

CHAPTER 80-10
EMPLOYMENT SERVICES AND TRAINING DIVISION

SUBCHAPTER 80-10.1
RESIDENT WORKERS FAIR COMPENSATION ACT RULES AND REGULATIONS

Subchapter Authority: 4 CMC § 9504.

Subchapter History: Proposed 21 Com. Reg. 16644 (Apr. 19, 1999).*

*A notice of adoption for the proposed Resident Workers Fair Compensation Act Rules and Regulations was never published.

Commission Comment: PL 1-8, tit. 1, ch. 9 (effective Aug. 10, 1978), codified as amended at 1 CMC §§ 2451-2472, originally created a Department of Commerce and Labor (DOCL) within the Commonwealth government. See 1 CMC § 2451. 1 CMC § 2454 directs the Department to adopt rules and regulations regarding those matters over which the Department had jurisdiction.

Executive Order 94-3 (effective August 23, 1994) reorganized the Commonwealth government executive branch, changed agency names and official titles and effected numerous other revisions. According to Executive Order 94-3 §§ 103 and 301:

Section 103. Department of Commerce.

The Department of Commerce and Labor is redesignated the Department of Commerce.

...

Section 301. Department of Labor and Immigration.

(a) Department Established. The is hereby established a Department of Labor and Immigration which shall have at its head a Secretary of Labor and Immigration.

(b) Labor and Employment Services.

(1) The Division of Labor and the Division of Employment Services are transferred from the Department of Commerce to the Department of Labor and Immigration. The Secretary of Labor and Immigration shall strengthen the Division of Employment Services to increase its ability to encourage and locate private sector employment for Commonwealth residents. The Secretary shall coordinate the functions of the two offices such that the availability of resident workers known to the Division of Employment Services is considered by the Division of Labor before non-resident worker certificates are issued.

(2) The function of the Secretary of Commerce under Chapter 2 [of] 4 CMC, Division 9 [4 CMC §§ 9211, et seq.], relating to minimum wages and hours, are transferred to the Secretary of Labor and Immigration.

(3) The Wage and Salary Review Board is abolished and its records, property, facilities, equipment, and supplies transferred to the Department of Labor and Immigration.

(4) The State Job Training Coordination Council/Private Industry Council and the JTPA office are allocated to the Department of Labor and Immigration for purposes of administration and coordination.

(5) Pursuant to paragraph (2) of 3 CMC § 4424(a), the Secretary of Labor and Immigration shall by regulation increase to not less than \$200 the annual fee for the

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processing of the initial application and for each annual renewal of a non-resident worker certificate, provided that the additional funds collected as a result of such increase shall be covered into the General Fund. On October 1, 1994, any funds remaining in the Commonwealth Non-resident Worker Fee Fund or in any account established pursuant to paragraph (1) of such subsection, shall be covered into the General Fund, may be reprogrammed by the Governor, and shall remain available for obligation until expended. The Governor may transit to the Legislature revised budget estimates for Fiscal Year 1995 as necessary to conform to the provisions of this paragraph.

(c) Immigration.

(1) The Office of Immigration and Naturalization is re-designated the Immigration Service and is transferred to the Department of Labor and Immigration as a division of that department. The Immigration Service shall have at its head a Director of Immigration, who shall have all the powers assigned by law to the Immigration and Naturalization Officer, except any power transferred pursuant to Section 201 of this plan. The position of Immigration and Naturalization Officer is abolished.

(2) All functions of the Attorney General relating to immigration and naturalization, are transferred to the Secretary of Labor and Immigration except:

- (A) any function transferred pursuant to Section 201 of this plan,
- (B) the hearing of immigration appeals as provided in 3 CMC § 4336(d), and
- (C) the constitutional function of legal representation.

The full text of Executive Order 94-3 is set forth in the commission comment to 1 CMC § 2001.

PL 9-71 (effective Nov. 16, 1995), the “Resident Workers Fair Compensation Act of 1995,” codified as amended at 4 CMC §§ 9501-9504, provides that all benefits mandated by law for nonresident workers must also be given to resident workers as provided in the act. 4 CMC § 9504 directs the Secretary of Labor and Immigration to promulgate regulations to implement the act within 30 days of November 16, 1995.

On August 16, 1995, the Secretary of DOLI published several memoranda delegating authority to enforce certain provisions of the Nonresident Workers Act and the Minimum Wage and Hour Act to the Director of Employment Services. See 17 Com. Reg. 13670-73 (Aug. 16, 1995).

Executive Order 03-01 (effective May 9, 2003), the “Department of Labor and Immigration Reorganization Plan of 2003,” returned the immigration functions of the executive branch to the Office of the Attorney General and renamed the Department of Labor. According to Executive Order 03-01 § 101:

Section 101. Office of the Attorney General: Division of Immigration. The Division of Immigration, Department of Labor and Immigration is transferred to the Office of the Attorney General to be headed by a Director of Immigration who shall be appointed and serve at the pleasure of the Attorney General. The position shall be exempted from the civil service system pursuant to PL 13-1.

...

(d) The Department of Labor and Immigration shall be renamed the Department of Labor to be headed by a Secretary who shall be appointed by, and serve at the pleasure of, the Governor with advice and consent of the Senate. The Department of Labor shall consist of the Division of Labor, Division of Employment Services and Training, and Administrative Hearing Office. Each division shall be headed by a Director who shall be appointed by, and serve at the pleasure of, the Secretary. The Administrative Hearing Office shall be headed by a Hearing Office Administrator, who shall be appointed by, and serve at the pleasure of, the Secretary. These three position shall be exempt for the civil service system pursuant to PL 13-1.

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Section 702 of the Consolidated Natural Resources Act of 2008 (PL 110-229, codified at 48 U.S.C. § 1806) removed the CNMI's authority to create and manage its own immigration laws. On March 22, 2010, the Governor signed PL 17-1, removing all references to immigration and deportation functions from the Commonwealth Code.

[Reserved for future regulations pursuant to 4 CMC § 9504.]