

TITLE 3: HUMAN RESOURCES
DIVISION 4: EMPLOYMENT AND REGISTRATION

§ 4972. Transition Provisions.

(a) *Transition for employment contracts:* Any employer employing foreign national workers in the Commonwealth, and any foreign national worker within the Commonwealth, shall comply fully with all provisions of this chapter, and no contract, contract modification, renewal, or transfer shall be permitted except in full compliance with this chapter.

(b) Transition exemptions for government employment.

(1) Public School System. Related service providers, including but not limited to, speech pathologists, occupational therapists, physical therapists and audiologists, and teachers in special education and pre-primary education may be exempted. Related service providers shall have a U.S. license, U.S. registration, or U.S. certification, as appropriate to their respective field of specialization. Persons exempted under this subsection shall have a bachelor's or master's degree in the field of special education prior to being issued an identification card, and shall pass teacher certification tests as designated by the Board of Education. Foreign language instructors may be exempted if they are graduates of a college or university approved or accredited in accordance with the Public School System Regulations on Employment of Certified Personnel [NMIAC chapter 60-30.2]. This exemption shall expire on September 30, 2010, and no contract may provide to the contrary.

(2) Department of Public Health.

(i) Nurses may be exempted if they are graduates of recognized colleges or universities with a degree in nursing science and satisfy the professional licensing requirements in their country of origin as well as satisfying the licensing requirements established by the Commonwealth Board of Nurse Examiners for Licensed Practical Nurses (LPN) or Registered Nurses (RN). Nurses employed pursuant to this subsection shall meet all minimum requirements for employment as provided by law, except that any minimum experience requirement shall not apply to a foreign national worker who completed the nursing education program at the Northern Marianas College or other approved vocational nursing school in the Commonwealth, passed the NCLEX exam, and is employed on or before December 31, 2010, in a nursing position at the Department of Public Health.

(ii) Biomedical engineering technicians and all other health care professionals who are required to be licensed, certified, registered, or otherwise regulated by the Health Care Professions Licensing Board as referenced in 3 CMC § 2212 may be exempted if they are graduates of recognized colleges and universities with a degree in their area of specialty in their country of origin and shall have satisfied all of their country's professional licensing and certification requirements in addition to satisfying, if applicable, the licensure requirements established by the Health Care Professions Licensing Board.

TITLE 3: HUMAN RESOURCES
DIVISION 4: EMPLOYMENT AND REGISTRATION

(iii) The exemptions provided in subsections (b)(2)(i) and (b)(2)(ii) of this section shall expire on September 30, 2017, for all positions covered thereunder, and no contract may provide to the contrary.

(3) Northern Marianas College. Foreign language instructors and research scientists at the Northern Marianas College may be exempted if they are graduates of colleges or universities in the United States, or colleges or universities which are accredited by United States accrediting associations, or, alternatively, if they have earned degree(s) from colleges, universities, or institutions abroad that are recognized by the Board of Regents and meet all other professional requirements set by the Board of Regents. This exemption shall expire on September 30, 2010, and no contract may provide to the contrary.

(4) Technical Service Division under the Department of Public Works. Engineers shall be exempted and the exemption period shall expire in 2015.

(c) *Transition for owners of businesses*. Persons who are not citizens or permanent residents and whose first entry into the Commonwealth for purposes of employment occurred on or before July 28, 1987, and who at the time of enactment of this chapter have a financial interest in, operate, or engage in any business or are employing others in the Commonwealth pursuant to a valid business license shall be granted a transition period by the Department to qualify for entry under Chapter 9 of Division 5 of Title 4, or under other applicable provisions of Commonwealth law. The Secretary, in consultation with the Department of Commerce, shall implement a reasonable transition process and time period not to exceed two years from the effective date of this chapter. This subsection shall expire and automatically repeal two years from the effective date of this chapter.

(d) *Transition for notaries public*. The Department of Commerce shall not renew the license as a notary public of any person who is not a citizen or permanent resident after January 1, 2009.

(e) *Transition for regulations*. The Secretary of Labor may implement regulations pursuant to 3 CMC § 4961(a) separately from the regulations of the Secretary of Public Health and the Commonwealth immigration authority. In the event that the Secretary of Public Health does not implement regulations with respect to 3 CMC § 4932 on medical insurance prior to the effective date of this statute, the provisions of prior law with respect to the responsibility of employers for the medical care of foreign national workers shall continue in full force and effect until the effective date of such final regulations.

Source: PL 15-108, § 4(4972); subsection (b)(5) amended by PL 16-14, § 2, modified; subsections (b)(1) and (b)(2) amended by PL 16-26, § 3; former subsections (b)(3), (b)(5), (c) and (f) deleted by PL 17-1 § 5(Q)(6)(f) (March 22, 2010)* and remaining subsections redesignated accordingly, modified; (b)(4) added by PL 17-59 § 2 (November 4, 2011).

TITLE 3: HUMAN RESOURCES
DIVISION 4: EMPLOYMENT AND REGISTRATION

Commission Comment: The Commission replaced section references with proper code sections, deleted figures that repeated written words and changed capitalization pursuant to 1 CMC § 3806(c), (e) and (f).

Public Law 16-14 was enacted on August 27, 2008. PL 16-14 contained severability and savings provisions and the following:

Section 1. Findings and Purpose. The Commonwealth Legislature finds that the Commonwealth Utilities Corporation (CUC) is currently unable to employ foreign national workers to fill certain essential positions pursuant to restrictions set forth in 3 CMC § 4972(b)(5) as established by Public Law 15-108. The Legislature further finds that CUC is unable to fill these essential positions with permanent resident or citizen employees at this time, and extension of the exemption for hiring foreign national workers within the Commonwealth government is necessary to ensure the delivery of uninterrupted power, water, and waste water services to the people of the Commonwealth. Accordingly, the purpose of this legislation is to allow CUC to hire up to nineteen foreign national workers to fill technical and professional positions at CUC and to extend such exemption to year 2010.

For information regarding PL 16-26, which took effect on December 24, 2008, see Commission comment to 3 CMC § 4532.

*PL 17-1 (enacted on March 22, 2010) contained the following effective date provision:

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.

Before and after the enactment of PL 17-1 on March 22, 2010, Governor Fitial issued several executive orders in 2009 and 2010 purporting to suspend subsection (b)(5) of this statute based on emergency powers conferred by Article III, § 10 of the NMI Constitution and 3 CMC § 5121(f). See Exec. Order No. 2010-06, 32 Com. Reg. 30525 (June 2010); Exec. Order No. 2010-05, 32 Com. Reg. 30504 (June 2010); Exec. Order No. 2010-04, 32 Com. Reg. 30414 (May 2010); Exec. Order No. 2010-03, 32 Com. Reg. 30396 (May 2010); Exec. Order No. 2010-02, 32 Com. Reg. 30379 (May 2010); Exec. Order No. 2010-01, 32 Com. Reg. 30363 (May 2010); Exec. Order No. 2009-13, 32 Com. Reg. 30488 (June 2010), 32 Com. Reg. 30916 (Oct. 2010); Exec. Order No. 2009-12, 32 Com. Reg. 30473 (June 2010), 32 Com. Reg. 30900 (Oct. 2010); Exec. Order No. 2009-11, 32 Com. Reg. 30459 (June 2010), 32 Com. Reg. 30885 (Oct. 2010); Exec. Order No. 2009-09, 32 Com. Reg. 30446 (June 2010), 32 Com. Reg. 30871 (Oct. 2010); Exec. Order No. 2009-08, 32

TITLE 3: HUMAN RESOURCES
DIVISION 4: EMPLOYMENT AND REGISTRATION

Com. Reg. 29980 (Sept. 2009); Exec. Order No. 2009-07, 32 Com. Reg. 29869 (Aug. 2009).

*Public Law 17-36 (enacted on March 23, 2011) attempts to amend subsection (b)(5) by revising a provision of PL 15-108 (formerly codified in 3 CMC 4972(b)(5)). However, subsection (b)(5) no longer exists because PL 17-1 § 5(Q)(6)(f) deleted subsection (b)(5) of 3 CMC § 4972. Due to this inherent deficiency, the Commission is unable to codify the provisions of PL 17-36. The text of PL 17-36 § 2 provides:

Section 2. Amendment. 3 CMC § 4972(b)(5), as established by Public Law 15-108, is amended to read as follows:

(b) Transition exemptions for government employment.

(5) Commonwealth Utilities Corporation. Engineers and professional employees in technical or trade areas may be exempted, and CUC may contract with manpower services or directly hire power plant mechanics and utility technicians who may be exempted; provided that direct or manpower hire of foreign national workers shall not exceed thirty (30) employees. During the period of this exemption, CUC shall use all diligent efforts to find and train U.S. Citizens or permanent residents to fill positions covered by this exemption. Should CUC require a future exemption they shall be entitled to one only with the certification of the CNMI Department of Labor. Labor shall certify CUC has used good faith efforts to train or hire U.S. citizen or permanent resident candidates without success. As part of this certification, CUC shall show and the Department of Labor shall certify that despite offering competitive pay and benefits similar and even better than U.S. utility operators, CUC is unable to attract qualified workers. Any future exemption shall be limited to fifty percent (50%) of this current exemption of thirty (30) workers, and shall be limited to an additional one (1) year. This exemption shall expire on September 30, 2012, and no contract may provide to the contrary.