

# FSMCode2014Tit51Chap01

## Title 51

## Labor

### CHAPTERS

#### **1 Protection of Resident Workers (§§ 111-169)**

### SUBCHAPTERS

#### **I General Provisions (§§ 111-115)**

#### **II Application of Chapter (§§ 121-122)**

#### **III Hiring of Nonresident Workers (§§ 131-139)**

#### **IV Employment Status of Nonresident Workers (§§ 141-142)**

#### **V Administration of Chapter (§§ 151-155)**

#### **VI Enforcement of Chapter (§§ 161-169)**

#### **2 Nonresident Workers' Health Certificates (§§ 201-207)**

#### **3 Labor Development (§§ 301-307)**

### Chapter 1

## Protection of Resident Workers

## **Subchapter I**

### **General Provisions**

#### **SECTIONS**

- § 111. Short title.**
- § 112. Definitions.**
- § 113. Statement of policy.**
- § 114. Preference.**
- § 115. Benefits for resident workers hired by Government contractors.**

## **Subchapter II**

### **Application of Chapter**

#### **SECTIONS**

- § 121. Compliance with chapter; Exception for temporary employees.**
- § 122. Application of chapter to employees of TT government.**

## **Subchapter III**

## **Hiring of Nonresident Workers**

### **SECTIONS**

- § 131. Application required.**
- § 132. Referral of resident workers.**
- § 133. Publication of vacancy.**
- § 134. Determination to permit employment of nonresident workers.**
- § 135. Nonresident employment agreement.**
- § 136. Effective date of nonresident employment agreements.**
- § 137. Expiration of nonresident employment agreements for failure of performance.**
- § 138. Nonresident worker's identification certificate.**
- § 139. Entry requirements.**

## **Subchapter IV**

### **Employment Status of Nonresident Workers**

### **SECTIONS**

- § 141. Outside employment for compensation.**

**§ 142. Change of employment.**

**Subchapter V**

**Administration of Chapter**

**SECTIONS**

**§ 151. Trust Territory Employment Service.**

**§ 152. Functions and duties of Employment Service.**

**§ 153. Functions and duties of the chief.**

**§ 154. Employer's records.**

**§ 155. Rules and regulations.**

**Subchapter VI**

**Enforcement of Chapter**

**SECTIONS**

**§ 161. Authorization to conduct hearing and investigations.**

**§ 162. Procedure for hearings and investigations.**

**§ 163. Petition to Court for enforcement.**

**§ 164. Appeals to chief.**

- § 165. Appeals to Court.**
- § 166. Injunctions.**
- § 167. Penalties for violation of chapter.**
- § 168. Penalties for violation of section 115.**
- § 169. Materiality of all information; Sanctions.**

## **Subchapter I**

### **General Provisions**

#### **§ 111. Short title.**

This chapter is known and may be cited as the “Protection of Resident Workers Act.”

**Source:** COM PL 3C-44 § 1; TT Code 1970, 49 TTC 1; TT Code 1980, 49 TTC 1.

**Editor’s note:** Provisions of this Act were formerly codified at 49 TTC 3(2), 49 TTC 16, and 49 TTC 18(2) in the 1980 edition of the Trust Territory Code, but were deleted from the 1982 edition as obsolete.

#### **§ 112. Definitions.**

For the purposes of this chapter, unless it is otherwise provided or the context requires a different construction, application, or meaning:

- (1) “Available” means able to be on the island on which the employer desires workers on the date the employer states the workers are desired.
- (2) “Chief” means the chief of the Division of Labor within the Department of Resources and Development.
- (3) “District representative” means any district employment service officer, or any other person designated by the chief to act on his behalf in any district in which there is no district employment service officer.
- (4) “Employer” means any individual, partnership, association, or corporation hiring employees in the Trust Territory and any individual who has in his employ a domestic servant, but does not include any branch or agency of the Trust Territory Government or of the United States Government.
- (5) “Employment service” means the Trust Territory Employment Service established under section 151 of this chapter.
- (6) “Employment service officer” means the official who is the head of the Trust Territory Employment Service established under section 151 of this chapter.
- (7) “Nonresident worker” means any person who is capable of performing services or labor and who is not a citizen of the Trust Territory or an immigrant alien admitted to the Trust Territory for permanent residence under the provisions of title 50 of this code, including persons acting in a professional, managerial, or executive capacity.
- (8) “Resident worker” means any person who is capable of performing services or labor and who is a citizen of the Trust Territory or an

immigrant alien admitted to the Trust Territory for permanent residence under the provisions of title 50 of this code, including persons acting in a professional, managerial, or executive capacity.

**Source:** COM PL 3C-44 § 3; TT Code 1970, 49 TTC 3; TT Code 1980, 49 TTC 3.

**Cross-reference:** Title 50 of this code is on Immigration.

**Editor's note:** Subsections rearranged in alphabetical order in the 1982 edition of this code. In subsection (8), “of the Code of the Federated States of Micronesia” is replaced by “of this code” for format consistency.

**Case annotations:** The Title 51 provision barring nonresident workers from gainful employment for other than the employer who has contracted for him does not apply to national government employees because the national government is not an employer for the purposes of Title 51 of the FSM Code and does not contract with the Chief of the Division of Labor for employment of nonresident workers. *FSM v. Moroni*, 6 FSM R. 575, 578 (App. 1994).

### **§ 113. Statement of policy.**

The Congress of Micronesia finds and declares that it is essential to a balanced and stable economy in the Trust Territory that Trust Territory citizen workers be given preference in employment in occupations and industries in the Trust Territory, and that the public interest requires that the employment of noncitizen workers in such occupations and industries not impair the wages and working condition of Trust Territory workers.

**Source:** COM PL 3C-44 § 2; TT Code 1970, 49 TTC 2; TT Code 1980, 49 TTC 2.

### **§ 114. Preference.**

Resident workers shall be given preference in employment in the Trust Territory in any industry or occupation for which such workers are qualified and available. Nonresident workers shall be employed only to supplement the labor force of available and qualified resident workers.

**Source:** COM PL 3C-44 § 4 (part); TT Code 1970, 49 TTC 4 (part); TT Code 1980, 49 TTC 4 (part).

### **§ 115. Benefits for resident workers hired by Government contractors.**

(1) The Trust Territory shall not enter into any contract whose primary purpose is the construction of any building, airport, road, harbor, or any other thing, unless such contract provides that if the contractor utilizes nonresident labor as defined in this chapter and if such contract provides that if this chapter and if such contractor provides either transportation, lodging or lodging expenses, or room or board expenses to any such employee, then such contractor shall provide the same benefits to resident employees, as defined in this title.

(2) Transportation, lodging or lodging expenses, or room or board expenses need not be provided when a resident employee maintains his principal place of residence within normal commuting distance, as defined by regulations implementing Public Law No. 4C-49, from his place of employment with such contractor.

**Source:** COM PL 5-6 § 1; TT Code 1980, 49 TTC 20.



**Editor's note:** COM PL 4C-49 is the Trust Territory Public Service System Act, formerly codified at 61 TTC 1-13, and repealed as to the FSM by PL 1-47.

## Subchapter II

### Application of Chapter

#### **§ 121. Compliance with chapter; Exception for temporary employees.**

(1) No employer shall employ a nonresident worker except in strict accordance with the provisions of this chapter and rules and regulations issued hereunder, except that the provisions of this chapter shall not apply to temporary employees who are brought into the Trust Territory for a period of time not to exceed 90 days.

(2) If the employer bringing in such temporary employees to the Trust Territory finds that their services are needed for a period of time exceeding 90 days, he may apply to the chief for an extension of the exemption, and the chief may grant such extension for an additional period of time not to exceed 90 days if he finds that the extension is reasonable.

(3) The chief may grant more than one extension, but the total time period, including any extensions, such temporary employee may remain in the Trust Territory under temporary employee status shall not exceed 180 days.

**Source:** COM PL 3C-44 § 4 (part); TT Code 1970, 49 TTC 4 (part); TT Code 1980, 49 TTC 4 (part).

**§ 122. Application of chapter to employees of TT Government.**

Nothing in chapter 1 of this title, known as the Protection of Resident Workers Act, shall be construed to exempt employees of the Trust Territory Government in seeking employment during hours not engaged in the performance of Government employment, and employers other than the Trust Territory Government in hiring such employees or prospective employees, from complying fully with the provisions of such chapter, and such chapter shall be construed to apply to such persons for all purposes, except insofar as rendered inapplicable by a specific provision thereof.

**Source:** COM PL 4C-30 § 1; TT Code 1980, 49 TTC 19.

**Case annotations:** Title 51 does not preclude nonresident national government employees from engaging in off-hours, secondary, private sector employment, but simply means that in order to engage in secondary employment nonresident national government employees must comply with its statutory provisions covering the private sector employment of nonresidents. *FSM v. Moroni*, 6 FSM R. 575, 579 (App. 1994).

### **Subchapter III**

#### **Hiring of Nonresident Workers**

**§ 131. Application required.**

Any employer who desires to import alien workers for employment in the Trust Territory shall file an application with the Employment Service stating the place and nature of the employer's business, the number of workers desired and occupational qualifications of such workers, the wages to

be paid such workers, the date on which such workers are desired, the district or districts in which such workers are desired, and any other information the Employment Service may require or which the employer may deem appropriate.

**Source:** COM PL 3C-44 § 8(a); TT Code 1970, 49 TTC 8(1); TT Code 1980, 49 TTC 8(1).

### **§ 132. Referral of resident workers.**

Upon receipt of an application pursuant to the provisions of section 131 of this chapter, the Employment Service shall first endeavor to fill the job vacancies reported by the employer by referral of qualified resident workers registered with such service and available for employment.

**Source:** COM PL 3C-44 § 8(b) (part); TT Code 1970, 49 TTC 8(2) (part); COM PL 4C-29 § 1; TT Code 1980, 49 TTC 8(2) (part).

### **§ 133. Publication of vacancy.**

(1) In the event of inability to supply sufficient qualified resident workers pursuant to section 132 of this chapter, the Employment Service shall cause the existence of the vacancies and other applicable information regarding the jobs to be publicized.

(2) The publication shall include notice to its field offices, posting of notice in public places in the districts, the use of radio and newspaper media when appropriate, and such other means as the Employment Service may determine to be feasible.

(3) No nonresident worker shall be permitted to be employed unless such publicity shall have been given:

(a) for a period of 30 days, in the district or districts where such employment is to take place; and

(b) for a period of 15 days, beginning with the sixteenth day after the first day on which the first advertisement was made in the district or districts in which employment is to take place, in all other districts of the Trust Territory.

(4) Upon the expiration of 30 days after the first advertisement by the Employment Service, the employment service officer, upon a finding that there are no occupationally qualified resident workers available to fill all or some of the vacancies applied for, shall notify the chief of those positions for which no resident workers are available.

**Source:** COM PL 3C-44 § 8(b) (part), (c); TT Code 1970, 49 TTC 8(2) (part), (3); COM PL 4C-29 §§ 1, 2; TT Code 1980, 49 TTC 8(2) (part), (3).

**§ 134. Determination to permit employment of nonresident workers.**

(1) Upon receipt of notice from the employment service officer of those positions which the employer requires, and for which no resident workers are available, the chief shall determine whether the employment of such nonresident workers will be in the best interests of the Trust Territory, and for what period of time and under what conditions the employer should be authorized to hire nonresident workers for those positions.

(2) Within seven days after the receipt of notice from the

employment service officer, he shall notify the employer of his findings.

**Source:** COM PL 3C-44 § 8(d) (part); TT Code 1970, 49 TTC 8(4) (part); TT Code 1980, 49 TTC 8(4) (part).

### **§ 135. Nonresident employment agreements.**

(1) For those positions for which the chief has determined that nonresident workers may be hired, he shall require that a nonresident employment agreement be entered into between the employer and the Trust Territory Government, which agreement shall authorize the employer to hire nonresident workers.

(2) The agreement shall be signed by the chief, as representative of the Trust Territory Government, and by the employer of his authorized representative.

(3) The agreement shall contain the following provisions, in addition to any other provisions the chief deems necessary in the circumstances:

(a) a statement that the employer requires such nonresident workers for immediate employment;

(b) a statement of the wages the employer is paying or intends to pay the nonresident workers for each occupational classification he is importing an alien to fill;

(c) a statement that the employer agrees to comply with the minimum employment conditions and other requirements consistent with the provisions of this chapter and other applicable laws of the Trust Territory;

(d) a statement of the period of time for which the employer will be allowed to fill each position with a nonresident worker before he must attempt to fill the position with a resident worker by filing a new application with the Employment Service; and

(e) a statement of the employer's responsibility for return transportation to the place of origin of each nonresident worker so employed.

(4) Upon execution of the agreement required under subsections (1) through (3) of this section, the chief shall notify the Office of Immigration Control.

(5) The chief shall provide each nonresident worker covered by this chapter with a copy of the nonresident workers' agreement which authorized his employer to hire him.

**Source:** COM PL 3C-44 § 8(d) (part), (e), (f) (part); TT Code 1970, 49 TTC 8(4) (part), (5), (6) (part); TT Code 1980, 49 TTC 8(4)(part), (5), (6) (part).

### **§ 136. Effective date of nonresident employment agreements.**

In addition to the requirements imposed by section 135 of this chapter, no nonresident employment agreement shall be effective until it has been signed by the District Administrator of the district in which such employment, or the major portion thereof, is to be performed by the nonresident worker in question.

**Source:** COM PL 4C-42 § 1; TT Code 1980, 49 TTC 18.

**§ 137. Expiration of nonresident employment agreements for failure of performance.**

Any nonresident employment agreement entered into by the chief of labor with any employer pursuant to the requirements of section 135 of this chapter shall expire 60 days from the date thereof, except as to the employment of any nonresident worker, as defined in this title, who is employed and present in the Trust Territory within 60 days from such date.

**Source:** COM PL 4C-42 § 1; COM PL 5-76 § 1; TT Code 1980, 49 TTC 22.

**§ 138. Nonresident worker's identification certificate.**

(1) The chief shall provide each nonresident worker covered by this chapter with a nonresident worker's identification certificate.

(2) The identification certificate shall contain the nonresident worker's name, his employer's name, his job classification, his legal residence, his country of origin and citizenship, the date of expiration of his entry permit, and the number of the nonresident workers agreement which authorized his employer to hire him.

(3) The nonresident worker shall be required to keep such certificate on his person at all times.

**Source:** COM PL 3C-44 § 8(f) (part); TT Code 1970, 49 TTC 8(6) (part); TT Code 1980, 49 TTC 8(6) (part).

**Editor's note:** Subsection (1) of this section is adopted from former 49 TTC 8(6), TT Code 1980.

### **§ 139. Entry requirements.**

Prior to entry of a nonresident worker into the Trust Territory for employment under the provisions of this chapter, the following requirements shall be met:

(1) Each nonresident worker shall present to the chief or his representative a sworn affidavit, on a form issued by the Trust Territory Government, executed by him, and such other evidence as the chief may require, which indicates a minimum of two years' experience in the line of work for which he is being hired, marital status, and if married the name of the spouse, number and ages of dependent children, and the addresses of the spouse and dependent children, and that he has not been convicted of a felony or other crime involving moral turpitude; and

(2) The employer of a nonresident worker shall present to the chief or his representative a copy of the nonresident worker's contract of employment, which shall include a statement of job title, of the duration of the contract, location of work, weekly hours schedule, wage scale for regular and overtime work, any deductions for living costs, and such other information or contractual provisions as required by the chief.

**Source:** COM PL 5-84 § 1; TT Code 1980, 49 TTC 8(7).

## **Subchapter IV**

### **Employment Status of Nonresident Workers**

### **§ 141. Outside employment for compensation.**



(1) It shall be unlawful for any nonresident worker admitted into the Trust Territory under the provisions of this title to engage in any other employment for compensation or for profit other than for the employer who has contracted with the Chief for the employment of such nonresident worker in the Trust Territory, except in accordance with the provisions of this section.

(2) A nonresident worker who is under a labor contract with an employer may work for or be employed by a second employer during the term of such contract if all of the following conditions are met:

(a) the nonresident worker has filed an “Application for Permission to Engage in Additional Employment for Compensation or Profit” with the Chief, which application shall be in the form required by the Chief in regulations issued pursuant to section 102(1) of title 17 of this code;

(b) the original employer and the prospective second employer have entered into a “Contract for Services” whereby the first employer agrees to allow the second employer to use the services of the nonresident worker. Such contract shall be filed with the Chief and shall contain, at a minimum, such provisions as the Chief shall, by regulation, require; and

(c) the second employer has met all of the requirements of this chapter for hiring nonresident workers and has paid a fee, the amount of which shall not be less than \$1,000 and shall be set forth in regulations issued pursuant to section 102(1) of title 17 of this code.

(3) Any employment of the nonresident worker in a manner not provided for by this section shall constitute sufficient ground and cause for deportation and the chief of the Division of Labor shall communicate to the Secretary of the Department of Justice any violation of this section and the Secretary shall institute deportation proceedings against the alien worker if in

the opinion of the District Administrator such would be in the best interest of the public.

(4) Violation of the provisions of this section by an employer or nonresident worker shall also be subject to penalties prescribed by section 167 of this chapter.

**Source:** COM PL 4C-77 § 1; TT Code 1980, 49 TTC 17; PL 12-65 § 6.

**Cross-reference:** The statutory provisions on Administrative Procedure are found in title 17 of this code.

**Editor's note:** In subsections (2)(a) and 2(c), “of the Code of the Federated States of Micronesia” is replaced by “of this code” for format consistency.

### **§ 142. Change of employment.**

(1) A nonresident worker who is under a labor contract with an employer shall not change his employer during the term of such contract, except in accordance with the provisions of this section.

(2) Before a nonresident worker can work for or be employed by an employer different than his previous employer, he shall first be required to apply for a permit reflecting his change of employment and pay a fee, except that citizens and nationals of the United States, for the duration of the Compact of Free Association, and citizens and nationals of the Republic of the Marshall Islands or the Republic of Palau shall not be required to pay a fee.

(3) The amount of the fee required by subsection (2) of this section, which shall not be less than \$1,000, and the circumstances under which a change in employment status may be granted shall be set forth in regulations

issued pursuant to section 102(1) of title 17 of this code. Fees collected as a result of this section shall be deposited into the fund established by section 113 of title 50 of this code.

**Source:** COM PL 5-84 § 2; TT Code 1980, 49 TTC 8(8); PL 4-110 § 1; PL 12-65 § 7; PL 12-79 § 1.

**Cross-reference:** The statutory provisions on Administrative Procedure are found in title 17 of this code. Section 113 of title 50 (Immigration) is on Entry Permit Revolving Fund.

**Editor's note:** In subsection (3), “of the Code of the Federated States of Micronesia” is replaced by “of this code” for format consistency.

## Subchapter V

### Administration of Chapter

#### **§ 151. Trust Territory Employment Service.**

(1) There is hereby established in the Department of Resources and Development a Trust Territory Employment Service.

(2) The Trust Territory Employment Service shall be headed by an employment service officer, who shall report directly to the chief of labor.

(3) The purpose of the establishment of the Trust Territory Employment Service is to create a system of free public employment offices in the Trust Territory for workers seeking employment and for employers seeking workers.

(4) The Trust Territory Employment Service shall have its main

office in Trust Territory headquarters, and shall have field offices in each of the administrative districts.

(5) The Trust Territory Employment Service shall have such powers, duties, and functions as may be established by this chapter, other provisions of this code, and the manual of administration of the Trust Territory Government.

**Source:** COM PL 3C-44 § 5; TT Code 1970, 49 TTC 5; TT Code 1980, 49 TTC 5.

### **§ 152. Functions and duties of Employment Service.**

For the purpose of this chapter, and without limitations on the scope or extent of powers, duties, or responsibilities vested in it by other provisions of the Trust Territory Code, manual of administration, or order of the High Commissioner, the Employment Service through its employment service officer and district representative shall:

(1) in the placement of workers, assist the chief in determining occupational categories, and, for those occupational categories designated by the chief, perform certification functions regarding minimum standards of qualifications and minimum wage requirements;

(2) conduct continuing surveys of manpower needs, assist in preparing training programs, and recommend other measures for alleviating shortages and reducing the need for nonresident workers;

(3) oversee, monitor, and review the use of alien workers and all matters related thereto, including but not limited to the following: health, safety, meals, lodging, salaries, working hours and conditions, and specific

contractual provisions for labor services;

(4) regulate the recruitment of FSM citizens for employment outside the FSM, by promulgating regulations establishing a system of registration of recruiters and by establishing minimum requirements for overseas employment contracts;

(5) conduct such investigations as may be necessary to fulfill the provisions of this section and such other duties as may be required by the chief.

**Source:** COM PL 3C-44 § 7; TT Code 1970, 49 TTC 7; COM PL 4C-46 § 2; TT Code 1980, 49 TTC 7; PL 12-80 § 1.

### **§ 153. Functions and duties of the chief.**

For the purposes of this chapter, and without limitations on the scope or extent of powers, duties, or responsibilities vested in him by other provisions of this code, manual of administration, or order of the High Commissioner, the chief and his district representative shall:

(1) enforce the provisions of this chapter and the agreements which the chief enters into with employers concerning the employment of nonresident workers, including the performance of investigatory functions as appropriate thereto;

(2) require that employers accept such agreements or conditions for the payment of wages or benefits to nonresident workers as the chief shall determine to be necessary and consistent with the policy and purposes of this chapter and any such agreements or conditions agreed to by an employer shall be legally enforceable in the courts of the Trust Territory, upon action

taken by an aggrieved employee or in his behalf by the chief or his district representative. In any such action taken by the chief or his district representative on behalf of an aggrieved employee, the chief or his district representative shall be represented by the Office of the Attorney General of the Trust Territory;

(3) establish occupational categories for the occupations to which this chapter is applicable, and, when the chief deems it necessary or desirable, establish minimum standards of qualification procedures, and minimum wage requirements for workers in certain occupational categories;

(4) supervise the employment service in furtherance of the objectives of this chapter and in the effectuation of the provisions of this chapter.

**Source:** COM PL 3C-44 § 6; TT Code 1970, 49 TTC 6; COM PL 4C-46 § 1; TT Code 1980, 49 TTC 6.

### **§ 154. Employer's records.**

Each employer hiring employees in the Trust Territory shall keep and present immediately upon demand of the chief or his district representative and quarterly to the chief and to his district representative up-to-date records with the following information:

(1) the name, address, age, and legal residence of each of his employees;

(2) the classification and wage rate of each of his employees;

(3) payrolls showing the number of hours worked each week, the

compensation earned, and deductions made for each of his employees;

(4) the educational and experiential backgrounds of each of his nonresident employees (to be provided but once by an employer for each nonresident employee working in the Trust Territory);

(5) the number of employment related accidents, name of the injured, and disposition by the employer of the injured employee;

(6) the number and types of illnesses by alien workers, the treatment and disposition of the alien worker, and whether hospitalization was required;

(7) the citizenship, country of origin, and expiration date of entry permit of each alien worker employed; and

(8) a copy of the nonresident workers agreement authorizing the hiring of the alien worker in question.

**Source:** COM PL 3C-44 § 9; TT Code 1970, 49 TTC 9; COM PL 4C-46 § 3; TT Code 1980, 49 TTC 9.

### **§ 155. Rules and regulation.**

The chief, subject to approval by the High Commissioner, shall promulgate rules and regulations necessary or appropriate to effectuate the provisions of this chapter. Such rules and regulations shall become effective immediately, or on the date which the chief shall determine, and shall have the force and effect of law.

**Source:** COM PL 3C-44 § 13; TT Code 1970, 49 TTC 13; TT Code 1980, 49

TTC 13.

## **Subchapter VI**

### **Enforcement of Chapter**

#### **§ 161. Authorization to conduct hearings and investigations.**

(1) The chief or his district representative is hereby authorized to conduct hearings or investigations as he may deem appropriate and necessary to enforce the provisions of this chapter.

(2) In connection with such hearings or investigations, the chief or his district representative may subpoena witnesses, records, and documents.

**Source:** COM PL 3C-44 § 10(a); TT Code 1970, 49 TTC 10(1); COM PL 4C-46 § 4 (part); TT Code 1980, 49 TTC 10(1).

#### **§ 162. Procedure for hearings and investigations.**

(1) The chief or his district representative shall upon a sworn affidavit by a person that a violation of this chapter or any rule or regulation issued thereunder has occurred, investigate all complaints, and he shall have the power to schedule a public or closed hearing as he may deem appropriate under the circumstances.

(2) Adequate notice shall be given to parties involved in the controversy or investigation should a hearing be scheduled, and opportunity shall be made available to them to present such evidence as they may desire.



(3) The district representative of the chief upon conclusion of his investigation or hearing shall have the power to issue an order disposing of the matter. Such order shall be in force and effect until modified, sustained, or repealed by the chief who shall review within 30 days all investigations and hearings conducted on a district level.

**Source:** COM PL 3C-44 § 10(b); TT Code 1970, 49 TTC 10(2); COM PL 4C-46 § 4 (part); TT Code 1980, 49 TTC 10(2).

### **§ 163. Petition to Court for enforcement.**

(1) The chief may petition the Trial Division of the High Court of the Trust Territory for the enforcement of an order issued under the provisions of this chapter, and the appropriate temporary relief or restraining order.

(2) The chief shall file in the Court a transcript of the records in the proceedings, including, where appropriate, the pleading and testimony upon which the order was entered and the findings and order of the chief.

(3) Upon such filing, the Court shall cause notice to be served upon the person against whom the order is directed. Thereupon the Court shall have jurisdiction of the proceeding and may grant such temporary relief or restraining order as it shall deem just and proper, or issue a decree enforcing, modifying and enforcing as so modified, or setting aside in whole or in part, the order of the chief.

(4) In all such actions the chief shall be represented by the Office of the Attorney General of the Trust Territory.

**Source:** COM PL 3C-44 § 10(c); TT Code 1970, 49 TTC 10(3); COM PL 4C-46 § 4 (part); TT Code 1980, 49 TTC 10(3).

### **§ 164. Appeals to chief.**

Anyone aggrieved by a decision of the Employment Service in the implementation of this chapter, or by a decision of the chief in the implementation or enforcement of this chapter, may appeal such decision to the chief within ten days after he received notice of such decision. In connection with such appeal, he shall be entitled to a public hearing, and may be represented in person or by counsel of his choice. Within ten days after such hearing, the chief shall give notice to the appellant of his findings, and issue an order disposing of the matter.

**Source:** COM PL 3C-44 § 11; TT Code 1970, 49 TTC 11; TT Code 1980, 49 TTC 11.

### **§ 165. Appeals to Court.**

(1) Anyone aggrieved by an order of the chief issued under the provisions of sections 162 or 164 of this chapter may appeal the order to the Trial Division of the High Court of the Trust Territory within ten days following the date of the order.

(2) The commencement of any proceedings in any court shall not operate as a stay of compliance with any provisions of this chapter, or any rules, regulations, or orders issued hereunder.

(3) All findings, decisions, or orders by the chief on questions of fact shall be deemed final if supported by substantial evidence.

**Source:** COM PL 3C-44 § 12; TT Code 1970, 49 TTC 12; TT Code 1980, 49

## TTC 12.

**Case annotations:** If the court were to take the plaintiff at his word that November 26, 2010 is the date of the demand for an immigration hearing, that 17 F.S.M.C. 109(4) obliges the court to view December 26, 2010 as the effective date of rejection, and that 51 F.S.M.C. 165 is now applicable, the court must deny his administrative appeal of the rejection because he filed his motion 15 days after December 26, 2010 and, under 51 F.S.M.C. 165(1), he had to make the appeal within 10 days following the date of the effective rejection. *Smith v. Nimea*, 17 FSM R. 333, 337 (Pon. 2011).

A party cannot file a civil action in anticipation of an adverse final agency decision and expect, without more, that that civil action works as an administrative appeal of the later-issued final agency decision. In order for a party to include an administrative appeal in a preexisting civil action, he must amend or request leave of court to amend his pleadings. *Smith v. Nimea*, 17 FSM R. 333, 337 (Pon. 2011).

Under both state and national law, the plaintiff's claims for wrongful termination and unpaid wages are not property before the FSM Supreme Court when, under state law, the plaintiff is either statutorily barred from asserting his claims for unpaid wages, overtime and wrongful termination due to his failure to appeal the Director's decision or if the Director was not the proper "Chief" of PL&MD, he is barred by the statute of limitations from further pursuing his claims for his failure to request administrative relief within six years of his employment's termination and when, under national law, he has failed to make a proper and timely appeal, which would have been to file a new civil action or request leave to amend his complaint by March 4, 2005. *Smith v. Nimea*, 17 FSM R. 333, 338 (Pon. 2011).

### **§ 166. Injunctions.**

In addition to any of the other penalties prescribed by this chapter, the Attorney General may bring action in the Trial Division of the High Court of the Trust Territory to enjoin violations of the provisions of this chapter or any of the rules and regulations issued pursuant thereto.

**Source:** COM PL 3C-44 § 15; TT Code 1970, 49 TTC 15; TT Code 1980, 49 TTC 15.

### **§ 167. Penalties for violation of chapter.**

(1) Any employer who willfully violates any of the provisions of this chapter or any of the rules and regulations issued pursuant thereto shall, upon conviction thereof, be fined not more than \$2,000, or imprisoned for not more than six months, or both.

(2) Any nonresident worker who fails to comply with the provisions of section 138(3) of this chapter shall, upon conviction thereof, be fined not more than \$50, or imprisoned for not more than five days, or both.

**Source:** COM PL 3C-44 § 14; TT Code 1970, 49 TTC 14; TT Code 1980, 49 TTC 14.

### **§ 168. Penalties for violation of section 115.**

Any contractor who violates any provision of a Government contract containing the requirements imposed by section 115 of this title shall be guilty of a misdemeanor, and upon conviction thereof shall be sentenced to a fine of

\$1,000, and shall also be ordered to pay reasonable expenses for transportation, lodging, and board to any employee entitled thereto to whom it was not so furnished.

**Source:** COM PL 5-6 § 2; TT Code 1980, 49 TTC 21.

### **§ 169. Materiality of all information; Sanctions.**

(1) All information provided to the Labor Division regarding the application of an alien for employment under this chapter, whether such information is submitted by the employer or the alien, or by another person on behalf of the employer or alien, shall be deemed material to the Labor Division's decision whether to permit such employment.

(2) The furnishing of any false or misleading information by the alien, the employer, or by another person on behalf of the employer or alien, shall be grounds for the Labor Division to deny employment under this chapter.

**Source:** COM PL 4-72 § 1.

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**[Return to FSM Code Table of Contents](#)**