

# TITLE 80: DEPARTMENT OF LABOR

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## SUBCHAPTER 80-20.7

### RECRUITMENT OF ALIEN WORKERS REGULATIONS

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Subchapter Authority: 3 CMC §§ 4421 and 4424(a)(1).

Subchapter History: Adopted 29 Com. Reg. 26420 (Jan. 16, 2007); Proposed 27 Com. Reg. 25219 (Nov. 25, 2005).

Commission Comment: Under the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States (Covenant, Pub. L. No. 94-241, § 301, 90 Stat. 263), the CNMI government retained nearly exclusive control over immigration. After the enactment of the Consolidated Natural Resources Act of 2008 (CNRA, Pub. L. No. 110-229, 122 Stat. 754) on May 8, 2008, federal immigration law became applicable to the CNMI beginning on November 28, 2009. Under CNRA § 702(a), the CNRA made the Immigration and Nationality Act (8 U.S.C. 1101(a)(17)) applicable to the CNMI. The CNRA further amended the Covenant to state that the “immigration laws,” as well as the amendments to the Covenant, “shall ... supersede and replace all laws, provisions, or programs of the Commonwealth relating to the admission of aliens and the removal of aliens from the Commonwealth.” On March 22, 2010, the Governor of the CNMI signed P.L. 17-1 into law, which effectively removed all references to immigration and deportation functions from the Commonwealth Code, and on April 15, 2010, the Office of the Attorney General, Division of Immigration, repealed the Division of Immigration Rules and Regulations (NMIAC Title 5, Chapter 40). The CNMI Department of Labor’s regulations relating to the admission of aliens in this subchapter were not specifically repealed, and therefore, remain.

For a complete history of the Department of Labor, see the general Commission comments to NMIAC subchapters 80-10.1 and 80-20.1.

In January 2007, the Department of Labor adopted regulations regarding the recruitment of alien workers as codified in this subchapter. These regulations are intended to “restrict practices that lead to violations of labor and immigration laws” and “recognize lawful recruiting practices while eliminating opportunities for economic coercion of alien workers.” 27 Com. Reg. 25219 (Nov. 25, 2005).

#### **Part 001 - General Provisions**

##### **§ 80-20.7-001 Introduction**

An employer in the Commonwealth of the Northern Mariana Islands may recruit alien workers from abroad through a recruiter or recruiting agency subject to the conditions stated in this subchapter and as otherwise provided by law. Where the Commonwealth has entered into an agreement, memorandum of understanding or similar protocol with another country regarding the recruiting of alien workers, all hiring must be done in conformity with said protocol.

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Modified, 1 CMC § 3806(d), (f).

History: Adopted 29 Com. Reg. 26420 (Jan. 16, 2007); Proposed 27 Com. Reg. 25219 (Nov. 25, 2005).

### **§ 80-20.7-005 Definitions**

(a) “Kickback” means any payment received by an employer in exchange for giving employment. The term does not include the customary fees paid by a prospective employee to a recruiter in exchange for the recruiter’s services in attempting to secure or securing employment for the prospective employee as long as the recruiter does not make or offer payment to the employer or his agent for providing the job. The term also includes any person’s collection or attempt to collect money or other consideration from an alien worker in exchange for an offer of employment or renewal of employment if that person is not a recruiter. Payment of a “finder’s fee” to an employer is a “kickback.”

(b) “Recruit” means to engage in an act or acts intended to result in the employment of a prospective employee by an employer.

(c) “Recruiter” means an individual, agent or business that engages, for a fee, in activities intended to place a worker with an employer at the request of the employer, or that engages in activities intended to find an employer for a worker at the request of the worker. To be considered a “recruiter” under this subchapter, it is not necessary that the employee becomes employed by the employer or that an employment contract be approved by the Department of Labor. The term includes a representative of a recruiter or recruiting business whose principal place of operations is within or without the Commonwealth. It is not required that the fee or any portion thereof be paid within the Commonwealth or remitted to a person or entity in the Commonwealth.

(d) “Sponsorship” means an arrangement where an application is approved for a worker to perform labor or services for a specific employer, but the worker does not perform according to the contract due to the statements or actions of the employer or by mutual agreement between the worker and the employer. It does not include situations where no work is provided to an employee due to reduction in business activity or other legitimate reason and the Department of Labor has been notified of the circumstances by the employer or employee.

Modified, 1 CMC § 3806(d), (g).

History: Adopted 29 Com. Reg. 26420 (Jan. 16, 2007); Proposed 27 Com. Reg. 25219 (Nov. 25, 2005).

Commission Comment: The Commission changed “a alien” to “an alien” in subsection (a) to correct a manifest error.

### **Part 100 - Recruitment Procedures and Penalties**

#### **§ 80-20.7-101 Proof Required from Overseas Recruiters**

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Overseas recruiters shall, upon request by the Department, provide proof that they are licensed to perform as a recruiter in their home country.

History: Adopted 29 Com. Reg. 26420 (Jan. 16, 2007); Proposed 27 Com. Reg. 25219 (Nov. 25, 2005).

### **§ 80-20.7-105 Registration with Department of Labor**

Local representatives of domestic and overseas recruiters must register with the Department of Labor, Processing Section and must provide the following information:

- (a) The name, local business address, map to the business location, and telephone number of the recruiter.
- (b) The name, address, telephone number, and contact person of an overseas recruiter represented by the recruiter within the Commonwealth.
- (c) A copy of the recruiter's CNMI business license.
- (d) A recruiter shall provide to the Department of Labor any agreement between the recruiter and an alien worker or between the recruiter and an employer.

History: Adopted 29 Com. Reg. 26420 (Jan. 16, 2007); Proposed 27 Com. Reg. 25219 (Nov. 25, 2005).

### **§ 80-20.7-110 Employer's Role in Local Recruiting Activities**

- (a) The Department of Labor recognizes that lawful recruiting benefits workers and employers alike. However, the employer is expected to maintain a strict position of neutrality regarding the employee-recruiter relationship.
- (b) Therefore, an employer may not:
  - (1) Condition the worker's receipt of the worker's copy of the contract or LIIDS card, or hold onto the worker's passport or travel documents, paycheck or other personal property as a condition of the worker complying with any obligation to the recruiter;
  - (2) Directly or indirectly collect any money from a worker on behalf of any recruiter;
  - (3) Condition renewal of an employment contract upon the worker's fulfillment of an obligation to a recruiter.
- (c) An employer may:
  - (1) Allow business premises to be used for meetings between workers and recruiters;
  - (2) Deliver mail or messages between recruiters and workers.

Modified, 1 CMC § 3806(g).

History: Adopted 29 Com. Reg. 26420 (Jan. 16, 2007); Proposed 27 Com. Reg. 25219 (Nov. 25, 2005).

Commission Comment: The Commission designated subsections (a), (b) and (c), which were not designated in the original. The Commission changed the semi-colon in subsection (c)(2) to a period.

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### § 80-20.7-115 Unlawful Acts and Penalties

(a) An employer, prospective employer, or third person shall not receive a kickback from any person in exchange for the employment or offer of employment to a prospective employee.

(b) An alien worker shall not receive compensation or consideration of any kind in exchange for recruiting or promising employment or renewal of employment to another person, except that an alien worker who is lawfully employed by a recruiting agency may engage in recruiting provided it is done in the ordinary course of business and provided the worker does not directly benefit from the recruiting efforts. An alien worker may make introductions or recommend a person for employment provided there is no compensation or consideration involved. A manager, line leader, supervisor or employee may not receive any consideration from a worker or person acting on his or her behalf for a recommendation regarding employment or renewal.

(c) A person or agency shall not engage in recruiting as a principal or agent unless licensed to do so by the Department of Commerce, and the Department of Labor may seek injunctive or other relief against an unlicensed recruiter, including banning the recruiter from employing alien workers or seeking an administrative award requiring reimbursement to an alien worker for any funds paid.

(d) The Department of Labor may seek revocation of the employment permit of an alien worker who violates the regulations in this subchapter by engaging in unlawful recruiting.

(e) Disputes arising between a recruiter and alien worker or between a recruiter and employer arising from recruiting activities are not within the jurisdiction of the Department of Labor. However, claims alleging unlawful acts committed by recruiters, employers or third persons (such as kickbacks or unlawful recruiting) are within the jurisdiction of the Department.

(f) Fees charged by a recruiter for all recruiting services and related duties performed in the CNMI may not exceed 12.5% of the base rate of the contract (calculated at 40 hours per week multiplied by the hourly wage rate multiplied by the number of weeks in the contract period, and does not include actual or projected overtime compensation).

(g) Sponsorship arrangements are strictly prohibited.

(h) A worker, recruiter and/or employer engaging in unlawful recruiting or a sponsorship is subject to the penalties in the Nonresident Workers Act, 3 CMC §§ 4411 et seq. and the penalties set forth in this regulation [§ 80-20.7-115].

Modified, 1 CMC § 3806(d), (f), (g).

History: Adopted 29 Com. Reg. 26420 (Jan. 16, 2007); Proposed 27 Com. Reg. 25219 (Nov. 25, 2005).

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Commission Comment: The Commission changed “a alien” to “an alien” in subsections (b) and (d) to correct manifest errors.

### **§ 80-20.7-120**            **Territorial Applicability**

(a) A person is in violation of this subchapter for his or her own conduct or the conduct of another for which the person is legally accountable, if

(1) The violation or any act toward commission of the violation occurs within the Commonwealth;

(2) Any act done outside the Commonwealth results in an act which has an impact within the Commonwealth.

(b) Any person, whether or not a citizen or resident of the Commonwealth, who in person or through an agent does any of the acts enumerated in this section, thereby submits such person, and, if not an individual, its personal representative, to the jurisdiction of the Department of Labor.

Modified, 1 CMC § 3806(d).

History: Adopted 29 Com. Reg. 26420 (Jan. 16, 2007); Proposed 27 Com. Reg. 25219 (Nov. 25, 2005).