

TITLE 3: HUMAN RESOURCES
DIVISION 4: EMPLOYMENT AND REGISTRATION

§ 4947. Orders and Relief.

(a) The hearing officer may, after notice and an opportunity to be heard is provided to the parties, dismiss *sua sponte* a complaint that the hearing officer finds to be without merit. Dismissal shall be reviewable pursuant to the Administrative Procedure Act (1 CMC § 9101 et seq.).

(b) The hearing officer shall, upon concluding a hearing, issue any necessary findings, decisions, and orders as soon as practicable.

(c) Issuance of findings, decisions, and orders shall be pursuant to 1 CMC § 9110, but shall not be judicially reviewable until final.

(d) The hearing officer is authorized to:

(1) Award unpaid wages or overtime compensation, amounts unlawfully deducted from wages or unlawfully required by an employer to be paid by a foreign national worker, damages for unlawful termination of an approved employment contract, or damages, when appropriate, for conduct of the employer that is in violation of Commonwealth or federal law;

(2) Assess liquidated damages in twice the amount of unpaid wages or overtime compensation in any case in which a foreign national worker prevails on unpaid wages or overtime compensation claims unless the hearing officer finds extenuating circumstances; and assess liquidated damages in an amount to be determined at the hearing in cases in which the employer's conduct in failing to pay wages or overtime is found to have been willful or retaliatory;

(3) Cancel or modify an identification card or an approved employment contract;

(4) Order temporary or permanent debarment of an employer;

(5) Disqualify a foreign national worker, temporarily or permanently, from employment in the Commonwealth;

(6) Levy a fine not to exceed two-thousand dollars for each violation of any provision of this chapter;

(7) Issue declaratory or injunctive relief as appropriate; and

(8) Award attorneys fees when appropriate in addition to any other enumerated remedy; provided however that attorneys fees shall not be recoverable against the Commonwealth.

(9) Modify an umbrella permit. An umbrella permit may be continued in effect on any of the bases upon which it could have been granted.

(10) Revoke umbrella permits for violation of, or condition the continuation in effect of umbrella permits as appropriate to secure compliance with, Commonwealth law, regulations, orders of a hearing officer, or terms of the permit.

(11) Impose such other sanction, order or relief as may reasonably give effect to Division 4, Title 3.

(e) If other remedies are insufficient to provide a foreign national worker the benefit of the bargain made when entering the approved employment contract,

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the hearing officer may grant a transfer so that a foreign national worker may become employed under a new approved employment contract without first exiting the Commonwealth, provided that:

(1) The grounds for granting transfer relief are limited to an unlawful termination of an approved employment contract by an employer; the voiding of an approved employment contract or debarment of an employer for a violation under this chapter; a reduction in force pursuant to 3 CMC § 4937; the abandonment of the worker during the term of an approved employment contract, but prior to ninety days before the termination date of the contract, by an employer who failed to pay bi-weekly wages on two successive occasions, closed a business, declared bankruptcy, or exited the Commonwealth evidencing an intent not to return; or, upon a finding by the hearing officer that the foreign national worker has prevailed under an equivalent theory of law or equity and that transfer relief is appropriate.

(2) A transfer may be granted only to a foreign national worker who has complied with the provisions of the approved employment contract to the extent practicable under the circumstances, and for whom transfer relief is required in order to assure receipt of the benefit of the bargain under the contract that is the subject of the action.

(3) A transfer shall be completed within thirty days of the order and in compliance with 3 CMC §§ 4922, 4924, and 4925 of this chapter.

(f) The hearing officer may authorize a foreign national worker to be employed in the Commonwealth on a temporary basis pending a hearing with respect to a labor complaint. A temporary work authorization shall end two business days after the hearing officer's order is issued.

(g) The hearing officer may assess costs for repatriation of a foreign national worker.

(h) The hearing officer may find an action to be frivolous if it is unfounded in fact or law or initiated primarily to obtain an undue pecuniary benefit or for distraction or delay. The filing of an action which is determined by a preponderance of the evidence to be frivolous shall be grounds for permanently disqualifying the foreign national worker who filed the action from employment in the Commonwealth or permanently barring an employer who filed the action from further employment of foreign national workers.

(i) The hearing officer shall notify the Commonwealth immigration authority promptly upon cancellation or modification of an identification card

Source: PL 15-108, § 4(4947); (d)(3) and (i) amended by PL 17-1 § 5(Q) and subsections (d)(9)-(11) added by § 5(Q)(4)(a)-(c)(March 22, 2010),* modified.

Commission Comment: The Commission replaced section references with proper code sections and deleted figures that repeated written words pursuant to 1 CMC § 3806(c) and (e). *PL 17-1 (enacted on March 22, 2010) contained the following effective date provision:

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

For more information regarding Public Law 17-1, see comment to 3 CMC § 4511.