O. shall determine if there is any alternative medical explanation for the results including the use of prescribed medication by the employee. Such a determination shall be based on information received from the employee such as the tested individual's medical history and records. If the M.R.O. determines it to be necessary he or she may request pertinent analytical records from the laboratory or require a re-analysis of the specimen.

(ii) The M.R.O. shall report the urine test result as negative and shall take no further action if he or she determines:

(A) There is a legitimate medical explanation for a positive test result, other than the use of the specific drug; or

(B) Based on a review of laboratory inspection reports, quality assurance and quality control data, and other drug test results, the positive drug test result is scientifically insufficient for further action.

(7) Illegal Use of Opium. If the GC/MS does not confirm the presence of 6-monoacetylmorphine; the M.R.O. shall determine whether there is clinical evidence, in addition to the urine test result, of illegal use of any opium, opiate, or opium derivative.

(8) Report to Government. The M.R.O. shall report all positive and negative urine drug test results, in a manner to assure confidentiality, to the employee's employer, and to the Director of Personnel Management.

(9) M.R.O. and Confidentiality. Other than as specified above, the M.R.O. shall not release the results of drug tests to any other individual without a written release from the tested employee.

(10) Statistical Reporting. The M.R.O. shall compile statistical data that is not name specific, related to testing and rehabilitation. The M.R.O. shall release the statistical data to the Executive Director or Director of Personnel Management upon request.

(i) Employee Awareness and Rehabilitation

(1) Employee Awareness Training. All employees shall receive information concerning the effects and consequences of drug and alcohol use on personal health, safety, and the work environment; the manifestations and behavioral clues indicative of drug and alcohol use; and the resources available to the employee in evaluating and resolving problems associated with the use of illegal and legal drugs and alcohol.

(2) Employees Seeking Voluntary Assistance. Commission employees shall be allowed to voluntarily seek assistance for alcohol or drug use at any time prior to being required to be tested under the reasonable suspicion, post-accident, or random testing procedures.

(i) Referrals. Employees may request referral to an S.A.P. for treatment, may refer themselves, or may be referred by a supervisor as part of a performance counseling. Such

TITLE 175: COMMONWEALTH CASINO COMMISSION REGULATIONS

referrals shall only be made a part of the employee's medical file and shall not be a part of the employee's official personnel folder. Referrals shall be kept confidential.

(ii) Voluntary referrals. Employees who voluntarily seek assistance in dealing with drug and alcohol problems or accept referrals, before job performance is compromised, shall be provided the same leave benefits for recommended treatment as provided for any other health problem.

(iii) Accountability for job performance. Regardless of participation in or requests for referrals, employees shall be held accountable for acceptable job performance. In no case where job performance has been compromised will disciplinary action be waived for employees asking for assistance and referral. However, such requests may be considered a mitigating factor in determining the appropriate form of discipline.

(3) Job Security Maintained. Employees shall not have job security or promotional opportunities jeopardized solely because of a request for a drug or alcohol treatment referral.

(4) Required Documentation. Although voluntary referrals or referrals made prior to testing are kept strictly confidential, documentation of poor performance or disciplinary actions taken due to drug or alcohol abuse shall be included in the employee's official personnel folder.

(j) Disseminating Information on Regulations

(1) Distribution to Employees. All current employees shall receive a copy of the regulations in this section at least thirty days before the implementation date. New employees hired after the effective date of this policy will be given a copy of the policy in this section at the time of hire. Each employee shall sign a form prescribed by the Executive Director or Director of Personnel Management which acknowledges the receipt of the policy and the employees understanding that he or she is bound by this policy. This acknowledgment shall be kept in the employee's official personnel folder.

(2) Posting. The regulations in this section will be posted in the primary workplaces of the Commission for at least sixty days following their implementation.

(k) Record Retention and Reporting Requirements

(1) Administrative Records. Records relating to the administration of the policy in this section, including policy and program development, employee awareness training, supervisory training, collection site training, program administration, and calibration documentation, shall be kept by the Executive Director or Director of Personnel Management and the M.R.O. for five years.

(2) Records Relating to Collection Process. Records relating to the breath and urine collection process shall be kept by the Executive Director or Director of Personnel Management, the M.R.O., and the specimen collector at the collection site for two years.

(3) Refusals, Referrals, and Test Results. The Executive Director or Director of Personnel Management shall keep a copy of all records of refusals to be tested, breath and urine test results, and referrals to an S.A.P. in the employees medical file, not the employee's official personnel folder, at least until such time as disciplinary action is taken. The M.R.O. shall keep a copy of all urine test results and the B.A.T. shall keep a copy of all breath test results in a manner to assure confidentiality. No test results shall be

TITLE 175: COMMONWEALTH CASINO COMMISSION REGULATIONS

available for use in a criminal prosecution of the employee without the employees' consent.

- (i) Positive test result records, records of refusals to be tested, and referrals to an S.A.P. shall be kept for five years.
- (ii) Negative test result records shall be kept for a period of one year.
- (4) Report to Federal Contract Agency. To comply with the Drug Free Workplace Act of 1988, 41 U.S.C. 701(a)(1)(E), the Executive Director or Director of Personnel Management shall notify the federal contracting agency of the conviction of any employee for selling, manufacturing, or dispensing any illegal drug on government business property or government time, within 10 days of the conviction.

Modified, 1 CMC § 3806(a), (g).

History: Adopted 41 Com. Reg. 42023 (June 28, 2019); Proposed 41 Com. Reg. 41438 (Mar. 28, 2019).

§ 175-10.3-330 Disciplinary Actions

(a) General Policy. The Commission expects its employees to maintain standards of conduct and behavior appropriate to its mission of service to the public. All documentation for disciplinary actions issued by the Manager, Supervisor, or Executive Director or his or her designee must be provided to the Executive Director and employee file. The Executive Director, his or her designee, or Division Managers initiate disciplinary actions. The Executive Director, his or her designee, or Division Managers, shall issue written disciplinary actions after review by Legal Counsel including suspension (with or without pay), transfer, demotion, or dismissal. The Executive Director, his or her designee, or Division Managers may take immediate action to remove an employee from duty only in circumstances involving immediate danger to the health or safety of Commission employees or the public. Examples of unacceptable conduct or performance that may result in corrective actions up to and including dismissal include, but are not limited to the following:

- (1) Any violations of the Bank Secrecy Act, or other Federal or Commonwealth Law applicable to casinos and financial institutions;
- (2) Habitual attendance problems such as not showing up for work and not calling or using approved leave or habitual tardiness that is more than de minimis;
- (3) Repeated violations of Federal or Commonwealth law or regulations or a single violation if the conduct is egregious;
- (4) Violation of a written policy, procedure or regulation, which was known or should have been known to the employee; including safety rules and policies as well as all other policies set out by the Executive Director;
- (5) Inefficiency, inadequacy or unsatisfactory work performance after notice and opportunity to correct performance;
- (6) Insubordination, or disruptive behavior; including the violation of an oral or written directive(s) which was known or reasonably should have been known to the employee;
- (7) Any breach of duty or trust to the Commission;
- (8) Use of obscene or abusive language;
- (9) Falsification of any portion of the employment application;

TITLE 175: COMMONWEALTH CASINO COMMISSION REGULATIONS

- (10) Unauthorized removal of property of Commission or stealing government or others' property while on duty.
- (11) Harassment of other employees or the public, or violation of Commission's sexual harassment policy;
- (12) Leaving the work site during working hours without permission from supervisory officials;
- (13) Theft, conversion, or unauthorized removal of Commission's property, or the use of Commission property without authorization;
- (14) Fighting and/or acts of violence; or threats of violence constituting assault;
- (15) Abuse or destruction of Commission property;
- (16) Unauthorized possession of weapons, explosives;
- (17) Sleeping on duty;
- (18) Unauthorized use of vehicles, equipment;
- (19) Punching another's time card/alter time records;
- (20) Misusing mail, phones, computer system, internet access;
- (21) an Ethics Code Violation;
- (22) Conviction or arrest for a crime involving violence, dishonesty or drug use or trafficking or any other crime which casts doubt on the employee's suitability for work. Absence from the job without approval or notification to Manager or Supervisor due to arrest and incarceration will be considered an unapproved absence or absence without leave (AWOL);
- (23) Substance abuse on the job; or violation of the Employee's Drug and Alcohol Abuse Policy; reporting to work when impaired by or under the influence of alcohol or controlled substance;
- (24) Other conduct or failure of performance which the management of the Commission reasonably recognizes as justification for serious discipline, including dismissal; or

(b) Forms of Corrective Action. Progressive corrective action shall be followed when practicable. However, when the severity of the inappropriate conduct warrants and it is in the best interest of the Commission, the Executive Director or his or her designee may impose any of the following forms of corrective action.

(1) Verbal Reprimand or Warning or Counseling. This type of corrective action is usually the first step in identifying and correcting failure to perform or misconduct and may be carried out by a Manager or Supervisor or the Executive Director or his or her designee. A written reprimand may also be given by the Manager, Supervisor, or the Executive Director or his or her designee, however, all other forms of corrective action require action by the Executive Director or his or her designee. A reprimand or warning and/or oral counseling should be a private conference between an employee and supervisor whereby the problem can be worked out in a constructive manner. The supervisor, manager, or the Executive Director or his or her designee will advise the employee of the problem, such as misconduct or failure to perform to expectation and present a solution to correct the problem. The supervisor, manager or the Executive Director or designee will offer guidance and assistance in an effort to prevent the problem from occurring again. The supervisor, manager, or the Executive Director or designee will also point out future corrective action that might be taken should the problem

TITLE 175: COMMONWEALTH CASINO COMMISSION REGULATIONS

continue. Supervisors, managers, or the Executive Director or designee will document the nature of the problem and retain a record of the problem and the action taken. Such documentation will remain with the supervisor unless it is needed as justification for taking further corrective or other problems.

(2) **Written Reprimand.** A written reprimand is an official notice to the employee of a failure of performance or misconduct. The nature of the breach and all related facts are documented and placed in the employee's official file by the Manager, Supervisor, or the Executive Director or designee. A copy shall be given to the employee. Unless circumstances do not permit the supervisor and employee shall meet to discuss the problem before issuance of the reprimand to allow the employee an opportunity to respond.

(3) **Immediate Suspension Without Pay.**

(i) Employees shall be immediately suspended, upon verbal notice, when the nature of the breach of discipline or misconduct makes it imprudent or hazardous for a supervisor to allow an employee to remain on the job. Supervisors or managers shall immediately, before taking any immediate suspension action, unless circumstances do not permit, advise the Executive Director or designee to discuss the nature of the discipline problem and the suspension. An immediate suspension is without pay. In any event, the immediate suspension shall be followed up with a written notice to the employee within five working days in accordance with the notice requirement under these rules. If more time is required to provide the employee written detail/support about the suspension, the employee will be notified. A copy of the notice of immediate suspension shall be placed in the official employee file. An immediate suspension may be followed by additional corrective action based on the same incident.

(ii) An employee under a suspension shall not receive pay including holiday or other unearned pay. Other benefits shall not be affected during the period of suspension. Lost pay shall be restored to the employee only upon determination that the employee is not at fault or the successful appeal of the suspension.

(4) **Regular Suspension.** An employee may be suspended without pay for a repeated offense or a serious failure of performance or misconduct. A regular suspension generally will not exceed 20 working days. When legal issues prevent the closure of a case pertaining to an employee's performance or action, the suspension may be longer than 20 working days. The employee shall be given the opportunity to respond to the allegations of misconduct or failure of performance prior to suspension. Subsequently, if the suspension is warranted, the employee shall be notified in writing in accordance with the provision of these rules and a copy shall be placed in the official employee file. An employee under a suspension shall not receive pay including holiday or other unearned pay. Other benefits shall not be affected during the period of suspension. Lost pay shall be restored to the employee only upon successful appeal of the suspension. An employee charged with a criminal offense may be suspended without pay if the offense arises in connection with the employee's job responsibilities or is an offense which in the Executive Director's opinion, would affect continued job performance or bring discredit to the Commission.

(5) **Demotion.** The Executive Director or his or her designee may demote an employee for misconduct, failure of performance, or other reason as set out in Section 1*

TITLE 175: COMMONWEALTH CASINO COMMISSION REGULATIONS

of this rule. A disciplinary demotion shall result in a reassignment of the employee to a position in a lower classification at a lower pay band.

(6) Dismissal. Employment may be terminated when previous corrective actions have failed to bring about correction or when serious misconduct or failure to perform occurs. The employee shall be given notice of the decision to terminate employment. The dismissal will take effect only in accordance with the procedures in these rules. The mere failure to renew a contract is not a dismissal.

(c) Corrective Action Reporting.

(1) Action Notice for Written Reprimands. All reprimands shall be documented on a corrective action report form. A record of the date, time and subject of a written reprimand shall be maintained in the official employee file. The employee shall be given an opportunity to review the report with his or her Manager, Supervisor or the Executive Director's designee. If the employee disagrees with the facts or conclusions contained in the report, he or she shall be permitted to submit, within 10 workdays after receiving the report a statement of disagreement. The statement shall clearly and concisely set forth the employee's reasons for disagreeing with the report. One copy of the employee's statement shall be appended to the report and shall become a part of it. If the employee has no comment or has not responded within the required time frame, the report shall be forwarded to the Executive Director or his or her designee. Upon completion of the approvals section of the disciplinary action report form, one copy shall be filed in the official employee file.

(2) The Manager, Supervisor, or Executive Director's designee will, if appropriate, complete periodic reviews of the employee's progress in correcting the cause of the original discipline. Such reports shall be made a part of the official employee file.

(d) Corrective Action Procedure and Appeals

(1) A suspension without pay, demotion, or dismissal for cause, shall be accomplished and reviewed only in accordance with the procedures stated in this section. No procedure or process is due for a dismissal without cause.

(2) The process of discipline begins with the immediate supervisor reporting misconduct or failure of performance with concurrence of the Executive Director or his or her designee.

(3) Before the Executive Director issues a notice to terminate employment, demote with a reduction in pay, or suspend without pay an employee, the Executive Director shall require a designee to investigate the basis for the proposed corrective action. The investigation shall include an interview of the employee with or without Legal Counsel, unless the employee has made him or herself unavailable. The employee shall be invited to submit a response in writing after the interview and it shall be included in the record of the matter. The findings and recommendations for action shall be prepared by the designee, and reviewed by Legal Counsel. In deciding what type of disciplinary action should be taken, the following shall be considered:

- (i) Seriousness of the breach of discipline, misconduct, or failure of performance.
- (ii) The circumstances surrounding the incident.

TITLE 175: COMMONWEALTH CASINO COMMISSION REGULATIONS

(iii) The past service record of the employee. The conduct should be considered within the context of the employee's total record. If the employee's record includes past misconduct, the action taken will ordinarily be more severe.

(iv) The Executive Director will consult with the Legal Counsel concerning action to be taken.

(4) The Executive Director shall issue a notice of action for all warnings and counseling.

(5) The Executive Director, with the signature confirmation of legal sufficiency by the Legal Counsel, based on the investigation, any follow-up after receiving the designee's report and after review of the proposed action by Legal Counsel, shall issue all notices of suspension or termination. The notice shall state any and all factual findings and reasons for the corrective action completely and concisely.

* So in original.

Modified, 1 CMC § 3806(e).

History: Adopted 41 Com. Reg. 42023 (June 28, 2019); Proposed 41 Com. Reg. 41438 (Mar. 28, 2019).

§ 175-10.3-335 Vehicle Policy

(a) Introduction. The Commission requires all employees who drive a Commission vehicle to obtain a CNMI Government Driver's License. The Commission requires employees who drive on behalf of the Commission to operate vehicles safely for the protection of the public. In addition, the Commission reminds its employees who drive to operate vehicles responsibly and maintain the vehicles so that they are available to the Commission work force and costs of maintenance, repair and replacement are kept to a minimum.

(b) Driver Responsibilities.

(1) Documents Driver Must Carry When Driving:

(i) Valid CNMI Driver's License

(ii) Current Government Driver's License

(iii) Current Vehicle Registration

(iv) Authorization to Drive After Regular Working Hours if driver is assigned to drive after 4:30pm Monday-Friday or on Saturday, Sunday or holidays.

(2) Driver's Responsibility for Condition of Vehicle.

(i) Driver is responsible for ensuring that the vehicle is fueled and that the proper fuel is put into the vehicle.

(ii) Driver is responsible for inspecting the vehicle daily to identify and correct or report obvious problems including oil level, tire inflation, signal, head and taillights, wipers.

(iii) Driver is responsible for reporting any damage to the vehicle immediately to a supervisor or the Executive Director.

(iv) Driver is responsible for operating the vehicle properly, so that the condition of the vehicle is not diminished as a result of improper operation.

(3) Safety Rules Drivers Must Know and Follow:

TITLE 175: COMMONWEALTH CASINO COMMISSION REGULATIONS

- (i) All CNMI driving laws;
 - (ii) Laws regarding vehicle safety;
 - (iii) Law regarding restrictions on use of government vehicles.
- (c) Prohibitions.
- (1) No Commission employee shall drive a Commission vehicle for personal business.
 - (2) No Commission employee driving a Commission vehicle shall drive any non-Commission person in the Commission vehicle unless that person is an employee of the Commonwealth government, a federal employee working with the Commission employee, or the passenger is integrally involved in the conduct of the Commission's affairs.
 - (3) No Commission employee shall drive his or her spouse or child in a Commission vehicle unless the spouse or child is a Commission employee, or a person described in subsection (c)(2) above.
 - (4) No Commission employee shall take a vehicle home unless he or she is authorized by the Executive Director to use the vehicle on a 24-hour basis. That approval must be in writing in accordance with the CNMI Government Vehicle law.
 - (5) No Commission employee shall drive a Commission vehicle while intoxicated from alcohol or under the influence of illegal drugs.
 - (6) Notwithstanding any other regulation to the contrary, any violation of these prohibitions are grounds for immediate termination.

Modified, 1 CMC § 3806(d).

History: Adopted 41 Com. Reg. 42023 (June 28, 2019); Proposed 41 Com. Reg. 41438 (Mar. 28, 2019).

§ 175-10.3-340 Outside and Dual Employment

(a) No Commission Employee shall engage in any employment other than that assigned by the Commission whether public, private or self-employment, during scheduled work hours, nor outside scheduled work hours if such employment conflicts with the Commission's interests or adversely affects the employee's availability or productivity.

(b) Any employee who wants to engage in outside employment with a company that may engage in business dealings with the Commission directly or indirectly shall request approval from the Executive Director or his or her designee in writing. The Executive Director or designee shall decide for or against the outside employment request according to the concept of conflict of interest under the CNMI Laws, and the best interests of the Commission.

History: Adopted 41 Com. Reg. 42023 (June 28, 2019); Proposed 41 Com. Reg. 41438 (Mar. 28, 2019).

§ 175-10.3-345 Safety Programs

TITLE 175: COMMONWEALTH CASINO COMMISSION REGULATIONS

All Commission Employees are responsible for following all federal and CNMI occupational safety and health regulations. All Employees are encouraged to learn CPR from an accredited training provider (such as, but not limited to, the American Red Cross).

History: Adopted 41 Com. Reg. 42023 (June 28, 2019); Proposed 41 Com. Reg. 41438 (Mar. 28, 2019).

§ 175-10.3-350 Whistleblower Policy

(a) Reprisal Prohibited. No Commission employee or Member shall engage in reprisal against an employee for disclosing to the Attorney General, the United States Attorney, or other local or federal law enforcement a violation or suspected violation of a CNMI or federal law, or a regulation promulgated by Commission or any other agency or instrumentality of the Commonwealth government pursuant to CNMI law.

(b) Application. An employee who reports, or who is known by any person in a management or supervisory position to have indicated to report, such violation or suspected violations described in subsection (a) above shall be protected by this rule, unless the employee knew the report was false. This protection shall extend to employees who participate, or who have indicated an intent to participate, in an investigation, hearing or inquiry conducted by a public body, and to employees who participate, or who were known by management or supervisor to have indicated an intent to participate, in a court proceeding.

(c) Forms of Reprisal. Reprisal includes such actions as discharge, threats of discipline, or arbitrary and capricious changes in the conditions of employment.

Modified, 1 CMC § 3806(d).

History: Adopted 41 Com. Reg. 42023 (June 28, 2019); Proposed 41 Com. Reg. 41438 (Mar. 28, 2019).

§ 175-10.3-355 Utilization of Sister Agencies

Any time the Executive Director deems prudent (including, but not limited to, the enforcement or other implementation of the Commission's Anti-Discrimination, Anti-Harassment, Anti-Bullying, and/or Anti-Drug and Alcohol policies and procedures), the Executive Director may, and is encouraged, to utilize the expertise and manpower of any agency of the CNMI government on terms mutually agreeable. By way of example and not by limitation, the Executive Director may utilize the services of the Office of Personnel Management to conducting random or other drug or alcohol tests, investigation of complaints of discrimination or harassment, or the like.

History: Adopted 41 Com. Reg. 42023 (June 28, 2019); Proposed 41 Com. Reg. 41438 (Mar. 28, 2019).