

**A. B. Won Pat**  
**Guam International Airport Authority**



**Personnel Rules and Regulations**

Promulgated July 29, 1998



A.B. Won Pat

(ATURIDAT PUETTON BATKON AIREN GUAHAN ENTENASIONAT)  
GUAM INTERNATIONAL AIRPORT AUTHORITY

## FOREWORD

The A.B. Won Pat Guam International Airport Authority's Personnel Rules and Regulations was last promulgated in 1978. Since then, numerous laws and policies affecting personnel management within the government of Guam have been enacted or adopted. These revisions include many, if not all, these changes and improvement which have occurred in the last two decades.

These rules will be utilized as the basis for guiding personnel principles to ensure fair treatment of applicants and employees in all aspects of personnel administration without regard to race, color, religion, sex, national origin, political affiliation, or other non-merit factors. These rules govern your rights, conduct, and obligations as employees as well as the responsibilities and actions of management.

It is important that each employee review and understand these rules. Please be especially mindful of the new Code of Ethics found in Chapter 3 that will help us to be the best public servants. Be mindful also of current issues relative to our Drug-Free Workplace Program and the revised On-the-Job Injury Policy, amongst others.

Sincerely,

PILAR C. LUJAN

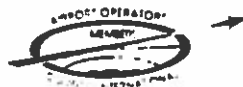
Chairman, GIAA Board of Directors

GERALD P. YINGLING

Executive Manager

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## CHAPTER 1

# PURPOSE AND SCOPE OF PERSONNEL RULES AND REGULATIONS

### STATEMENT OF POLICY

It is the policy of the Board of Directors, hereinafter referred to as "Board", of the A.B. Won Pat Guam International Airport Authority, hereinafter referred to as "Authority", to set forth the fundamental character of the system of personnel administration governed by these rules and regulations, consistent with merit principles and the principles of Equal Employment Opportunity; provisions of Title 4 of the Guam Code Annotated; and other laws pertaining to employment in the Authority. These rules and regulations are adopted pursuant to Section 1112 (Title 12) and Section 4105 and 4106 (Title 4) of the Guam Code Annotated.

### 1.000 COVERAGE

- A. These rules shall apply to all employees occupying classified positions employed by the Authority.
- B. Unclassified employees occupying unclassified positions are not governed by these rules and regulations, unless otherwise identified.
- C. These rules and regulations may be supplemented by administrative policies and procedures established by the Executive Manager.

### 1.100 GUIDING PERSONNEL PRINCIPLES

The following merit system principles shall guide personnel administration:

- A. recruiting, selecting applicants and advancing employees on the basis of their knowledge, abilities, and skills;
- B. providing a uniform compensation policy;
- C. training employees to improve performance;
- D. retaining employees based on performance;
- E. classifying positions systematically through job evaluation; and



- F. providing fair, expedient, and responsive processes for grievance, adverse action, and conflict resolution.

## **1.200 EQUAL EMPLOYMENT OPPORTUNITY**

- A. It is the policy of the Board that there shall be no discrimination in employment against any person on the basis of race, color, sex, religion, national origin, age, creed, marital status, disability, or political affiliation, except for bona fide occupational qualifications or legal requirements.

\* Sex discrimination includes Sexual Harassment

- B. The Executive Manager will design and develop Equal Employment Opportunity (EEO) programs pursuant to the guidelines of the Civil Service Commission.
- C. The EEO program calls for positive results-oriented action toward equal opportunity. Affirmative efforts will be made by the Executive Manager to assure equal opportunity in employment and to assure non-discrimination in programs and activities offered and/or conducted by the Authority.
- D. In order that this EEO program becomes a management objective, the Executive Manager and all levels of management, which includes first line supervisors, will continue to be trained in the legal requirements of equal employment opportunity.

## **1.300 PENALTIES**

Any penalty imposed on any employee for violation of these rules shall be in accordance with the applicable rules and regulations and statutes.

## **1.400 GENDER**

Words used in the masculine gender include the feminine.

## **1.500 CIVIL SERVICE COMMISSION**

Nothing in these rules and regulations is intended to limit or deprive the Civil Service Commission of jurisdiction or authority vested by the Organic Act or the laws of Guam.

## **1.600 STATUTORY CONFLICT**

In the event any of these rules or regulations is in conflict with statute, the statute shall prevail to the extent of the inconsistency.

## **1.700 SEVERABILITY**

If any part of these personnel rules and regulations are held to be inorganic then the remaining personnel rules and regulations shall continue in force and effect.

## CHAPTER 2

# ADMINISTRATION

### STATEMENT OF POLICY

This policy sets forth the responsibilities of the Executive Manager in the implementation of Title 4 of the Guam Code Annotated; these Personnel Rules and Regulations; Section 1107 of Title 12 of the Guam Code Annotated; and other laws.

### 2.000 RESPONSIBILITY OF THE EXECUTIVE MANAGER

- A. The provisions of Title 4 of the Guam Code Annotated and these Rules and Regulations and other applicable statutes shall control personnel administration in the Authority.
- B. The Executive Manager shall:
  - 1. be responsible for the enforcement of these Personnel Rules and Regulations and other applicable statutes.
  - 2. advise the Governor, the Board and the Civil Service Commission on policies and procedures concerning personnel management matters.
  - 3. maintain an adequate system of review to ensure that statutes, executive orders, rules, regulations, policies and standards relating to personnel management are properly executed. Whenever this review of established policies, rules, regulations and standards, reveals that there have been infractions, the Executive Manager shall take such actions as may be appropriate to obtain compliance therewith.
  - 4. exercise and provide leadership in personnel matters.
  - 5. develop and promulgate policies, rules, regulations and standards to promote the efficiency of services offered and/or conducted by the Authority.
  - 6. maintain complete employment records of all personnel under the jurisdiction of the Authority.
  - 7. maintain the position classification and pay plan.

8. carry out such other personnel administration activities as are necessary to assure the promotion of merit-based personnel systems.
9. provide for initial and periodic orientation to all employees concerning the provisions of these rules and regulations, and the training of all supervisors and managers in their specific responsibilities for advising employees on requirements and provisions of these rules and regulations.
10. assure that each supervisor and managers is provided a copy of these rules and regulations and any subsequent changes.
11. assure that each employee is provided a copy of the Authority's Employee Handbook.

## CHAPTER 3

# CODE OF CONDUCT

### STATEMENT OF POLICY

It is the policy of the Executive Manager to maintain the highest standards of conduct of employees to ensure that services offered and/or conducted by the Authority are properly administered.

### 3.000 ETHICAL CONDUCT AND RESPONSIBILITIES OF EMPLOYEES

- A. Public service is a public trust. Employees are expected to be loyal to the U.S. Constitution, the Organic Act of Guam, and to perform their duties and responsibilities ethically and in accordance with laws.
- B. Employees shall not hold financial interests that conflict with the conscientious performance of duty
- C. Employees shall not engage in financial transactions using confidential or non-public information or allow the improper use of such information to further any private interest
- D. An employee shall not, except as permitted by statute or regulation, solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the Authority, or persons whose interests may be substantially affected by the performance or non-performance of the employee's duties or that of the Authority.
- E. Employees shall put forth honest effort in the performance of their duties.
- F. Employees shall not knowingly make unauthorized commitments or promises of any kind purporting to bind the Authority.
- G. Employees shall not use public office for private gain.
- H. Employees shall protect and conserve Authority property and shall not use it for other than authorized activities.
- I. Employees shall not engage in unauthorized outside employment or

activities, including seeking or negotiating for employment that conflict with official duties and responsibilities.

- J. Employees shall, in good faith, disclose waste and abuse and corruption to the appropriate authorities, and in doing so shall be protected from reprisal.
- K. Employees shall respect the rights and privacy of other employees and never use their position, authority or other means, to injure another person or employee for personal reasons or malicious purposes.
- L. Employees shall refrain from the unlawful use of drugs and alcohol. Drugs shall mean those drugs identified in the Drug-Free Workplace Program Operating Procedures (DFWPOP).
- M. Employees shall be courteous and helpful to clients and members of the public.
- N. Employees shall be courteous to other employees and respect supervisory authority.

### **3.100 OATH OF OFFICE**

All persons employed by the Authority or accepting employment with the Authority shall subscribe and certify to the prescribed loyalty oath. This oath may be administered by the Executive Manager or the officers, or employees designated by him at the time of employment processing. Failure to take such oath, or certifying falsely to such oath, shall be cause for disciplinary action, dismissal or rescindment of employment offer.

### **3.200 NEPOTISM**

- A. Spouses and persons within the first degree of relation such as brother/sister or parent/child may not be employed in the Authority in a direct supervisor-subordinate relationship. Exception to this rule may be made when it is for the good of the service and upon the approval of the Civil Service Commission.
- B. No spouse of the Executive Manager may be employed in the Authority.
- C. Whenever there are already two or more members of an immediate family in the public service under the same department of any branch of the Government, no other members of such family shall

be eligible to appointment to any such department; provided, however, that such prohibition shall not apply to employees in the medical, para-medical or teaching professions. As used in this Section, immediate family means a collective body of persons living together in one home under one head.

## CHAPTER 4

# FILLING POSITIONS IN THE AUTHORITY

### STATEMENT OF POLICY

This policy implements a system of recruitment and selection of employees in accordance with Merit System principles and Equal Employment Opportunity guidelines.

### 4.000 APPOINTMENT THROUGH THE MERIT SYSTEM

#### 4.001 Recruitment and Examinations

Recruitment of persons for employment in the classified service shall be accomplished consistent with the merit principles of recruiting, selecting applicants and advancing employees on the basis of their relative knowledge, ability and skill.

#### 4.002 Filling of Vacancies

A. No person shall be appointed to or employed in, or paid for service in any classified position until that position has been established, funded, and allocated to its proper class by the Executive Manager. Nor shall any person be allowed to begin work before such person submits an employment application, is placed on an eligibility list as "eligible" for the position applied for and is certified, selected, and processed by competitive examination. At a minimum, this applies to all original, initial and promotional appointments. Exception to the establishment and certification requirement may be made for reemployment, transfers, demotions, and temporary appointments consistent with these rules.

B. Competitive examinations shall also apply to the following:

1. demotion to a position with known promotional potential within a class series;
2. transfer to a position with known promotion potential within a class series;
3. reinstatement or reemployment to a position with known promotion potential within a class series; or



4. appointments to positions with known promotion potential within a class series.

C. Applicants selected for and offered employment with the Authority shall undergo and pass a mandatory drug test before being employed. Failure to submit to, or pass such drug test shall be grounds for rescinding the offer of employment, unless the applicant is undergoing treatment through a rehabilitation program approved or recognized by the Department of Mental Health and Substance Abuse, in which case the applicant must successfully complete the program within the prescribed time before being employed.

**NOTE:** Employees selected for Testing Designated Positions (TDP's) will be tested as provided in the Drug Free Workplace Program Operating Procedures.

#### **4.003 Maintenance of List of Authorized Positions**

A. The Executive Manager shall maintain a list of authorized positions for each division within the Authority, showing by class of positions those that have been established and the current status of the positions. No change in the numbers of authorized positions on such list shall be made, except upon approval of the Board.

B. The procedure for authorizing additional positions shall be as prescribed by the Governor or by statute. The Authority may not employ more employees than the number of authorized positions within its Full-Time Equivalency (FTE) ceiling except as authorized by law as follows:

1. Part-time employees may be counted as a fraction which is determined by dividing 40 hours into the average number of hours of such employees' regularly scheduled workweek.

2. The number of employees in the Authority may be increased beyond the number authorized for a period of no longer than 90 days in the event Guam is declared to be in a condition of disaster or emergency by the Governor or by the President of the United States.

#### **4.004 Certification From Eligibility Lists**

All original appointments or initial appointments to positions in the Authority shall be made through certifications from eligibility lists resulting from open competitive examinations except as otherwise provided by statute and these rules. Certifications will also be made for selections covered under the Merit Career Plan.

## **4.100 RECRUITMENT**

### **4.101 Announcement of Recruitment and Examination**

- A. Whenever there is a need to establish a list of eligibles, the Executive Manager shall publish and disseminate announcements of recruitment and examination on an Authority-wide, Government-wide, and/or Open competitive basis, and shall cause such announcements to be posted throughout the Authority and departments and agencies of the government. Other methods for announcing examinations may be used at the discretion of the Executive Manager so as to better disseminate information to employees and the public.
1. Authority-wide competitive examinations shall be held to allow all interested and qualified permanent status employees occupying a classified position within the Authority the opportunity to compete for vacant positions within the Authority.
  2. Government-wide competitive examinations shall be held to allow all interested and qualified permanent status employees occupying a classified position within the government the opportunity to compete for vacant positions in the Authority. Government-wide competitive examinations may be held when, in the judgement of the Executive Manager, there are insufficient in-house qualified persons for adequate competition and adequate flexibility of selection.
  3. Open competitive examinations shall be held to allow all interested and qualified persons or employees to compete for vacancies within the Authority. Open competitive examinations may be held when, in the judgement of the Executive Manager, there are insufficient qualified applicants within the government for adequate competition and adequate flexibility of selection. Recruitment for positions of a managerial nature

ultimately responsible for the operational or conceptual integration or coordination of activities shall be made only through open competitive announcements.

- B. Open competitive examinations may be re-announced when it is determined by the Executive Manager that there are less than five individuals meeting the qualifications for the class available.

#### **4.102 Maintenance of Distribution Lists**

The Executive Manager shall establish and maintain distribution lists of public and private agencies or groups, by occupation or other appropriate categories, and shall disseminate to prospective applicants appropriate examination announcements or other information regarding prospective examinations.

#### **4.103 Content of Recruitment and Examination Announcements**

Each recruitment and examination announcement for an original appointment or a promotion shall contain the title of the class, applicable pay grade, selective certification when applicable, division and section (if area of consideration is other than "open"), area of consideration, character of the duties and responsibilities and examples thereof, closing date and place for filing applications, minimum qualifications for entry into the position and other information deemed necessary by the Executive Manager. The Executive Manager, in making appointments other than from an eligibility list, for example by transfer, demotion, or reinstatement, shall be bound by minimum qualification requirements set forth in such announcement.

#### **4.104 Minimum Period of Recruitment**

- A. Job announcements shall be posted for at least 10 working days.
- B. The Executive Manager may post job announcements on a continuous basis. Notice of the final closing of such announcement shall be posted at the Authority and sent to other departments and agencies at least one week prior to the final closing date for receipt of applications.
- C. The Executive Manager may extend the period for receipt of applications. Announcement of such extension shall be

posted at the Authority and disseminated to other departments and agencies for posting.

#### **4.105 The Application Form**

- A. The Executive Manager shall prescribe a form to be used by applicants which shall require information covering experience, training, and other pertinent data indicated as being necessary in the examination announcement. Applications shall be signed and the truth of all statements therein certified to by such signature.
- B. The Executive Manager or his designate may not make any pre-employment inquiry about a disability, or about the nature or severity of a disability on application forms, job interviews, or in background or reference checks.
- C. Medical information received on an employee as a result of an employment requirement shall be filed separate and apart from the employee's active personnel records.

#### **4.106 Acceptance of Applications**

- A. Applications for competitive examinations shall be accepted only during the filing period specified in the examination announcement. All applications submitted shall be date stamped to indicate the date received.
- B. Applications submitted by mail must be postmarked by midnight of the announced last day for filing applications in order to be accepted.
- C. Late applications for competitive examinations may be accepted if the examination has not been administered and an eligibility list established; provided that the late filer is a government of Guam employee who can establish to the satisfaction of the Executive Manager that he was unaware of the job announcement or unable to file a job application due to factors beyond his control (i.e. official off-island training, on extended annual or sick leave, etc.).

#### **4.107 Evaluation of Applications**

- A. Two months after the closing date of the position announcement, an eligibility list shall be established. Failure

to establish an eligibility list within two months of the closing date will require that the position be re-announced with a new closing date and that all applications previously received shall be re-stamped and re-accepted to coincide with the new announcement period.

- B. The closing date of the announcement shall be the ending date to credit the job applicant's education, experience and training for the position applied for. For continuous job announcements the ending date to credit the job applicant's education, experience and training shall be the date of application.

#### **4.108 Rejection of Applicants**

The Executive Manager shall not be required to accept applications or, after acceptance and evaluation, establish an applicant as eligible on an eligibility list or allow an applicant admission to an examination when any of the following conditions exists:

- A. Conviction of a crime within seven years from the date of application which bears a nexus to the position applied for, unless otherwise required by statute.
- B. Refusal or failure to furnish documents required to verify any statements made in the application.
- C. Intentional false statements or deception or fraud in the application process.
- D. Failure to attest to the accuracy of information presented on the application form.
- E. Failure to submit an application within the announcement period (with exception of 4.106B and 4.106C).

When such finding is made, the Executive Manager shall reject the application and promptly notify the applicant of such action.

#### **4.109 Notification of Rejection of Applicants**

- A. A rejected applicant shall be notified promptly of such action and the reasons for rejection within 10 workdays of the rejection.

- B. Whenever an application has been rejected prior to a scheduled examination (assembled), notice thereof, with the reason or reasons for such rejection, shall be given in sufficient time to permit the applicant to respond in writing or to amend an incomplete or defective application at least three days before the date of the examination. If insufficient time is available for this purpose, the applicant may be admitted to the examination with the condition that the applicant shall not be certified as eligible until all the established requirements for eligibility are met.

## **4.200 EXAMINATIONS**

### **4.201 Scope and Character of Examinations**

- A. Competitive examinations shall be held for original appointments and promotions and shall be job-related in nature and designed to reveal the capacity and fitness of the applicant to satisfactorily perform the characteristic duties of the class or position for which the examination is held.
- B. Any accepted personnel examining technique may be used, including a verification and evaluation of education, training and experience; tests of knowledge, skill, ability, intelligence or aptitude; medical examinations, appraisals of personal suitability; and any other matter that the Executive Manager deems appropriate.
- C. All examinations shall be either or both:
  - 1. Assembled, wherein the applicants assemble in a designated place at a specified time to take written, oral or performance tests pertinent to the position(s) sought; or
  - 2. Unassembled, wherein interested persons responding to an examination announcement, submit to designated places and by designated times, their records of education, training, experience, and such other information as requested in the announcement to be evaluated and rated by a qualified analyst or by a board of rating examiners.

### **4.202 Parts of Examination**

- A. The parts of total examination may consist, in various combinations, of such selection devices as work sample and performance tests, written tests, individual or group oral examinations, assessment center exams, medical examinations, rating of training and experience, and background and reference inquiries. Examination parts will be appropriately weighed.
- B. An applicant for any examination must pass all parts of that examination in order to qualify for appointment to a position.

#### **4.203 Education and Experience**

If education and experience form a part of the total examination, the Executive Manager shall determine a procedure for the evaluation of the education and experience qualifications of the various applicants. The formula used in appraisal shall give regard to recency and quality as well as quantity of experience and to the pertinency of the education. This procedure should allow for the substitution of education for experience and experience for education within the limits stated in the class specifications.

#### **4.204 Development and Validation of Tests**

Tests for each examination shall be developed and validated in compliance with equal employment opportunity objectives and merit principles, and in accordance with professionally approved validation strategies such as content, criterion-related or construct validation where it is technically feasible.

#### **4.205 Admission to Compete in Assembled Examinations**

Persons submitting applications during the period specified in the examination announcement shall be admitted to compete in the examination provided it is clearly shown that requirements for admission are met. Where doubt exists as to whether or not the applicant meets the minimum requirements for admission to the examination, the Executive Manager may authorize conditional admission. Such action shall not be construed as entitling the applicant to certification or appointment until such condition admission has been confirmed by the Executive Manager. Person admitted to take an examination must provide a valid document verifying their identity.

#### **4.206 Conduct of Examinations**

- A. Examinations shall be held at such time and place which is most practical and meets the need of the service and shall be administered by an authorized representative designated by the Executive Manager.
- B. If an assembled examination is to be administered, qualified applicants shall be notified of the date, time and place of the examination. The Executive Manager shall not be responsible if a notice is lost or delayed in the mail or sent to an applicant's former address through failure of the applicant to inform the Authority of a change of address.
- C. No applicant shall be entitled to take an examination at a date, time or place other than that stated in his notification except as the Executive Manager may authorize.
- D. All applicants for examinations involving physical ability or performance tests may be required to sign a waiver of liability.
- E. All reasonable precautions shall be taken to protect the confidentiality of information about applicants.
- F. Applicants with disabilities shall be given reasonable accommodation in the administration of tests.

**4.207 Assembled Examinations for Closed and Continuous Announcements**

- A. For announcements having a specific closing date, closed announcements, an examination shall not be administered until after the closing date and until such time all applications have been evaluated. Applicants applying under a closed announcement may take the required examination only once and only one eligibility list established.
- B. For continuous announcements, the following provisions shall prevail:
  - 1. No examination shall be administered until 10 work days after the date of the announcement.
  - 2. Candidates who failed an examination may retake the same examination after 30 days have lapsed. Exceptions to this rule may apply when the Executive Manager has certified that there are less than five eligibles for each vacancy in a given class of position.



3. An applicant who has passed all parts of an examination for a particular position and who requests to retake the examination for the purpose of upgrading his final earned rating, may retake the examination provided that 30 days have elapsed since his last examination, and provided that the announcement has not been closed. The higher score shall be used to determine the final earned rating.
4. When a closing date is announced, only one final eligibility list shall be established and no examinations shall be administered thereafter.

#### **4.208 Rating of Examinations**

- A. Appropriate psychometrics and measurement techniques and procedures shall be used in evaluating the results of examinations and in determining the minimum rating by which eligibility may be achieved and the relative rank of candidates.
- B. The Executive Manager shall set the minimum ratings for each part of an examination and all candidates shall be required to obtain the set minimum passing score for each part of the examination in order to proceed to each successive test and in order to receive a final passing rating. The final earned rating of each applicant shall be determined by combining the earned ratings of each part of the examination in accordance with the weights established for each part.

#### **4.209 Notification of Examination Results**

Each applicant who participates in an examination shall be given written notice, in person or by mail, of his examination results. The record of ratings, as well as examination papers, shall be held as official records for the life of the resulting eligibility list.

#### **4.210 Inspection of Written Examination Papers**

The Executive Manager shall, upon request of a candidate, authorize such candidate to inspect his own written examination papers within 30 days of the date of examination in the presence of an authorized representative, except that when a candidate is scheduled to retake the same examination, inspection shall not be allowed more than five days prior to the exam date. The privilege of inspection shall not be deemed to include authorization to copy examination papers or to inspect or to copy examination

instructions, questions or answers.

**4.211 Administrative Review of Examination Rating**

An applicant may request administrative review of his rating assigned in an examination by submitting to the Executive Manager in writing, information to substantiate his request within 10 work days following the date his examination notice was postmarked. Certification of eligibles is authorized only after the administrative review period has elapsed.

**4.212 Changes in Rating**

- A. Changes in rating may be made as a result of a discovery of errors in the rating or scoring process, or as a result of an administrative review wherein the facts warrant a change.
- B. Rating errors may be corrected throughout the life of the eligibility list.
- C. Any such changes shall be reported to the applicants affected.
- D. Changes in rating generally will not affect a certification already issued or invalidate an appointment already made from the eligibility list.

**4.213 Duration of Examination Ratings**

Examination ratings are good only for the life of the eligibility list and shall not be carried over to a new eligibility list for the same position after a period of one year.

Exceptions to this rule shall apply when minimum qualifications are amended or when written, oral or performance examinations are likewise amended. In this event, the existing eligibility list will be invalidated and candidates must take and pass any and all new examinations, both assembled and unassembled, in order to remain eligible for certification.

**4.214 Security of Tests**

Examination questions shall, at all times, be maintained under conditions affording maximum security. All precautions to safeguard the confidential nature of examination materials shall be taken. No information concerning the nature of the tests shall be

divulged to any person prior to examination. Proved disclosure of unauthorized release of examination material by any employee shall be the basis for disciplinary action.

#### **4.215 Protection of Confidentiality of Materials**

- A. Because of the continuing use of examination materials prepared by the Authority and where exposure would jeopardize the confidentiality of the examination questions, the review of such test materials shall not be permitted.
- B. All examination materials relating to a particular applicant or applicants, including but not limited to reports of character and material regarding personal suitability of the applicant, shall be considered confidential material. Such examination material shall be the property of the Authority and be maintained for a period of one year from the date the eligibility list was established.

#### **4.216 Special Provisions**

Special arrangement for examinations on a non-competitive basis, such as upon reallocation of position, temporary appointments and for employment of labor or custodial personnel, may be made by the Executive Manager subject to the limitations which follow:

##### **A. Non-Competitive Examination**

The Executive Manager may authorize non-competitive examinations under any of the following conditions:

1. No more than one person applies who meets the minimum qualification requirements.
2. Examination given is to test the fitness of an employee who has a permanent appointment and who seeks transfer to a position in a class in the same pay grade but which requires a skill not required in the present classification. [However, the provisions of the Merit Career Plan shall apply to a transfer to a position with Known Promotion Potential (KPP)].
3. The examination is to test an employee who has a permanent appointment in a position which has been reallocated to a class requiring a new skill.

4. When a permanent position is to be filled by a temporary appointment.
5. To facilitate the employment of qualified persons with disabilities consistent with provisions of law and these rules.
6. Examination given is to test the fitness of a permanent employee who has been previously selected under an announcement for a position with Known Promotional Potential (KPP) and who is to be promoted to the higher grade position.

**B. Labor and Custodial**

Examinations of applicants for the labor classification or for employment as custodian shall be governed by the following regulations:

1. Each applicant for these classes shall, prior to appointment, qualify by examination which shall consist of completing an application form. The Executive Manager shall certify the names of the 10 top applicants in order of date of receipt of application.
2. Notwithstanding the limitation of this rule, the Executive Manager may, at any time, prescribe such additional tests for applicants in the labor and custodial classes as he shall deem practical and feasible to assure equitable consideration of all applicants.

**C. Appointment of Qualified Individuals with Disabilities**

1. The Authority shall employ at least two percent or two individuals with disabilities, whichever is greater, certified by the Department of Vocational Rehabilitation. Such employment shall be on a temporary limited term appointment not to exceed a total of 700 hours per annum regardless of whether the position being filled is budgeted as temporary or permanent.
2. All such individuals with disabilities shall possess the qualifications for the position to which appointed. Eligibility lists may be developed for the various positions for which individuals with disabilities are certified.

3. Nothing contained in this section shall be construed to deter or prevent the Executive Manager from employing:
  - a. Individuals with disabilities when available and eligible for permanent employment.
  - b. Individuals with disabilities employed pursuant to the provisions of Subsection 1 in permanent employment, if such persons qualify for permanent employment before the termination of their temporary appointment.
4. If such person is appointed pursuant to this section to a permanent position during or immediately after the 700 hour period, such 700 hours or portion thereof shall be credited toward such employee's probationary period.
5. Appointment of individuals with disabilities to permanent positions must be consistent with merit system requirements. In this exception, if the immediate supervisor determines satisfactory performance either prior to, or after the expiration of the seven hundred 700-hour appointment, the position occupied by the person with a disability(ies) shall be converted to permanent employment.

## **4.300 PREFERENCE**

### **4.301 Preference Credit for Individuals with Disabilities**

Residents of Guam who have physical or mental disabilities but are physically or mentally able to perform efficiently and safely the duties of the position applied for, as certified by the Director of Public Health and Social Services shall receive a preferential credit of five points which shall be added to their passing examination score for initial appointment to a position (does not apply to subsequent applications for employment in the government after separation).

### **4.302 Preference Credit for Veterans of the United States Armed Forces or Former Members of the Guam Police Combat Patrol**

Veterans of the Armed Forces of the United States or former members of the Guam Police Combat Patrol, as certified by the

Chief of Police, shall receive a preferential credit of five points which shall be added to their passing examination score upon initial employment only. Such veterans or former members who are disabled as a result of their service in the Armed Forces or Combat Patrol, shall receive a preferential credit of 10 points which shall be added to their passing examination score upon initial employment only (does not apply to subsequent applications for employment in the government after separation).

**4.303 Proof of Eligibility for Veteran's Preference Credit**

Persons claiming veteran's status must submit their DD Form 214, Armed Forces of the United States Report of Transfer or Discharge. A person must have completed at least 180 consecutive days of service in the Armed Forces of the United States and must have received other than a dishonorable discharge from such service to be eligible for veteran's preference.

**4.304 Offer of Employment for Preference Credit Recipient**

When two applicants for government service are equally qualified for the position to be filled, and one is a recipient pursuant to Rule 4.301 or 4.302, while the other is not, the former shall be given the first offer-of position.

**4.305 Preferential Hiring of a Recipient of an Award or Scholarship**

Residents of Guam who have completed their post-secondary education assisted by the award of educational scholarships or loans from the government of Guam shall be given preference to jobs within the government of Guam for which they have applied and are qualified. Such preference shall be applicable only in selection for initial employment (does not apply to subsequent applications for employment in the government after separation or after an initial job offer is declined).

**4.400 CERTIFICATION**

**4.401 Eligibility Lists**

Employees shall be selected from among the highest available eligibles on appropriate eligibility lists, established and maintained by the Executive Manager, except those employees who are demoted, transferred, reinstated or reemployed. Within the limitations found elsewhere in these rules, qualified applicants shall

be placed on eligibility lists as a result of examinations. When more than one competitive examination or area of consideration is announced simultaneously for a particular class, an appropriate eligibility list shall be established for each competitive examination or area of consideration for that class.

**4.402 Establishment of Eligibility Lists**

Names of qualified candidates shall be placed on eligibility lists in rank order of qualifying scores after appropriate examination. This list shall be designated as an "Eligibility List" for that class and area of consideration. After the eligibility list has been approved by the Executive Manager, it shall then be considered "established".

**4.403 Ranking of Eligibles**

After each examination, the Executive Manager shall prepare a list of persons with passing scores. The names of such persons shall be placed on eligibility lists in the order of their final earned rating, starting with the highest. Prior eligibility lists resulting from a continuous examination announcement shall be merged by ranking the names of all successful applicants in order of their final earned rating.

**4.404 Determination of Rank in Event of Tie**

Final earned ratings shall be calculated to two decimal places and ranked from highest to lowest. When, upon certification of eligibles in accordance with Rule of Five/Ten (Rule 4.410) a tie score occurs with the fifth/tenth eligible, such tied scores shall not be broken and all such eligibles shall be certified as being the fifth/tenth eligible.

**4.405 Duration of Eligibility**

An eligible on an Authority-wide, Government-wide or Open competitive eligibility list shall have eligibility for employment consideration for one year from the date the list was established. Once a list is established its life should be viable for one year. Whenever a position is re-announced at the discretion of the Executive Manager, and a new eligible list is established, the names of eligibles on a former list, which has yet to expire, shall be combined with those on the new list according to final score.

**4.406 Reappointment Lists**

Reappointment is the employment, through competition, of a former classified permanent employee who was separated without cause through resignation or retirement, to the same or comparable position within the jurisdiction of these rules that the individual held at the time of separation. This reappointment privilege shall be for a period not to exceed four years from the date of separation. Former employees seeking reappointment shall apply to the Executive Manager who shall determine whether the former employee meets the current minimum qualification requirements for the class to which reappointment is requested. The Executive Manager shall require the employee to serve a new probationary period. Former employees who are reappointed may be hired at the salary they held prior to their separation. Qualified employees shall be placed on the reappointment list and shall be accorded priority certification under an open competitive eligibility list.

**4.407 Authority-wide Competitive Eligibility Lists**

Authority-wide Competitive Eligibility Lists shall be established consistent with Rule 4.402 and Rule 4.403 and selections shall be made in accordance with the Merit Career Plan.

**4.408 Government-wide Competitive Eligibility Lists**

Government-Wide Competitive Eligibility Lists shall be established consistent with Rule 4.402 and Rule 4.403 and selections shall be made in accordance with the Merit Career Plan.

**4.409 Open Competitive Eligibility Lists**

Open competitive eligibility lists shall be established consistent with Rule 4.402 and Rule 4.403.

**4.410 Certification of Eligibles**

Certification of eligibles shall consist of five (10 for labor/custodial) or such fewer eligibles as may be available for the class. Eligibles shall be certified in the order that they appear on the eligible list provided that:

- A. eligibles with reappointment privileges shall be accorded priority certification.
- B. when the fifth (tenth for Labor/Custodial) eligible to be certified is one of two or more eligibles who have identical



examination scores, such two or more eligibles shall be certified notwithstanding the fact that more than five (10 for Labor/Custodial) persons are thereby certified to fill a vacancy.

- C. for unskilled labor and custodial positions, the top 10 eligibles on the eligibility list shall be certified.
- D. in the event one or more eligibles decline or fail to respond to an employment interview, the Executive Manager shall be entitled to such additional eligibles as would provide him with a full certification. (See 4.413 Supplemental Certification).
- E. if the supervisor and/or manager rejects one or more of the eligibles certified, he shall submit in writing to the Executive Manager the reasons for rejection. If the rejections are approved by the Executive Manager, the supervisor and/or manager shall be entitled to such additional eligibles as would provide him with a full certification. (See 4.413 Supplemental Certification).
- F. a certification of eligibles shall be effective for no more than 30 days after the date of certification, unless extended by the Executive Manager.

#### **4.411 Certification of Eligibles from a Multiple List**

After eligibility lists are established for a particular job announcement with multiple competitive examinations or areas of consideration, the Executive Manager may request to certify in one of two ways:

- A. Merge the lists and certify according to Rules 4.410 and 4.412; or
- B. Certify, in accordance with Rules 4.410 and 4.412., from each list in the following order: Authority-wide, Government-wide, Open. Each list must be exhausted in accordance with these rules before certification from the next list will be authorized.

NOTE: Merging Open competitive lists with Authority-wide or Government-wide competitive lists is prohibited.

#### **4.412 Certification of Eligibles For More Than One Vacancy**

- A. For more than one vacancy, the Executive Manager shall

certify an additional eligible for each additional vacancy.

- B. When the last eligible to be referred is one of two or more eligibles who have identical examination scores, such two or more eligibles shall also be certified.
- C. For example, when certification is made for two vacancies, certification of eligibles will appear as follows:

First Ranked Eligible  
Second Ranked Eligible  
Third Ranked Eligible  
Fourth Ranked Eligible  
Fifth Ranked Eligible  
Sixth Ranked Eligible

The Executive Manager shall make his selection according to the following:

1. The Executive Manager may select two persons from the six certified to fill two vacancies.
2. Should the Executive Manager decide to fill only one of two vacancies, he shall be restricted to select from the first five eligibles on the certification and may not select the sixth ranked eligible.
3. Should an additional vacancy exist and certification was not made for such vacancy, the Executive Manager may not select from among the six eligibles to fill the third vacancy. He must request for an additional eligible and then make selection for the third vacancy from among the seven certified eligibles.
4. If the supervisor and/or manager does not wish to select any of the eligibles certified, he must justify to the Executive Manager, in writing, with reasons for non-selection of each eligible before a new certification is authorized.

#### **4.413 Supplemental Certification**

Supplemental certification of eligibles may be submitted to provide the Executive Manager with a full certification.

- A. The supplemental certification may be used only upon the failure to appear for an interview, refusal of appointment by eligibles or the rejection of eligibles by the Executive Manager for cause.
- B. The additional eligibles to be certified shall be of such number that will provide the Executive Manager with a full certification.
- C. The Executive Manager shall contact eligibles in descending order to ascertain their interest in the vacant position. If the last eligible contacted is one of two or more eligibles with identical examination scores, such two or more eligibles shall also be contacted.

#### **4.414 Selective Certification**

- A. Upon approval of the Executive Manager, selective certification may be made when specific identifiable qualifications and skills are essential to successful performance of the duties and responsibilities of the position. The factors shall pertain to knowledge, skills and abilities pertinent to certain program operations when these qualifications and skills cannot be readily acquired after appointment. As a standard for determining qualification on a selective factor basis, applicants must have at least six months of work experience in the particular selective knowledge, skill or ability or the equivalent in education.
- B. Selective certification may also be made which specifies a Bona Fide Occupational Qualification Requirement (BFOQ) when justified. For example, certification based on sex is a BFOQ when the duties and responsibilities involve certain institutional or custodial services which can be properly performed only by a member of the same sex as the recipient of the services.
- C. All selective certifications must be indicated on the proper job announcements and be job-related.

#### **4.415 Interview of Eligibles and Notification of Selection/Non-Selection**

- A. The Executive Manager shall establish procedures for interviewing certified eligibles for selection.

- B. Within 30 calendar days from the date a selection is made, the Executive Manager shall notify, in writing, all eligibles certified as to whether they were selected or not.

**4.416 Suspension and Removal of Eligible from Competitive List of Eligibles; Restoration to List**

- A. The Executive Manager may suspend or remove an eligible from an Eligibility List for any of the following reasons:
  - 1. refusal of two offers of permanent employment in the class of position for which eligibility has been established.
  - 2. failure to reply within 15 calendar days to a written inquiry relative to availability for employment.
  - 3. appointment to a permanent position for the class.
  - 4. failure to report for selection interview on three occasions.
  - 5. in the case of Authority-wide and Government-wide lists, termination of service with the government of Guam.
  - 6. when further investigation of the eligible's suitability needs to be conducted.
  - 7. withdrawal by the eligible.
  - 8. findings of deception or fraud in the employment process.
  - 9. advocates, aids or belongs to any party, organization or association which advocates the overthrow of the government of Guam or the United States.
  - 10. conviction of a crime which bears a nexus to the position applied for.

In the event the eligible has already received an appointment, the Executive Manager shall take appropriate action to ensure the termination of the employee.

- B. The following eligibles, upon their request, may have their names restored to the list of eligibles if the list is still active:

1. A probational employee who is separated without cause.
2. An eligible who had been removed from the list under A.(7) above, and who then makes himself available for employment.
3. An eligible who received an appointment as a result of this list, then resigned in good standing and wishes to be placed on the list for future consideration. This provision applies only to open competitive eligibility lists.

**4.417 Notification of Disqualification of Eligibles**

An eligible who is disqualified pursuant to Rule 4.416 shall be notified in writing, of such action and the reasons for disqualification within 10 work days of the action.

**4.418 Cancellation of Competitive Eligibility Lists**

The Executive Manager may cancel an eligibility list for any of the following reasons:

- A. Changes in the minimum qualifications or classification standards of a class of position.
- B. Abolishment of the class for which the list of eligibles was established.
- C. All eligibles on the list are unavailable for employment.

**4.500 NON-COMPETITIVE ACTIONS**

**4.501 Transfers**

- A. Intra-departmental and Inter-departmental:

Upon the approval of the Executive Manager, employees may transfer within the Authority or to another government of Guam department or agency when the following conditions are met:

1. the employee meets the minimum qualification requirements for the position which he seeks movement, including any assembled examination requirements.

2. movement is within the same class of position or from one class of position to another class of position having comparable duties and responsibilities and qualification requirements.
3. any such transfer shall require clearance of the Executive Manager and the consent of the employee. The employee shall give the releasing department or agency reasonable notice of the transfer. Prior approval for the transfer is not required by the releasing department. The releasing department cannot require the employee to resign.
4. any employee affected by this section shall not have affected adversely his government service, retirement credits, sick or annual leave and other fringe benefits normally granted to an employee of the government.
5. the Executive Manager may require a transferred employee to serve a probationary period.

**B. Inter-Governmental**

The temporary transfer of an employee of any Federal, State or other local government to the government of Guam may be made to meet the Authority's specific needs and when the following conditions are met:

1. the position requires highly developed skills and technical abilities as determined by the Executive Manager;
2. the employee meets the minimum qualification requirements for the position, including any assembled examination requirements.

**4.502 Reemployment**

- A. A permanent classified employee who separated through resignation or retirement while in good standing may be eligible for reemployment, without competition, to the same or comparable position within the Authority within four years from the date of separation, except that law enforcement personnel who have retired and are granted honorary promotions shall have reemployment rights to their former permanent positions, prior to the honorary promotion. For

reemployment, the person must be certified by the Executive Manager as meeting the current minimum qualification requirements for the class to which reemployment is requested. A reemployed employee may be hired at not less than the salary earned at the former position. Reemployment appointments are not subject to the certification procedures as described in these rules. Former employees covered by this Rule shall not be affected by the Merit Career Plan requirements.

- B. An employee who separates in good standing during a new probationary period shall be required to serve the remainder of the new probationary period upon reemployment to the same position, subject to these rules. Otherwise, the Executive Manager may require the employee to repeat another new probationary period.

#### **4.503 Reinstatement Immediately After Active Military Service**

A permanent classified employee of the government of Guam, who terminates such employment for the sole purpose of entering active duty in the Armed Forces of the United States, shall be entitled to limited military leave for such periods and under such conditions as may from time to time be determined by the Civil Service Commission and upon termination under honorable conditions of such active duty, be entitled to reinstatement in his previous position or its equivalent, in the step within his former pay, to which such employee would have been entitled but for his military service, provided that such employee makes application for such reinstatement within 90 days after discharge, and provided further that at the time of such application he shall be on military leave status with the government of Guam consistent with these rules.

#### **4.504 Voluntary Demotions**

Intra-departmental and inter-departmental demotions may be made when the following conditions are met:

- A. the employee meets the minimum qualification requirements of the position to which he seeks movement, including any assembled examination requirements;
- B. the employee to be demoted is a permanent employee and the movement is from a position in which he last held permanent appointment; and

- C. such demotion shall require the prior approval of the Executive Manager and the appointing authorities concerned with the consent of the employee.

#### **4.505 Developmental Promotions (KPP)**

- A. Promotions without competition may be made where at an earlier date an employee was selected under an announcement (competitive examination) for a position with Known Promotion Potential (KPP) and the employee is now to be promoted to the higher level position, provided the employee:

1. Has completed the probationary period in the position he currently holds;
2. Meets the minimum qualifications of the higher grade position including any assembled examination requirements; and
3. Meets management's developmental criteria guidelines for advancement to the higher grade position.

- B. Types of KPP:

1. KPP within a class or related class series not to exceed the highest non-supervisory level position within the series.
2. KPP within a class series up to the supervisory position within the series (first line); provided the KPP position is no more than two levels below the supervisory position.
3. KPP within an organizational program for supervisory positions not to include the managerial position ultimately responsible for the operational or conceptual integration or coordination of activities within the organizational program.

(NOTE: Organizational charts shall be utilized to determine the position for KPP.)

- C. To be eligible for promotion without competition when the position is upgraded under these conditions, an employee must continue to perform the same basic functions and his former position must be absorbed in the new one. When an



additional position is created, or when the new position is not a clear successor to the former position, non-competitive promotion is not authorized.

#### **4.506 Detail Assignments**

- A. A detail is the temporary assignment to meet management needs of an employee to another position or to a group of specific duties and responsibilities for a specified period, with the employee returning to his regular duties at the end of the detail. A position is not filled by a detail as the employee continues to be the incumbent of the position from which he is detailed and his salary during the detail does not change. For details to unbudgeted positions or to a group of specific duties and responsibilities, the Executive Manager shall provide a position description upon the 30th day of the detail appointment.
- B. Details shall be made only for meeting temporary needs of the Authority such as:
  - 1. Emergency details - to meet emergencies occasioned by abnormal workload, change in organization, or unanticipated absences.
  - 2. Pending description and formal classification of a new position.
  - 3. To replace an incumbent who is undergoing training.
- C. All details in excess of 30 calendar days must be documented by the Executive Manager. No personnel action shall be transacted unless proper documentation is provided.
- D. An employee shall not be detailed while serving a probationary period.
- E. No employee shall be temporarily assigned or detailed to a position nor shall the employee assume the duties and responsibilities of a position other than the one to which he has been appointed for a period in excess of 120 days within a calendar year, unless the Executive Manager obtains an exemption upon written application to the Civil Service Commission, such exemption not to extend beyond an additional 120 days within that calendar year.

- F. An employee in an unclassified position or an individual employed under a contract will not be detailed to a position in the classified service.
- G. Nothing in this regulation is intended to infringe on management's prerogatives in day-to-day operational activities which may occasionally require that an employee be assigned, for brief periods up to 30 calendar days, work normally performed by another employee.
- H. Employees serving on a detail in excess of 30 calendar days within any calendar year in a position having a higher pay grade than his regular position, shall receive a payment differential in accordance with Rule 6.007 provided the detail appointment is consistent with classification principles as determined by the Executive Manager.
- I. Employees serving a detail in excess of 30 calendar days within any calendar year in position having a lower pay grade shall not have their pay adjusted to the lower pay.
- J. An employee may not be detailed beyond 120 calendar days to any classified position unless that employee has met all of the qualification requirements for the position.

#### **4.507 Acting Capacity as Executive Manager**

- A. The Board, at its discretion, may appoint a classified or unclassified employee to serve temporarily in an acting capacity as Executive Manager.
- B. Any employee so appointed has the right to return to the position the employee held immediately before the appointment.
- C. Such employee shall receive a payment differential according to Rule 6.008.

### **4.600 TYPES OF APPOINTMENTS**

#### **4.601 Permanent Appointment**

A permanent appointment is granted an employee after successfully completing a probationary period in the permanent position.

#### **4.602 Probationary Appointment**

##### **A. Probationary Period**

The probationary period shall be utilized as fully as possible to determine the fitness of the employee for the position.

##### **B. Original Probationary Period**

An original probationary period shall be required when an individual who does not have permanent status is appointed to a permanent position.

This also applies to former employees who have not been employed in the government of Guam service after four years of separation in good standing.

##### **C. New Probationary Period**

1. A new probationary period shall be required of a permanent employee when he:
  - a. is promoted to a permanent position;
  - b. is transferred to a permanent position in another class;
  - c. receives a voluntary demotion to a permanent position; or
  - d. is reappointed to a permanent position.

##### **D. Duration of Probationary Period**

1. Original and new probationary periods will be for six months, except that service as a result of the 700 hour employment program may be credited consistent with statute. Employees holding classified positions under temporary employment, who are subsequently appointed to the same position under a permanent appointment, shall be credited for time served towards their probationary period under the temporary appointment.
2. In entry level trainee classes, the probationary period may

be established at not more than 12 months, upon request of the supervisor and/or manager and approval of the Executive Manager.

3. The supervisor and/or manager may extend an original probationary period or a new probationary period not to exceed a total of 12 months. Written notice of the extension (approved by the Executive Manager) shall be given to the employee by the supervisor and/or manager prior to the expiration of the probationary period.

**E. Discontinuance of a Probationary Appointment**

1. If an employee fails to render satisfactory service during the original probationary period, he may be dismissed by the Executive Manager provided he has served a probationary period of at least three months. The dismissal notice shall indicate the effective date of the action. Failure to submit a probationary letter within 10 work days does not grant permanent status.
2. If an employee fails to satisfy a new probationary period, the employee shall be served a notice of non-performance with intent to remove from the position appointed to. Such employee shall be permitted to return to the position he last occupied on a permanent basis or he may request to be placed in a comparable position for which he meets the minimum qualification requirements and if such position is not available the employee shall be placed on a priority placement list and given first offer of employment upon availability of such position. The employee has the right to request for a review of the removal with the CSC.

**NOTE:** Probationary employees may be disciplined for misconduct with the right to appeal under adverse action procedures.

**4.603 Temporary Appointment**

**A. Limited-Term Appointments**

1. Limited-term appointments may be made to fill temporary vacancies in permanent positions, where there are no eligibles or an insufficient number of eligibles for that

particular position.

2. Where limited-term appointments are proper, the appointments shall not be made until the Executive Manager certifies the candidate as qualified for the position.
3. Limited-term appointments are for a specified period not to exceed one year.
4. Limited-term appointments shall be made without competition except that any person appointed on a limited-term basis must meet all qualification requirements including any assembled examinations.
5. Limited-term appointments are unclassified appointments and may be terminated at any time prior to the expiration of one year.
6. Employees appointed on a limited-term basis shall be given the usual employee benefits.
7. Limited-term employees do not serve a probationary period.

#### B. 120-Day Appointments

Temporary appointments shall be consistent with the provisions of 4 GCA Section 4102 (a)(6) and Section 4103 (e) as follows:

1. A person may not be temporarily employed in a non-professional capacity for more than 120 days in any calendar year.
2. A person may not be temporarily employed in a professional capacity for more than 120 days except upon a contract in writing and a determination in writing by the Executive Manager that such employment is critical to either the public health, safety or welfare of the community. [A person is employed as a professional if the person's job description in the Dictionary of Occupational Titles, published by the U.S. Department of Labor, has as its first digit zero or one. Any person whose job description does not have as its first digit zero

(0) or one (1) shall be deemed to be a non-professional employee.]

3. The following provisions shall apply to appointments made consistent with items (1) and (2) above:
  - a. A classified employee who fills a temporary classified or unclassified position has classified employment status absent other controlling legislation.
  - b. A newly hired employee who fills a temporary classified or unclassified position has unclassified employment status.
  - c. Such temporary appointments shall be made without competition except that any person appointed on a temporary basis must meet the minimum qualification requirements and satisfy all examination requirements for the position as determined by the Executive Manager prior to appointment.
  - d. A person appointed on a temporary basis shall not perform the duties and responsibilities of a position other than that to which he was appointed.

#### **4.604 Contracts for Personnel Services**

- A. Contracts shall not be used as a substitute for merit system employment. The Authority will not contract for personnel services which normally are performed by employees appointed under the Merit System. The CSC shall approve all employment contracts prior to the effective date of the contract.
- B. Contracts for personnel services may be used only when the Authority is authorized to contract and when the use of a contract is in accordance with all legal provisions, including merit systems laws and rules.
- C. A basic consideration in determining the appropriateness of a contract with an individual is whether an employee-employer relationship will exist between the Authority and the individual providing the personnel services. No single criterion on the existence of an employee-employer relationship determines

conclusively in all circumstances whether personnel services contracts or appointments as employees are appropriate. It would not be considered appropriate to contract on a continuous non-emergency basis with a private organization to hire typists who work under supervision of a government employee, in a government office, using government equipment to perform government work. Factors to be considered which could provide an adequate justification for the use of contract with individuals services include:

1. emergency short-term work (less than 2 months) normally exempt from competitive appointment methods.
2. part-time professional work.
3. inability of the government merit personnel system to provide qualified employees.
4. contract for expert consultation services not available in the government, when full-time employment is not needed or practical, or when the need is intermittent or for a short period of time. Such an expert might provide views or recommendations but would not perform or supervise the performance of government functions;
5. part-time services of a medical, dental, or other professional specialist,
6. contract with an individual to produce a product such as an individual research paper.

#### **4.605 Vacation Employment for Students**

The Executive Manager may employ during the vacation period between school years, at a rate not exceeding the minimum wage specified by any applicable Federal or Guam law, students of the various public and private schools in Guam who are at least 16 years of age, provided that such employment may not exceed eight hours in one day and five days in one week and that such employment may not be of a hazardous nature or in any way injurious to or endangering the student. Students employed under the authority of this section shall not be eligible for retirement, sick or annual leave benefits.

## CHAPTER 5

# POSITION CLASSIFICATION SYSTEM AND COMPENSATION PLAN

### STATEMENT OF POLICY

This policy is to develop and maintain a government-wide system, for the objective, consistent, and timely classification of all classified positions and for the reasonable and consistent assignment of classes of positions to pay grades.

Compensation of position classes shall be based on Know-How, Problem-Solving, and Accountability. Where not otherwise specified by laws, pay relationships shall take into consideration prevailing wage in the primary area of recruitment for the same or related classes of positions.

### 5.000 POSITION CLASSIFICATION SYSTEM

#### 5.001 The Official Classification Plan

Title 4, Chapter 6 of the Guam Code Annotated established the "Uniform Position Classification and Salary Administration Act of 1991."

#### 5.002 Preparation and Publication of Classification Standards

Classification standards established by the Civil Service Commission place positions in their proper classes and pay grades to:

- A. define the various classes of positions that exist in the classified service in terms of duties, responsibilities and qualification requirements. Standards may be created, amended or abolished;
- B. establish the official class titles; and
- C. set forth the pay grades.

#### 5.003 Delegation of Classification Authority and Responsibility

The Executive Manager, as delegated by the Civil Service Commission, is authorized to classify positions under its jurisdiction, subject to:



- A. existing Policies and Procedures;
- B. class standards published by the Commission;
- C. post-audit by the Commission; and
- D. classification appeal by the employee.

The Executive Manager may review published standards and submit amendments to the standards for approval by the Commission.

#### **5.004 Classification Maintenance**

- A. The Commission may review positions in the Authority to determine whether positions are allocated to classes and grades in conformance with or consistent with the uniform and unified system of position classification and compensation.
- B. Positions shall be placed in its appropriate class and grade, provided that if a position is downgraded, the position title and pay grade shall not be applicable to an incumbent until the expiration of two years from the date of the downgrade. The Authority shall take action in accordance with such determination.
- C. Whenever the Commission finds that the positions are not placed in classes and grades in conformance with the uniform and unified system, it may prescribe, revoke or suspend in whole or in part the classification authority of the Executive Manager.

#### **5.005 Class Specifications**

The class specifications shall be considered in allocating positions and shall be applied as follows:

- A. Class specifications are descriptive and explanatory and are not restrictive. The use of a particular expression or illustration of duties, qualification requirements or other attributes shall not be regarded as excluding others not mentioned which are of similar nature.
- B. in determining the class to which any position shall be allocated, the specifications for each class shall be considered as a whole. Consideration shall be given to the general duties,

specific tasks, responsibilities, minimum qualification requirements and relationships to other classes consistent with statutory provisions.

- C. A class specification shall be construed as a general description of kinds of work characteristic of positions that are properly allocated to that class, and not as prescribing what the duties or responsibilities of any position shall be; nor as limiting or modifying the authority which the Executive Manager has to take from, add to, eliminate entirely, or otherwise change the duties and responsibilities; to assign duties or delegate responsibilities to employees; or direct and control their work.
- D. The fact that all of the actual tasks performed by the incumbent of a position do not appear in the specifications of a class to which the position has been allocated shall not be taken to mean that the position is necessarily excluded from the class, nor shall any one example of a typical task taken without relation to the other parts of the specification be construed as determining that a position should be allocated to the class.
- E. The statement of minimum qualification is to be construed as an expression of the minimum knowledge, abilities, skills, and experience and training which would be required of any appointee to a position in the class as partial evidence of his ability to perform the work satisfactorily.
- F. Qualification requirements in the specification for any class, as interpreted herein, shall constitute the basis for the tests to be included in examinations for the class and for the evaluation of qualifications of applicants.

#### **5.006 Title of Positions**

The assigned class title shall be the official title for the purpose of personnel actions, and shall be used on payroll, budget and official records and reports. This requirement however, shall not prevent the use of organizational or other titles for internal administration, public convenience, law enforcement, or similar purposes.

#### **5.007 Position Description**

- A. The Authority must prepare a written description of the duties

and responsibilities of each budgeted position on a form prescribed by the Commission. A group of like positions may be covered by a single description. The description may be prepared by the employee, supervisor and/or position classifier. However, the major responsibility to insure accurate descriptions is on the supervisor.

- B. The supervisor must certify as to the accuracy of the duties assigned and such certification shall be authenticated by the Executive Manager. The position classifier must certify as to the proper classification of the position. Copies of the position description must be filed with the Commission and the Authority's Personnel Office.
- C. The position description must be amended whenever significant changes occur that would affect the recruitment and classification of a position, and must be promptly reported to the Executive Manager so that a review of the position can be made to determine the proper classification of the position.

**5.008 Authority Responsibilities**

- A. The Authority shall insure that the duties and responsibilities assigned to each of its positions are accurately reflected in an official position description. Amended descriptions should be submitted on a timely basis if significant changes in the duties and responsibilities of a position are made.
- B. The Authority shall not use the classification process to evade the principles of the merit system and effect personnel changes for which other personnel processes exist.

**5.009 Periodic Review of Descriptions and Classifications**

In addition to the day-to-day work of describing and classifying new or changed positions to reflect current duties assigned and reported by supervisors or employees, the Executive Manager must review, at intervals not exceeding two year, all positions of the classified service within his jurisdiction to insure that the official position descriptions accurately reflect the work being performed and that the positions are properly classified, and shall take appropriate action as necessary.

**5.010 Determination of Proper Allocation for Newly Budgeted or Vacant Positions**

When a new position is to be established/budgeted or a vacant position is to be filled, the Executive Manager must determine the proper classification of the new position via the position description. No position may be filled until the Executive Manager certifies that the position is properly classified. Copies of all classification reviews shall be filed with the Commission for post-audit purposes.

**5.011 Reclassification/Reallocation of Positions**

- A. The Executive Manager may, upon his own initiative, or upon the written request of a permanent employee, investigate the duties of any position to determine if it is properly classified; and shall take appropriate action as necessary, in accordance with the Commission's regulations, policies and procedures. In making a request for the review of a position, the employee or the Executive Manager shall set forth the changes that have occurred in the particular position since the last review or other factors which in his opinion warrant reclassification provided that such changes in duties and responsibilities have been acquired or performed for at least three months and are not temporary in nature.
- B. The Executive Manager shall, after a thorough review of position, notify the employee affected of the classification study result within 20 work days from the completion of the audit. A copy of the study, documented in a form prescribed by the Commission, and the personnel action shall be filed with the Commission for post-audit purposes.

**5.012 Effective Date of Reclassification of Positions**

- A. When a position is reclassified to a class of the same or higher pay grade, the effective date of such reclassification shall not be prior to the date of the Executive Manager's approval.
- B. When a position is reclassified to a class of a lower pay grade, the effective date of such reclassification shall not be applicable to an incumbent until the expiration of two years from the date of the downgrade.

**5.013 Status of Incumbents When Positions Are Reallocated**

- A. When a position is reallocated as a result of Gradual Accretion of Duties and Responsibilities, the employee in the position

shall be entitled to serve in that class provided he continues to perform the same basic functions and meets the minimum qualifications for the class to which the position is reallocated. Reallocation within a series of positions, that is non-supervisory, shall be without competition.

- B. When a position is reallocated as a result of Planned Management Action, the requirements of the Merit Career Plan must be complied with. The employee holding a permanent position shall retain the position currently held should the requirements of the Merit Career Plan result in his non-selection.
- C. If ineligible for reallocation to the position as reallocated, the employee may be transferred, promoted, or demoted to an appropriate class by appropriate action in accordance with the provisions of these rules.
- D. The incumbent of the position designated for downgrade shall not have his current salary reduced. Salary adjustment in the reclassified position shall be suspended until the incumbent's salary increment in the new grade is granted. This salary adjustment is subsequent to 5.012B.

#### **5.014 Administrative Review**

- A. An administrative review may be requested by an employee of the position, his designated representative acting on his behalf, or the Executive Manager.
- B. All requests for administrative review must be in writing, shall contain the specific reason(s) for disagreement with the classification action taken by the Executive Manager, and shall state the action requested and the reasons the requested action is deemed more appropriate.
- C. An administrative review consists of a reevaluation of a classification action and is therefore confined to the duties and responsibilities assigned to the position at the time the description was prepared, and which were the basis for the classification action. Subsequent changes in duties and responsibilities cannot be the basis for a request for administrative review, but must be reported on a new description and submitted for another classification action.

- D. The Executive Manager shall notify the affected employees of the original notice of classification action. Requests for administrative review shall be filed with the Executive Manager within 20 calendar days of the date the notice of classification action was approved.
- E. The Executive Manager shall take such action as he deems appropriate, which may include rescinding the earlier action and taking a different classification action. The affected employee and division head shall be notified of the action taken.
- F. Any permanent employee whose position is reviewed, may appeal to the Civil Service Commission.

The employee may file a written appeal with the Commission within 15 calendar days upon receipt of the decision justifying the reasons for the review.

#### **5.015 Creation of New Positions and Classes of Positions**

- A. Pursuant to Section 6303, Title 4, Guam Code Annotated, new positions or classes of positions may be created by the Governor when necessary for the efficient performance of the duties and functions of the government. The position description of the created positions shall be submitted to the Civil Service Commission within 30 calendar days after creation. The position shall be terminated unless approved by the Commission within 90 days after submission. No newly created position shall be filled in the absence of appropriations to pay the salary of the proposed position. This provision shall not apply to any and all positions specifically required by law to be confirmed by the Guam Legislature.
- B. Any request for creation of a new class or classes of positions must be submitted in accordance with the Commission's policies and procedures.

### **5.100 COMPENSATION PLAN**

#### **5.101 Assignment of Classes to Pay Grades**

Pay Grades for all classes of positions are assigned by the Civil Service Commission.

## **5.102 Evaluation of Classes for Assignment to Pay Grades**

- A. Classes are evaluated on the basis of job know how, problem solving and accountability consistent with the Hay methodology of position classification and salary administration guidelines.**
- B. The assignment of classes of pay grades shall be in accordance with policies and standards established in conformance with statute and the following principles:**
  - 1. classes which are related and are substantially equal shall be assigned to the same pay grade; and**
  - 2. significant differences between related classes in job know how, problem solving and accountability shall be reflected in the relative difference in assignment to pay grades.**

## CHAPTER 6

# PAY ADMINISTRATION

### STATEMENT OF POLICY

It is the policy of the Executive Manager to provide a uniformed pay administration to facilitate pay actions, while ensuring the proper compensation of employees and to provide the opportunity for the Authority to carry out its missions.

These pay administration rules are subject to the Civil Service Commission's policies and procedures.

### 6.000 PAY ACTIONS RELATED TO APPOINTMENTS

#### 6.001 Compensation at Initial Appointments

All initial appointments shall be made at the first step of the appropriate pay grade, except as provided below:

- A. The Executive Manager may, with the approval of the Civil Service Commission, authorize initial employment in a position at a higher step not to exceed Step 10 of the pay grade, if such action is warranted by recruitment difficulties or exceptional qualifications. This petition to the Commission shall be made before the applicant is hired.
- B. The increment schedule consisting of Steps 11 through 20 shall not be used for recruitment above-step.

Note: The Commission may establish policies to administer this action.

#### 6.002 Compensation Adjustment Following a Promotion

- A. An employee, when promoted from one class to another of a higher pay grade, shall receive a salary increase closest to and not less than a two-step increase in the pay grade held prior to promotion.
- B. For employees on Step 20 or beyond prior to the promotion, a two-step increase is added to the salary at Step 20 or beyond for the purpose of slotting the employee into the higher grade at the salary which is closest to and not less than



the slotting rate.

**6.003 Compensation Adjustment Following a Voluntary Demotion**

The minimum reduction shall be to the salary in the new pay grade closest to, but not more than, the employee's salary at the time of demotion.

**6.004 Compensation Adjustment Following an Involuntary Demotion**

- A. Employees demoted for adverse action shall have their compensation reduced at least one step and may, upon the discretion of the Executive Manager, have their compensation reduced to the lowest step on the pay grade of the position to which they are demoted.
- B. Employees demoted involuntarily due to fiscal constraints or lack of funds shall be compensated at a rate which is less than the rate held prior to the demotion.

**6.005 Compensation Adjustment Following Reemployment**

A person who is reemployed under the provisions of Rule 4.502 shall be paid at a rate to which he would have been entitled had he remained in service, but that no credit shall be given toward progressive salary step increases within the pay grade.

**6.006 Compensation Following a Transfer**

An employee who is transferred shall continue at the same pay grade and step.

**6.007 Compensation Following a Detail Appointment**

- A. Employees serving a detail appointment, consistent with Rule 4.506, in excess of 30 consecutive calendar days in a position having a higher pay grade than his regular position, shall receive a salary increase closest to and not less than a two-step increase in the current pay grade. Payment of the differential shall be deferred until the employee has served at least 30 consecutive calendar days in a detail.
- B. At the discretion of the Executive Manager, employees detailed to an unclassified position, whose detailed step does not exceed Step 10, may receive up to Step 10 of the

unclassified position.

**6.008 Compensation Following Appointment in an Acting Capacity**

An employee who is appointed by the Board to serve temporarily in an acting capacity as Executive Manager shall be compensated during the period of such services by a payment differential to be added to his base rate of pay, measured by the difference in amount between the step in the pay grade he holds and the salary paid the Executive Manager provided that the payment differential shall be deferred until the employee has served 30 calendar days in an acting capacity.

**6.100 PAY ACTIONS RELATED TO REALLOCATION OF POSITIONS**

**6.101 Compensation Following Reallocation of Position**

- A. When a position is reallocated to a class of a higher pay grade, the employee shall receive a salary increase closest to and not less than a two-step increase in the pay grade held prior to reallocation.
- B. When a position is reallocated to another class of the same pay grade, the salary of the incumbent shall remain unchanged.
- C. When a position is reallocated to a class of a lower pay grade, the implementation shall not be effected until the expiration of the two year waiver as provided for in Rule 5.012 (B).

**6.102 Salary Adjustment Upon Demotion Due To Position Reclassification Action**

- A. The salary in the new grade that is closest to, and not more than the incumbent's salary shall be identified as the incumbent's step in the new pay grade.
- B. Implementation of the reclassification in terms of position title shall be made upon approval of the reclassification determination by the Executive Manager.
- C. The incumbent of the position designated for downgrade shall not have his current salary reduced. Salary adjustment in the reclassified position shall be suspended until the incumbent's salary increment in the new grade is granted.

- D. The salary increment anniversary date before the reclassification determination shall be used to determine the appropriate salary increment date in the new pay grade. Where there is no change in the waiting period, the salary increment date and the pay grade before the reclassification shall be maintained. Where there is a change to a shorter waiting period (Steps 1-7), the salary increment date before the reclassification shall be maintained. Where there is a change to a longer waiting period (Steps 8-10, 11-20 or beyond), the new waiting period shall be applied.

## **6.200 PAY ACTIONS RELATED TO PAY GRADE REASSIGNMENT**

### **6.201 Pay Grade Reassignment**

A supervisor or employee may initiate a written request for consideration of an amendment to the pay grade allocation for a class of position with justification to the Executive Manager. If the findings of the Executive Manager indicate the need to amend the pay grade allocation, he shall submit a written request with justification to the Commission in accordance with the Commission's policies and procedures. Changes adopted shall become effective as directed by the Commission.

### **6.202 Pay Adjustment Following Pay Grade Reassignment**

When a pay grade for any class is reassigned to a higher or lower pay grade and there is no change in the position classification, the pay adjustment shall be consistent with current Civil Service Commission policies.

## **6.300 PAY ACTIONS RELATED TO INCREMENTS**

### **6.301 General Provisions Relating to Salary Increment Increases**

- A. Salary increment increases shall be granted as authorized by law.
- B. Increment Status Upon Demotion Due To Position Reclassification: The salary increment anniversary date before the reclassification determination shall be used to determine the appropriate salary increment date in the new pay grade. Where there is a change to a shorter waiting period (Steps 1-7), the salary increment date before the reclassification shall be maintained. Where there is a change to a longer waiting

period (Steps 8-10, 11-20 or beyond), the new waiting period shall be applied.

C. Personnel Actions Not Affecting Increment Anniversary Dates:

The following personnel actions shall not change increment anniversary dates:

1. reassignment of pay grade for a class or classes of positions.
2. pay adjustments from statutory amendments to the pay grade schedule.
3. detail appointment.
4. transfer from one position to another of the same or related class of position while retaining the same salary rate upon transfer.
5. involuntary demotion for other than adverse or disciplinary reasons.
6. reclassification to a class of the same pay grade or lower while the employee retains the same salary rate.
7. salary increment freeze.
8. other situations as may be determined by the Civil Service Commission.

D. Voluntary Demotion To The Same Or Related Class Of Positions:

The employee's next salary increment shall include the period served prior to the voluntary demotion; and provided that the work performed is satisfactory.

- E. Creditable Service Upon Reemployment: Permanent classified employees who leave the Authority in good standing shall be credited for time served in the increment held prior to separation when exercising their reemployment privileges.

**6.302 Step Increase**

Employees entitled to an increment increase shall receive such increase according to the following schedule and upon certification by the Executive Manager that satisfactory service has been

rendered for the performance rating period preceding such increase:

- A. Employees at Steps 1 through 6 shall be entitled to a one step adjustment after 12 months of satisfactory performance;
- B. Employees at Steps 7 through 9 shall be entitled to a one step adjustment after 18 months of satisfactory performance;
- C. Employees at Steps 10 through 19 shall be entitled to a one step adjustment after 24 months of satisfactory performance.
- D. Employees at Steps 20 or beyond shall be entitled to an increment equivalent to 3.5% of their base pay after 24 months of satisfactory performance.

## CHAPTER 7

# HOURS OF WORK, OVERTIME AND PREMIUM PAY

## STATEMENT OF POLICY

This chapter sets forth the standard for hours of work, wages, overtime compensation, compensating time-off in lieu of overtime pay, observance of holidays and a system under which the pay of certain employees shall be adjusted for certain hours, days or conditions of work. These provisions shall be in compliance with the Fair Labor Standards Act (FLSA).

## 7.000 GENERAL PROVISIONS

- A. The basic workweek is 40 hours. Alternatively, a workweek is a regularly recurring period of 168 consecutive hours -- seven consecutive 24-hour periods. The workweek need not coincide with the calendar week. It may begin any day of the week and any hour of the day, but it must in each case, be established in advance. The workweek may be changed but only if the change is intended to be permanent and is not made to evade overtime requirements or policies.
- B. An employee's workweek may be in accordance with office hours, with designated shifts, or with such flexible or variable hours program as are implemented by individual departments provided that no division shall operate on less than a 40-hour workweek except as provided by law.
- C. A full-time employee may be allowed a 15-minute break period in the first half and second half of the workday, except for those employees subject to Section 7(K) of the FLSA relating to employees in fire protection or in law enforcement activities provided further that:
  - 1. no single work break shall exceed 15 minutes absence from the employee's work station.
  - 2. an employee may not accumulate unused work breaks.
  - 3. work break time shall not be authorized for covering an employee's late arrival on duty or early departure from duty.
- D. Full-time employees shall be allowed a minimum of 30 minutes and

up to a one-hour meal period during each workday.

- E. The schedule of workweek for shift workers shall be prepared and prominently posted at least two weeks in advance so that the employees affected will be informed. Such schedules shall be for no less than 2 week periods and shall not be changed except for good cause and provided affected employees are given at least 24 hours prior notice. Whenever possible, work schedules should permit an employee to enjoy a holiday on the day it is observed.
- F. The Executive Manager may permit flex-time as may be appropriate.

### **7.100 MINIMUM WAGE**

Employees shall be paid not less than the established minimum wage for Guam.

### **7.200 HOURS WORKED**

- A. All time during which an employee is suffered, or permitted to work and to be on the Authority's premises on duty or at a prescribed work place, except for meals or other periods when he is free from duty or for any such time that an employee is performing personal business, is considered as hours worked. Essentially, this means that once a supervisor allows the employee to work, or "knows" that the employee is working, then the employee is compensated.
- B. As a general rule, hours worked will include:
  - 1. All time during which an employee is required to be on the Authority's premises or at a prescribed work place.
  - 2. All time during which an employee is suffered or permitted to work whether or not required to do so. The determination of an employee's working hours will include, in the ordinary case, all hours from the beginning of the work day to the end with the exception of periods when the employee is relieved of all duties for the purpose of eating meals or sleeping time in the case of affected employees.

### **7.300 HOURLY RATE OF PAY**

The hourly rate of pay is the rate published by the Civil Service Commission.

## **7.400 OVERTIME**

### **7.401 Coverage**

- A. Upon the occurrence of overtime work, covered classified employees shall be entitled to receive overtime compensation calculated at the rate of 1 and ½ times the regular rate of pay for each hour or portion of the hour of overtime worked.
- B. In determining the number of hours worked by an employee within a given workweek or work period, time spent off on annual, administrative, sick, compensatory time-off, other leave with or without pay, or holidays will not be counted as time worked. Such time off with pay shall be included in straight time pay, but it is not included in computing whether a covered employee has worked in excess of 40 straight time hours in a workweek.
- C. Any fraction of an hour of overtime worked shall be converted to the nearest 15 minutes.
- D. Covered employees include those classes of positions that are not in the executive, administrative, and professional categories, as determined by the Civil Service Commission in accordance with the Fair Labor Standards Act.

### **7.402 Occurrence of Overtime Work**

- A. Overtime work may be authorized by the Executive Manager in cases of emergency, or when the best interests of the Authority indicate that overtime work is required.
- B. The Executive Manager shall hold hours worked by the employees to the Authority's established 40-hour workweek (106 hours maximum work period standard for fire protection personnel) standard except in those cases where excessive hours of work are necessary because of weather conditions, necessary seasonal activity or emergencies.
- C. It shall be the responsibility of the Executive Manager to determine that the provision of overtime pay is administered in the best interest of the Authority. Recognizing that the Executive Manager is responsible for the manner in which overtime is authorized, it is especially important to control unauthorized overtime.



- D. The Executive Manager is responsible for internal controls which will provide a means of reviewing and evaluating the use of overtime.
- E. Overtime work will occur when a employee renders service under any of the following conditions:
  - 1. The employee renders service in excess of 40 straight time hours per workweek; or in the case of fire fighters when the employee renders service in excess of the established work period.
  - 2. The employee renders service on his or her scheduled day-off and there has been no change, by mutual consent or by due prior notice, in the work schedule.

#### **7.403 Emergency Situations Defined**

The Executive Manager shall arrange the employment and work programs of the Authority in such a way that overtime is not required except in emergency situations.

Overtime work may be required for any covered employee in emergency situations as described below:

- A. Where an established post of duty must be covered 24 hours per day, and an employee is not available to cover that post on a given shift.
- B. When danger to life, health, or well-being of the public, employees or other persons could occur if an employee is not required to be on duty or where danger to property is eminent.
- C. Other situations where the Executive Manager determines that the responsibilities prescribed for the Authority cannot be accomplished unless overtime work is authorized.
- D. Employees who work during typhoon emergency periods as declared by the Governor of Guam.

#### **7.404 Compensation For Overtime Work**

- A. Payment for overtime work shall be made no later than the next pay period after the overtime work is performed.

- B. Overtime compensation shall be at the rate of 1 and ½ times the regular rate of pay for each hour or portion of the hour of overtime worked.
- C. An employee who is subject to the maximum 240/480 hours of compensatory time under the FLSA, as amended, shall be paid cash wages of time and one-half the regular rate of pay for overtime hours in excess of this maximum.
- D. The requirement that overtime must be paid after 40 hours a week may not be waived by an agreement between management and the employee except as provided in Rule 7.405.
- E. Consistent with Section 4105(e), Title 4 of the Guam Code Annotated, no person shall be required to work overtime unless the employee has received certification by the Executive Manager that funds for overtime pay are available.
- F. Employees who work during emergency periods as declared by the Governor of Guam, shall be compensated in the following manner:
  - 1. Employees occupying permanent positions in the classified service or the unclassified service, except for the Executive Manager and Deputy Executive Manager, whose regularly scheduled hours of work fall within such an emergency period, but whose presence is not required at work, shall be granted administrative leave. Employees not occupying permanent positions are not eligible for administrative leave.
  - 2. Employees not occupying permanent positions in the classified service, who were required to report to, and did work during such an emergency period, shall be entitled to overtime pay for all such hours worked.
  - 3. Employees occupying permanent positions in the classified service or unclassified service, except for the Executive Manager and Deputy Executive Manager, whose regularly scheduled hours of work fall within such an emergency period, and who are required to report for, and be on duty during such emergency period, shall be entitled to overtime pay for all such hours worked, in addition to full compensation for any administrative leave

taken.

4. Employees occupying permanent positions in the classified service or the unclassified service, except for the Executive Manager and Deputy Executive Manager, whose regularly scheduled hours of work do not fall within such an emergency period, but who are required to report for, and be on duty, shall be entitled to overtime pay for all such hours worked, including overtime, but not for administrative leave.
5. In the event that a typhoon emergency period includes a legal holiday, then such employees required to report for, and be on duty, shall be entitled to overtime pay for all such hours worked, in addition to full compensation for holiday leave.

**7.405 Compensatory Time Off in Lieu of Overtime Pay**

- A. In the absence of any funds for overtime compensation, compensatory time off shall be granted in lieu of overtime pay by mutual agreement between the employee and management, before work is performed. A record of this agreement must be kept with the Personnel Office.
- B. The number of hours of overtime work be converted to compensatory time credit at the rate of 1 and ½ hours of compensatory time credit for each hour of overtime work or portion of the hour consistent with Rule 7.401.
- C. Employees engaged in work in law enforcement or fire fighting may accrue not more than 480 hours of compensatory time. Employees engaged in non-law enforcement work may accrue not more than 240 hours of compensatory time.
- D. Any additional overtime work performed by employees who have already accumulated the maximum 240 hours of compensatory time or 160 hours of actual overtime work (480 for law enforcement and fire fighter personnel), compensatory time off credits shall be compensated not later than the pay period immediately following the period during which the overtime was worked.
- E. When sickness lasting one or more days occurs during a scheduled compensatory time off, and the employee

substantiates such to the satisfaction of the Executive Manager, the employee shall be charged for sick leave and permitted to reschedule his compensatory time off. Application for such substitution of sick leave for compensatory time off shall be made within three workdays upon return to duty, and shall be in conformance to applicable provisions of the sick leave policies and these rules and regulations.

- F. An employee who has requested the use of compensatory time-off shall be permitted to use such time within a reasonable period after making the request if the use of the compensatory time does not unduly disrupt the operations of the Authority.
- G. An employee on compensatory time off shall be deemed to be on official leave with pay status.
- H. The Executive Manager may require an employee to use any accumulated compensatory time off credits, upon mutual agreement with the employee as to the schedule and use of these credits.

#### **7.406 Conversion of Compensatory Time Off to Cash**

- A. The Executive Manager may direct, at the option of the employee, payments for accrued compensatory time earned, at any time, in any combination, and which shall be paid at the regular rate earned by the employee at the time the employee receives such payment.
- B. At the time of separation, the employee shall be paid in cash for all unused compensatory time credit earned at a rate of compensation not less than:
  - 1. the average regular rate received by such employee during the last 3 years of the employee's employment, or;
  - 2. the final regular rate received by such employee, whichever is higher.

#### **7.500 NON-OVERTIME WORKWEEKS**

When an employee is on non-pay status for less than 40 hours during a workweek or less than the maximum standard hours for those employees

subject to the 106 hours work period, such workweek shall be considered a non-overtime workweek and all hours worked shall be paid at the regular rate in accordance with established personnel policies except as provided by law.

## **7.600 UNAUTHORIZED WORK**

Hours worked by an employee without the Executive Manager's permission or contrary to his instructions or, not authorized by such applicable budget appropriations, shall not be considered as hours worked. Unrecorded hours worked during a workweek or work period by an employee at the job site, or at his home or other duly authorized designated place, must be counted as hours worked if the Executive Manager has reason to know of such practice. The Executive Manager must enforce his no-work rule and may not unjustly benefit from work performed without his knowledge.

## **7.700 HOLIDAY PAY**

- A. When an employee is absent from duty at the close of the working day immediately preceding a holiday, and at the beginning of the working day immediately following a holiday, and such absences are determined to have been on a leave without pay status, the employee shall not be considered eligible for compensation for the holiday under this rule, but shall be considered as on leave without pay status.
- B. Employees who are required, because of an emergency or other reasons, to work on holidays (or their equivalent day) shall be paid at a rate equivalent to double their hourly rate of pay exclusive of any additional pay, except as otherwise provided by statute.
- C. For purposes of these rules, holidays are declared to be those identified in these Rules.

## **7.800 NIGHT DIFFERENTIAL PAY**

Work performed between the hours of 6:00 p.m. and 6:00 a.m. shall be compensated as follows:

- A. Any employee (except the Executive Manager and Deputy Executive Manager) who works between the hours of 6:00 p.m. to 6:00 a.m. shall be entitled to night differential pay, calculated at the rate of their regular wage plus ten percent (10%) for all periods worked between the hours of 6:00 p.m. and 6:00 a.m., except as otherwise provided by statute.

## **7.900 DUAL EMPLOYMENT**

No employee of the Authority may be employed on a full-time, part-time, or contractual basis by more than one department, agency or branch of the government of Guam at any time, except for:

- A. persons serving as part-time teachers, and instructors for the Guam Community College and for the University of Guam and instructors who may be employed during the summer.
- B. persons employed by the Youth Congress.
- C. persons employed on a part-time basis by boards or commissions.
- D. persons employed as nurses, physicians, and as ancillary health professionals in the Guam Memorial Hospital's Ancillary Services Department.
- E. attorneys engaging in the active practice of law, or part-time judges or part-time court referees.
- F. persons employed on a part-time or contractual basis who are individual and family counselors or chemical dependency specialists.

## **7.950 OUTSIDE EMPLOYMENT**

Employees may be permitted to work at outside private employment not in conflict with their Authority service nor such as would bring the Authority or its employees into disrepute. Any employee may undertake outside employment only if such is not in conflict with his work assignments and duly scheduled hours of his Authority employment, and only with the consent in writing of the Executive Manager. Consent may not be unreasonably withheld. The Executive Manager may review the adequacy of such requests. Such requests and approvals shall be renewed on an annual basis. In the event of an employee placed on furlough, the Furlough Policy shall govern.

## **7.975 RECORD KEEPING**

Records of hours worked and wages paid are required to be kept for each employee subject to this policy. The Executive Manager is responsible for making available the following information for review by the Federal Wage and Hour Division. Records must be preserved for at least five years.

- A. Name
- B. Home address
- C. Date of birth
- D. Sex and position classification in which employed
- E. Time and day of work, the workweek or work period begins
- F. Total wages paid each pay period
- G. Date of payment and pay period covered
- H. Basis on which wages are paid
- I. Regular hourly rate of pay for any week in which overtime is worked
- J. Amount and nature of each payment excluded from regular rate
- K. Hours worked each workday and total hours worked each workweek
- L. Total daily or weekly straight time earnings or wages
- M. Other records or information as the Executive Manager may require.

## CHAPTER 8

# LEAVES OF ABSENCE

### STATEMENT OF POLICY

This chapter establishes a uniform and equitable system where employees may be reasonably excused from work for rest, recreation, health, education, welfare and other purposes without an appreciable decrease in the productivity of and services provided by the Authority.

Also, herewith in Appendix G are the Procedures for Leave Sharing which may be utilized to augment the provisions of this chapter.

### 8.000 GENERAL PROVISIONS FOR LEAVES OF ABSENCE

#### 8.001 Leave of Absence

A leave of absence is an approved absence from duty, by the Executive Manager or his delegated representative, for a prescribed period of time, with or without pay.

#### 8.002 Revocation of Leave

Approved leaves may be revoked by the Executive Manager when the good of the Authority requires it, or when evidence shows that the employee on leave is engaged in activities for which the leave would not otherwise have been granted.

#### 8.003 Denial of Leave of Absence

- A. No leave of absence, with or without pay, shall be authorized where it appears or was discovered that it was requested for the purpose of:
  - 1. allowing the employee to work at his outside employment.
  - 2. engaging in prohibited political or unlawful activities.
- B. Leave may also be denied when the loss of the employee's services on days for which leave is requested would result in the discontinuance of critical services to the public.



**8.004 Form of Leave Application**

Application for leave of absence shall be made in the form prescribed by the Executive Manager.

**8.100 ANNUAL LEAVE**

**8.101 Policy**

The Executive Manager shall afford opportunity for employees to take leave, and particularly to avoid, whenever possible, loss of leave by forfeiture. However, leave may be denied by the Executive Manager when the services of the employee are required after good faith consideration of the employee's request and operational requirements.

**8.102 Request for Annual Leave**

Requests for annual leave shall be submitted to the appropriate supervisor by the employee at least 48 hours in advance for leaves in excess of 40 consecutive hours and 24 hours in advance for leaves less than 40 hours in order to avoid unnecessary disruption of work. Reasonable consideration shall be afforded for emergency situations.

**8.103 Minimum Charge for Annual Leave**

An employee who uses annual leave in an amount of time which is less than a full hour shall be charged leave daily according to the following table:

<u>Minutes Used</u>	<u>Time Charged (Minutes)</u>
0 - 14	00
15 - 30	30
31 - 60	60

**8.104 Accrual of Annual Leave**

A. Employees occupying permanent positions shall accrue annual leave in accordance with the following schedule:

1. One-half day (4 hours) for each full bi-weekly pay period

in the case of employees with less than three years of service.

2. Three-fourths day (6 hours) for each full bi-weekly pay period except that the accrual for the last full bi-weekly pay period in the year shall be one and one-fourth day (10 hours) in the case of employees with three but less than fifteen years of service.
  3. One day (8 hours) for each full bi-weekly pay period in the case of employees with fifteen or more years of service.
- B. Annual leave earned during any pay period shall be credited to the employee's account on the last day of that pay period or, in the case of separation, the last day the employee is on the payroll.
- C. An employee shall continue to earn annual leave credits during leaves of absence with pay for each bi-weekly pay period; otherwise there shall be no accrual for such period.

**8.105 Determination of Years of Service for Annual Leave Accrual Purposes**

Computation of years of service as a basis for the rate of accrual of annual leave shall be in accordance with the following:

- A. In determining years of service prior to the 1961 leave year, employees shall be credited with:
1. All periods of employment to include service with the Naval government of Guam or with other Federal instrumentalities or agencies within Guam prior to August 1, 1950.
  2. Period of service with the Armed Forces of the United States subsequent to August 1, 1950.
- B. In determining years of service commencing with the 1961 leave year, employees shall be credited with:
1. All service for which annual leave shall accrue.
  2. Full time employment in the Judicial or Legislative

Branches.

3. Service with the Naval government of Guam or with other Federal instrumentalities or agencies within Guam prior to August 1, 1950, and to include honorable service with the Armed Forces of the United States if such former member of the Armed Forces is not receiving an annuity or pension, other than a disability annuity or pension as a result of such military service. Years of service shall include one year for each year served as a school year employee.

**8.106 Carry-Over and Accumulation of Annual Leave**

- A. Annual leave accrued and unused in a leave year may be accumulated and carried over to the next leave year except that total accumulation by such carry-over shall not exceed 480 hours. Annual leave in excess of 480 hours shall be automatically credited to accumulated sick leave provided that not more than 100 hours shall be credited to sick leave. All other excess annual leave accrued and unused in a leave year shall be automatically forfeited at the end of such leave year.
- B. Exception to the 480 hours annual leave maximum accumulation may be made upon the approval of the Board of Directors. The Board of Directors may authorize a total accumulation of up to 720 hours of annual leave when it is determined that the additional accumulation results in the continued service of an employee and is in the best interest of the Authority's operational requirements.
- C. All other excess annual leave accrued beyond 720 hours and unused in a leave year shall be automatically forfeited at the end of such leave year and shall not be creditable to sick leave. However, employees should be given an opportunity to exhaust excess leave.

**8.107 Lump Sum Payment for Annual Leave Upon Separation or Transfer**

- A. When an employee is separated from the Authority, he shall be given a lump sum payment for any accrued and unused annual leave as of the date of separation. In computing such lump sum payment, leave on leave shall not be allowed.
- B. Any employee who transfers from one branch of the

government of Guam to another, or from one department, agency, instrumentality or corporation of the government of Guam to another department, agency, instrumentality or corporation at his option may accept the cash value of his earned leave at the time of transfer or transfer his accumulated leave to his new government position, notwithstanding the fact that such transfer may appear on the employee's personnel records as a resignation and reappointment.

- C. Any employee who has been authorized to accumulate annual leave beyond 480 hours and who has earned more than 720 hours of annual leave shall be entitled to a lump sum payment for the earned leave upon separation if such separation occurs prior to the end of the leave year.

#### **8.108 Avoiding Forfeiture of Annual Leave**

- A. Employees shall submit advance requests for planned annual leave which will be earned in the current leave year to preclude forfeiture of annual leave.
- B. Supervisors share the responsibility with employees for avoiding forfeiture of annual leave. Supervisors shall develop by the end of the first quarter of each leave year a schedule of annual leave for employees under their supervision. Employees shall be expected to submit reasonable estimates for use of their leave for the current leave year.

#### **8.109 Liberal Consideration of Annual Leave Requests Upon Birth or Adoption of a Child**

Employees may, upon the birth or adoption of a child, submit a request on the appropriate leave form for annual leave for the purposes of assisting or caring for the child. Such requests should be liberally considered by supervisors and for other leaves set forth in the Family and Medical Leave Act (FMLA).

#### **8.110 Advance Lump Sum Payment for Annual Leave**

In accordance with Section 4111, Chapter 4 of Title 4 of the Guam Code Annotated, an employee may, prior to taking authorized annual vacation leave, receive a lump sum payment in advance for the period of leave authorized. If any such employee returns to work status prior to the expiration of the leave period for which he

received a payment in advance, he shall reimburse the government for any portion of such period which shall not have expired no later than the pay period following the return to work status and shall be credited with the unused annual leave for further use.

#### **8.111 Annual Leave Charge - Firefighters**

Firefighters shall be charged no more than nine hours annual leave for any given day on which such leave is taken.

### **8.200 SICK LEAVE**

#### **8.201 Purpose and Eligibility**

A. Sick leave shall be allowed to an employee when the employee:

1. receives medical, dental or optical examination or treatment or any mental health examination, counselling or treatment;
2. is incapacitated for the performance of duties by sickness injury, complications due to pregnancy, medical confinement; or would jeopardize the health of others by his presence at his duty assignment because of exposure to a contagious disease; or
3. gives birth or becomes a father pursuant to maternity or paternity statutes.

B. Sick leave with pay shall be allowed during leaves of absence or vacations, provided, however, that any sick leave taken by an employee while on vacation must be supported by a certificate issued by a licensed physician.

C. Responsibility for administration of this section shall remain with the Executive Manager, subject to such audit as ordered by the Civil Service Commission.

#### **8.202 Notification of Sickness**

Notification of absence on account of sickness shall be given as soon as possible on the first day of absence or, if impracticable, as soon thereafter as circumstances permit. If such notification has not been given in accordance with this section, the employee may

be denied sick leave with pay.

**8.203 Application for Sick Leave**

- A. Application for sick leave shall be filed on a form prescribed by the Executive Manager.
- B. Sick leave shall be granted in accordance with statute, rules, policies and procedures.

**8.204 Sick Leave Charged Only for Working Hours**

An employee shall be charged for sickness for only those hours for which he was or would have been scheduled to work.

**8.205 Accrual of Sick Leave**

Employees occupying permanent positions shall accrue sick leave at the rate of one-half day (4 hours) for each bi-weekly pay period in which the employee is on pay status for the entire ten days, otherwise, there will be no accrual.

**8.206 Minimum Charge for Sick Leave**

An employee who uses sick leave in an amount of time which is less than a full hour shall be charged leave according to the following table:

<u>Minutes Used</u>	<u>Time Charged (Minutes)</u>
0 - 14	00
15 - 30	30
31 - 60	60

**8.207 Accumulation and Carry Over of Sick Leave**

Unused sick leave may be accumulated and carried over to succeeding leave years without limitation.

**8.208 Vesting of Sick Leave**

Sick leave accrued for service with the government of Guam or any of its instrumentalities, branches, authorities or any entity, corporation or agency, shall vest in the employee upon accrual and shall remain vested in such employee while he is employed by the

government notwithstanding the fact that from time to time, he may be transferred from one branch to another or to an autonomous agency, authority or other entity within the government of Guam. Sick leave accrued and unused at the time of separation from the government shall remain credited to the employee if such employee returns to government service. An employee, approved for disability retirement, shall exhaust his accrued sick leave prior to effecting his retirement.

#### **8.209 Advance of Sick Leave**

- A. An employee, who has suffered a serious illness or ailment and has exhausted his sick leave and who intends to return to work, may submit a written request, for advance of sick leave, to the Executive Manager. Each request for advance of sick leave must be accompanied by a certification of incapacitation for duty by the employee's physician. An advance of sick leave may not exceed 13 days, and shall be subject to approval by the Executive Manager.
- B. If an employee is separated from service without having earned all of the sick leave allowed and taken, there shall be deducted from any money due him at the time of separation an amount equal to his salary for the period of unearned sick leave allowed and taken.
- C. If the employee is medically certified as being unable to return to work after all accrued and/or advanced sick leave credits have been used, the employee shall be allowed to use any accrued compensatory or annual leave credits before being placed on leave without pay.

#### **8.210 Physician's Certification of Incapacitation**

- A. An employee who is absent in excess of three consecutive days because of illness, injury away from the job, or quarantine, or for the full day immediately before or after a holiday, weekend, day off or vacation, may be required to furnish a certification as to the incapacitation by a licensed physician or furnish other administratively acceptable evidence. The Executive Manager may require certification for such other periods of illness he deems advisable. Supervisors shall apply reasonable judgment when requesting a doctor's certification.

- B. If the certification required is not furnished, all absences which would have been covered by such certification shall be indicated on the payroll as leave of absence without pay.
- C. If the medical certification furnished by the employee is not acceptable to the Executive Manager, the Executive Manager may require the employee to submit to a special medical examination which shall be paid for by the Authority. Based on the medical certification, the Executive Manager:
  - 1. shall not approve further use of sick leave if the employee is medically evaluated as fit for work.
  - 2. shall allow the employee to use accrued sick leave if the employee is medically evaluated as unfit to return to work. In the event the employee exhausts his accrued sick leave the provisions of these Rules shall apply.
- D. An employee who, upon a written request by the Executive Manager, refuses to comply with these rules shall not be eligible to use accrued sick leave credits and any absence from work shall be handled in accordance with Rule 8.700

**8.211 Lump Sum Payment for Sick Leave Prohibited**

No employee who separates from government service for any reason may receive a cash payment for sick leave accrued at the time he leaves such service; except that upon the death of the employee, a lump sum payment of unused sick leave shall be made in accordance with Section 7102, Title 4 of the Guam Code Annotated.

**8.212 Sick Leave Charge - Firefighters**

Firefighters shall be charged no more than nine hours sick leave for any given day on which such leave is taken.

**8.300 ON-THE-JOB INJURY**

**8.301 Policy**

It is the policy of the Board that all employees be provided with safe working conditions. This On-the-Job-Injury policy is intended as an employee benefit separate and apart from Worker's Compensation Law (22 GCA §§9101, et seq.). Unless otherwise



provided by statute or the Civil Service Commission, the On-the-Job-Injury policy shall control in the event of conflict with other rules or policies.

### 8.302 Definitions

- A. **Classified Employee** - a probationary or permanent status employee occupying a classified position.
- B. **Day** - a calendar day unless otherwise specified.
- C. **Death** - death resulting from an on-the-job-injury.
- D. **Disability** - physical or mental incapacity due to an on-the-job-injury which prevents the employee from performing the essential functions of the employee's regular position or other temporary duties.
- E. **Essential Functions** - those that an employee must be able to perform in the employee's regular position, with or without reasonable accommodation.
- F. **Lateral Position** - a position with substantially comparable minimum qualifications or equivalent pay grade as the employee's regular position.
- G. **Management Official** - official with supervisory or management responsibilities.
- H. **On-the-Job-Injury** - injury or death arising out of and in the course of employment, including an accidental injury or injury caused by the willful act of a third person directed against an employee because of his or her employment, and such occupational disease or infection as arises naturally out of such employment, or, as naturally or unavoidably results from such accidental injury.
- I. **Personal Leave** - annual or sick leave or compensatory time off.
- J. **Physician** - a person licensed to practice medicine in the United States or its territories or in other medical licensing jurisdictions recognized by the American Medical Association and other practitioners of the healing arts recognized by the Worker's Compensation Commission.

- K. **Public Employment** - employment by a department, agency, or instrumentality of the government of Guam.
- L. **Reasonable Accommodation** - a modification or adjustment to the employee's regular position, the work environment, or the way things are usually done that enables the employee to perform the essential functions of his or her regular position.
- M. **Regular Position** - the position for which the employee was hired.
- N. **Temporary Duties** - specific duties of limited duration assigned to the employee during the work-injury period in lieu of the regular duties of the employee.
- O. **Unclassified Employee** - an employee occupying an unclassified position or one employed on a temporary or limited term status.
- P. **Work-Injury Leave** - leave with pay granted by the Executive Manager under the provisions of Rule 8.300.

#### 8.303 Coverage

- A. A classified or an unclassified employee who suffers an on-the-job-injury will be eligible for work-injury leave for up to 60 days without charge to personal leave, beginning the day of the injury, provided:
  - 1. The employee signs an agreement with the Authority, entitling the Authority to reimbursement of that portion of the administrative leave payment equivalent to loss wages benefits received from the Authority's insurance carrier.
  - 2. The employee is unable to perform the essential functions of the employee's regular position, or temporary duties, during the 60-day period, or portions thereof, as certified to by the employee's physician. If the Executive Manager disputes in good faith the certification from the employee's physician, the Executive Manager shall refer the case to the Worker's Compensation Commission and the Authority's insurance carrier for further medical evaluation to include any necessary tests or testing such as laboratory tests of radiological, sonographic, and

computerized axial tomography, and magnetic resonance imagery evaluation. The decision of the Worker's Compensation Commission shall be final. The Authority, with the approval of the Civil Service Commission, shall identify the essential functions of the employee's position for the purpose of this section.

3. The injury results in the death of the employee. In this event, the employee's designated beneficiary or beneficiaries, or if there are none, the estate of the employee, shall be entitled to a lump sum payment for the entire 60-day work-injury period, or, that portion of the work-injury period that the employee would have been entitled to had the employee survived.
  - B. If an employee is able to perform at least the essential functions of his or her position or undertake temporary assignments as provided in Rule 8.303A(1), but requires follow-up medical treatment for injuries, the employee shall be allowed work-injury leave for this purpose. The administration of this provision shall be closely coordinated with the Worker's Compensation Commission.
  - C. An employee who is absent from work due to a work-injury and has completed a minimum of 50% of the performance rating period will be evaluated on his or her performance for that period. The employee will be entitled to a salary increment upon receiving a satisfactory rating.
  - D. The employee on work-injury leave will continue to accrue annual and sick leave as provided in 4 GCA §4108 and §4109.
  - E. Employment insurance benefits will continue pursuant to contract provisions in effect for the group life and health insurance program.
  - F. Work-injury leave will not be allowed if the death or injury of the employee was self-inflicted or the result of the employee's use of illegal drugs, intoxication, recklessness, gross negligence, criminal conduct, or the result of disciplinary action against the employee.
  - G. To prevent dual compensation, work-injury leave will not be allowed if the employee is receiving worker's compensation.

### **8.304 Responsibilities**

#### **A. An employee's responsibilities include:**

1. Immediately reporting the injury to the employee's supervisor. If the supervisor is not available, the employee shall report the injury to any available management official within the Authority.
2. Pursuing a worker's compensation claim in an expedient and timely fashion prior to the expiration of the approved work-injury leave period or converting to other leave status at the end of the leave period.
3. Acting in good faith in pursuing work-injury claims. Any employee who engages in fraud, misrepresentation, or abuse, shall be subject to discipline, prosecution, and be required to provide restitution for all monies and benefits received under Rule 8.300.
4. Obtaining physician's certification to include medical evaluation and physician's detailed recommendation.

#### **B. Management's responsibilities include:**

1. The supervisor who receives the employee's report must take immediate and expedient action to provide necessary medical treatment.
2. In cases requiring immediate treatment, medical assistance shall be sought for the employee at the nearest available medical facility. If the employee is not ambulatory, or otherwise should not be moved without medical intervention, an ambulance shall be called to transport the employee. The supervisor, or designee, or if unavailable, any management official, shall accompany the injured employee to the medical facility for medical treatment as may be determined by the treating physician. Prompt notification of the employee's immediate family shall be made by the supervisor, Division Head, Deputy Executive Manager or Executive Manager.
3. Completion of all work-injury reports and immediate submission to Division Head, who shall submit such

reports to the Executive Manager within five working days following the date of notification of injury.

4. Notifying the Division Head, who shall notify the Administration Division if the employee is absent from work without authorization after the expiration of the approved work-injury leave period.
5. The Worker's Compensation Commission will be notified by the Administration Division upon receipt of the required Worker's Compensation forms.
6. Placing the employee on personal leave status pursuant to the provisions of these rules after the expiration of the approved work-injury leave period. The type of personal leave to be taken is at the employee's option.
7. Obtaining from the employee per Rule 8.303A(1), a doctor's certification of the employee's capacity to perform the essential functions of the employee's regular position, along with any specified mental/physical restrictions (e.g., no lifting over 20 pounds, no prolonged walking, standing, bending, stooping, no climbing of ladders, etc.), and recommendations of the physician as to other temporary duties which may be assigned without aggravating the existing condition.
8. Acting in good faith.
9. Complying with all applicable rules and regulations.

#### **8.305 Employment Status**

- A. A classified employee, who as a result of an on-the-job-injury becomes disabled and is unable to perform the essential functions of his or her regular position within six months after the date of injury may, if eligible, retire from the government of Guam
- B. If the classified employee is ineligible or declines to retire, the Executive Manager may allow the employee to exhaust personal leave; otherwise, the employee shall be placed in lateral or lower vacant position to which the employee qualifies, or be downgraded to a position needed by the Authority for which the employee qualifies, at the discretion of the Executive Manager. If the employee assumes the lateral

position, the employee shall maintain his or her current salary. If the employee is downgraded or placed in a lower position, the employee shall maintain the current salary for one year. If there are no vacant position to which the employee qualifies, or the Executive Manager determines that a downgrade is not proper, the Executive Manager shall exercise expedient and good faith efforts to place the employee in a position in which he or she qualifies in another division. If placement is unsuccessful, the Executive Manager shall immediately notify the employee in writing that the employee will be terminated within 60 days from the receipt of the notice by the employee. The notice shall include the employee's right to appeal under Rule 8.306. If the employee is unavailable for personal service, service may be made by certified mail to the last known address, provided management has made reasonable good faith efforts to personally serve the employee. In cases of service by mail, the 60 days begin to run on the date of the mailing.

#### **8.306 Appeals**

- A. A classified employee who is terminated in accordance with Rule 8.305B may appeal the termination to the Civil Service Commission within 20 days from the effective date of the termination in accordance with CSC appeals procedures. The Commission may up-hold the termination or take whatever action or remedies it deems appropriate. The Commission's decision is final, but subject to judicial review within 30 days after the losing party receives the Commission's written decision.

### **8.400 EXCUSED ABSENCES/ADMINISTRATIVE LEAVE**

#### **8.401 General Provision**

An excused absence is an absence from duty administratively authorized without loss of pay and without charge to leave. Supervisors and employees will apply the following procedures for excused absences.

#### **8.402 Attendance at Official Meetings/Conferences On or Off-Island**

- A. Employees shall initiate a written request for an excused absence citing the purpose of the meeting/conference, dates involved and costs, if any, to the Executive Manager.

- B. The Executive Manager will evaluate the relative costs, availability of funds, potential for the employee's development, and desirability of government representation when approving the attendance at on or off-island meetings and conferences.
- C. Upon approval of the request, a copy shall be provided to the employee and Accounting Office.

**8.403 Jury Duty**

- A. An employee who is called for jury duty in any court in the Territory of Guam shall be excused from duty with full pay and without charge to leave for all hours required for such duty not to exceed the number of hours in the employee's normal workday; however, if the jury duty does not require absence for the entire workday, the employee shall return to duty immediately upon release by the court.
- B. An employee called for jury duty is required to show the Jury Duty Call Notification to his supervisor.
- C. Supervisors are responsible for advising employees that all compensation earned for such jury service, except allowances for travel, must be paid to the Authority accordance with Section 6505, Chapter 6, Title 4 of the Guam Code Annotated. An employee may elect to request for annual leave for the purpose of jury duty service, in which case the employee may keep the compensation earned for such jury duty.

**8.404 Participation as a Competitor in a Government of Guam Personnel Examination or Interview**

- A. Employees who are participating in a competitive examination or interview for government of Guam employment, shall be excused from work with pay and without charge to leave for the time required for the examination or interview. Employees are required to report to their work location after completion of the examination or interview.
- B. Employees must advise their supervisor in advance of the need for excused absence to participate in a scheduled examination or interview. This notice should be given as soon as the employee receives information of the scheduled date and time of examination or interview.

**8.405 Participation in Examinations for Military Service**

An employee who is scheduled to appear for an examination for entrance into the United States military service, shall be excused from work with pay and without charge to leave for the time required for the examination.

**8.406 Natural Disasters and Other Emergency Conditions**

- A. Excused absence with pay and without charge to leave shall be granted employees when natural disasters or other emergency conditions create unsafe working conditions.
- B. Excused absence for natural disaster or other emergency conditions may be granted only when there has been an official proclamation of the hazardous conditions by Executive Order or an equivalent announcement by the Governor.
- C. When the Governor declares a State of Emergency, the Executive Manager shall determine whether affected facilities or portions thereof which are located in the area covered by the Executive Order or proclamation, are to be closed.
  - 1. Except for those employees determined by the Executive Manager to be necessary for providing essential services, employees shall be released from duty with pay, without charge to leave for the period the facility is closed.
  - 2. Those employees required to remain on duty to provide essential services shall be paid a differential rate as provided by law or granted compensatory leave credits for the hours worked during the period the facility is closed and the other employees are on excused leave.
- D. Employees who are on annual or sick leave status when an emergency condition is declared by Executive Order or announcement by the Governor and are not required to report to duty, shall be considered as released from duty with pay without charge to leave for the period the work facility is closed.

**8.407 Participation in Officially Sanctioned Events**

An employee, who is a participating member of an official Guam delegation which is sanctioned by the Governor shall be excused



from duty with pay and without charge to leave for a period not to exceed five work days in a calendar year.

**8.408 Absence Pending Formal Investigation**

An employee who is under formal investigation by the Authority for misconduct or violation of a rule or statute, may be placed on excused absence from duty without charge to leave not to exceed 20 workdays where the employee's absence from the work location is essential to the investigation.

**8.409 Disabled Veteran's Reexamination or Treatment**

An employee, who has been rated by the Veterans Administration to have incurred a service-connected disability and has been scheduled by the Veterans Administration to be reexamined or treated for such disability shall, upon presentation of written confirmation of having been so scheduled, be excused from duty without charge to leave for such reexamination or treatment. Excused absences shall not exceed five workdays in any calendar year. Thereafter, the employee may utilize other forms of leave as provided in these rules.

**8.410 Civil Disaster/Emergency Search and Rescue**

An employee who is a member of a volunteer services, privately or as a member of an organization, in times of civil unrest, disaster, search and rescue operations, and other civil emergencies shall be excused from duty with pay, without charge to accrued leave not to exceed two workdays.

**8.411 Bereavement Leave**

- A. An employee, upon request, shall be granted two days of excused absence with pay and without charge to leave upon the death of any member of the employee's immediate family as defined in these rules and regulations.
- B. Each employee requesting bereavement leave due to a death in the immediate family, shall submit a request to the Executive Manager stating the name of the deceased and the relationship to the deceased.

**8.412 Paternity Leave**

- A. Paternity leave shall be granted to a male employee occupying a permanent position upon the birth of a child or children by his wife, including common-law.
- B. Paternity leave shall not exceed five days of paid leave and must encompass the date of childbirth.
- C. Additional leave taken for such paternity purpose may be charged against accumulated sick leave, or may be unpaid leave. Total leave, whether paternity, sick or unpaid leave, shall not exceed two months without approval of employee's supervisor.

**8.413 Military Training Leave**

- A. An employee who is a member of a Reserve Component of the U.S. Armed Forces including the Air or Army National Guard, shall be entitled to military training leave with pay, without charge to annual leave, not to exceed 15 workdays per fiscal year.
- B. The employee shall submit a copy of orders or other documents which place the employee on military training, to the Executive Manager.
- C. A copy of the official orders shall be filed in the employee's personnel file.
- D. Any absence in excess of 15 work days may, upon request by the employee and approval by the Executive Manager, be covered by accrued annual leave credits or accrued compensatory leave credits. If not requested by the employee or approved by the Executive Manager as annual or compensatory time off leave, such absences in excess of 15 work days shall be considered as leave without pay.

**8.414 Maternity Leave**

- A. General Provisions of Leave Related to Pregnancy
  - 1. Pregnant employees are responsible for notifying their supervisor, in advance, of their intention to request leave for maternity purposes including the type of leave, approximate dates and anticipated date of return to duty, to allow the division and the Authority to prepare for any

staffing adjustments which may be necessary.

2. The supervisor is responsible for providing gainful employment and making use of her skills for as long as the employee is not incapacitated for duty.
3. Sick leave shall be made available during pregnancy to cover for physical examinations and periods of incapacitation based on certification of the employee's physician.
4. An employee may request for annual or sick leave or leave without pay (in addition to the authorized maternity leave) to provide for a reasonable period of adjustment, or to make arrangements for the care of the child. Such additional leave requirements shall be granted by the Executive Manager.
5. The employee who wishes to return to work following delivery and confinement shall be assured continued employment in her position or a position of like seniority, status and pay upon presentation of her personal physician's certification of fitness for duty.
6. The marital status of the pregnant employee shall not adversely affect her right to continued employment or use of leave.

**B. Granting of Maternity Leave**

1. Maternity leave shall be granted to a female employee occupying a permanent position who is absent from work because of confinement for childbirth, including still birth. Such maternity leave shall not exceed 20 workdays, shall be in addition to any accumulated sick leave, and shall be paid leave. Such maternity leave shall be any 20 workdays encompassing the date of childbirth, and any additional leave taken for such childbirth proposes shall be charged against accumulated sick leave, annual leave, compensatory time, or leave without pay.
2. Total leave whether maternity, sick or unpaid leave shall not exceed six months without approval from the employee's supervisor.

#### **8.415 Educational Leave With Pay**

- A. Should the Authority desire to establish a program where employees are allowed to take educational leave with pay, the program must be approved by the Board.
- B. An employee may be granted excused absence from duty with pay and without charge to leave to attend on a full-time basis, a college, university, or training academy for not more than the equivalent of 2080 hours of pay status for the purpose of receiving training that is of clearly foreseeable benefit to the Authority.
- C. The granting of educational leave with pay shall be in accordance with the Authority's approved program.
- D. Only employees who have completed their original probationary period are eligible to participate in this program.

### **8.500 HOLIDAYS**

#### **8.501 General Provisions**

Employees may absent themselves from duty on the holidays established by these rules, provided however, that work assignments may be required to be carried out if previous notification is given by the Executive Manager.

#### **8.502 Legal Holidays**

- New Year's Day January 1
- President's Day 3rd Monday in February
- Guam Discovery Day 1st Monday in March
- Good Friday
- Memorial Day Last Monday in May
- Independence Day July 4
- Liberation Day July 21
- Labor Day 1st Monday in September
- All Souls Day November 2
- Veteran's Day November 11
- Thanksgiving Day 4th Thursday in November
- Our Lady of Camarin Day December 8
- Christmas Day December 25
- Every day on which an election is held throughout Guam, except for elections to the Guam Youth Congress.

- Every day appointed by the President of the United States or the Governor of Guam for a public fast, thanksgiving day or holiday.

Island-wide Election Day, except elections to the Guam Youth Congress, and other days as may be designated by proclamation of the Governor shall be paid holidays. If any of the holidays listed above falls upon a Sunday, the following Monday is a holiday, and if any of such holidays falls upon a Saturday, the preceding Friday is a holiday.

### **8.503 Legal Holiday for Irregular Hours of Duty**

For employees whose workweek is other than Monday through Friday, and whose holiday falls on a non-workday, his holiday shall be determined as follows:

#### **A. Sunday Holiday:**

1. When an employee's workweek does not include Sunday, and a holiday falls on Sunday, his next regular workday within his workweek is his holiday.
2. When an employee's workweek includes Sunday and a holiday falls on the day that has been designated as his non-workday in lieu of Sunday, his next regular workday after his "in lieu of Sunday" within his workweek is his holiday.

#### **B. Other Holidays:**

When a holiday falls on an employee's non-workday other than Sunday, the regular workday preceding the employee's non-workday is his holiday.

## **8.600 LEAVE WITHOUT PAY**

### **8.601 Leave of Absence Without Pay**

- A. Employees may request leave without pay for good cause when their current authorized annual or sick leave with pay will not cover the total period of requested leave. Leave without pay may be granted for a period not to exceed one year. For extenuating circumstances the Executive Manager may extend the leave without pay for an additional year. No

extension may be granted thereafter.

- B. When an employee is on leave without pay status, accrual of sick, annual or retirement credit is not allowed.

#### **8.602 Request By the Employee**

Leave without pay is a temporary non-pay status and absence granted in response to an employee's request. Leave without pay covers only those hours which an employee would otherwise work or, for which he would be paid.

#### **8.603 Authorization**

- A. Authorizing leave without pay is a matter of administrative discretion. An employee cannot demand that he be granted leave without pay as a matter of right, except in the case of:
  - 1. disabled veterans who are entitled to leave without pay, if necessary, for medical treatment; and
  - 2. members of the Reserve Components of the U.S. Armed Forces who are entitled to leave without pay, if necessary, to perform military training duties.
- B. An employee who does not have adequate annual or sick leave credits may submit a written request for leave without pay to his supervisor, which requires final approval of the Executive Manager. The employee's request should indicate the reasons and the need for leave without pay and the date employee intends to return to duty from leave.

#### **8.604 Conditions for Approval of Leave Without Pay**

- A. Each request, for extended leave without pay, should be evaluated carefully to assure that, the value to the Authority or serious needs of the employee, are sufficient to offset the costs and administrative inconveniences to the Authority which result from the retention of an employee in a leave-without-pay status. Among these costs are:
  - 1. encumbrance of a position;
  - 2. loss of services which may be needed in the organization; and

3. obligation to provide active employment at the end of the approved leave period.
- B. As a basic condition to approval of extended leave without pay, there should be reasonable expectation that the employee will return to work at the end of the approved period. In addition, it should be apparent that at least one of the following benefits would result:
1. increased job ability;
  2. protection or improvement of employee's health;
  3. retention of a desirable employee; or
  4. furtherance of a program of interest to the Authority.

#### **8.605 Examples of Appropriate Use of Leave Without Pay**

Examples of types of cases for which approval of extended leave without pay would be proper, all other factors being favorable, are:

- A. For educational purposes, when the course of study or research is in line with a type of work which is being performed by the Authority and completion of which would contribute to the Authority's best interests;
- B. For the purpose of recovery from illness or disability, not of a permanent or disqualifying nature, when continued employment or immediate return to employment would threaten impairment of the employee's health, or the health of other employees.
- C. For the purpose of caring for a child upon birth or adoption.
- D. For the purpose of providing care to a spouse or child who is ill or disabled, or to provide care to elderly parents or parents-in-law.

#### **8.606 Military Leave Without Pay - Special Provision**

- A. Any classified employee except an employee who is employed in a temporary position or employed on a temporary basis, who is drafted, who volunteers for active military service, or who is ordered to active duty (not active duty military training

as outlined in Rule 8.413) consistent with Section 6218(d) of Title 4 of the Guam Code Annotated shall be granted limited leave without pay beginning with the date of induction, and not to exceed a period of four years of military service. Active military service includes active duty with the U.S. Army, the U.S. Air Force, the U.S. Navy, the U.S. Marine Corps, the U.S. Coast Guard, National Guard of Guam or other services as provided by Guam law. Such leave of absence shall be verified by official orders or appropriate military certification which shall be filed in the employee's personnel file.

- B. During such leaves of absence, the employee shall be entitled to retain the same rights and privileges as an employee granted leave without pay in accordance with these rules.
- C. All unused leave benefits shall be retained by the employee, who shall have the same credited to the employee's record upon return to his assigned position consistent with Section 6218(d) of Title 4 of the Guam Code Annotated.
- D. Upon termination under honorable conditions of such active duty, the employee shall be entitled to reinstatement in his previous position provided the employee makes application for reinstatement within 90 days after discharge.
- E. If the employee volunteers for an additional tour of military duty, the employee shall forfeit the right to return to the position.

## **8.700 UNAUTHORIZED LEAVE OF ABSENCE FROM DUTY**

- A. An employee who is absent from duty without proper authorization shall be placed on unauthorized leave of absence without pay
- B. Repeated unauthorized absences may be grounds for disciplinary action.

## **8.800 FAMILY AND MEDICAL LEAVE ACT**

Leave of absence, for a maximum of 12 weeks during any 12-month period under the Family and Medical Leave Act (FMLA) of 1993 (PL 103-3) (Federal Regulations - 29 C.F.R. Part 825) shall be approved for an employee for one of the following reasons:

- A. Purpose



1. The birth of a child of the employee and the care of such a child.
2. The placement of a child with the employee for adoption or foster care.
3. The care of a spouse, son, daughter or parent with a serious health condition.
4. A serious health condition of the employee.

**B. Eligibility**

An employee must have worked for the government of Guam for at least 12 months and for at least 1,250 hours during the year preceding the start of the leave. Temporary employees working part time, after completion of 1,250, are counted as completing the workweek even if they do not work a forty 40 hour workweek.

**C. Medical Certification**

A medical certification may be required by the Executive Manager to show dates of anticipated absence due to medical reasons or for childbirth.

**D. Leave Status**

1. Leave for the purpose of childbirth or placement of a child for adoption or foster care, shall not be taken intermittently or on a reduced leave schedule.
2. Leave for caring for spouse, son, daughter or parent, or for the employee's serious health condition may be taken intermittently or on a reduced leave schedule.
3. When leave is taken intermittently or on a reduced leave schedule, the employee's absence under the FMLA shall not exceed the equivalence of a full-time work schedule of 12 weeks (40 hours per week x 12 weeks = 480 hours).
4. An employee may elect to substitute the following paid leave for any, or all of the periods of leave taken under the FMLA. However, the Executive Manager may not

require an employee to substitute paid time off for any, or all of the period of leave taken.

- a. Accrued annual or sick leave, or compensatory time off (CTO) requested and approved consistent with rules governing the granting and use of annual or sick leave.
- b. Advanced sick leave approved under the same term and conditions that apply to any other employee who requests advanced sick leave.
- c. Leave made available to an employee under the Leave Sharing Program.

**E. Return To Employment**

Upon completion of an employee's leave, an employee must be returned to the same position and pay, benefits and working conditions at the conclusion of the leave as applicable.

## CHAPTER 9

# HEALTH AND SAFETY

### STATEMENT OF POLICY

This chapter ensures that applicants and employees meet the health and physical requirements for the efficient performance of their duties. In addition, this chapter is to develop a safe and healthful environment for employees and for the public when using the Authority's facilities, by establishing/maintaining and properly supervising an active safety and health program tailored to meet the needs of the Authority.

### 9.000 MEDICAL STANDARDS

#### 9.001 Establishment of Medical Standards

Medical standards shall include, but not be limited to, pre-entry medical examinations, medical reevaluations, the method of administration of medical examinations, and the consequences of failure to meet health and physical condition requirements.

The Executive Manager is authorized to establish medical standards in order to:

- A. Ensure that persons seeking employment in the Authority meet the health and physical requirements necessary for the safe and efficient performance of the duties of the class of position in which they seek employment, and can continue to meet the health and physical requirements for a reasonable period of time.
- B. Ensure that each employee is able to perform the duties of his position satisfactorily and without undue hazard to himself or others or without undue hardship on the operation of the program.
- C. After making a conditional job offer and before an individual starts work, the Executive Manager may request a medical examination or ask health related questions, provided that all candidates who receive a conditional job offer in the same job category are required to take the same examination and/or respond to the same inquiries.

#### 9.002 Kinds of Employment Medical Examinations

The Executive Manager is authorized to require three types of medical examinations:

**A. PRE-ENTRY**

Pre-entry medical physical examinations shall be required of all persons prior to initial appointment to the position.

**B. PERIODIC**

Periodic medical physical examinations shall be required of all employees holding positions in classes which the Executive Manager certifies and approves, that the nature of the work performed is such that a periodic check of ability to meet the health and physical condition standards is necessary. The intervals at which periodic medical physical examinations shall be taken will be determined by the Executive Manager. The Authority shall implement the standards imposed by the U.S. Department of Transportation and other OSHA standards applicable to periodic medical physical examinations for certain type of vehicle operations.

**C. SPECIAL**

The Executive Manager may authorize special medical physical or psychological examinations to determine the fitness for duty of employees to continue with their assigned duties. Special physical or psychological medical examinations shall have as their purpose the determination of whether an employee should be retired from the government service or assigned to duties and responsibilities that are within his physical or psychological ability to perform. Costs for the special medical examination shall be paid by the Authority.

**9.003 Administration of Employment Medical Examinations**

Medical examinations shall be administered by a licensed physician or other licensed professional on forms prescribed by the Executive Manager. The examination form shall request a medical determination of the individual's fitness for employment in the class of position. For special examinations, forms shall provide a means for recommendations by the examining physician or licensed professional as to whether the individual employee should be retired or placed in other employment more suited to his physical or mental condition and ability.

**9.004 Temporary Medical Exemptions**

The Executive Manager may determine that a position must be filled immediately, making it impossible to complete the medical examination prior to appointment. In these unusual cases, the Executive Manager may temporarily waive the medical examination, provided that the medical examination is completed at the earliest possible date and in no instance later than 30 days after the appointment.

**9.100 PLACEMENT OF EMPLOYEES WHO BECOME MEDICALLY NON-QUALIFIED**

**9.101 General Provisions**

- A. The provisions of this section shall apply to permanent employees who become medically non-qualified and to original probationary employees with a service-connected disability.
- B. It is the responsibility of the Authority to assure, to the extent possible, the continued employment of employees who become disabled as a result of an injury, accident or illness that is not a result of misconduct or who are found to be medically non-qualified for their present position, but who are medically qualified for other types of positions within the Authority.
- C. The employee shall be examined at the expense of the Authority by a government or private physician or physicians in such field or fields of medicine and/or psychiatry as may be applicable to evaluate the employee's qualifications for his present position, or assess his current physical and emotional capacities and/or evaluate his qualifications for a vacancy for which he is being considered under the provisions of this section.
- D. Employees affected by this rule shall be considered for those vacancies for which they qualify within the Authority, and may also receive consideration for vacancies in other departments.
- E. In the placement of employees with a disability, the Authority shall consider the following:
  - 1. The ability of the employee to safely perform the duties of the position without undue interruption to the work

program and/or undue hardship on the operations of the program.

2. The ability of the employee to absorb any required training or retraining.
3. The mutual interest of both the Authority and the employee.

F. If demotion is involved, whether or not initiated by the employee, he shall be compensated in accordance with Rule 6.005.

#### **9.102 Placement of Employees with Disabilities**

A. After medical, physical, or psychological re-evaluation, an employee who is no longer qualified to perform the duties of his position satisfactorily within a stated reasonable period of time and in spite of reasonable accommodations due to a permanent medical physical or mental incapacity, the Executive Manager shall take the following action (assuming the employee is qualified and able to perform the new duties within the limitations established by these rules and the ADA):

1. Transfer the employee to an equivalent position elsewhere in the Authority; or
2. Promote the employee consistent with Chapter 4; or
3. Reassign the employee to a lower graded position, without loss of pay, elsewhere in the Authority, if no equivalent position is available.

B. If there is no appropriate position in which the employee can be placed within the Authority, the Executive Manager will coordinate placement of the employee in a suitable position with other government of Guam departments and agencies. If an appropriate vacancy is found, the receiving department or agency is required to employ the employee who is medically disabled consistent with these rules and provisions of the ADA.

#### **9.103 Reasonable Accommodation**

Every effort shall be made by the Executive Manager to provide

reasonable accommodations to assure continued employment.

#### **9.104 Termination of Employment**

The Executive Manager shall terminate the employment of the employee:

- A. If no suitable placement can be made or if the employee refuses placement in a suitable position.
- B. If the employee refuses or is ineligible for retirement.
- C. If the Executive Manager has evidence that the employee is permanently disabled from performing the job, or will be disabled for a long time that termination is necessary in light of demonstrated business realities.

Such termination action shall be consistent with Adverse Action Procedures.

### **9.200 SAFETY STANDARDS**

The minimum safety standards shall be those as established in the Occupational Safety and Health Code (Chapter 87, Title 10 of the Guam Code Annotated) and administered by the Division of Occupational Safety and Health, Department of Labor.

## CHAPTER 10

# EMPLOYEE PERFORMANCE

### STATEMENT OF POLICY

This chapter encourages efficiency and productivity among employees and the orderly and constructive relationships between management and employees in the interest of effective personnel management and the efficient operation of the Authority.

### 10.000 EMPLOYEE PERFORMANCE EVALUATION

#### 10.001 Performance Evaluation

The Executive Manager shall establish and maintain a performance evaluation system for the fair and objective appraisal of work performance of employees. The performance evaluation system may be used to:

- A. improve individual performance.
- B. strengthen supervisor/employee relationships.
- C. recognize employee accomplishments and good work.
- D. identify job standards.
- E. identify training needs.
- F. grant or deny pay increments.
- G. determine order of layoffs.
- H. determine whether a probationary employee shall be given a permanent appointment.
- I. determine eligibility for promotion.
- J. determine whether disciplinary action is required.

#### 10.002 Performance Evaluation Training

The Executive Manager shall be responsible for providing periodic training for all levels of management concerning the performance



evaluation system including the development of performance standards, performance interview techniques and performance ratings.

**10.003 Performance Evaluation Records**

A. A copy of the performance evaluation report shall be transmitted to the Executive Manager 30 days prior to the anniversary date. Upon receipt of the performance evaluation report and recommendations, the Executive Manager shall effect the appropriate personnel action in accordance with the recommendation of the supervisor and/or division head. No action will be taken by the Executive Manager until receipt of the performance evaluation report.

B. Records of the performance evaluation report shall be filed in the employee's personnel folder.

**10.004 Executive Manager's Responsibility for Performance Evaluations**

The Executive Manager shall be responsible for the effective implementation and administration of the performance evaluation system within the Authority. He shall approve all performance ratings made within the Authority and shall ensure that supervisory personnel receive adequate training in the performance evaluation system. He shall ensure that performance evaluations and reports are completed and submitted on a timely basis.

**10.005 Supervisor's Responsibility for Performance Evaluations**

A. The performance standards shall be developed and the performance rating shall be completed by the supervisor immediately responsible for the employee's work with input from the employee. The rater should be the individual who oversees, reviews and checks the daily work performance of the employee being rated, or is the supervisor who is most closely acquainted with the employee's daily work performance. The supervisor shall also be responsible for the timely preparation and submission of performance reports for all employees under his supervision. The employee's supervisor must have supervised the employee for at least 90 days to render a fair evaluation. When a supervisor retires, resigns or transfers he shall render an evaluation for the assigned employees before leaving the Authority.

- B. For employees on temporary assignments due to work injury, disability (light duty), details, etc., for 120 days or more, the supervisor may establish additional performance standards to reflect current duties. A composite rating for the temporary assignment and permanent position may be made.

#### **10.006 The Performance Evaluation Form**

Performance evaluations shall be accomplished on a form prescribed by the Executive Manager, consistent with the performance evaluation system in effect. The performance evaluation forms shall be filed in the employee's permanent records.

#### **10.007 Performance Evaluation Period**

In accordance with the system and procedures prescribed by the Executive Manager, supervisors shall evaluate the work performance for employees:

- A. Every 12 months of service for permanent employees in Pay Steps 1 through 6, every 18 months of service for permanent employees in Pay Steps 7 through 9, and every 24 months of service for permanent employees in Pay Steps 10 through 19, to coincide with the employee's employment anniversary date or increment due date.

**(NOTE: Supervisors are also required to conduct mid-term performance assessments for all their subordinates.)**

- B. No later than the end of the probationary period for those employees serving original or new probationary appointments, including those whose probationary periods have been extended. The final Probationary Performance Report shall be submitted and received by the Executive Manager no later than 10 workdays from the end of the probationary period.

#### **10.008 Salary Increments - Permanent Employees**

Every classified employee shall be entitled to a one step salary increment for satisfactory performance, except as otherwise provided by statute.

#### **10.009 Performance Evaluations for Probationary Employees**

- A. An overall performance rating of at least Satisfactory shall be necessary before an employee serving an original or new probationary period may receive a permanent appointment in the class of position he occupies.
- B. When an employee serving an original or new probationary period receives an overall performance rating of Marginal, the probationary period shall be extended for an additional period of 60 days during which the employee has the opportunity to improve his work performance, provided the total probationary period does not exceed 12 months.
- C. When an employee, serving an original or new probationary period, receives an overall performance rating of Unsatisfactory, the employee serving the original probationary period shall be terminated from employment with the Authority, while the employee serving a new probationary period shall be allowed to return to his former or comparable position consistent with these rules. If such position is not available, the employee shall be placed on a priority list and given first offer of employment upon availability of such position.

## **10.100 APPEAL PROCEDURE FOR REDETERMINATION OF PERFORMANCE RATING**

### **10.101 Purpose**

This procedure outlines the responsibilities and procedures to be followed by management and employees in handling performance rating appeals.

### **10.102 Coverage**

Employees covered in this procedure are those employees who have satisfactorily completed their original probationary period and have attained permanent status with the Authority. Such employee who believes he was unjustly rated may request for a redetermination of his performance rating. Original probationary period performance ratings are not appealable under this procedure.

### **10.103 Representation**

An employee has the right to present an appeal without

representation. He also has the right to be accompanied, represented, and advised by a representative of his choice at any step of the appeal proceedings.

**10.104 Freedom from Reprisal or Interference**

An employee and his representative shall be free to appeal a performance rating without restraint, interference, coercion, discrimination, or reprisal.

**10.105 Management's Responsibility for Timely Action**

Management shall expedite the resolution of an appeal and shall abide by the allotted time. Failure to render a decision within the allotted time at any step constitutes denial, and the employee may then proceed to the next step of the appeal procedure.

**10.106 Informal Appeal Procedure**

- A. The employee who believes he was unjustly rated shall bring the matter to the attention of his immediate supervisor not later than five workdays after he was notified of his performance evaluation rating by his supervisor.
- B. A review of the rating shall be afforded the employee by the immediate supervisor. Settlement of aggrieved matters shall be encouraged at the lowest possible administrative level and in the shortest possible time. The employee shall be notified of the decision not later than five workdays after presentation of his informal appeal to his immediate supervisor.
- C. If the employee's concerns are not resolved by the immediate supervisor, the employee may present his informal appeal either orally or in writing to his manager. The employee shall be notified of the decision not later than five workdays after presentation of his informal appeal to his manager.
- D. If the employee's concerns are not resolved, or that a decision is not issued within five workdays, the employee may file a formal appeal to the Executive Manager.

**10.107 Formal Appeal Procedure**

- A. When the decision of the Executive Manager fails to satisfy the employee, the employee may file a formal appeal to the

Performance Rating Board of Review via the Executive Manager. The appeal shall be in writing to the Board and filed within five workdays after the appellant receives the Executive Manager's decision.

- B. The Board shall be appointed by the Executive Manager and shall consist of three members, who are classified employees of which one shall be at the same position level as the appellant, one shall be at the managerial level and one from the Commission staff or designated official who will serve as the hearing officer. The Executive Manager shall appoint the Board within five workdays of receipt of the written appeal.
- C. The Board shall conduct its first hearing within five workdays or its appointment. The Board shall complete the investigation and conduct the final hearing not later than 10 workdays from the date the Board convened. The Board shall give notice of hearings and shall provide all pertinent documents related to the appeal to the appellant, his representative, the rater(s), and all other parties concerned.

The conduct of the hearing shall be consistent with the opportunity to present all information necessary to decide the merits of the appeal. Both oral and written information which the Board considers pertinent may be given, as well as any other information the Board requests concerning the appeal.

- D. The hearing officer shall preside and rule on all questions and conduct of the hearing during the proceedings. Board members shall consider the case and vote objectively. They shall give consideration to the merits of the case and secure all necessary information. They shall encourage a harmonious relationship between employees and supervisors during proceedings before the Board. All members of the Board shall be present at all times during hearings and shall participate in decisions. Hearings shall be recorded and summarized in writing.
- E. When all pertinent information in an appeal has been presented to the Board, the Board shall render a decision by majority vote. The Board may either amend the performance rating, or sustain the rating without change. When an amendment is made by the Board, to the performance rating, that amended rating shall not be lower than the original rating.

The Board shall make its decision within five workdays of the final hearing. The Board decision shall be in writing with the hearing officer's signature. The decision shall contain a brief summary of the facts on which the Board based its decision. The written decision shall be sent immediately to the appellant and signed copies forwarded to the Executive Manager.

- F. When the Executive Manager receives the Board decision amending the employee's rating, the Executive Manager shall immediately substitute the original rating for the amended rating. The Executive Manager must reconsider administrative actions based on the original rating and redetermine and adjust those administrative actions to conform to the amended rating.

**(NOTE: Further reference to Board composition - AG Opinion Reference DOA95-1399)**

## CHAPTER 11

# ADVERSE ACTION PROCEDURES

## STATEMENT OF POLICY

This chapter sets forth the guidelines and procedures by which the Executive Manager may suspend, demote or dismiss a permanent employee.

## 11.000 COVERAGE

This chapter shall apply to all permanent classified employees.

## 11.100 SCOPE

For the purpose of this chapter, the term "dismissal" shall not be interpreted to include:

- A. Actions taken by the Executive Manager referenced in the Chapter on RESIGNATION and TERMINATION; or
- B. Action taken by the Executive Manager in the termination of services of an original probationary employee.

## 11.200 EMPLOYEE DISCIPLINE

### 11.201 General Provisions

#### A. Responsibility for Discipline

The Executive Manager derives his authority and responsibility for employee discipline under the provisions of Section 4105, Title 4, of the Guam Code Annotated. The Executive Manager has the responsibility to remove or demote to another position on a fair and equal basis, any employee in the classified service whose conduct or capacity is such that his removal or demotion will promote the efficiency of services offered and/or conducted by the Authority.

#### B. Delegation of Authority

The Executive Manager may delegate responsibility for administration of day-to-day discipline to line management,

which include such actions as oral admonitions, letters of reprimand, and the recommendation of adverse actions.

#### **11.202 Job Protection Procedures in Employee Discipline Actions**

- A. All levels of supervision and management share the responsibility for strict adherence to employee's job protection rights and considerations including:
1. Informal counseling at the first indication that an on-the-job or personal problem is affecting the employee's job performance.
  2. A reasonable opportunity for the employee to correct inadequate performance including providing specific training to the employee to improve the level of his job performance or to correct unacceptable habits or practices such as tardiness or lack of attention to work requirements.
  3. The right to reply to the notice of a proposed adverse action that may result in a suspension, demotion, or dismissal.
  4. The right to reply to the notice of a proposed adverse action and careful consideration of any reply.
  5. The right to appeal to the Civil Service Commission as provided in the CSC Rules and Regulations relative to Demotion, Suspension, Dismissal and Appeal of Adverse Actions.
- B. The Executive Manager is accountable for assuring that each supervisor and manager has received orientation and training on the Authority's basic intent that discipline shall be a method of correcting people in such a way as to produce satisfactory job performance. The use of discipline in a punitive matter is inconsistent with the Authority's concept of discipline as an opportunity to provide constructive correction.

### **11.300 ADVERSE ACTION PROCEDURES**

#### **11.301 General Requirements**



- A. An employee must be given the final notice and statement of the charges, pursuant to Title 4, Guam Code Annotated (GCA) Section 4406, no later than 60 days after management knew, or should have known the facts or events which form the alleged basis for the adverse action.
- B. An employee covered by the Adverse Action Procedures may be suspended for not more than 30 workdays as the result of a single adverse action, nor may an employee be suspended for more than a total of 60 workdays in a calendar year as the result of multiple adverse actions taken by the Authority. Employees on a 24-hour on and 24-hour off employment basis shall not be suspended for more than 10 work days or an equivalent of 240 work hours as a result of a single adverse action, nor may suspension be more than a total of 20 work days (480 work hours) in a calendar year as a result of multiple adverse actions.
- C. Copies of the adverse action rules and appeal procedures shall be made available upon request by the employee.

**11.302 Definition**

- A. **Suspension-** The temporary removal of an employee from his position with loss of pay as a disciplinary measure.
- B. **Demotion -** The involuntary reduction in status of an employee for disciplinary reasons from a position which he occupies in a specific class to a position in another class where the maximum rate of pay is less than the maximum rate of pay for the class which he had held or a reduction to a lower salary step in the same class.
- C. **Dismissal-** The termination of employment for any authorized cause of adverse action.
- D. **Days -** Refers to calendar days unless otherwise specified.

**11.303 Authorized Causes for Adverse Action**

The Executive Manager may remove an employee for such misconduct which affects the efficiency of the service. The authorized causes for adverse actions include but are not limited to the following:

- A. fraud in securing appointment.
- B. refusal or failure to perform prescribed duties and responsibilities.
- C. insubordination.
- D. intoxication while on duty or the unauthorized possession, use or sale of alcohol while on Authority premises.
- E. unlawful use, possession or sale of illicit drugs.
- F. unauthorized absence.
- G. conviction for a crime.
- H. discourteous treatment to the public or other employees.
- I. political activity prohibited by law.
- J. misuse or theft of government property.
- K. refusal to take and subscribe to any oath or affirmation which is required by law in connection with employment.
- L. acts prohibited by Section 9102, 4 GCA relating to strikes against the government.
- M. acts of prohibited discrimination to include sexual harassment.
- N. failure to comply with the Drug-Free Workplace Program.
- O. other misconduct not specifically listed.

**11.304 Employees Covered**

All employees in the classified service are covered by these rules except the following:

- A. Contract employees whose contracts are not renewed upon expiration.
- B. Probationary employees serving original appointment.

- C. Employees on limited-term, temporary, seasonal, intermittent, part-time, provisional, or only for a specific project.
- D. Employees who are exempt by law or other legal authority from the jurisdiction of the Civil Service Commission with regards to adverse actions.

**11.305 Adverse Action Covered**

- A. These rules apply to the following adverse actions:
  - 1. Suspension
  - 2. Demotion (disciplinary action)
  - 3. Dismissal
- B. The use of any combination of the adverse actions listed for the same offense is prohibited.

**11.306 Notice of Proposed Adverse Action**

An employee against whom adverse action is sought is entitled to immediate written notice stating any and all reasons, specifically and in detail, for the proposed action. The written notice must make it clear that it concerns only proposed action and not a matter already decided.

**11.307 Employee's Answer**

An employee is entitled to seek reconsideration of the proposed adverse action by answering any charges within 10 days after receipt of the notice; the answer may be made orally, in writing, or both. The Executive Manager shall be available to meet with the employee at the designated date and time. The Executive Manager may designate a committee to hear the employee's answer. The employee may be represented by a person of his choice. The Executive Manager must consider the employee's answers to the charges in the proposed adverse action notice. If the employee fails to answer during the notice period, the employee's inaction shall be construed as an answer.

**11.308 Suspension During Notice Period**

- A. An employee against whom adverse action is proposed, must

be retained in active duty status during the notice period; however, in an emergency situation, an employee may be immediately suspended during the notice period, under the following conditions:

1. The continued presence of the employee may interfere with the efficient operation of the Authority, or the health or safety of the employee or others.
  2. Suspension is necessary to eliminate the possibility of deliberate damage to equipment, property or important documents.
  3. The employee's absence without authorized leave prevents the issuance of notice of proposed adverse action and the Authority's attempt to contact the employee was unsuccessful.
- B. Suspension under this section is a separate adverse action and is appealable to the Commission within 20 days of the effective date of the immediate suspension. A copy of the notice of immediate suspension shall be filed with the Civil Service Commission not later than the next working day following the effective date of the suspension.
- C. If the Commission sustains the Authority's action in suspending the employee during the notice period, the number of days of suspension under this section shall be considered part of the final disciplinary penalty and in no case shall the final days of suspension be more than 30 workdays.

#### **11.309 Leave Pending Investigation**

In cases requiring investigation of allegations against an employee involving misappropriation of public funds or property, mistreatment of persons in a government institution or acts which constitute a crime, the Executive Manager may authorize the employee an administrative leave of absence with pay for 20 work days. The administrative leave may be terminated by the Executive Manager by giving the employee 24 hours written notice.

#### **11.310 Employment Status During Imprisonment**

- A. An employee who is incarcerated pending disposition of a

case by the court, and who does not have accrued annual leave, may be granted leave without pay at the discretion of the Executive Manager.

- B. When the employee is released from incarceration or imprisonment, the Executive Manager shall determine whether the employee will return to duty or whether to take adverse action against an employee so imprisoned. Nothing in this Section shall preclude the Executive Manager from taking adverse action against an employee during imprisonment.

#### **11.311 Final Notice of Adverse Action**

- A. An employee is entitled to written notice of the Authority's decision within 10 days after the employee's 10-day response period. The decision shall be made by the Executive Manager and shall be delivered to the employee at or before the time the action will be made effective. The notice shall be in writing; be dated; state the specific facts found upon which such action is based; inform the employee of his right to appeal to the Commission; and, inform the employee of the time limit of 20 days within which an appeal may be submitted as provided in Section CSC-100(c) of the Civil Service Commission Hearing Procedures for Adverse Action Appeals.
- B. In the event the Executive Manager cannot locate the employee, the Notice of Proposed Adverse Action and/or Notice of Final Adverse Action shall be sent, certified mail, to the employee's last known address.
- C. Copies of the final notice of adverse action shall be filed by the Authority with the Commission not later than the next work day following the effective date of the action.

#### **11.312 Appeal to the Civil Service Commission**

The Hearing Procedures for Adverse Action Appeals adopted by the Civil Service Commission shall be applicable for all Adverse Action Appeals proceedings.

#### **11.313 Service of Proposed and Final Notices of Adverse Action**

The Proposed and Final Notices of Adverse Action shall be

personally served upon the employee. In the event that the Executive Manager cannot locate the employee, after reasonable efforts have been made to locate the employee, service of the Proposed or Final Notice of Adverse Action may be made by leaving the Notice at the employee's dwelling or usual place of abode with some person of suitable age and discretion residing therein, or by mailing the Notice to the employee at last known address. Service by mail is complete upon mailing.

## **11.400 GUIDELINES FOR DISCIPLINARY OFFENSES AND PENALTIES**

### **11.401 General Provisions**

- A. The list that follows is not intended to cover every possible type of offense. Penalties for offenses not listed will be prescribed by the Executive Manager.
- B. Many of the items listed on this schedule combine several offenses in one statement, connected by the word "OR". Usage of the word "OR" in a charge makes it non-specific. Use only the items which describe the employee's actual conduct and leave out parts which do not apply.
- C. Penalties for disciplinary offenses will, in general, range from the minimum penalty to the maximum indicated. In unusual circumstances, depending on the gravity of the offense, the past record and the position of the employee, a penalty outside the general range may be imposed.
- D. Suspension penalties on this schedule apply to workdays and holidays.
- E. Depending on the gravity of the offenses, dismissal proceedings may be instituted against an employee for any number of offenses committed. A greater penalty may be imposed for any offense if the circumstances justify greater penalty.
- F. In as much as a reprimand is not an adverse action under these rules, a management official need not apply the Adverse Action Procedures. The penalty of reprimand is included in the schedule of penalty to provide certain flexibility for management's discretion to institute progressive disciplinary action against an employee or group of employees.

G. Reprimands shall not remain in an employee's personnel file for more than one year.

**11.402 Range of Penalties for Stated Offenses**

**(Reprimands - Suspensions - Dismissals)**

\* In as much as a reprimand is not an adverse action under these rules, a management official need not apply the Adverse Action Procedures. The penalty of reprimand is included in the schedule to institute progressive disciplinary action against an employee or group of employees. Reprimands shall not remain in an employee's personnel file for more than one year.

NATURE OF OFFENSE	1ST OFFENSE		2ND OFFENSE		3RD OFFENSE	
	MINIMUM	MAXIMUM	MINIMUM	MAXIMUM	MINIMUM	MAXIMUM
A. Unauthorized absence.	Reprimand*	Suspension	Suspension	Dismissal	Suspension	Dismissal
B. Falsifying attendance record for oneself or another employee.	Reprimand*	Suspension	Suspension	Suspension	Suspension	Dismissal
C. Leaving job to which assigned at any time during working hours without proper permission.	Reprimand*	Suspension	Suspension	Suspension	Suspension	Dismissal
D. Unexcused or unauthorized absence on one or more scheduled days of work or assigned overtime.	Reprimand*	Suspension	Suspension	Dismissal	Suspension	Dismissal
E. Unexcused tardiness.	Reprimand*	Suspension	Reprimand*	Suspension	Suspension	Dismissal
F. Actual or attempted theft of government property or the property of others.	Reprimand*	Dismissal	Suspension	Dismissal	Suspension	Dismissal

**CONDUCT**

A. Criminal, dishonest, infamous or notoriously disgraceful conduct adversely affecting the employee/employer relationship (on duty or off duty).

Reprimand\*      Suspension      Dismissal      Suspension      Dismissal      Suspension      Dismissal



**CONDUCT (con't.)**

**1ST OFFENSE                      2ND OFFENSE                      3RD OFFENSE**

	<b>MINIMUM</b>	<b>MAXIMUM</b>	<b>MINIMUM</b>	<b>MAXIMUM</b>	<b>MINIMUM</b>	<b>MAXIMUM</b>
B. Disobedience to constituted authorities, or deliberate refusal to carry out any proper order from any supervisor having responsibility for the work of the employee; insubordination.	Reprimand*	Dismissal	Suspension	Dismissal	Suspension	Dismissal
C. Disorderly conduct; fighting threatening or attempting to inflict bodily injury to another; engaging in dangerous horseplay, or resisting competent authority.	Reprimand*	Dismissal	Suspension	Dismissal	Suspension	Dismissal
D. Disrespectful conduct; use of insulting, abusive, or obscene language to or about other personnel.	Reprimand*	Dismissal	Suspension	Dismissal	Suspension	Dismissal
E. Falsification, misstatement, or concealment of material fact in connection with any official record.	Reprimand*	Dismissal	Suspension	Dismissal	Suspension	Dismissal
F. False testimony or refusal to testify in an inquiry, investigation or other official proceedings.	Reprimand*	Suspension	Suspension	Dismissal	Suspension	Dismissal
G. Knowingly making false or malicious statements with the intent to harm or destroy the reputation of authority, or official standing of individuals or organizations.	Reprimand*	Dismissal	Suspension	Dismissal	Suspension	Dismissal
H. Gambling or unlawful betting during working hours.	Reprimand*	Dismissal	Suspension	Dismissal	Suspension	Dismissal
I. Promotion of gambling on Government premises.	Reprimand*	Dismissal	Suspension	Dismissal	Suspension	Dismissal

CONDUCT (con't.)	1ST OFFENSE		2ND OFFENSE		3RD OFFENSE	
	MINIMUM	MAXIMUM	MINIMUM	MAXIMUM	MINIMUM	MAXIMUM

- |  |            |           |            |           |            |           |
|--|------------|-----------|------------|-----------|------------|-----------|
| J. Willful damage to Government property or the property of others.  | Reprimand* | Dismissal | Suspension | Dismissal | Suspension | Dismissal |
| K. Engaging in prohibited acts covered in Section 9102 of 4 Guam Code Annotated.<br>(Penalty shall be imposed pursuant to Section 9103, 4GCA.) | Suspension | Dismissal | Dismissal  | Dismissal | Dismissal  | Dismissal |

### DISCRIMINATION

- |  |            |           |            |           |            |           |
|--|------------|-----------|------------|-----------|------------|-----------|
| A. Discriminating against an employee or applicant because of race, color, religion, sex, national origin, age, disability, creed, political affiliation or marital status or other prohibited discriminatory practices. | Reprimand* | Dismissal | Suspension | Dismissal | Suspension | Dismissal |
|--|------------|-----------|------------|-----------|------------|-----------|

### INTOXICANTS

- |  |            |           |            |           |            |           |
|--|------------|-----------|------------|-----------|------------|-----------|
| A. Reporting for duty or being on duty under the influence of intoxicants, unauthorized possession of or attempting to bring intoxicants on Government premises. | Reprimand* | Dismissal | Suspension | Dismissal | Suspension | Dismissal |
| B. Reporting for duty while under the influence of a narcotic or dangerous drug, or use of same on Government property or on duty.                               | Reprimand* | Dismissal | Suspension | Dismissal | Suspension | Dismissal |
| C. Unauthorized sale or transfer of narcotic or dangerous drug on Government property or during duty hours.  | Reprimand* | Dismissal | Suspension | Dismissal | Suspension | Dismissal |

**PERFORMANCE**

	1ST OFFENSE		2ND OFFENSE		3RD OFFENSE	
	MINIMUM	MAXIMUM	MINIMUM	MAXIMUM	MINIMUM	MAXIMUM

A. Careless workmanship resulting in spoilage or waste of materials or delay in production.	Reprimand*	Suspension	Suspension	Dismissal	Suspension	Dismissal
B. Covering up or attempting to conceal defective work; removing or destroying same without permission.	Reprimand*	Suspension	Suspension	Dismissal	Suspension	Dismissal
C. Failure to delay in carrying out orders, work assignments or instructions or superiors.	Reprimand*	Suspension	Suspension	Dismissal	Suspension	Dismissal
D. Loafing, wasting time, or in-attention to duty.	Reprimand*	Suspension	Suspension	Dismissal	Suspension	Dismissal
E. Sleeping on duty where life or property is endangered.	Reprimand*	Dismissal	Suspension	Dismissal	Suspension	Dismissal
F. Unauthorized use or possession of, loss of or damage to Government property or the property of others.	Reprimand*	Suspension	Suspension	Dismissal	Suspension	Dismissal

**SAFETY**

A. Failure to observe precautions for personal safety posted rules, signs, written or oral safety instructions, or to use protective clothing or equipment.	Reprimand*	Suspension	Suspension	Dismissal	Suspension	Dismissal
B. Violation of safety regulations which endangers life or property.	Reprimand*	Suspension	Suspension	Dismissal	Suspension	Dismissal
C. Endangering the safety of or causing injury to personnel through carelessness.	Reprimand*	Suspension	Suspension	Dismissal	Suspension	Dismissal

**SAFETY (con't.)**

	1ST OFFENSE		2ND OFFENSE		3RD OFFENSE	
	MINIMUM	MAXIMUM	MINIMUM	MAXIMUM	MINIMUM	MAXIMUM

- |  |            |            |            |           |            |           |
|--|------------|------------|------------|-----------|------------|-----------|
| D. Failure to observe no smoking regulations or carrying matches in restricted areas.  | Reprimand* | Suspension | Suspension | Dismissal | Suspension | Dismissal |
| E. Violating traffic regulations, reckless driving on Government premises, or improper operation of government motor vehicles. | Reprimand* | Dismissal  | Suspension | Dismissal | Suspension | Dismissal |

**1.500 CIVIL SERVICE COMMISSION HEARING PROCEDURES FOR ADVERSE ACTION APPEALS (COVERING SUSPENSIONS, DEMOTIONS, DISMISSALS): SEE APPENDIX A**

## CHAPTER 12

# GRIEVANCE PROCEDURES

### STATEMENT OF POLICY

It shall be the policy of the Authority to: promote favorable relations between management and its employees by resolving complaints expeditiously; prevent similar complaints; assure fair and equitable treatment of all employees; and promote harmonious working relationships among all levels of employees.

This chapter outlines the responsibilities and procedures to be followed by employees in the presentation of an informal or formal grievance. All levels of management shall carefully and promptly respond to an employee's grievance and shall be guided by these procedures.

### 12.000 APPLICABILITY

The regulations in this Chapter shall apply to all permanent classified employees.

### 12.100 DEFINITION

A grievance is any question or complaint filed by a permanent employee alleging that there has been a misinterpretation, misapplication or violation of a personnel statute, rule, regulation, or written policy which directly affects the employee in the performance of his official duties; or that he has received prejudicial, unfair, arbitrary, capricious treatment in his working conditions, or work relationships.

CSC Insert: The time frames provided in this chapter will serve as a guide and may be extended or shortened based on concurrence of the parties involved.

### 12.200 COVERAGE

Grievances may include but are not limited to, such matters as employee-supervisor relationships, duty assignments not related to job classification, shift and job locations assignments, hours worked, working facilities and conditions, policies for granting leave and other related matters.

### 12.300 EXCLUSIONS

### **12.301 General Exclusions**

The following actions are not covered by these grievance procedures:

- A. disqualification of an applicant
- B. disqualification and non-selection of an eligible
- C. examination ratings
- D. removal during original probationary period
- E. appeals from classification and/or paygrade determinations
- F. appeals of adverse personnel actions
- G. allegations or complaints of discrimination
- H. appeals of performance evaluations

### **12.302 Grievance Procedures for Employee Organizations**

These procedures are also not applicable when the employee is in a unit covered by an exclusive recognition, as an employee organization, which has negotiated grievance procedures for that unit. When negotiated procedures exist, they shall be the exclusive procedures available to public employees in the unit for settlement of individual or group grievances.

### **12.303 Equal Employment Opportunity Discrimination Complaint**

When an aggrieved employee submits a written allegation of discrimination on grounds of race, color, religion, sex, national origin, marital status, age, disability, or political affiliation in connection with a matter which is subject to the Authority's grievance procedures, as well as the EEO discrimination complaint procedures, that allegation shall be processed under the EEO discrimination complaint procedures.

## **12.400 GENERAL PROVISIONS FOR USE OF GRIEVANCE PROCEDURES**

### **12.401 Freedom from Reprisal or Interference**

- A. An employee and his representative shall be free to use the grievance system without restraint, interference, coercion, discrimination, or reprisal.
- B. An employee, whether acting in an official capacity for the Authority, or on any other basis, must not interfere with, or attempt to interfere with, another employee's exercise of his

rights under this grievance system. To be fully effective, the spirit as well as the letter of this noninterference requirement must be enforced. It is not enough for an official to abstain from overt threats or interference. He should refrain from making any statement or taking any action which has the appearance or even the flavor of a threat, interference or intimidation.

**12.402 Employee's Status During Grievance Procedures**

An employee's status during each procedural level shall be status quo.

**12.403 Right to Seek Advice**

All levels of management will provide an opportunity for an employee to communicate with and seek advice from:

- A. his servicing personnel office.
- B. the equal employment opportunity counselor.
- C. a supervisory or management official of higher rank than the employee's immediate supervisor.

**12.404 Representation**

- A. An employee has the right to present a grievance without representation.
- B. An employee has the right to present a grievance with representation.
  1. An employee has the right to be accompanied, represented, and advised by a representative of his choice at any stage of the grievance proceedings.
  2. An employee may change his representative, but to do so, he must notify his supervisor and the Executive Manager of the change in writing.
  3. A person chosen by the employee must be willing to represent him.

**12.405 Official Time for Presentation of the Grievance**

- A. An employee must be given a reasonable amount of official time to present his grievance if he is otherwise in an active duty status.
- B. An employee's representative, if he is an employee of the government of Guam and is otherwise in an active duty status, must be given a reasonable amount of official time to present the grievance.
- C. There is no requirement that the official time for the presentation include time for investigation or preparation or that it include travel expense or per diem travel allowance or consultation with private attorney.

**12.406 Termination of Grievance**

- A. An employee who has filed a grievance may terminate the grievance at any time.
- B. Failure on the part of the employee to proceed to a higher step of the grievance procedures within the time period specified will terminate the grievance.

**12.407 Management's Responsibility for Timely Action and Settlement at the Lowest Possible Level**

- A. It shall be the responsibility of management to settle grievances fairly and promptly at, or near the organizational level where the grievance was brought to their attention by the employee.
- B. Failure by management to render a decision to the employee within the allotted time at any step constitutes denial, and the employee may then proceed to the next step of the grievance procedures.

**12.500 STEP 1 - INFORMAL GRIEVANCE PROCEDURES**

**12.501 Management Responsibility**

An employee's grievance may or may not be objectively justified. What is important is that the grievance is real to the employee. When the grievance is well-founded, management has both a duty and a need to eliminate the cause. When the grievance is not well-founded, it is equally important to reach an understanding



based on the full facts. Therefore, the informal procedure should assure consideration of every employee's grievance with a degree of promptness, sympathy, understanding, fairness, competence, and authority which evidences that the employee has been treated fairly.

**12.502 Settlement at the Lowest Possible Level of Management**

The informal procedure should be as simple as possible consonant with bona fide consideration of grievances. It should encourage settlement of matters at the lowest possible administrative level in the shortest possible time and should not, therefore, require any written explanation from the employee. However, the employee may present his grievance under the informal procedures, either orally or in writing, and he should not be prevented from submitting a written explanation if he desires.

**12.503 Supervisor's Responsibility**

- A. Normal day-to-day discussions between employees and supervisors regarding working conditions and related employment matters are the most constructive and expeditious means of developing and enhancing favorable and effective work relationships.
- B. Each employee of the Authority has the right to present matters to his supervisor, and each supervisor has the obligation to act promptly and fairly upon them, seeking the advice and assistance of others when necessary.

**12.504 Employee's Responsibility**

- A. Each employee is expected to make a concerted effort to achieve informal settlement of his grievance. He should bring his grievance to the attention of management promptly.
- B. Tolling Period - In counting the number of days for each step, if the last day of the period falls on a weekend, the filing time or receipt time falls on the next working day.

**12.505 Using the Informal Grievance Procedure - Step 1**

**A. Initiation by Employee**

In keeping with the personal nature of matters covered by

grievance procedures, grievances can be initiated only by employees, singly or jointly; they may not be initiated by employee organizations. Employee organizations may be permitted to present a grievance on behalf of an employee or a group of employees when requested to do so by the employee or employees.

**B. Time Limit**

1. An employee may present a grievance to his supervisor concerning a continuing practice or condition at any time. Grievances concerning a particular act or occurrence must be presented within 15 calendar days of that action or occurrence.
2. The immediate supervisor shall render a decision within 10 calendar days of the presentation of the grievance.

**C. Form of the Grievance**

An employee may present a grievance under the informal procedure either orally or in writing.

**D. Non-rejection Provision**

A grievance may not be rejected in the informal procedure for any reason. If the grievance is not timely or consists of a matter not covered under the grievance system, the employee should be so advised, but he must be allowed to submit his grievance under the formal procedures if he insists.

**E. Mandatory Use of the Informal Procedure**

An employee must complete the informal procedure before the Authority may accept from him a grievance concerning the same matter under the formal procedure.

**12.600 STEP 2 - FORMAL GRIEVANCE PROCEDURES - NEXT ADMINISTRATIVE LEVEL**

**12.601 Presentation of the Grievance - Step 2**

- A. An employee is entitled to present a grievance under the formal procedure if:

1. he has completed the informal procedures; and
  2. the grievance is not satisfactorily resolved at the informal level; or
  3. the immediate supervisor failed to render a decision within 10 calendar days of the presentation of the grievance at the informal level.
- B. The grievance presented in Step 2 must:
1. be in writing on a form prescribed by the Authority;
  2. contain sufficient detail to identify and clarify the basis for the grievance;
  3. specify the personal relief request by the employee; and
  4. be submitted to the person who is the next higher supervisor than the immediate supervisor within five calendar days after the receipt of the answer in Step 1 or after the answer was due.

**12.602 Responsibility of Next Higher Supervisor**

- A. The next higher supervisor must determine whether the grievance is timely, is covered by the grievance procedures, and has been processed through the informal procedure.
- B. The next higher supervisor shall make a positive attempt to resolve the grievance. He shall render a decision, in writing, to the employee within five calendar days of receipt of the written grievance.

**12.700 STEP 3 - FORMAL GRIEVANCE PROCEDURES - EXECUTIVE MANAGER**

**12.701 Presentation of the Grievance - Step 3**

- A. An employee is entitled to present a grievance under Step 3 if:
  1. he has completed Step 2 of the procedures;
  2. the grievance is not satisfactorily resolved at the Step 2

level;

3. he has specified the personal relief requested by the employee; and
4. he has submitted to the Executive Manager within five calendar days after receipt of the answer in Step 2 or after the answer was due.

## **12.702 Grievance Committee**

### **A. Appointment of Committee**

Within three calendar days of receipt of the written grievance from the employee, the Executive Manager shall appoint a Grievance Committee to investigate the circumstances of the grievance and to make a recommendation as to its disposition.

### **B. Committee Membership**

The Committee shall consist of four members who are permanent government employees, two members from the employee's peer group and two members at the managerial level.<sup>3</sup>

### **C. Responsibility of Committee**

The Committee must determine whether the grievance is timely, is covered by the grievance procedures, and has been processed through the informal procedure.

### **D. Committee Inquiry**

The Committee shall be expected to convene and initiate a grievance inquiry appropriate to the nature and scope of the issues involved in the grievance. The inquiry will typically include the securing of documentary evidence and personal interviews in a effort to fully understand the issues and obtain the maximum information available pertinent to the issues.

### **E. Grievance File**

When the Committee begins a grievance inquiry, the Committee Chairperson (elected by the members of the

Committee) shall establish an employee grievance file. This is an independent file, separate and distinct from the personnel folder. The grievance file is the official record of the grievance and must contain all documents pertaining to the grievance including:

1. statements of witnesses;
2. records or copies of records; and
3. reports of personal interviews.

**F. Open Record**

The grievance file is an open record. It is open for review by the employee and his representative and must not contain any document that is not available to the employee. Information to which the Committee is exposed which cannot be made available to the employee in the form it was received must be included in the file in a form which the employee can review or it must not be used.

**G. Committee Report**

The Committee shall complete its investigation within 15 calendar days of the date the Committee was appointed and shall submit a written report of its findings and recommendations to the Executive Manager within two calendar days following the completion of its investigation.

**H. Executive Manager's Written Decision**

The Executive Manager shall render a written decision to the employee within five calendar days of receipt of the written report from the Committee.

**12.800 STEP 4 - FORMAL GRIEVANCE PROCEDURE - GRIEVANCE REVIEW BOARD**

**12.801 Presentation of the Grievance - Step 4**

- A. An employee is entitled to present a grievance appeal under Step 4 if:
1. he has completed Step 3 of these procedures; and
  2. the grievance is not satisfactorily resolved at the Step 3

level; or

3. the Executive Manager failed to render a decision within 25 calendar days of the submission of the written report from the Committee at the Step 3 level.

B. The grievance presented in Step 4, must:

1. be in writing on a form prescribed by the Executive Manager;
2. contain sufficient details to identify and clarify the basis of the grievance;
3. specify the personal relief requested by the employee; and
4. be submitted to the Executive Manager within five calendar days after receipt of the answer in Step 3, or after the answer was due.

#### **12.802 Grievance Review Board**

##### **A. Appointment of Grievance Review Board**

Within 10 calendar days of receipt of the written grievance from the employee, the Executive Manager shall appoint a Grievance Review Board, which has the responsibility and authority to resolve the grievance.

##### **B. Grievance Review Board Membership**

The Grievance Review Board shall consist of five members, of which two shall be the peers of the employee. The Chairperson of the Grievance Review Board shall be elected by the members and shall preside over meetings and hearings conducted during the course of its investigation.

##### **C. Grievance Review Board Investigations**

The Grievance Review Board shall conduct its meetings and hearings during working hours and personnel called to attend shall do so without loss of salary or leave. Hearings shall be informal and technical rules of evidence shall not apply. Proceedings of the investigation shall be recorded in summary

and shall contain all pertinent facts brought out during the investigation.

**D. Grievance Review Board Decision and Report**

The Grievance Review Board shall conclude its investigation within 20 calendar days of the date the Board was appointed, and shall render its written decision to the employee and the Executive Manager on that 20th day or sooner.

Management has a limited right to appeal a decision made by the Grievance Review Board where the decision is contrary to law.

**E. Grievance File**

The Grievance Review Board shall maintain an employee grievance file which shall contain all documents or information pertinent to the grievance.

**12.900 STEP 5 - APPEAL TO THE CIVIL SERVICE COMMISSION**

**12.901 Presentation of the Grievance - Step 5**

A. An employee is entitled to present a grievance appeal under Step 5 if:

1. he has completed Step 4 of these procedures;
2. the grievance is not satisfactorily resolved at the Step 4 level;
3. the Grievance Review Board failed to render a decision within 30 calendar day of the submission of the grievance at the Step 4 level;
4. there has been a violation of the Government Code or Personnel Rules and Regulations;
5. the procedural rights of the employee filing the complaint as outlined have been disregarded;
6. the decision of the supervisor, Executive Manager, or the Grievance Review Board has been unjust, inequitable or not in accord with the facts; and

7. the Executive Manager fails to act on the Grievance Review Board's decision.

B. The grievance presented in Step 5 must:

1. be in writing on a form prescribed by the Executive Manager and/or the Commission;
2. contain sufficient details to identify and clarify the basis of the grievance;
3. include copies of the grievance forms submitted in Steps 2, 3 and 4;
4. specify the personal relief requested by the employee; and
5. be submitted to the Civil Service Commission within five calendar days after receipt of the answer in Step 4, or after the answer was due.

## **12.902 Civil Service Commission**

### **Commission-Investigations**

- A. The Civil Service Commission shall review the official grievance file and all relevant written representations.
- B. The Commission may, at its discretion, afford the parties an opportunity to appear personally and present oral arguments and representations.



# NEXT ADMINISTRATIVE LEVEL GRIEVANCE FORM - STEP 2

Employee Name: \_\_\_\_\_

Name of Supervisor: \_\_\_\_\_

Position Title: \_\_\_\_\_

Name of Higher Supervisor: \_\_\_\_\_

Work Location: \_\_\_\_\_

STATEMENT OF GRIEVANCE AND OUTCOME OF INFORMAL DISCUSSION WITH IMMEDIATE SUPERVISOR.  
(STEP 1):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SPECIFIC POLICY OR REGULATION ALLEGED TO HAVE BEEN VIOLATED (CITE SOURCE):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DATE: \_\_\_\_\_ SIGNATURE: \_\_\_\_\_

REMEDY SOUGHT (BE SPECIFIC):

\_\_\_\_\_  
\_\_\_\_\_

DATE: \_\_\_\_\_ SIGNATURE: \_\_\_\_\_

UPON COMPLETION OF THIS SECTION, GRIEVANT SHALL PRESENT ORIGINAL AND COPIES #2, #3 AND #4 TO THE SUPERVISOR AT THE NEXT ADMINISTRATIVE LEVEL. COPY #5 SHOULD BE RETAINED BY GRIEVANT.

IMMEDIATE SUPERVISOR'S RESPONSE:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DATE: \_\_\_\_\_ SIGNATURE: \_\_\_\_\_

UPON COMPLETION OF THIS SECTION, THE SUPERVISOR AT THE NEXT ADMINISTRATIVE LEVEL SHALL RETAIN ORIGINAL, PRESENT COPY #2 TO GRIEVANT, COPY #3 TO THE GRIEVANT'S IMMEDIATE SUPERVISOR, AND FORWARD COPY #4 TO THE EXECUTIVE MANAGER.

# EXECUTIVE MANAGER GRIEVANCE FORM - STEP 3

APPEAL TO THE EXECUTIVE MANAGER - ALL PORTIONS OF THIS SECTION MUST BE COMPLETED BY THE GRIEVANT (COPY #2) OF COMPLETED GRIEVANCE FORM - STEP 2 MUST BE ATTACHED:

## REASON FOR APPEAL

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## REMEDY SOUGHT (BE SPECIFIC)

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DATE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

UPON COMPLETION OF THIS SECTION, GRIEVANT SHALL PRESENT ORIGINAL AND COPIES #2, #3, #4 AND #5 TO THE EXECUTIVE MANAGER. COPY #6 SHOULD BE RETAINED BY GRIEVANT.

## DECISION OF MANAGEMENT

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DATE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

UPON COMPLETION OF THIS SECTION, THE EXECUTIVE MANAGER SHALL RETAIN ORIGINAL AND FORWARD COPY #2 TO GRIEVANT, COPY #3 TO GRIEVANT'S IMMEDIATE SUPERVISOR, COPY #4 TO THE SUPERVISOR AT THE NEXT ADMINISTRATIVE LEVEL, AND COPY #5 TO THE GRIEVANCE COMMITTEE.

# GRIEVANCE REVIEW BOARD GRIEVANCE FORM - STEP 4

## APPEAL TO THE GRIEVANCE REVIEW BOARD:

REQUEST FOR REVIEW BY GRIEVANCE REVIEW BOARD. THIS SECTION IS COMPLETED BY THE GRIEVANT. COPIES OF THE COMPLETED GRIEVANCE FORMS IN STEPS 2 AND 3 MUST BE ATTACHED.

I HEREBY REQUEST THAT THE GRIEVANCE REVIEW BOARD BE CONVENED TO CONSIDER THE GRIEVANCE OUTLINED ON THE ATTACHMENTS.

MY REPRESENTATIVE IS (OPTIONAL): \_\_\_\_\_

DATE: \_\_\_\_\_ SIGNATURE: \_\_\_\_\_

UPON COMPLETION OF THIS SECTION, GRIEVANT SHALL PRESENT ORIGINAL, COPIES #2 AND #3 AND ALL ATTACHMENTS TO THE EXECUTIVE MANAGER. COPY #4 SHOULD BE RETAINED BY GRIEVANT.

## REPORT OF THE GRIEVANCE REVIEW BOARD

SIGNED COPIES OF THE REPORT OF THE GRIEVANCE REVIEW BOARD SHALL BE ATTACHED TO GRIEVANCE FORMS. ORIGINAL SHALL BE PLACED IN THE GRIEVANCE FILE. COPY #2 TO THE GRIEVANT, AND COPY #3 TO THE EXECUTIVE MANAGER.

DATE OF APPOINTMENT OF GRIEVANCE REVIEW BOARD: \_\_\_\_\_

DATE OF SUBMISSION OF REPORT TO EXECUTIVE MANAGER: \_\_\_\_\_

# CIVIL SERVICE COMMISSION GRIEVANCE FORM - STEP 5

## APPEAL TO THE CIVIL SERVICE COMMISSION:

IF THIS SECTION IS COMPLETED BY THE GRIEVANT. COPIES OF THE COMPLETED GRIEVANCE FORMS IN STEPS 2, 3 AND 4 MUST BE ATTACHED.

I HEREBY REQUEST THAT THE GRIEVANCE OUTLINED ON THE ATTACHMENTS BE REVIEWED BY THE CIVIL SERVICE COMMISSION.

MY REPRESENTATIVE IS (OPTIONAL): \_\_\_\_\_

DATE: \_\_\_\_\_ SIGNATURE: \_\_\_\_\_

UPON COMPLETION OF THIS SECTION, GRIEVANT SHALL PRESENT ORIGINAL, COPY #2 AND COPY #3 AND ALL ATTACHMENTS TO THE CIVIL SERVICE COMMISSION. COPY #4 SHOULD BE RETAINED BY GRIEVANT. THE EXECUTIVE MANAGER SHALL FORWARD THE GRIEVANCE FILE TO THE COMMISSION UPON REQUEST BY GRIEVANT.

## CIVIL SERVICE COMMISSION REPLY:

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DATE: \_\_\_\_\_ SIGNATURE: \_\_\_\_\_

UPON COMPLETION OF THIS SECTION, COPY #2 WILL BE PRESENTED TO GRIEVANT AND COPY #3 TO THE EXECUTIVE MANAGER. THE ORIGINAL AND ALL ATTACHMENTS SHALL BE PLACED IN THE GRIEVANCE FILE. THE FILE IS PLACED IN A PERMANENT FILE WITH THE CIVIL SERVICE COMMISSION.

## CHAPTER 13

# RESIGNATION AND TERMINATION

## STATEMENT OF POLICY

It is the Board's policy to provide for orderly, uniform and fair procedures for the non-disciplinary separation of employees from Authority service.

## 13.000 RESIGNATION

### 13.001 Coverage

This section shall apply to all classified service employees.

### 13.002 Notice of Resignation

An employee may resign by giving written notice of the resignation to the Executive Manager. The employee should notify the Executive Manager in writing at least 14 calendar days before the date of separation. When a resignation letter is directed to the Executive Manager it shall by its terms, be effective immediately or on a certain date. If no effective date is indicated, it shall be effective upon delivery to the Executive Manager. Upon receipt by the Executive Manager of any resignation letter, the Executive Manager may make the resignation effective immediately or sooner than the effective date in the resignation letter. Such resignation shall be effective according to its terms unless the Executive Manager, at its discretion, makes the resignation effective immediately or at sometime sooner than the resignation letter. Once a resignation letter is delivered to the Executive Manager, it may not be later withdrawn by the resigning person without the consent of Executive Manager. Acceptance of such resignation by the Executive Manager is not required for the resignation to become effective.

### 13.003 Withdrawal of Resignation

With the consent of the Executive Manager, a resignation may be withdrawn by the employee at any time prior to the effective date of the resignation.

### 13.004 Resignation in Good Standing

A resignation shall be deemed to be in good standing when it is made voluntarily and not as a direct result of a final adverse action or criminal conviction. With the exception of an employee serving an original probationary period, an employee who resigns in good standing shall have reemployment/reappointment privileges consistent with Title 4, Guam Code Annotated and Rules 4.406 and 4.502.

**13.005 Resignation Pending Adverse Action**

An employee who resigns after receipt of a notice of proposed adverse action is deemed to have resigned voluntarily and has no right to appeal to the Civil Service Commission. Any employee who resigns under this section, and is subsequently convicted of a crime based on the same facts which form the basis of the adverse action, shall be deemed not to resign in good standing.

**13.100 TERMINATION OF EMPLOYMENT**

**13.101 Termination of Employment**

The Executive Manager may terminate the services of an employee for any of, but not limited to, the following reasons:

- A. the duration of the temporary period of employment is ended.
- B. the employee failed to demonstrate satisfactory work performance during the original probationary period or failed to satisfy other conditions of employment.
- C. for misconduct, in which case, the adverse action procedures shall be adhered to (see Adverse Action Procedures).

## CHAPTER 14

### MERIT CAREER PLAN

(Authority-Wide and Government-Wide Announcements)

#### A. PURPOSE

This procedure outlines the responsibilities of the Executive Manager when permanent classified employees apply and are being considered for career opportunities.

#### B. COVERAGE OF THE MERIT CAREER PLAN

This plan applies only to permanent classified employees.

#### C. EXAMINATION UNDER THE MERIT CAREER PLAN

The same examination will be used for all persons responding to a Merit Career Job Announcement.

#### D. REFERRAL OF LIST OF CANDIDATES

The top five (10 for labor/custodial) eligibles shall be furnished to the Executive Manager based on rank order. However, in the event of tie scores with the fifth (tenth for labor/custodial) eligible, all eligibles with the same score as the fifth (tenth for labor/custodial) eligible will be referred.

#### E. SELECTION INTERVIEW

The Executive Manager shall establish procedures for interviewing certified eligibles.

#### F. EVALUATION OF CANDIDATES DURING THE SELECTION PROCESS

1. Evaluation of candidates shall be based on job-related criteria which measures the knowledge, abilities, skills and personal characteristics essential to successful performance in the position to be filled. Due consideration shall be given to formal recognition of superior performance of candidates, job-related training, and performance appraisals.
2. Length of service, length of experience or level of formal education

may be used as an evaluation factor when there is a clear and positive relationship with the requirements of the job to be performed. Length of service or experience may not be the factor given the greatest weight unless the nature of the vacant job is such that other factors cannot be expected to identify significant qualitative differences between qualified candidates.

## **G. SELECTION DOCUMENTATION REQUIREMENTS**

1. The basis for selection must be job-related. The results of the selection process must be on file with the Personnel Office. Evaluation results are confidential and form a part of the selection process for the candidates being considered for the position. CSC reserves the right to post audit selection documentation records.
2. The Executive Manager will advise all persons certified under a Merit Career Job Announcement of the selection within 10 workdays of the selection.
3. Individuals who were certified and were not selected may request that the Executive Manager review the adequacy of the consideration they received provided that such a request is received in writing by the Executive Manager within five workdays after the non-selectee was advised of the selection. The minimum qualifications established for the position may not be contested by a competitor. The following information shall be made available to competitors under a Merit Career Job Announcement upon request, and the Executive Manager shall periodically publish the competitors' right to this information:
  - a. whether the individual was considered eligible on the basis of minimum qualification requirements for the position;
  - b. whether an individual was one of those in the group from which selection was made; and
  - c. who was selected.

## **H. HANDLING EMPLOYEE COMPLAINTS**

1. The Executive Manager shall respond to employee questions or complaints about the career program, or about a specific promotion action, and provide the employee with appropriate information or explanation.



2. Issues that are not a basis for a formal complaint are:
  - a. failure to be selected for promotion when proper procedures are used. A complaint may not be filed for non-selection from a group of properly ranked and certified candidates; and
  - b. any action required to be taken under the provisions of statute, or instructions of the Civil Service Commission.

## I. EXCEPTIONS TO THE MERIT CAREER PLAN

1. The provisions of this Merit Career Plan are not required for career promotions which are:
  - a. promotions without current competition where at an earlier date an employee was selected under a Merit Career Job Announcement for a position with known promotion potential to the position to which he is being promoted. The promotion potential must have been included in the announcement and, where appropriate, the career ladder (intervening promotion) documented in the original announcement].
  - b. where the employee's position is reconstituted in a higher grade because of gradual accretion of additional duties and responsibilities and the accretion was not the result of planned management action. For example, an increase in the level of the employee's performance or change in workload, procedures, or organization that affects the grade of the positions only incidentally.

**NOTE:** To be eligible for a career promotion when the position is upgraded under these conditions, an employee must continue to perform the same basic function and his former position must be absorbed in the new one. When an additional position is created, or when the new position is not a clear successor to the former position, career promotion is not authorized. Similarly, a career promotion may not be made from a non-supervisory position to a supervisor or manager position because these levels of positions inherently have specific administrative authority which can only be delegated by management.

2. The provisions of this Merit Career Plan are not required for the following personnel actions:
  - a. A transfer from a position having known promotion potential to a position having no higher promotion potential.
  - b. A detail appointment.
  - c. An action taken as a remedy for failure to receive proper consideration in a competitive promotion procedure.
  - d. A promotion resulting from the upgrading of a position without significant change in duties and responsibilities due to issuance of a new classification specification (standards) or the correction of a classification error.
  - e. Re-promotion to a class or position from which an employee was demoted without personal cause and not at his request (acceptance of a demotion in lieu of layoff is not a demotion at the employee's request for these purposes).

**NOTE:** The competitive procedures of the Merit Career Plan will not be used before these individuals are - accorded their rights to re-promotion.

- f. Recruitment of reallocation for chief, administrator, or manager positions.

## **J. ADMINISTRATION REQUIREMENTS**

1. The Executive Manager shall provide for initial and periodic orientation to all employees concerning the provisions of this Merit Career Plan and the training of all supervisors and managers in their specific responsibilities for assuring the maximum publicity of Merit Career Job Announcements, as well as advising employees on requirements and provisions of this Merit Career Plan.
2. The Executive Manager shall institute controls and audit procedures as deemed necessary to assure that all promotion actions are consistent with the provisions of this Merit Career Plan.
3. The Executive Manager will assure that each current and future supervisor and manager is provided a copy of the Merit Career Plan and any subsequent changes to the Plan.

# PERSONNEL RULES AND REGULATIONS

## G L O S S A R Y

**ADMINISTRATIVE LEAVE:** Leave with pay without charge to annual leave.

**ADMINISTRATIVE WORKWEEK:** Consists of 40 hours of work or paid leave per workweek.

**ALLOCATION/CLASSIFICATION:** The assignment of an individual position to an appropriate class in the classification plan on the basis of kind and level of difficulty of the duties and job requirements of work performed in the position.

**APPOINTING AUTHORITY:** The Executive Manager is the appointing authority.

**CLASS OF POSITION:** Includes all positions which are sufficiently similar, as to (1) kind and subject matter of work; (2) level of difficulty and responsibility; and (3) the qualification requirements of the work to warrant similar treatment in personnel and pay administration.

**CLASS SERIES:** Consists of two or more classes that are similar as to line of work but differ as to level of responsibility and difficulty.

**CLASS SPECIFICATION:** An official document which describes the general characteristics of the class, including title, nature of work summary, statement of examples of typical duties performed, and a statement of minimum qualifications, abilities and skills and experience and training requirements needed to perform the work which provides the criteria for placing each position in its proper class.

**CLASS TITLE:** The official name given to a class of positions to identify the class and all positions in the class and shall be used for personnel, budget and fiscal purposes.

**CLASSIFICATION PLAN (Position Classification Plan):** A plan in which classes of positions are arranged in a logical and systematic order according to similarities and differences in duties, responsibilities, and qualifications requirements.

**CLASSIFIED SERVICE:** Government service of which employees have attained permanent status and cannot be removed from employment without cause.

**COMMISSION:** Shall mean the Guam Civil Service Commission.

**COMMON LAW:** Persons who have co-habitated for at least two consecutive years and who are readily eligible to marry without emancipation under the laws of Guam.

**COMPARABLE POSITIONS:** Positions of equivalent or lower grade and pay in the same occupational category.

**COMPENSATION PLAN:** A compilation of all classes of positions in the classification plan setting forth their assignments of pay grades in accordance with Chapter 6 of Title 4 of the Guam Code Annotated.

**COMPENSATORY TIME-OFF:** Time off in lieu of overtime pay. The amount of time off shall be granted at time and one-half.

**CREATION OF NEW CLASS OR CLASSES OF POSITIONS:** Those creations pursuant to Section 6210 of Title 4 of the Guam Code Annotated, because there is no existing class in the classification plan to which a position creation can be properly allocated to.

**CREDITABLE SERVICE:** Service period for increment step increases.

**DEMOTION:** The change of an employee's position to a position with a lower maximum salary rate.

**DEMOTION (Involuntary):** Demotion of an employee for cause.

**DEMOTION (Voluntary):** Demotion request by an employee in order to retain employment, when lay-off from his position is eminent or for other reasons when the action is entirely voluntary on the part of the employee and not for cause.

**DETAIL:** Is the temporary assignment of an employee by the Executive Manager to perform a particular function. Detail shall not be for a period of more than 120 days except where the Civil Service Commission has granted an extension of up to an additional 120 days per calendar year.

**DISCIPLINE:** Minimum corrective action taken by the Executive Manager, necessary to maintain efficiency of the service.

**DISMISSAL:** Separation, discharge or removal for cause of an employee from his/her position.

**DUTY:** A task assigned to an employee by a responsible management authority.

**EMERGENCY:** Situations which may jeopardize human life and property or operations which require immediate action.

**EMPLOYEE:** Any person employed by the Authority.

**ESSENTIAL FUNCTIONS:** Those functions contained in a job specification that the

Executive Manager believes to be important in accomplishing the purpose of the job.

**FIRST DEGREE OF CONSANGUINITY:** Blood relationship restricted to parent-child or sibling-sibling, to include adoptive and step-parents and children.

**GRADUAL ACCRETION OF DUTIES AND RESPONSIBILITIES:** The acquiring of duties and responsibilities over a period of time. The employee must continue to perform the same basic function and his former position must be absorbed in the new one.

**GRIEVANCE:** Complaints which relate to the working condition and relationship to Authority policies, rules and regulations, and which cannot be resolved through informal discussions with the immediate supervisor.

**IMMEDIATE FAMILY:** With respect to leave, immediate family is defined as the employee's spouse, common-law, mother, grandparents, guardian, children, in-loco parentis, sister, brother, mother-in-law and father-in-law. Step, adoptive, and spouse of adoptive parents/children/ grandchildren would also be considered "immediate family".

**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.

**JOB CONTENT:** Duties and responsibilities assigned to a particular position.

**KNOWN PROMOTION POTENTIAL:** Upward career mobility in a series of positions within an organization without competition and where at an earlier date an employee was selected under a competitive examination.

**LAY-OFF:** The involuntary termination of employment as a result of reorganization or lack of funds.

**LEAVE YEAR:** The period from the beginning of the first complete pay period in the fiscal year commencing October 1, to the beginning of the first complete pay period in the following fiscal year.

**LIMITED-TERM APPOINTMENT (LTA):** An appointment to positions which are permanent in nature, not to exceed on year.

**LINE MANAGEMENT:** The line of authority from the Executive Manager down to the first level supervisors.

**MERIT CAREER:** Promotion within the classified service which is covered under the Merit Career Plan of these rules.

**MINIMUM QUALIFICATION:** Minimum experience and training requirements derived from the knowledge, skills and abilities and other qualifications required to perform the duties and responsibilities of the position.

**MISCONDUCT:** Any action of an employee which is of a personal nature not related to the employee's ability to perform the job, but which constitutes a violation of regulations governing expected employee conduct on the job.

**NEPOTISM:** Supervisor-Subordinate relationship between and among spouses and persons within the first degree of consanguinity or as prescribed in the GCA, Section 4204, 4GCA.

**NEXUS:** Refers to a conflicting link between a job and a criminal offense where there is a strong likelihood that employment will impair the Authority's ability to provide safe and efficient services.

**NON-PERMANENT STATUS:** Those employees who do not have permanent status and are non-permanent employees until such time as they acquire permanent status.

**NEW PROBATIONARY PERIOD:** This is a working test period and is part of the examination process following the appointment of a permanent employee from one permanent position to another pursuant to Rule 4.602(C).

**OPEN COMPETITIVE:** This is an examination which permits the competition of persons who meet the requirements of the official announcement for the position, and is not restricted to persons currently employed in the classified service.

**ORIGINAL OR INITIAL APPOINTMENT:** First-time permanent appointment to a classified position via the competitive process.

**ORIGINAL PROBATIONARY PERIOD:** It is that period in which an employee initially serves to attain permanent status as an employee of the Authority. This also applies to former employees who have not been employed in the government of Guam service after four years of separation in good standing.

**OVERTIME:** Actual hours worked in excess of 40 hours in an administrative workweek. For classified employees whose normal workweek schedule does not consist of five working days and two days off in a workweek, overtime shall mean only hours worked in excess of their administrative workweek.

**PASSING SCORE:** A score of 70.00 or above.

**PAY GRADE:** The designated grade of compensation, as provided in the Compensation Schedule.

**PAY GRADE REASSIGNMENT:** Change of pay grade allocation of a class as determined by CSC.

**PAY GRADE SCHEDULE:** A systematic arrangement of salary grades set forth by the Civil Service Commission's Unified Pay Schedule.

**PERMANENT APPOINTMENT:** An appointment made by an Executive Manager to a position subject to the probationary period requirements.

**PERMANENT STATUS:** As used in these rules, permanent status is attained once an employee completes a satisfactory original probationary period.

**PLANNED MANAGEMENT ACTION:** Refers to the predetermination of a position via the vehicle of management budget or classification review where the new position is not a clear successor to the former position or where a promotion is recommended from a non-supervisory position to a supervisory or manager position. The requirements for competitive examinations shall apply.

**POSITION:** The work consisting of the duties and responsibilities assigned by the Executive Manager for performance by an employee whether part-time or full-time, temporary or permanent, occupied or vacant.

**POSITION DESCRIPTION:** A statement of the duties and responsibilities comprising the work assigned to an employee/position.

**PRIORITY PLACEMENT LIST:** List established for displaced permanent classified employees to be afforded first offer of employment or positions that they previously filled, or to comparable positions they are qualified for.

**PROBATIONARY APPOINTMENT:** The initial appointment by the Executive Manager of an employee to a class of position in which the employee will commence serving a probationary period.

**PROBATIONARY PERIOD:** This is a working test period and is part of the examination process following an appointment from the certification list during which an employee is required to demonstrate fitness for the position to which appointed by the satisfactory performance of the duties and responsibilities of the position.

**PROMOTION:** The movement of a permanent employee to a position with a higher maximum salary rate.

**PROMOTIONAL COMPETITIVE:** Competitive recruitment under the merit system that are only open to permanent status employees of the government of Guam.

**RAW SCORE:** As used in these rules, raw score is that numerical score which is

attained by an examinant without the application of a formula.

**REALLOCATION (Reclassification):** The change in the allocation of a position by assigning it to a higher or lower class or another class at the same level for any of the following reasons:

- A. Significant changes in the nature or variety of work which influence the overall level of difficulty.
- B. Re-determination of the initial classification judgement without a change in duties and responsibilities.

**REAPPOINTMENT:** A former permanent classified employee who returns to government service within four years of separation in good standing via the competitive process, and to the same or comparable position, but to a different department or agency from where he was formerly employed.

**REEMPLOYMENT:** A former permanent classified employee who returns to government service within four years of separation in good standing without competition and, to the same or comparable job in the Authority.

**REINSTATEMENT:** A former permanent classified employee who returns to his former position as a result of CSC ruling or as a result of military service in accordance with Rule 4.503.

**RESIGNATION:** The voluntary termination of employment by an employee without cause.

**SERIES OF CLASSES:** Consists of two or more classes that are similar as to kind of work, but differ as to level of responsibility and difficulty.

**SPOUSE:** Husband or wife.

**SUSPENSION:** The temporary removal of an employee from his/her position with loss of pay for cause.

**TEMPORARY APPOINTMENT:** Temporary appointment to positions which shall not exceed 120 workdays or 960 hours, whichever comes first within a calendar year.

**TERMINATION:** The removal of an employee from employment for cause.

**TRANSFER:** The lateral movement of an employee without any change in position title or salary, or from one class of position to another class of position having similar duties and responsibilities and qualification requirements, or a movement from one department to another department.



**CIVIL SERVICE COMMISSION  
HEARING PROCEDURES FOR  
ADVERSE ACTION APPEALS  
(COVERING SUSPENSIONS, DEMOTIONS, DISMISSALS)**

**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.

**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.

**GG-105 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.

# 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 (%)
<b>COLD WORK</b>	
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.	4%
<b>HOT WORK</b>	
A. Working in spaces wherein the employee is subjected to temperatures in excess of 110 degrees Fahrenheit.	4%
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.	25%
<b>HIGH VOLTAGE ELECTRICAL ENERGY</b>	
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.	50%
<b>EXPLOSIVES INCENDIARIES</b>	
Working with or in close proximity to any situation where explosives incendiaries are being handled.	25%
<b>HIGH WORK</b>	
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.	25%

CATEGORY OF HAZARDOUS/ENVIRONMENTAL DUTY	DIFFERENTIAL RATE (%)
<b>MICRO-ORGANISMS</b>	
<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.	4%
<b>COMMUNICABLE/INFECTIOUS DISEASES</b>	
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.	8%
<b>UNDERGROUND WORK</b>	
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.	25%
<b>WORK IN UNSAFE STRUCTURES</b>	
Work within or immediately <sup>1</sup> 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.	25%
<b>ASBESTOS</b>	
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.	8%
<b>FIBROUS GLASS WORK</b>	
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 or preventive devices being used.	6%

CATEGORY OF HAZARDOUS/ENVIRONMENTAL DUTY	DIFFERENTIAL RATE (%)
<p><b>DEEP SEA DIVING AND DANGEROUS SEAS</b>            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><b>LAW ENFORCEMENT</b>            When assigned duties that expose the employee to unusually hazardous factors. The differential shall only be applicable during times of exposure.</p>	10%
<p><b>MENTALLY ILL, EMOTIONALLY DISTURBED AND PSYCHOTIC SUBSTANCE ABUSE DISORDER PATIENTS</b>            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><b>GUARDING OF PRISONERS</b>            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><b>POISONS (TOXIC CHEMICALS)</b>  <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 (%)
<p><b>EXAMPLES:</b> 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>	
<b>POISONS (TOXIC CHEMICALS)</b>	
<p><b>Low Degree Hazard:</b> 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>	4%
<p><b>EXAMPLES:</b> Handling for shipping, marketing, labeling, hauling, and storing loaded containers or toxic chemical agents that have been monitored.</p>	
<b>DIRTY WORK</b>	
<p>Performing work which subjects the employee to soil of body or clothing:</p>	4%
<ol style="list-style-type: none"> <li>1. Beyond that normally to be expected in performing the duties of the classification; and</li> <li>2. 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</li> <li>3. When the use of mechanical equipment, or protective devices, or protective clothing results in an unusual degree of discomfort.</li> </ol>	
<b>NATURAL DISASTERS</b>	
<p>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 (%)
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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%

## TEMPORARY HAZARDOUS/ENVIRONMENTAL PAY REQUEST FORM

### PART I - SUPERVISOR

DEPARTMENT/DIVISION/UNIT \_\_\_\_\_

LOCATION OF HAZ/ENV CONDITION \_\_\_\_\_

SUPERVISOR \_\_\_\_\_

WORK PHONE: \_\_\_\_\_

PURPOSE OF WORK ACTIVITY: (Why the work or job must be performed)

\_\_\_\_\_

SPECIFIC DESCRIPTION OF HAZARDOUS/ENVIRONMENTAL: (Describe in detail and give reason why it is considered hazardous/environmental conditions. Type of injuries/accidents/illnesses incurred).

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

FREQUENCY OF EXPOSURE TO ABOVE HAZARDOUS/ENVIRONMENTAL CONDITION: (Daily, 3-days a week, once a month, 3-times a year, etc.) \_\_\_\_\_

ASSESSMENT OF TIME NEEDED TO COMPLETE WORK ACTIVITY: \_\_\_\_\_

ACTUAL TIME EXPOSED TO THE HAZARDOUS/ENVIRONMENTAL CONDITION: \_\_\_\_\_

Classes of employee(s) exposed to hazardous/environmental conditions (List of all classifications of employees who are actively engaged in work exposing them to the hazardous/environmental conditions.)

POSITION CLASS. TITLE	NO. OF EMPLOYEES	POSITION NO. OR SSN

DESCRIBE IN DETAIL ALL ACTIONS AND EFFORTS TO ELIMINATE, REDUCE, MITIGATE, OR CONTROL HAZARDOUS/ENVIRONMENTAL CONDITION (i.e., guarding equipment, substitution employee training, etc.)

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EQUIPMENT OR MACHINERY USED: (Types of equipment and relationship to the hazardous/environmental condition.)

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PROVIDE A DETAILED LIST AND THE FUNCTION OF EACH PERSONAL PROTECTIVE EQUIPMENT UTILIZED:

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Accident and Injury History involving the prescribed work activity (past 5 years). Previous accidents or injuries that occurred from exposure to similar conditions in the past. If none, please state none.

DATE	LOCATION OF INJURY	TYPE OF INJURY	LOST WORK DAYS	CORRECTIVE ACTION TAKEN

\_\_\_\_\_  
SUPERVISOR'S SIGNATURE

\_\_\_\_\_  
DATE

**PART II - DEPARTMENT'S DIRECTOR**

CONCUR                       DO NOT CONCUR

REMARKS (Added information if available):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
DIRECTOR'S SIGNATURE

\_\_\_\_\_  
DATE

**PART III - OFFICE OF GUAM OCCUPATIONAL SAFETY AND HEALTH,  
DEPARTMENT OF LABOR**

INSPECTION REQUESTED:  YES       NO      DATE \_\_\_\_\_

INVESTIGATION BY OFFICE OF GUAM OCCUPATIONAL SAFETY AND HEALTH,  
DEPARTMENT OF LABOR (Supportive reason for recommendation concerning this  
request)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

CAN THE HAZARDOUS/ENVIRONMENTAL CONDITION(S) BE ELIMINATED, REDUCED  
OR CONTROLLED? EXPLAIN. (Give detailed analysis considering similar industry  
practices.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_





## GLOSSARY

**DUTY INVOLVING PHYSICAL HARDSHIP (ENVIRONMENTAL):** Duty that may not in itself be hazardous but causes extreme physical discomfort or distress and is not adequately alleviated by protective or mechanical devices, such as duty involving exposure to extreme temperatures for a long period of time, arduous physical exertion, or exposure to fumes or dust or noise that causes nausea, skin, eye, or nose irritation, or noise irritation that would cause undue duress.

**HAZARDOUS DUTY:** A Duty performed under circumstances in which an accident could result in serious injury or death. Any injuries incurred while working under unsafe conditions should be considered as well and not just based on severity or death.

**HIGH WIND VELOCITY:** Winds in excess of eighteen (18) knots or twenty-one (21) miles per hour (MPH).

**HAZARDOUS PAY DIFFERENTIAL:** Additional pay for the performance of hazardous duty or duty involving physical hardship.

**GOSH ADMINISTRATOR:** Chief Officer of the Division of Occupational Safety and Health (GOSH), Department of Labor.

**DEPARTMENT OR AGENCY HEAD:** A cognizant authority of a department, agency, autonomous or semi-autonomous agency, public corporation or other public instrumentalities responsible for the safety program.

**IMMEDIATE SUPERVISOR:** An employee responsible for assigning, delegating and supervising the work assignments of an employee.

**EMPLOYEE:** Classified and Unclassified Employee of the Government of Guam.

## 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 of 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 part 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 at 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.

## 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.

GOVERNMENT OF GUAM  
GUAM INTERNATIONAL AIRPORT AUTHORITY

INSTRUCTIONS FOR COMPLETING FORM  
**SICK/ANNUAL LEAVE DONATION REQUEST  
FOR MEDICAL EMERGENCY REASON**

1. Enter employee names, the Recipient first and then the Donor.
2. Enter the social security numbers for both employees.
3. Enter the classifications of the employees and the associated pay grade for each.
4. Enter each employee's Agency and Division.
5. Enter the dates for which the donated leave is to be used.

Note: These dates must not be for a prior period of time as the request must be approved before leave can be taken. Also, enter the total hours and leave type to be used during this period of time (hours of leave donated).

6. Explain the appropriate reason (medical emergency) for which this leave will be used. The recipient employee must sign and date the form.
7. To receive leave, the requesting employee (recipient) must obtain certification from his agency payroll supervisor on his leave account.
8. The donating employee must certify this request by signing and dating the form. In addition, the donor employee must obtain certification from his payroll supervisor indicating the donor has accrued the amount of leave to be donated in addition to the required one pay period leave which must remain in the donor's leave account.

**INSTRUCTIONS FOR RECIPIENT ON THE REQUIRED DOCUMENTATION**

- A. The recipient shall attach a copy of the medical certification by a licensed practicing physician.
  - B. Attach a copy of the approved Request for Leave (Form FCN 2-0-1). Note: Absence must be for a minimum of ten (10) consecutive work days for medical emergency reasons.
9. Recipient's Appointing Authority's certification.

GOVERNMENT OF GUAM  
GUAM INTERNATIONAL AIRPORT AUTHORITY

INSTRUCTIONS FOR COMPLETING FORM  
**ANNUAL LEAVE DONATION REQUEST FOR  
PERSONAL REASONS**

1. Enter employee names, the Recipient first and then the Donor.
2. Enter the social security numbers for both employees.
3. Enter the classifications of the employees and the associated pay grade for each.
4. Enter each employee's Agency and Division.
5. Enter the dates for which the donated leave is to be used.  
Note: These dates must not be for a prior period of time as the request must be approved before leave can be taken. Also, enter the total hours to be used during this period of time (hours of leave donated).
6. Explain the appropriate personal reason (reasons authorized by leave sharing procedures) for which this leave will be used. The recipient employee must sign and date the form.
7. The donating employee must certify this request by signing and dating the form.
8. To receive leave, the requesting employee (recipient) must obtain certification from his agency payroll supervisor and the approval of the appointing authority indicating the request meets all guidelines and is approved for acceptance of the donated leave.
9. To donate leave, the donor employee must obtain certification from his payroll supervisor indicating the donor has accrued the amount of leave to be donated, in addition to the required one pay period leave, which must remain in the donor's leave account.
10. Final approval for donated leave requests for personal reasons (other than medical emergency) is the Executive Manager. Upon approval/disapproval of the request, a copy will be forwarded to the payroll supervisors of the recipient and donor, and the appointing authorities of both employees.
11. The recipient shall attach some form of proof (notarized affidavit or certification) to prove validity of request.
12. Attach a copy of the approved Request for Leave (Form FCN 2-0-1).

Note: Absence must be for a minimum of five (5) consecutive work days for personal reasons.

# 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.



