

TITLE 3: HUMAN RESOURCES
DIVISION 4: EMPLOYMENT AND REGISTRATION

§ 4511. Definitions.

As used in this chapter, the following terms shall, unless the context clearly indicates otherwise, have the following meanings:

(a) "Administrative Hearing Office" means the hearing office of the Department of Labor; and for purposes of 1 CMC §§ 9109 and 9110 as those provisions may apply to this chapter;

(b) "Citizen" means a person who is a citizen or national of the United States;

(c) "CNMI permanent resident" means a person who was granted the status of CNMI permanent resident by the CNMI government prior to April 23, 1981.

(d) "Department" means the Department of Labor;

(e) "Domestic helper" means a person who assists an employer with the domestic duties of a household, including but not limited to cooking, cleaning, and care for children, elders, and handicapped persons in the home; and does not include farmers;

(f) "Employer" means a person, corporation, partnership, or other legal entity that has a current business license issued by the Commonwealth, is doing business in the Commonwealth, and has one or more approved employment contracts with foreign national workers, or is acting directly or indirectly in the interest of a person, corporation, partnership or other legal entity in relation to an employee; or a person employing a farmer or domestic helper; and does not include the government of the United States;

(g) "FAS citizen" means a citizen of the Freely Associated States, which are the Federated States of Micronesia, The Republic of the Marshall Islands, and the Republic of Palau, who is legally residing in the Commonwealth.

(h) "Hearing officer" means a hearing officer appointed by the Secretary who serves in the Administrative Hearing Office and who conducts mediations, hearings, and other proceedings as necessary; and for purposes of 1 CMC §§ 9109 and §§ 9110 as those provisions may apply to this chapter;

(i) "Indigenous" means a person generally recognized in the community as a person of Northern Marianas Descent, who is also a citizen or permanent resident of the Commonwealth and speaks the Carolinian or Chamorro language to a degree of fluency such that the person may accomplish the basic daily tasks of life without resorting to a language other than the Carolinian or Chamorro language;

(j) "Job classification" means the job classifications described by regulation promulgated by Employment Services;

(k) "Permanent resident" means a person who is legally residing in the Commonwealth without restrictions as to employment in the Commonwealth, including but not limited to eligible immediate relatives of citizens and citizens of the Freely Associated States of the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau;

(l) "Secretary" means the Secretary of Labor.

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(m) "U.S. permanent resident" means a person who has been granted permanent resident status by the United States.

Source: PL 15-108, § 4(4511); (c),(g) and (m) added, former subsections (f) (Employment Services) and (k) (Regulation) deleted, and subsections (j) and (k) amended by PL 17-1 § 5(M)(1) (March 22, 2010).*

Commission Comment: See the comment to 3 CMC § 4401 regarding PL 15-108.

On March 22, 2010, Public Law 17-1 was enacted into law. In addition to amending provisions of the code,

PL 17-1 contained severability and savings provisions and the following:

Section 1. Short title. This Act may be referred to as the "Immigration Conformity Act of 2010."

Section 2. Findings and purpose. The Commonwealth Legislature finds the following with respect to the immigration functions previously controlled by the Commonwealth of the Northern Mariana Islands and now controlled by the U.S. Department of Homeland Security:

Section 503 of the Covenant provided that the immigration and naturalization laws of the United States, except as provided in Section 502(b), would not apply to the Northern Mariana Islands "except in the manner and to the extent made applicable to them by Congress by law after termination of the Trusteeship Agreement."

Under the Covenant and the Commonwealth Constitution, the Commonwealth of the Northern Mariana Islands since 1978 has enacted immigration laws governing the admission and regulation of aliens entering the Commonwealth. It established a Division of Immigration to administer and enforce these laws.

The Trusteeship Agreement was terminated with respect to the Northern Mariana Islands in 1986. Twenty-two years later, in 2008, the United States Congress enacted Public Law 110-229, Title VII, which applied the federal immigration laws to the Commonwealth of the Northern Mariana Islands. This law was signed by the President on May 8, 2008, and became effective on November 28, 2009. Public Law 110-229, Title VII, expressly provided that the Commonwealth's immigration laws would be preempted by the new application of the federal immigration laws to the Commonwealth. The authority of the federal government to apply the federal immigration laws to the Commonwealth as provided by Public Law 110- 229 was upheld by the decision of the U.S. District Court for the District of Columbia on November 25, 2009, in *Commonwealth of the Northern Mariana Islands v. United States of America, et al.*

Public Law 110-229 does not *ipso jure* preempt the Commonwealth's labor laws. In the United States federal system, there are areas in which the States share responsibilities with the federal government. Labor (including the terms and conditions under which workers are employed) is such an area. The federal government can regulate labor through its control of interstate commerce and immigration. But the States remain free

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to regulate labor under the power to control intrastate commerce and under the general police power. The Commonwealth has all of the powers of a State in this area, as well as the powers of local self-government under the Covenant. Employers and workers in the Commonwealth must comply with both federal and CNMI law. It is the intent of the Legislature that this Act shall amend the Commonwealth Code to reflect the assumption of immigration responsibilities by the federal government.

It is the intent of the Legislature that this Act shall exercise the authority of the Commonwealth to regulate labor conditions and practices within the Commonwealth to the full extent that this area could be regulated by a State and can be regulated under the Covenant. It is further the intent of the Legislature to regulate the terms and conditions under which permits previously issued by the Commonwealth were granted so long as those permits remain in force and protect the status of foreign national workers as lawfully present in the Commonwealth.

It is the intent of the Legislature that the umbrella permits issued by the Department of Labor in 2009 continue to be governed under the Department's normal processes. All umbrella permits and the bases on which they were granted are ratified and approved, *nunc pro tunc*, any other provision of current or former law or regulation notwithstanding.

It is the intent of the Legislature that this Act shall replace the decisions in *Smith & Williams v. Royal Crown Ins. Co.*, NMI Super. Ct. Small Claims Nos. 06-0676 et al. (February 5, 2007) and *Zhou v. Oceania Ins. Corp.*, NMI Super. Ct. Small Claims Nos. 08-0452 et al. (February 5, 2009) so that plaintiffs holding unpaid awards under orders issued by the Administrative Hearing Office of the Department of Labor may proceed with collection actions in the Commonwealth courts without first exhausting collection remedies at the Department of Labor.

It is the intent of the Legislature to provide to the maximum extent permitted by law an employment priority for United States citizens, United States permanent residents, and CNMI permanent residents (as that status was defined by Commonwealth law prior to April 23, 1981) in the workforce of the Commonwealth in order to develop the human resources of the people of the Commonwealth as reflected in the provisions and stated intent of PL 110- 229. It is the intent of the Legislature that the employment priority for United States citizens, United States permanent residents, and CNMI permanent residents established by Commonwealth law provide legitimate grounds under the Immigration Reform and Control Act (IRCA), P.L. 99-603 (1986) for hiring decisions based on citizenship in both the government and private sectors in the Commonwealth.

It is the intent of the Legislature the Commonwealth Law Revision Commission shall have discretion to adjust the numbering of code divisions, parts, articles, or sections affected by this Act as necessary to effectuate a reasonable codification of Sections 5 and 6 of this Act.

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*Section 12. Effective date. This Act shall take effect upon its approval by the Governor or becoming law without such approval and shall be

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retroactive to November 28, 2009 except as otherwise specifically provided herein.