

APPENDIX A

CSC-100 A. *RIGHT TO APPEAL*

1. Any person in the classified service holding a permanent appointment and who is subject to an adverse action by management, except one who is exempted by law from the jurisdiction of the Civil Service Commission, is entitled to appeal an adverse action to the Civil Service Commission. A person who has been appointed to a permanent position and who has satisfactorily completed his probationary period holds a permanent appointment.
2. A contract employee occupying a permanent position in the classified service is entitled to appeal an adverse action to the Civil Service Commission during the term of his contract. Non-renewal of the contract by the Government of Guam is not appealable.

B. CONTENTS OF APPEAL

An appeal shall be in writing and shall set forth the answer to the charges and the grounds for appeal. An appeal may be amended within 15 days after filing. A person who is the subject of an adverse action and who files an appeal on his own behalf or through a representative is the appellant.

C. TIME LIMIT FOR FILING APPEAL

An appeal must be submitted within 20 calendar days from the effective date of the action.

D. RIGHTS IN PURSUIT OF APPEAL

An appellant shall:

1. Be assured freedom from restraint, interference, coercion, discrimination, or reprisal.
2. Have the right to be accompanied, represented and advised by a representative.
3. Be assured a reasonable amount of official time to prepare his case if he is on duty status.

CSC-200 A. *ENTITLEMENT*

An appellant who files an appeal in accordance with these rules is entitled to a hearing on his appeal before

the Civil Service Commission. Except in the case of an emergency, or death, incapacitation, or absence from the island of the appellant, the appellant shall be personally present at the hearing of his appeal. The term "emergency" means an occurrence of a serious nature demanding immediate attention. The term "absence from the island" covers off-island emergencies, relocation, situations in which the appellant was not notified of the hearing date before leaving the island, and situations in which the appellant was excused by the Commission for off-island purposes.

B. PLACE AND TIME OF HEARING

The Commission shall set the place, date, and time of hearing as expeditiously as possible.

C. CONDUCT OF HEARING

1. The hearing is open to the public.
2. The hearing will be conducted so as to bring out pertinent facts, including the production of certain records.
3. Decisions on the admissibility of testimony or other evidence are made by the presiding officer of the Commission after consulting with the Commission's legal counsel. When a member objects to a decision of the presiding officer, the objection shall only be sustained by not less than 4 concurring votes.
4. Testimony is under oath or affirmation.
5. Each party shall have the right to call, examine, or cross-examine witnesses, and introduce exhibits. Either party may be called and examined by the Commission. Any member of the Commission may direct relevant questions at a witness after examination of the witness has been completed by both parties; except that questions may be asked during examination to clarify a response by a witness.
6. Rules of evidence shall not be applied. The only grounds for excluding any proffered evidence are that the evidence is irrelevant or unduly repetitious. If any evidence is ruled inadmissible by the presiding officer, the grounds shall be stated for the record.
7. The order of presentation in the hearing shall be as follows:

- a. Opening statement of management.
 - b. Opening statement of appellant.
 - c. Presentation by management of evidence in support of the charges.
 - d. Presentation by the appellant of such evidence in defense or rebuttal.
 - e. Closing statement of management.
 - f. Closing statement of appellant.
8. Preliminary motions and issues shall be disposed of prior to the hearing on the merits.

D. BURDEN OF PROOF

Management shall have the burden of proof by a preponderance of the evidence. In cases involving charges, which could be a crime if the person was charged in a criminal action, the Commission shall determine the matter based upon substantial evidence.

E. WITNESSES

1. Both parties are entitled to produce witnesses. The department or agency head or his designee shall be in attendance without subpoena. Except as otherwise provided in CSC-200(A), the appellant shall be in attendance without subpoena.
2. The Commission may call additional witnesses as it may deem necessary and require the production of documents.
3. The Chairperson of the Civil Service Commission or the Executive Director, upon his own initiative, upon the request of any member of the Commission, or upon the request of any party before the Commission, may summon in writing any person to attend a meeting of the Commission as a witness and, in a proper case, to bring with him any book, record or paper which may be deemed material as evidence in the case. The fees for such attendance shall be the same as the fees of witnesses before the Superior Court, except that if the witness is a government employee no witness fee shall be given. The subpoena shall issue in the name of the Civil Service Commission, and shall be directed to the person and served in the same manner as subpoenas to appear and testify before the court. If any person summoned to testify shall refuse or neglect to obey said

subpoena, upon petition, the court may compel the attendance of such person before the Commission, or punish said person for contempt in the same manner provided by law for securing the attendance of witnesses or their punishment for neglect or refusal to attend in the Superior Court.

4. An employee is considered to be on duty status during the time he is made available as a witness. Such employee is entitled to compensatory time-off if he serves during his normal non-working hours. The Civil Service Commission shall furnish the head of the department or agency in which the witness is employed, a certificate showing the time devoted to the hearing. "Employee" in this section does not include the parties to the appeal or their representatives.
5. The Commission shall ensure that all witnesses are treated with courtesy and respect while giving testimony at the hearing.
6. The government shall assure witnesses freedom from restraint, interference, coercion, discrimination, or reprisal in presenting testimony.

F. RECORD OF HEARING

1. The hearing may be tape recorded by the Commission. The Commission's recordings, testimonies and exhibits admitted during the hearing, together with all pleadings and papers filed by the parties, shall constitute the official record.
2. Filming, video taping, or recording of the hearing or other proceedings before the Commission by any of the parties shall be permitted only upon written request and prior approval by the Commission, with notice to the other parties in the case.
3. Transcripts of the hearing may be made available upon request and at a cost of \$1.00 per page. Additional copies may be provided for \$.50 per page. These charges do not apply to the Government of Guam.

CSC-300 A. *TERMINATION OF APPEAL*

The Civil Service Commission may terminate an employee's appeal:

1. At the appellant's request.

2. When an appellant fails to furnish required information necessary to proceed with the appeal.
3. When, without reasonable justification or excuse, an appellant fails to personally appear for the hearing.

B. DEATH OF APPELLANT

When an appeal has been filed properly before the death of the appellant, the Commission shall process it to completion and adjudicate it. The Commission may include in its decision retroactive compensation and benefits to which the deceased employee would have been entitled to at the time of death.

CSC-400 *A. SCOPE OF HEARING*

The scope of the appeal hearing shall be limited to:

1. The issues in dispute;
2. A review of compliance with procedural requirements for effecting an adverse action.

B. DECISION

1. The Commission shall decide the appeal on the basis of the evidence presented.
2. Except as provided in paragraph D below, if management proves the charges against the appellant, the Commission shall sustain the adverse action.
3. If management fails to prove the charges, the Commission shall dismiss the adverse action with prejudice.
4. If management proves the charges, but the Commission finds that, because of the appellant's past record, the gravity of the offense, or the facts and circumstances of the case, the adverse action be modified, it may modify the adverse action accordingly. The reasons for such modification shall be stated, in sufficient detail, in the decision of the Commission. Any compensation or benefits due as a result of the modification shall be restored to the appellant.
5. If the Commission finds that the adverse action was substantially procedurally defective because not in conformity with the applicable rules and regulations for adverse actions, it shall dismiss the adverse action, with or without prejudice, as it

considers fair and equitable under the facts and circumstances of the case. The Commission shall be satisfied that procedural requirements have been met before proceeding with the hearing on the merits.

6. The Commission shall issue a written decision within 30 days after the hearing is completed and provide copies thereof to the parties. If the adverse action is sustained, the effective date of the action shall stand as issued by the department of agency head.

A written decision or ruling shall be considered final and shall be dispositive of the issues presented therein. Notwithstanding any other Civil Service Commission and EEO Review Board rule, regulation, or policy, written decisions and rulings mentioned herein may be issued within 30 working days from the conclusion of the deliberation in which a decision or ruling is made, which forms the basis of the final written decision or ruling.

7. If the adverse action is revoked by the Commission, all compensation and other benefits which would have accrued to the appellant from the effective date of the decision shall be restored to the appellant.

CSC-500 ***COMPLIANCE***

The decision of the Commission is final but subject to judicial review. Compliance with any order specified in the decision is required by law. The department or agency head to whom an order is directed, must report, within 10 working days after receipt of the decision, that he has carried the order into effect or he has taken action to have the decision reviewed by the Superior Court.

CSC-600 ***AMENDMENT AND SUPPLEMENTAL POLICIES***

These procedures and guidelines may be amended by the Commission as the need arises or may be amended or supplemented by other written appeal policies of the Commission.

APPENDIX B

GOVERNMENT OF GUAM DEPARTMENTAL/AGENCY PROCEDURES FOR LAYOFF, DEMOTION, OR SALARY REDUCTION PURSUANT TO SECTION 13 OF PUBLIC LAW 17-5

GG-100 A. *GROUNDS OF LAYOFF*

A department/agency head may, acting in good faith, layoff any person in the classified service holding a permanent appointment whenever it is necessary because of lack of work, or funds, or to promote efficiency, or in the interest of economy.

Department and agency heads shall exhaust all available alternatives in relocating or reassigning employees before a layoff is initiated.

When a layoff is being planned, the department/agency shall be required to freeze all non-essential personnel actions on positions substantially similar or closely related to those occupied by employees who are subject to layoff. For example, if a department decides to layoff an Accountant III, there shall be no recruitment, promotion, transfer, reclassification or related action to be taken on substantially similar or closely related positions such as Accountant I and II, Accounting Technician class series, or other fiscal positions.

B. DEFINITIONS

1. **Class or Class of Positions:** Means the logical and reasonable grouping of duties and responsibilities with respect to the kind or subject matter of work, level of difficulty and responsibility, and qualification requirements of the work to warrant similar treatment in personnel and pay administration. (Examples: Clerk I, Clerk-Typist I, Planner IV, Painter II, Teacher IV, etc., are classes of positions.)
2. **Demotion (Voluntary):** Means the voluntary movement of an employee from a higher to a lower position with the same or lower salary in the same department/agency in order to retain employment when layoff from his position is forthcoming.
3. **Government of Guam Employment Service:** Means all employment service (with pay) in the Government of Guam.
4. **Layoff:** Means the involuntary termination of an employee for other than disciplinary reasons which

does not reflect discredit on the service of the employee and includes a reduction-in-force for any of the reasons stated in GG-100A.

5. **Performance Rating:** Means the appraisal or evaluation of the work performance of an employee by each department/agency as required in their respective Personnel Rules and Regulations.
6. **Position:** Means the work, consisting of the duties, functions and responsibilities, assignable to an employee.
7. **Reduction in Salary:** Means the lowering of an employee's salary while continuing to occupy the same position in order to retain employment when layoff from his position is forthcoming and the action is voluntary on the part of the employee.
8. **Transfer (Voluntary):** Means the voluntary movement of an employee from one position to another in the same or to a different department/agency with the same pay grade and salary and to the same position title or to another position (with the same pay grade and salary) having substantially similar duties and responsibilities and qualification requirements in order to retain employment when layoff from his position is forthcoming.
9. **Transfer and Demotion (Voluntary):** Means the voluntary movement of an employee from a higher to a lower position and pay grade with the same or lower salary in the same or to a different department/agency in order to retain employment when layoff from his position is forthcoming.
10. **Transfer and Reduction in Salary (Voluntary):** Means the voluntary movement of an employee from one position to another in the same or to a different department/agency while retaining the same pay grade but to a lower pay step in the salary schedule in order to retain employment when layoff from his position is forthcoming.
11. **Vacancy:** Means an established, budgeted, and unencumbered position.

C. COVERAGE

This procedure covers all departments, bureaus, agencies, commissions, or other instrumentalities, whether autonomous, semi-autonomous, or non-autonomous, in the Executive Branch of the Government of Guam.

A. WRITTEN NOTICE

Any employee, including casual or non-regular employee, in the classified service who is subject to layoff shall be given written notice of at least sixty (60) calendar days prior to effective date of layoff.

1. In situations where for the convenience of the Government it is necessary to terminate an employment without the giving of sixty (60) calendar day notice, the employee shall be retained in pay status until the notice period shall have run. This provision shall not apply to a person whose employment is terminated for cause.
2. In instances where an employee has been continued in pay status but has been relieved of duties, the employee shall not be given a lump sum payment for the period of notice to which entitled but shall, instead, be paid on a biweekly basis and such payment shall continue only so long as the employee certifies under oath that he has not obtained new employment. The obtaining of new employment during the notice period shall constitute a waiver by the employee to any further claim for the pay to which he would otherwise be entitled.
3. An employee must immediately report to his department/agency head the effective date of his new employment obtained during the 60-calendar day notice period. A written certification from his new employer must be presented to the department/agency head, stating the effective date of his new employment.
4. An employee who continues to receive layoff payments from the Government after becoming newly employed, shall reimburse the Government for all payments received from the effective date of his new employment to the expiration date of the 60-calendar day notice period.
5. The contents of the written notice of layoff shall include the following information:
 - a. The specific layoff action to be taken;
 - b. The effective date of the action;
 - c. The employee's retention standing;

- d. The place where the employee may inspect the regulations and records pertinent to his case; and
 - e. The written notice of layoff must include a provision that the employee has the right to appeal to the Civil Service Commission within twenty (20) calendar days from either the date the notice was received or the date of release, as provided in GG-140 on appeal.
6. A copy of the layoff procedures shall be provided to each employee subject to layoff.

GG-110 A. *ORDER OF LAYOFF*

The order of layoff shall be determined by each department/agency head in accordance with the following formula, and shall be applied on a department-wide or agency-wide basis:

- 1. The department/agency head shall determine where in his department/agency the layoff shall occur.
- 2. The department/agency head shall determine the position class(es) (e.g., Clerk-Typist I, II, and III) and the number of positions to be eliminated.
- 3. Affected employees of the department/agency occupying the same position class(es) shall be released in the following order:
 - a. First - Part-time, short term or seasonal
 - b. Second - Provisional
 - c. Third - Temporary or limited-term
 - d. Fourth - Probationary (initial)
- 4. If additional layoffs are necessary, all employees not covered under GG-110(A)(3) shall be subject to layoff based on the following procedures:
 - a. A combination of performance rating and seniority based on actual GovGuam employment service will be utilized in determining the order of layoff. For example, if a department/agency head decides to layoff a Clerk-Typist III, then the performance rating and seniority of service shall be based on the total actual Government of Guam employment service, including services held by the employee in other position(s) within the Government of Guam.

- (1) One (1) point shall be allowed for each complete month of actual GovGuam employment service.
- (2) Two (2) points shall be allowed for each satisfactory performance rating on the present position held.
- (3) Four (4) points shall be given for each outstanding performance rating on the present position held.
- (4) One (1) point shall be allowed for each satisfactory performance rating on all prior position(s) held.
- (5) Two (2) points shall be allowed for each outstanding performance rating on all prior position(s) held.
- (6) An employee, on pay status, who was (is) on in-service training during a performance rating period, who did not receive a performance rating shall be deemed to have performed satisfactorily during this period, provided he or she continuously participated in the in-service training program. Two (2) points shall be given for the rating period in question if the present position was the position held during training, otherwise, only one (1) point shall be given.

b. Should a tie score occur in determining who shall be retained, the total points shall be broken in the following manner:

- (1) The employees' length of service in the class to which the employees have rights shall be awarded one (1) point for each month of service in the class.
- (2) If a tie still exists, the employee with the earliest date of employment with no break in GovGuam service shall be retained.
- (3) If a tie still exists, the employee with the earliest date and time of receipt of employment application shall be retained.

GG-115 A. *LAYOFF RECORDS*

Each department/agency head shall maintain records of layoff computations and each notice of layoff; a copy of which shall be furnished each employee who has been identified for layoff and the Civil Service Commission.

A copy of the departmental/agency layoff list shall be posted on the department's/agency's official bulletin board accessible to employees.

GG-120 A. *TRANSFER*

In lieu of layoff, an employee may elect to transfer to another comparable vacant position in the same or to a different department/ agency for which he is qualified with the same or lower salary, provided that the salary shall not be greater than the maximum step of any pay schedule and provided funds are available.

GG-125 A. *REDUCTION IN SALARY/DEMOTION*

In lieu of layoff, an employee may elect reduction in salary and/or demotion to a lower vacant position class for which he is qualified, provided funds are available. Employees voluntarily demoted and/or reduced in salary shall retain promotion rights to their former position or salary for a period of two (2) calendar years conditioned upon availability of funds. After two (2) calendar years, subject employee may be given priority consideration upon applying and meeting the current minimum qualification requirements of the position.

When an employee is offered his promotion rights during the two-year calendar period, he is entitled to no further promotion rights if he accepts an offer, rejects an offer, or fails to reply to an offer within five (5) working days following receipt of offer. An acceptance or reply communicated through the postal system will be deemed timely if postmarked within the five (5) day period (it is recommended that the acceptance or reply be sent through certified mail) and if received within ten calendar days of the postmarked date.

GG-130 A. *RIGHTS TO OTHER POSITIONS*

If there are no vacant positions available to permit a transfer or voluntary demotion under GG-120 and 125, or if an employee refuses transfer or demotion, the employee shall have the right to displace (bump) another employee in the same or lower class series with less retention points, as calculated under Rule GG-110(A)(4) -- (For example a Clerk III may bump a Clerk III, Clerk II, or Clerk I with lesser retention points). A bumped (displaced) employee may then resort to Rules GG-

120(A), GG-125(A) and GG-130(A) to determine his layoff status.

If a transfer, demotion, or bumping is unavailable, the employee will be subject to layoff.

Qualifications shall be determined pursuant to qualification standards established for the class of position in question. Employees have the right to examine the order of layoffs established to determine where he or she falls with respect to the layoff.

GG-135 A. *LAYOFF REINSTATEMENT LIST*

Permanent and probationary employees subjected to layoff shall be placed on the department's/agency's Layoff Reinstatement List for the position class involved in the layoff for a period of two (2) calendar years and may be reinstated by the department/agency initiating the layoff. The names of permanent and probationary employees who have been released or voluntarily demoted who have served at least three months of consecutive satisfactory service shall be placed on the Layoff Reinstatement List for the class of position at the time of layoff in reverse order of layoff. Each person on such a list shall retain eligibility for appointment therefrom for a period of two (2) calendar years from the date of his layoff. A permanent employee who had been released and is being reinstated in the same department/agency shall have permanent status restored. Probational employees who are on the Layoff Reinstatement List and are reinstated shall be given full credit for the probational time already served.

Departmental Layoff Reinstatement List established as a result of a layoff shall take priority over the normal reemployment or employment eligibility lists. Employees reinstated to the same class of position held at the time of layoff shall be paid at the rate to which he is entitled had he remained in service, but that no credit shall be given toward progressive salary step increases within any pay schedule.

When an employee is offered his reinstatement rights during the two-year calendar period, his name shall be removed from the Layoff Reinstatement List if he accepts a reinstatement, rejects a reinstatement, or fails to reply to an offer of reinstatement within five (5) working days following receipt of offer. An acceptance or reply communicated through the postal system will be deemed timely if postmarked within the five (5) day period (it is recommended that the acceptance or reply be sent through certified mail) and if received within ten (10) calendar days of the postmarked date.

GG-140 A. *APPEAL*

An employee who is given a written notice of layoff or who is released pursuant to a layoff, has twenty (20) calendar days to appeal to the Civil Service Commission from the date of receipt of the notice of layoff, or the date released (if no notice was given) when he believes that his department/agency incorrectly applied the layoff procedure or when the action of the department or agency head was taken in bad faith.

The appeal must be in writing and must state specifically what provisions of the layoff procedures were incorrectly applied, if such is alleged, and/or the reasons or actions constituting bad faith, if bad faith is alleged.

An employee subject to layoff, may appeal only once as a matter of right under either a release or written notice, so that if, prior to release, an employee appeals upon a written notice of layoff, he or she may not appeal again upon being released.

PRIORITY PLACEMENT PROCEDURE

PURPOSE

To establish uniformed guidelines for the government of Guam in case of a need to transfer functions, abolishment of positions, demotions, lack of work or funds, or reduction in force.

STATEMENT OF POLICY

It is the policy of the government of Guam to promote stability of employment of permanent classified employees affected by changing manpower requirements and to provide maximum opportunity for placement in the Executive Branch of the government. Consistent with this policy, a strong Priority Placement Procedure shall be maintained to minimize the adverse affects on employees caused by actions required for the effective management of government such as, but not limited to, consolidation, transfer of functions, lack of work or funds, position classification decisions or reduction-in-force.

I. COVERAGE

A. *DEPARTMENTS AND AGENCIES*

This procedure is applicable to all departments, bureaus, agencies, commissions, or other instrumentalities, whether autonomous, semi-autonomous, or non-autonomous in the Executive Branch of the Government.

B. *EMPLOYEES*

This procedure covers all probationary and permanent classified employees who are to be or have been issued notice of impending demotion or separation due, but not limited to, consolidation, transfer of functions, lack of work or funds, position classification decisions or reduction-in-force.

II. RESPONSIBILITIES

A. All department and agency heads shall assure efficient operations of these procedures within their respective department/agency and shall insure that all managers, supervisors and department officials comply with these procedures.

B. Annually, all department and agency heads shall issue a written statement of support to their employees for these procedures and shall insure that all managers and supervisors comply with these procedures, and that employees are notified with respect to these procedures.

C. All personnel offices are responsible for the effective administration of these placement procedures, for counseling employees on the provisions of these regulations, and for informing department heads,

managers, supervisors, and employees on the placement requirements.

- D. Affected employees shall be responsible for notifying the respective personnel office of any changes to their employment status i.e., availability, latest address and telephone number, lowest acceptable salary, etc.
- E. The Civil Service Commission shall monitor and enforce compliance of these procedures.

III. ADVANCED PLANNING

Whenever a consolidation, transfer of functions, lack of work or funds, position classification decisions or reduction-in-force occurs within a department or agency, the following actions shall be carried out:

- A. The department/agency head shall immediately inform, in writing, the servicing personnel office of the positions impacted and the number of employees affected. A copy of the notice shall be provided to all other personnel offices within the Executive Branch and to the Civil Service Commission.
- B. Immediately upon receipt of notice, all other personnel offices shall forward the servicing personnel office and the Civil Service Commission a listing of all position vacancies. Position vacancy listings shall continue to be provided on a monthly basis as long as there are employees on the Priority Placement List who have not been matched to appropriate positions.

IV. DURING THE NOTICE PERIOD

- A. The servicing personnel office shall be responsible for the following actions:
 - 1. Obtain from each affected employee a list of positions, but not more than ten, to which they wish to be considered, to include the lowest pay grade acceptable, and a completed application form. Affected employees, in determining this listing, shall be provided a copy of the position vacancy listing.
 - 2. Review applications of employees to determine qualifications to positions identified for consideration.
 - 3. Based on positions identified by affected employees, establish and forward a Priority Placement Listing to all personnel offices for placement assistance.
 - 4. Immediately upon receipt of the Priority Placement Listing, all personnel offices shall freeze all recruitment action and review all vacancies within the respective department(s) for placement assistance, including all classified positions encumbered by unclassified employees appointed on a 120-day basis.

5. An offer of a position vacancy matching the Priority Placement Listing shall be immediately made to the employee and the releasing department will be immediately notified of the placement. A copy of the appointment action shall be submitted to the Civil Service Commission.
 6. If there are more priority placements to be made than there are vacancies, placement shall be based on retention points whereby those employees with the highest retention points shall be given first offer of employment.
 7. In those instances where inadequate position vacancies exist to those position classifications where employees have indicated an interest in but where there are existing positions in the classifications of interest which are filled by temporary unclassified appointments (120-days), the personnel office shall contact the department head where the position(s) exists to inform him that the 120-day appointment(s) shall be terminated in order to place a priority placement eligible.
- B. Qualification Dispute - The gaining personnel office is not authorized to disqualify a priority placement employee without the mutual agreement of the releasing personnel office. Disagreements of qualification of a priority placement employee shall be submitted to the Civil Service Commission.
- C. Priority placement shall not be applicable in those instances where an affected employee is being considered for promotional opportunities to position levels higher than the position held prior to the demotion or reduction-in-force action.

V. AFTER THE NOTICE PERIOD

Notwithstanding any other provision of law or regulation, all personnel offices shall continue to monitor their vacancies and offer priority placement assistance as provided in Section IV of these procedures to affected employees for a period of two years or until such time that affected employees are matched to a position of not less than that prior to demotion or reduction-in-force.

VI. RECORDS AND REPORTS

- A. Each personnel office shall maintain for a 2-year period, an individual folder of each affected employee. The individual folder shall contain the following information.
1. Employee's name
 2. Date(s) of counseling
 3. Position title, pay grade and salary prior to layoff or demotion
 4. Most recent application form
 5. Offers received, accepted or declined
 6. Date removed from the priority placement listing and reason (i.e. acceptance of position, request by employee, etc.)
 7. Current address and phone number
 8. Any additional relevant information.

APPENDIX D

GOVERNMENT OF GUAM HAZARDOUS/ENVIRONMENTAL PAY POLICY & PROCEDURES

PURPOSE

To provide uniform guidelines and requirements for requesting and payment of a hazardous/ environmental duty pay differential to employees of the Government of Guam who perform work which involves exposure to hazardous conditions or physical hardship (environmental) conditions.

STATEMENT OF POLICY

This policy shall be consistent with other applicable provisions established by Public Law 19-19, Occupational Safety and Health Code.

Public Law 19-19 was enacted into law by the Nineteenth Guam Legislature on August 22, 1988. This law mandated the creation of the Guam Occupational Safety and Health Act herein referred as the GOSHA.

Public Law 19-19, §87125. Employees not to be Compelled to Work in Unsafe Conditions. After citation of an unsafe working condition by the Division, no employee may be compelled or in any way coerced to work in an unsafe working condition. Anyone who compels or coerces an employee to do so shall be guilty of a misdemeanor, and, in addition, shall be held personally liable for actual and punitive damages should an employee suffer injury as a result of said unsafe working condition. Civil actions may be brought against such person without reference to the Government Claims Act. No disciplinary action may be brought against an employee who either refuses to work in an unsafe working condition after citation of same by the Division, or who reports an unsafe working condition to either the Safety Officer or the Division Head. Refusal to work in an unsafe working condition after citation of same by the Division, or reporting of an unsafe working condition, shall not be considered in evaluating job performance or be considered as a factor in the promotion or demotion or adverse action of said employee.

All departments, agencies, public corporations, and other public instrumentalities shall take appropriate measures to eliminate or reduce hazardous working conditions. When it is not possible to eliminate or reduce hazardous working conditions, the departments, agencies, public corporations, and other public instrumentalities shall request inspection assistance from the Division of Occupational Safety and Health of the Guam Department of Labor.

The Governor of Guam, in Executive Order 88-9, dated March 22, 1988, declared the policy and commitment of the GOSHA. These are:

- A. Assure every employee of the Government of Guam a safe workplace and healthful working condition free from recognized hazards that are causing or are likely to cause death or serious physical harm;
- B. Preserve its human resources; and
- C. Ensure every department or agency of the Government of Guam complies with all GOSH standards, rules and regulations, including all applicable GOSH standards promulgated by the national consensus standards.

I. AUTHORITY

Section 6304, 4GCA, enacted by Public Law 21-59, Differential Pay:

The Civil Service Commission shall establish and implement uniform differential pay policies.

All statutes, rules, regulations, and policies which are not covered by or inconsistent with the policies set forth herein, are hereby repealed upon establishment of uniform pay policies.

II. SCOPE

This policy shall apply to all employees of the departments and agencies, public corporations and other public instrumentalities of the Government of Guam. Hazardous pay for Corrections Officers and Police Officers will continue to be governed by 4GCA: §6222 Corrections Officers Hazardous Pay, §6224 Police Officers - Hazardous Pay and §6225 Hazardous Duty Positions Identified.

HAZARDOUS/ENVIRONMENTAL PAY POLICY

- A. The Department Head may grant pay differentials in accordance with the Hazardous/Environmental Pay Policy and Procedures to employees who are temporarily exposed to hazardous duty or duty involving physical hardship (environmental) when the following conditions are met:
 - 1. the exposure to hazardous duty or duty involving physical hardship (environmental) is temporary; and
 - 2. the hazardous duty or duty involving physical hardship (environmental) has not been considered in the assignment of the position class to a pay grade; and
 - 3. the hazardous duty is performed by the employee for a minimum of fifteen (15) minutes for each assigned hazardous duty; and
 - 4. subject to GOSH review and certification of the hazardous/environmental duty.

- B. It is the responsibility of the Department or Agency Head to eliminate or reduce to the lowest possible level, all hazards and physical hardships, and implement safe working conditions.
- C. Hazardous/environmental pay shall not be used as an incentive to encourage employees to work in an unsafe place or under unsafe conditions.
- D. In no event shall the Department or Agency Head grant or authorize multiple differential rates of pay to an employee for the same period. In the event the employee performs more than one hazardous or physical hardship (environmental) duty, the highest authorized differential rate shall be used to calculate the differential pay.
- E. The Department Head shall submit a copy of all approved hazardous/environmental pay requests to the Civil Service Commission for post audit review.
- F. Hazardous/Environmental differentials are in addition to an employees's base pay and shall not be used to compute overtime pay, holiday pay, night differential and other pay differential, including paid leave and severance pay.
- G. Approved hazardous/environmental differentials shall be paid within four (4) pay periods from which the performance of hazardous or physical hardship (environmental) duty began.
- H. The assignment of hazardous/environmental duty shall not exclude person(s) with disabilities.
- I. Employees who are not certain (aware) of existing hazardous/environmental conditions may request certification via their appointing authority from the Office of GOSH. Certifications approved by GOSH shall qualify employees for differential pay.
- J. Hazardous duty certifications from the office of GOSH are valid for a period of one (1) year from the date of approval. Requests for an extension is subject to GOSH review, certification and approval.

III. HAZARDOUS/ENVIRONMENTAL PAY REQUEST PROCEDURES

The initial determination of the existence of a temporary, unusually hazardous working condition shall be made by the immediate supervisor of the affected employee. Upon making this determination, the supervisor shall alert the Department or Agency Head, shall request an inspection from the Administrator of the Guam Occupational Safety and Health, Department of Labor, of the identified unusually hazardous working conditions prior to the planned work activity. Whenever pre-work inspections are conducted by GOSH, the following procedures will be followed when a determination of the existence of a temporary, unusually hazardous condition is identified:

- A. The supervisor completes the "Supervisor's Section" of the Hazardous/ Environmental Pay Request Form (Part I). The Hazardous/Environmental Pay Request form and any supporting document is forwarded to the Department or Agency Head for review.
- B. The Department or Agency Head may concur or not concur with the request. The request is then forwarded to GOSH for inspection, investigation and certification.
- C. The GOSH Administrator, Department of Labor, shall determine if the hazardous/environmental or hardship condition exists (Part III).
- D. Upon certification by GOSH, the Department or Agency Head shall forward the approved request to the Payroll office for processing and payment to the employee (Part IV). If not certified, one copy is returned back to the Supervisor with a copy to the Civil Service Commission.

The Department or Agency Head shall notify the immediate supervisor of his/her non-concurrence of the hazardous pay recommendation request within ten (10) working days after receipt of the request.

The **HAZARDOUS/ENVIRONMENTAL PAY REQUEST FORM** is found on page D11.

IV. GUAM OCCUPATIONAL SAFETY AND HEALTH CERTIFICATION

Request for hazardous pay certifications shall be submitted to GOSH at least thirty (30) days prior to the scheduled operations where exposure to hazardous working conditions or hardships are projected.

Requests for certification resulting from unanticipated exposure to hazardous working conditions or physical hardship (environmental) must be submitted to GOSH within ten (10) working days from the start of the hazardous/environmental or hardship condition.

FUNDS CERTIFICATION

The differential pay granted under this policy is subject to certification by the respective department or agency head or designated fiscal officers as to the availability of funds.

**TABLE OF
HAZARDOUS/ENVIRONMENTAL DUTIES**

The following table shall be used by the Department or Agency Head when authorizing pay differentials for employee(s). The allocated percentage shall be calculated by multiplying the employee's hourly rate times the number of hour(s) the hazardous/environmental duty was performed.

CATEGORY OF HAZARDOUS/ENVIRONMENTAL DUTY	DIFFERENTIAL RATE (%)
<p>COLD WORK Working in cold storage or other climate controlled areas where the employee is subjected to temperatures at or below freezing (32 degrees Fahrenheit) where such exposure is not practically eliminated by mechanical equipment or protective devices being used.</p>	4%
<p>HOT WORK A. Working in spaces wherein the employee is subjected to temperatures in excess of 110 degrees Fahrenheit. B. Exposure to burning gasoline/fuel as a result of vehicular accidents/impacts where such exposure is not practically eliminated by mechanical equipment or protective devices being used.</p>	4% 25%
<p>HIGH VOLTAGE ELECTRICAL ENERGY Working on energized electrical lines rated at 4,160 volts or more which are suspended from utility poles or towers, when adverse weather conditions such as steady rain, high winds, lightning, or similar environmental factors make the work unusually hazardous.</p>	50%
<p>EXPLOSIVES INCENDIARIES Working with or in close proximity to any situation where explosives incendiaries are being handled.</p>	
<p>HIGH WORK Working, training, or rappelling from any structure of at least 50 feet above the base level, ground, deck, floor, roof, etc., under open conditions, if the structure is unstable or if scaffolding guards or other suitable protective facilities are not used, or if performed under adverse conditions such as darkness, lightning, steady rain, or high wind velocity.</p>	25% 25%
CATEGORY OF HAZARDOUS/ENVIRONMENTAL DUTY	DIFFERENTIAL RATE (%)

CATEGORY OF HAZARDOUS/ENVIRONMENTAL DUTY	DIFFERENTIAL RATE (%)
MICRO-ORGANISMS	
<p><i>Low Degree Hazard:</i> Working with or in close proximity to micro-organisms in situations for which the nature of the work does not require the individual to be in direct contact with primary containers or organisms pathogenic for man, such as culture flasks, culture test tubes, hypodermic syringes, and similar instruments, and biopsy and autopsy material and wherein the use of safety measures have not practically eliminated the potential for personal injury.</p>	4%
COMMUNICABLE/INFECTIOUS DISEASES	
<p>Assigned to work with or in close proximity to micro-organisms in situations for which the nature of work requires the employee to be in direct contact with communicable/infectious diseases such as tuberculosis, human immune deficiency virus, Hepatitis B, measles, mumps, and other reportable communicable/infectious diseases.</p>	8%
UNDERGROUND WORK	
<p>Work underground performed in the construction of tunnels and shafts, and the inspection of such underground constructions, until the necessary lining of the shaft or tunnel has eliminated the hazard.</p>	25%
WORK IN UNSAFE STRUCTURES	
<p>Work within or immediately adjacent to a building or structure which has been severely damaged by earthquake, fire, typhoon, flood, or similar cause when the structure has been declared unsafe by competent technical authority and when such work is considered necessary for the safety of personnel or recovery of valuable materials or equipment, and the work is authorized by competent authority.</p>	25%
ASBESTOS	
<p>Working in an area where airborne concentrations of asbestos fibers may expose the employee to potential illness or injury and protective devices or safety measures have not practically eliminated the potential for such personal illness or injury.</p>	8%
FIBROUS GLASS WORK	
<p>Working with or in close proximity to fibrous glass materials which results in exposure on the skin, eyes or respiratory system to irritating fibrous glass particles or slivers where exposure is not practically eliminated by the mechanical equipment on preventive devices being used.</p>	6%
CATEGORY OF HAZARDOUS/ENVIRONMENTAL DUTY	DIFFERENTIAL RATE (%)

CATEGORY OF HAZARDOUS/ENVIRONMENTAL DUTY	DIFFERENTIAL RATE (%)
<p>DEEP SEA DIVING AND DANGEROUS SEAS Deep sea diving below 20 feet requiring the use of scuba (underwater breathing apparatus) or working in dangerous water or similar factors which make the work unusually hazardous when such work is considered necessary for the rescue of human lives or the recovery of human bodies; to obtain water samples from the sewage treatment plant outfalls; and to conduct inspection, research and other activities underwater.</p>	25%
<p>LAW ENFORCEMENT When assigned duties that expose the employee to unusually hazardous factors. The differential shall only be applicable during times of exposure.</p>	10%
<p>MENTALLY ILL, EMOTIONALLY DISTURBED AND PSYCHOTIC SUBSTANCE ABUSE DISORDER PATIENTS When confronting or working in close proximity to mentally ill or emotionally disturbed or psychotic substance use disorder patients who are unpredictably, combative or volatile.</p>	10%
<p>GUARDING OF PRISONERS A Uniformed Officer or any employee of the government who performs the duty of guarding prisoners in transit or is otherwise exposed to a life-threatening environment with respect to incarceration of prisoners shall be entitled to hazardous pay for all periods he or she is on such duty. The differential shall be applicable only during time of exposure.</p>	10%
<p>POISONS (TOXIC CHEMICALS) <i>High Degree Hazard:</i> Working with or in close proximity to poisons (toxic chemicals), other than tear gas or similar irritants, which involves potential serious personal injury such as permanent or temporary, partial or complete loss of faculties and/or loss of life including exposure of an unusual degree to toxic chemicals, dust, or fumes of equal toxicity generated in work situations by processes required to perform work assignments wherein protective devices and/or safety measures have been developed but have not practically eliminated the potential for such personal injury.</p>	8%
CATEGORY OF HAZARDOUS/ENVIRONMENTAL DUTY	DIFFERENTIAL RATE (%)

CATEGORY OF HAZARDOUS/ENVIRONMENTAL DUTY	DIFFERENTIAL RATE (%)
<p>EXAMPLES: Handling and storing toxic chemical agents including monitoring of areas to detect presence of vapor or liquid chemical agents; examining of material for signs of leakage or deteriorated material; decontaminating equipment and work sites; work relating to disposal of deteriorated material; (exposure to conjunctivitis, pulmonary edema, blood infection, impairment of the nervous system, possible death).</p> <p>POISONS (TOXIC CHEMICALS) <i>Low Degree Hazard:</i> Working with or in close proximity to poisons (toxic chemicals other than tear gas or similar irritating substances) in situations for which the nature of the work does not require the individual to be in as direct contact with, or exposure to, the more toxic agents as in the case with the work described under high hazard for this class of hazardous agents and wherein protective devices and/or safety measures have not practically eliminated the potential for personal injury.</p>	
<p>EXAMPLES: Handling for shipping, marketing, labeling, hauling, and storing loaded containers or toxic chemical agents that have been monitored.</p>	4%
<p>DIRTY WORK Performing work which subjects the employee to soil of body or clothing:</p> <ol style="list-style-type: none"> Beyond that normally to be expected in performing the duties of the classification; and Where the condition is not adequately alleviated by the mechanical equipment or protective devices being used, or which are readily available, or when such devices are not feasible for use due to health considerations (excessive temperature, asthmatic conditions, etc.): or When the use of mechanical equipment, or protective devices, or protective clothing results in an unusual degree of discomfort. 	4%
<p>NATURAL DISASTERS Working in a hazardous environment such as high velocity wind, darkness and unsafe structure; and exposing employees to hazard duties such as evacuation, search and rescue and damage assessment efforts.</p>	
CATEGORY OF HAZARDOUS/ENVIRONMENTAL DUTY	DIFFERENTIAL RATE (%)

CATEGORY OF HAZARDOUS/ENVIRONMENTAL DUTY	DIFFERENTIAL RATE (%)
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LOW LEVEL AIRCRAFT OPERATIONS

Low-level flights in an aircraft flying at altitudes of 200 feet and under while conducting wildlife surveys and law enforcement activities, animal depredation abatement and making agricultural applications, and conducting or facilitating search and rescue operations; flights in helicopters at low levels involving line inspection, maintenance, erection, or salvage operations.

100%

POLITICAL ACTIVITY

PURPOSE

The purpose of this chapter is to make known the restrictions on political activities to Government of Guam employees.

STATEMENT OF POLICY

It is the policy of the government of Guam to protect employees from political interference on matters of employment.

A. APPLICABILITY

These regulations shall apply to all Government of Guam employees, except that officers and employees of departments receiving Federal funds may be subject to further restrictions in political activities as indicated by the conditions under which the Federal funds are granted. Management and employees of such departments are responsible for seeing that their actions are not in violation of federal requirements.

B. DEFINITION

1. **'EMPLOYEE'** means a person employed in the executive branch of the Government of Guam, including autonomous and semi-autonomous agencies thereof, or in the judicial branch with the following exceptions:

- a. A person holding elective office;
- b. A Special or Staff Assistant to the Governor;
- c. A person appointed by the Governor with the consent of the Legislature;
- d. A person retained from time to time to perform professional or special services for a specific fee; and
- e. A person working on a casual basis on the days he performs no services.

'Employee' includes a person on administrative, annual, or sick leave unless such person has resigned and has received a lump-sum payment for such leave. Subject to (E) above, it includes persons not providing professional services for a specific fee who are hired on temporary, part-time, emergency or casual basis;

2. **'ELECTION'** means any local, primary, general or special election;

3. **'ACTIVITY'** means the independent action of an employee, the action of an employee in open or secret cooperation with others, and the indirect action of an employee through an agent. 'Activity' does not mean the independent action of the husband or wife of an employee, upon his or her own initiative and in his or her own behalf;
4. **'POLITICAL PARTY'** means a national political party, a territorial political party and an affiliated organization;
5. **'PARTISAN'** and **'NON-PARTISAN'** when used as an adjective refers to political parties; and
6. **'CANDIDATE'** means (1) an individual as defined in Subsection (b) of 8101, Title 3 of the Guam Code Annotated; and (2) a candidate for an office in a political party.

C. PERMITTED ACTIVITY

1. Every employee will have the right to freely express his views as a citizen and to cast his vote.
2. An employee may engage in political activity to the fullest extent consistent with the restrictions set forth in Rule 13B, so long as such activity does not materially compromise his efficiency or integrity as an employee or the efficiency or integrity of his department or agency. Each employee specifically retains the right to register and vote in an election and, while not on duty and while not in a uniform identifying him as an employee, to
 - a. Express his opinion as an individual citizen privately and publicly on political issues and candidates;
 - b. Display a political picture, sticker, badge or button;
 - c. Participate in the non-partisan political activities of a civic community, social labor; professional or similar organization;
 - d. Be a member of a political party or other political organization and participate in its activities to the fullest extent consistent with Rule 13B;
 - e. Attend a political convention, rally, fund-raising function or other gathering;
 - f. Sign a political petition as an individual citizen;
 - g. Make, as an individual citizen, a contribution to or expenditure on behalf of a political party or organization or candidate;
 - h. Be free from any obligation to contribute to any political fund or to render any political service;

- i. Participate in political activity in connection with a question not specifically identified with a political party;

EXAMPLE

Soliciting signatures for petition relative to changing working conditions or campaigning for an issue in a referendum; and

- j. Serve as a member of a precinct board or other election official who performs non-partisan duties under this Code.

NOTE: Political activity is subject to CSC advisories issued on prohibited or permitted employee activities.

3. The head of a department of agency may prohibit or limit the participation of an employee of his department of agency in an activity permitted by section C2 of this section if such participation would interfere with the efficient performance of official duties or create a conflict or apparent conflict of interests.

D. PROHIBITED ACTIVITY

1. An employee shall not use his official authority or influence for the purpose of interfering with or affecting the result of an election.
2. An employee shall not participate in activities in connection with political management or a political campaign, except as permitted in Section C. Specific activities in which employees are prohibited from participating include but are not limited to:
 - a. Serving as an officer of a political party, a member of a committee of a political party, an officer or member of a committee of a partisan political organization, or being a nominee for such positions;
 - b. Organizing or reorganizing a political party, partisan political organization, or committee thereof;
 - c. Soliciting, collecting, handling, disbursing, or accounting for assessments, contributions or other funds for a political party, partisan political organization or candidate;
 - d. Organizing, selling tickets to, seeking support for, or actively participating in a fund-raising activity of a political party, partisan political organization or candidate;
 - e. Taking an active part in managing the political campaign of a candidate;

- f. Being a candidate;
- g. Taking an active party in an organized solicitation of votes in support of or in opposition to a candidate, including distributing campaign literature, badges, or buttons;
- h. Acting as recorder, watcher, challenger of similar officer at the polls on behalf of a political party, partisan political organization or candidate;
- i. Driving voters to the polls on behalf of a political party, partisan political organization or candidate;
- j. Endorsing or opposing a candidate in a political advertisement, a broadcast, campaign literature, a letter or article in a newspaper (signed or unsigned), or similar material;
- k. Serving as a delegate, alternate or proxy or a political party convention;
- l. Addressing a convention caucus, rally or similar gathering of a political party in support of or in opposition of a candidate or on a partisan political question;
- m. Initiating or circulating a nominating petition for a candidate;
- n. Discharging, promoting, demoting or changing the compensation of any other employee, or promising or threatening to do so, because said other employee advocates or fails to advocate through contribution, voting or otherwise, a candidate; and
- o. Using government travel allowances, government transportation, government supplies or government facilities for the benefit of any political party, partisan political organization or candidate.

E. ACTIVITIES NOT AFFECTED

Nothing in this Chapter shall preclude the use under a rental agreement of government of Guam facilities by a political party, partisan political organization or candidate.

F. INVESTIGATIONS BY CIVIL SERVICE COMMISSION

When any person has reason to believe that an employee has violated §5103 he shall report the matter to the Civil Service Commission. On receipt of such report or on receipt of such other information which seems to the Commission to warrant an investigation, the Commission shall investigate the matter in accordance with the provisions of the Administration Adjudication Law, Title XXV of the Government Code and the following:

- a. All hearings shall be conducted before the entire Commission; and
- b. The decision of the Commission shall include a determination of whether a violation of §5103 has occurred and whether a violation warrants the removal of the employee from his employment.

G. OTHER RESTRICTIONS

PENALTY. No persons, whether or not an employee, shall solicit or receive a contribution or distribute literature for any political purpose in any room or building occupied in the discharge of official duties by a person employed by the Executive, Legislative or Judicial Branches of the Government of Guam. For purposes of this section, soliciting a contribution includes solicitation by letter or circular addressed to and delivered to an employee in said room or building. Any person who violates this Section is guilty of a misdemeanor.

EQUAL EMPLOYMENT OPPORTUNITY

PURPOSE

To provide for procedures that promulgate equal employment opportunity in employment and prohibit discrimination in employment.

STATEMENT OF POLICY

It is the policy of the government of Guam to provide Equal Employment Opportunity (EEO) in all matters of employment based on merits without regard to race, color, sex, religion, age, national origin, marital status, political affiliation and mental/physical disability.

A. APPLICABILITY

The regulations in this Chapter shall apply to all classified employees and applicants for classified positions. Unclassified employees, excluding agency heads and their deputies, may use the EEO counseling process to resolve complaints of discrimination.

1. *Unclassified coverage*

When the complaint of an unclassified employee can not be resolved informally, counseling should be terminated and the employee with the permission of the agency head, may request an informal hearing before the CSC-EEO Review Board within ten (10) work days from the date counseling ended. Unclassified employees do not have a right to file a formal complaint.

2. *Status of employee*

At any level of the EEO procedure, the employee shall not have his employment status changed. Administrative leave shall be granted to those employees who file their complaint formally or informally.

B. DEFINITION

A discrimination complaint is any allegation against an alleged discriminatory official for applying discriminatory practices in employment.

C. COVERAGE

Complaints based on discrimination are to be based on race, religion, creed, color, sex, national origin, age, disability, marital status, or political affiliation.

D. COUNSELING

1. Complainant contacts EEO counselor within twenty (20) days after becoming aware of the alleged discriminatory action or twenty (20) days after the effective date of a personnel action.

2. Complainant discusses issues of case with the Counselor who will try to resolve the complaint informally within fifteen (15) days. If the complaint involves an adverse action (suspension, dismissal, demotion), Complainant must be advised to follow the adverse action procedures. If it involves a complaint not based on race, religion, creed, color, sex, national origin, age, disability, marital status, or political affiliation, Complainant must be advised of the appropriate complaint procedures.
3. If the complaint is resolved within the fifteen (15) days, counseling is terminated. The Counselor must submit counseling report to the Complainant, the agency EEO Coordinator/Officer and the Civil Service Commission.
4. If the Counselor cannot resolve the problem within fifteen (15) days after the first interview with the Complainant, the Counselor must notify in writing of the right to file a formal complaint of discrimination within five (5) days from receipt of the notice.
5. If the Complainant does not elect to file a formal complaint within the five (5) days, counseling may continue if the Counselor believes and Complainant agrees that informal resolution of the complaint is still possible.
 - a. If the complaint is resolved, counseling is terminated. The Counselor must submit counseling report to the Complainant, EEO Coordinator/ Officer and the Civil Service Commission.
 - b. If the Counselor is reasonably certain that the complaint cannot be resolved to the satisfaction of the Complainant, counseling is terminated and a final interview is held with the Complainant. The Counselor must notify the Complainant in writing of the right to file a formal complaint within five (5) days following the receipt of this final notice.
6. The Complainant files the formal complaint with the Civil Service Commission with copies of the complaint given to the agency EEO Coordinator/Officer.

E. INVESTIGATION

1. The Civil Service Commission will advise the Agency Head and/or the EEO Coordinator/Officer in writing that a formal complaint has been filed by a Complainant no later than three (3) days following the receipt of the formal complaint.
2. The Civil Service Commission will secure the assignment of an EEO Investigator upon receipt of the Counselor's report.
3. Upon assignment, the Investigator has five (5) days to begin investigation. The Investigator has fifteen (15) days to prepare, conduct and submit its report to the Civil Service Commission. Extensions of the investigation period may be granted for reasonable cause.

4. The Civil Service Commission will provide copies of the Investigator's report to the Complainant and Agency Head within five (5) days following receipt of the report. The Agency Head is responsible for providing copies of the report to all the Alleged Discriminatory Officials(ADO) within the agency. At the same time, the Commission will also advise the Complainant in writing of the right to an EEO Review Committee Hearing.

F. EEO REVIEW COMMITTEE HEARING

1. The Complainant has five (5) days following the receipt of the "Notice of Right To An EEO Review Committee Hearing" to file a request with the Civil Service Commission for an EEO Review Committee Hearing. The request must include a suggested list of witnesses the Complainant may wish the Committee to call. The Complainant is also required to supply two (2) 60 -minute cassette tapes.
2. Upon receipt of the Complainant's request, the Commission shall inform the Agency. The Agency has five (5) days following notification to submit a suggested list of witnesses it may wish the Committee to call. It is also required to supply two (2) 60 -minute cassette tapes.
3. The Civil Service Commission will organize an EEO Review Committee upon receipt of the Complainant's request for a Review Committee Hearing. There is no right to legal representation in this proceeding.
4. The EE Review Committee will be composed of three members. The Complainant and the Agency Head (ADO) will each select a member of the Review Committee and the Civil Service Commission will select the third member. The members of the Review are not advocates for either Complainant or Management (ADO) and must maintain impartiality throughout the conduct of the hearing.
5. The EEO Review Committee has twenty-five (25) days to prepare for and conduct the hearing, and to submit its findings and recommendations to the Civil Service Commission. The Civil Service Commission will provide copies to the Agency Head and the Complainant.
6. The EEO Review Committee shall give at least five (5) days notice to both parties and witnesses of the hearing date, time and place.
7. The Agency Head has five (5) days following the receipt of the Review Committee report to accept or reject the Committee's recommendations, and to submit a decision to the Civil Service Commission.
8. The Civil Service Commission will provide the Complainant with the Agency's decision together with a "Notice of Right to A Hearing Before the Civil Service Commission-EEO Review Board."

9. If the Complainant is not satisfied with the decision of the Agency, he has the right to file a request for a hearing before the Civil Service Commission-EEO Review Board.

G. EEO REVIEW BOARD

1. The Complainant has five (5) days following the Receipt of Notice of Right to a Hearing Before the Civil Service Commission-EEO Review Board to request a hearing. The Complainant may amend the basis(race, religion, creed, color, sex, national origin, age, disability, marital status, or political affiliation) once as matter of right at the time of filing. Any amendments thereafter will be at the discretion of the Board.
2. A hearing date will be set upon timely receipt of the Complainant's request.
3. The hearing is formal and involves a new determination of the issues. At this stage the Complainant has the right to be represented by an Attorney and should be prepared for a trial-type hearing.
4. The Civil Service Commission-EEO Review Board will issue a decision within thirty (30) days after the conclusion of the hearing.

Note: "Days" in the discrimination complaint process refers to workdays unless otherwise specified.

APPENDIX G

LEAVE SHARING PROCEDURES

PURPOSE

The purpose of the Leave Sharing Program is to provide assistance to employees who need to take extended period of absence from their employment for personal reasons as defined in this procedure. Absence must be for a minimum of 10 consecutive workdays for medical emergency, and a minimum of five consecutive workdays for other personal reasons.

STATEMENT OF POLICY

It is the policy of the Government of Guam to provide assistance to employees, who need to be absent from their jobs for personal reasons, as defined in this procedure, but have exhausted their earned leave accrual. Through the generosity of other employees, annual or sick leave may be donated to those employees with legitimate needs for extended absence from work, as determined by their appointing authorities and/or the Director of Administration.

A. GLOSSARY

1. **EMPLOYEE.** A person currently employed by the Government of Guam and who is entitled to leave accrual.
2. **FAMILY MEMBER.** Spouse, including a so-called "common law" spouse if such spouse is 18 years old or over, and has cohabited with the employee for at least the last two consecutive years immediately preceding the request for leave donation. Other recognized family members include children and adopted children and their spouses, grandchildren and adopted grandchildren, parents and parents-in-law, in loco parentis, grandparents, brothers and sisters.
3. **LEAVE DONOR.** An employee whose voluntary written request for transfer of leave to a leave recipient is certified and approved by his agency payroll supervisor.
4. **LEAVE RECIPIENT.** A current employee for whom the employing agency has approved an application for extended absence from his employment, and is certified to be eligible to receive leave donated by another employee of the Government of Guam.
5. **PERSONAL REASONS.** For the purpose of this procedure, personal reasons is defined as those defined in "medical emergency" below, adoption of a child, divorce and separation, loss of a family member, cosmetic and voluntary surgery, child care, legal commitments, education, care for family member who is elderly or has a mental or physical disability, and other reasons as determined by the appointing authority and/or Director of Administration.

6. **MEDICAL EMERGENCY.** A medical condition of an employee or a family member that is likely to require an employee's absence from duty for a prolonged period of time and to result in a substantial loss of income to the employee because of unavailability of paid leave.
7. **ANNUAL LEAVE.** For purposes of the Leave Sharing Program, an employee may request annual leave to care for a sick family member and for other personal reasons authorized by this procedure. An employee may also opt to use annual leave in lieu of sick leave for absence because of his illness and other authorized use of sick leave.
8. **SICK LEAVE.** Leave which is authorized for the employee who is incapacitated to perform regular duties or available light duty, due to illness or injury; medical treatment; complications due to pregnancy; childbirth; or when the employee's presence on the job will jeopardize the health of others because of exposure to a contagious disease (requires a quarantine by medical authority).
9. **IN LOCO PARENTIS.** Refers to the situation of an individual who had such responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary.

B. ELIGIBILITY

1. **LEAVE RECIPIENT.** Any employee of the Government of Guam, who has used his appropriate accrual leave (annual, sick, and/or compensatory time off [CTO]), e.g. if employee is requesting sick leave, his sick leave should be used first; if employee is requesting annual leave, his annual leave should be used first before receiving leave donated by another employee. To be eligible for leave donation, the leave recipient shall be absent ten (10) consecutive work days or more for the medical emergency reasons and five (5) consecutive work days or more for other personal reasons, and must meet the criteria for annual or sick leave approval as defined in Rule 8.
2. **LEAVE DONOR.** An employee of any branch of the Government of Guam who has accumulated annual or sick leave in excess of one pay period is eligible to donate leave to another employee in any department or agency. Type of leave donated must meet the criteria for annual or sick leave defined above.

C. VOLUNTARY TRANSFER OF LEAVE

An active employee who has accrued leave balance in excess of one pay period may submit a formal written request to his payroll supervisor to make available for transfer annual or sick leave of a minimum of eight (8) hours at any one time to another named employee authorized to receive leave under this procedure. The employee donating the leave may not request a transfer of an amount

of annual or sick leave that would result in reducing his sick or annual leave balance to less than one pay period.

D. RECEIPT OF SICK/ANNUAL LEAVE

The leave recipient must use his respective personal accrued leave or earned CTO before he may be eligible to use the leave donated by another employee.

E. CONDITIONS FOR APPROVAL OF LEAVE TRANSFER FOR MEDICAL EMERGENCY

An appointing authority may permit an employee of the agency to receive donated leave based on the provisions of this procedure. The appointing authority and/or the Director of Administration will conduct periodic audits on all donated leave transactions processed and approved by agency/department directors and will repeal and take corrective actions on those approved actions which are not in compliance with this procedure. Employees found to have abused or committed fraudulent acts relative to the use of donated leave shall be required to pay back the government for the full amount of his salary paid as a result of the use of the donated leave. Appointing authorities may approve requests for donated leave subject to the following conditions:

1. The employee or a member of his family suffers from a medically certified incapacitation due to illness, injury, impairment, or physical or mental condition which has caused, or is likely to cause, the employee to go on leave for at least ten (10) consecutive work days. An employee who is medically certified to be incapacitated for duty shall use sick leave, and at his option, use a combination of annual leave and/or CTO earned to his credit. However, an employee who needs to care for a family member shall use his annual leave and/or CTO earned and donated annual leave, but not sick leave.
2. The employee's need to be absent from work is certified by a licensed practicing physician.
3. The employee has to exhaust the type of leave, i.e., sick or annual, he is requesting, before the donated leave is used. An employee who is on sick leave status may opt to use annual leave, but should not be required to use annual leave.

Therefore, when the employee's sick leave has been exhausted, the employee may use his annual leave or use donated sick leave, but will not be required to exhaust annual and CTO earned. Similarly, an employee should not have to exhaust his sick leave in order to be eligible for donated annual leave for absence of a personal nature during the duration of the absence.

4. The employee has complied with the agency's policy concerning the request and approval of sick leave, annual leave or CTO.

F. CONDITIONS FOR APPROVAL OF LEAVE TRANSFER FOR OTHER PERSONAL REASONS

The appointing authority may submit a request for leave transfer, for reasons other than "medical emergency," for an employee in his agency. The Executive Manager will review and process all requests for donated leave, for non-medical reasons, on a case by case basis. The following are some of the more common non-medical reasons which employees may use to justify requests for a donated leave. However, these reasons do not in and of themselves become an authorization for personal reasons.

1. Adoption of a child, or to place a child up for adoption.
2. The employee is undergoing divorce or separation proceedings.
3. Loss of a family member.
4. Cosmetic and voluntary surgery.
5. Child care.
6. Legal commitments.
7. Education.
8. To care for an elderly or physically/mentally disabled member of the family.

G. PROCEDURES

It is the responsibility of the employee requesting for donated leave to obtain proper leave authorization from his supervisor and the department/agency head. The approved Leave Application Form (FCN 2-0-1) must be accompanied by the attached request for leave transfer forms (medical emergency and other personal reasons), endorsed by the donating employee, payroll supervisor and the appointing authority. The following officials are authorized to give final approval for leave transfer requests based on personal reasons:

1. Appointing authority of the recipient employee may approve all requests for medical emergency, subject to audit and repeal by the Director of Administration upon finding of non-compliance to established policy and procedures.
2. The Executive Manager has the final approval authority for all leave transfer requests submitted by the appointing authority of the recipient employee for all other personal reasons authorized by this procedure.
3. The payroll supervisor of both donor and recipient must ensure appropriate action is taken to accommodate the request in a timely manner.

All salary payments made to an employee while on leave transferred under this procedure shall be made by the agency/department employing the person receiving the leave. The leave recipient will continue to accrue annual and sick leave for as long as he is on a pay status.

Any leave transferred under this procedure for a specific request which remains unused shall be returned to the leave donor. Any employee who needs additional time off for reasons authorized by this procedure may submit a new request for leave donation. All approved requests for leave transfers will be used for one time only.

H. LIMITATIONS

Transfers of leave are subject to the following restrictions:

1. No transfer may be made by any employee to his or her supervisor or to any person above him or her in the supervisory chain, or to a member of the supervisor's or such supervisory person's immediate family.
2. Leave may not be transferred to another employee if, as leave recipient, he intends to use it for credit towards retirement or accumulated leave.
3. Donated leave shall not be converted to cash or retirement credit by the leave recipient.
4. Annual or sick leave donated by an employee is understood to be a donation and shall not be sold or loaned to the recipient.
5. No employee shall directly or indirectly intimidate, threaten, coerce, or attempt to intimidate, threaten, or coerce any other employee for the purpose of interfering with the employee's right to voluntarily contribute leave when authorized under this procedure. For the purpose of this procedure, "intimidate, threaten, or coerce" shall include, without being limited to, the promise to confer or the conferring of any benefit or effecting or threatening to effect any reprisal.

EMPLOYEE FURLOUGH PROCEDURES

PURPOSE

To establish Furlough procedures as an option for the government of Guam to cut administrative costs and continue to provide vital public service to the people of Guam. In addition, furlough procedures shall be administered and coordinated with procedures for employee layoff, priority placement, outside employment, and leave without pay policy. The appointing authority and/or the Director of Administration may revise, change or add to the following policy and procedure, as appropriate, subject to the review of CSC.

STATEMENT OF POLICY

It is the policy of the government of Guam to resort to employee furlough, when necessary, to avoid layoff of employees and to ensure that the government meets its commitment to the people of Guam in the areas of education, health, safety, and other vital services. This procedure will be used only after all other efforts have been explored by departments and agencies to cut operating costs. The appointing authority and/or the Director of Administration make the final approval on all furlough.

A. *DEFINITION*

A furlough action is the placement of an employee in a temporary non-duty and non-pay status on a continuous basis (for example 10 consecutive days), or a noncontinuous basis (for example one day a week). A furlough is not a layoff or reduction in-force action.

B. *REASONS FOR FURLOUGH*

Furlough is caused by any one of the following reasons:

1. Lack of work.
2. Shortage of funds.
3. Insufficient personnel authorization.
4. Reorganization.
5. Reclassification of an employee's position due to erosion of duties when such action will take effect after a formal announcement of a reduction in force.

C. *TIME LIMIT*

Departments/agencies may furlough an employee for a period of time listed below:

1. One to thirty (1 to 30) consecutive days on a continuous basis, or 22 work days if done on a noncontinuous basis.

2. More than 30 consecutive days or more than 22 work days to a maximum of one year. The one year limit begins the day after the notice period ends and when the furlough begins.

D. *VOLUNTARY FURLOUGH*

Employees who are interested in taking leave of absence without pay will be encouraged to voluntarily apply for a furlough. This opportunity is especially beneficial to employees who have outside part-time employment. Employees who volunteer for furlough, for a period not to exceed one year, will be allowed to work increased hours at their outside employment without regard to the scheduled hours of work with the government.

E. *INVOLUNTARY FURLOUGH*

Where budget constraints are crucial, the director may resort to involuntary furloughs after it has been decided that the voluntary furlough will still not meet the necessary cost reduction. Furloughed employees shall be furloughed based on retention points for the time limits authorized above will be used to the maximum extent possible in order to reduce the necessity for layoffs. Departments and agencies having exclusive bargaining units must work with the employee unions to explore all avenues to avert layoffs, and obtain their support for this option.

F. *RESTRICTIONS*

A department or agency may not:

1. Furlough any employee it does not intend to recall to duty in the same position within one year; or
2. Separate an employee through layoff while an employee with lower retention points in the same competitive level is on furlough.

G. *FURLOUGH IMPACT ON EMPLOYMENT BENEFITS*

Employees on furlough, voluntary or involuntary, will be covered for health benefits based on the following conditions:

1. The government will pay for both government and employee contributions only when the employee is certified to have no family income during the period of furlough.
2. Employees with some form of income (e.g., spouse's income, part-time or full-time job, etc.) during the furlough period will be required to pay for the employee's contribution portion only, of the health plan premium.

Employees who wish to continue their life insurance benefits will be required to pay for the premium for supplemental plans only. The employee will continue to be fully covered for the basic life insurance while on furlough.

H. ***FURLOUGH RETENTION RIGHTS***

1. **Release by Furlough.** The action to release an employee scheduled for a furlough must be consistent with established layoff procedures. A department/agency may furlough an employee under the layoff provisions only if the employee has no right of assignment, or refuses an offer of assignment. A furloughed employee who accepts another offer of assignment becomes the incumbent of the offered position unless the employee accepts an offer of recall to the position from which furloughed.
2. **Assignment Rights.** In determining whether a furloughed employee has assignment rights to another position, it is important for the department/agency to consider whether the offer would result in undue interruption to the organization. Since a furlough anticipates an employee's recall to the same position, the agency should consider whether undue interruption would result from the displacement of a lower-standing employee and from the recall of both employees to their positions of record at the end of the furlough period. The assignment right does not apply when all employees in the department/agency are furloughed at the same time or on the same basis. For example, if all employees in the Department of Administration were furloughed one day a week (either the same day or different days) on a noncontinuous basis for 28 weeks, none of the employees would have a right of assignment to another position. If only some of the employees were furloughed one day a week for 28 weeks and other employees were not furloughed, the furloughed employees would have a right of assignment to positions held by employees with lower retention standing and not affected by the furlough only if there was no undue interruption.

I. ***RECALL FROM FURLOUGH***

If all employees furloughed from a competitive level cannot be recalled at the same time, the employees must be recalled according to their retention points beginning with the highest-standing employee.

J. ***SEPARATION IN LIEU OF RECALL***

1. **No Recall.** If the situation changes and a department/agency determines that a furloughed employee cannot be recalled within the one year period, the employee must be separated unless the employee accepted an offer of assignment to another position. If some but not all furloughed employees in a competitive level must be separated, employees are selected for separation by retention standing points beginning with the lowest-standing employee. A new layoff notice of separation must be given to the furloughed employee at least 60 days prior to the end of the one-year furlough period. The separation of a furloughed employee is a new layoff action. Separated

employees are entitled to the same rights as those employees separated through regular layoff procedures.

2. **Failure to Return.** If a furloughed employee refuses or does not respond to a notice to return to duty, the department/ agency may separate the employee by layoff effective on the specified date of recall. A new layoff notice of separation is not required.

K. ***PROCEDURES***

The appointing authority and/or the Director of Administration approve the authorization to conduct a furlough within six (6) months of the proposed furlough. The authorization must specify the reason for the furlough, the number of employees and/or positions to be affected, and the duration of the furlough. After approval, the following procedure applies:

1. A written 90-day notice that a furlough is planned must be issued to all employees (whether or not identified for furlough) in the department/agency. The notice must include the following information:
 - a. The date the furlough will commence.
 - b. The period of furlough (i.e., 1-30 days continuous, 22 or more days non-continuous, or a maximum of one year).
 - c. Employees may volunteer to be furloughed.
 - d. Loss of some employment benefits for furloughed employees.
 - e. Employees under furlough are not restricted from seeking other employment during the furlough period. Those employees who already have part-time jobs while employed with the government, may opt to increase their hours of work up to a full-time basis during the furlough period.
 - f. Furloughed employees must report to work when recalled to duty.
 - g. Furlough will be conducted in accordance with employees' retention standing points.
 - h. Furloughed employees have the right to appeal to the Civil Service Commission.
2. Encourage the use of voluntary furlough to the maximum extent possible before implementing involuntary furlough.
3. Coordinate with the Department of Administration, Division of Personnel Management, with regard to the feasibility of assigning employees reached for furlough to ensure fairness in

the assignment and that the furlough poses no unnecessary disruption to the agency's/department's mission.

4. Those employees who cannot be assigned to other positions within the department/agency will receive written "Notice of Furlough". This final (or second notice) will again include the same information as the first notice. In addition, the furloughed employee shall be:
 - a. Encouraged to continue his insurance coverage by personally paying for the premiums.
 - b. Informed that his name will be retained in a "recall list" for one year, and must keep current address and telephone number at the Personnel Office.
 - c. That if he fails to provide a current home address on record with the personnel office, will lose recall rights.
 - d. Informed that he must respond to the recall notice within seven (7) days of receipt or its attempted delivery, or lose his rights for reemployment.
 - e. Notified that he must inform the agency/department or Personnel Office if he becomes unavailable for recall.
 - f. Provided appeal rights to the Civil Service Commission.

L. *RECALL*

Employees will be recalled according to need, classification, or ability to do the job based on retention standing points. The recall notice will be sent registered mail, return receipt requested, to the current home address furnished by the employee.

Returning employees will be paid the same salary as before they were furloughed. Any unused sick leave or annual leave accrued prior to the furlough will be reinstated. All employment benefits will be restored at the same rate as before the furlough.