

**17 GAR LABOR RELATIONS
CH. 6 FAIR EMPLOYMENT PRACTICE**

**CHAPTER 6
FAIR EMPLOYMENT PRACTICE**

SOURCE: Originally codified as Title 12 GAR Chapter 1, Subchapter F (June 30, 1982 revision), §§ 11050-11059.2. Moved by the Compiler to Title 17, Chapter 6. Amendments were filed by the Department of Labor with the Guam Legislature on April 26, 2018 and became effective 90 days (July 25 2018) thereafter pursuant to the Administrative Adjudication Law (5 GCA Chapter 9, Article 3).

- Article 1. Fair Employment Practices.
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NOTE: Rule-making authority cited for Director of the Department of Labor, 22 GCA § 3305 and § 5210.

§ 6101. Authority.

By virtue of the authority vested in it by 22 GCA Chapter 3 and § 5210, the Department of Labor hereby issues these Rules and Regulations, which it finds necessary in order to carry out its responsibilities in the administration and enforcement of the provisions of the law as it relates to Unlawful Employment Practice and/or Discrimination. These Rules and Regulations shall be liberally construed to accomplish the purposes of the law and the

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policies of the Department and shall be in force and effect until such time that it is amended or rescinded by rules and regulations hereafter made and published by the Department of Labor.

§ 6102. Statement of Policy.

(a) It is the public policy of the territorial government of Guam to protect and safeguard the civil rights of all individuals to seek, have access to, obtain and hold employment without discrimination because of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, sex and/or age, sexual orientation and/ or gender identity.

(b) Employment practices should treat all individuals equally, evaluating each individual only on the basis of bona fide occupational qualification, unless pursuant to permissible defense as enumerated in the law.

SOURCE: Subsection (a) amended in 2018.

2018 NOTE: Paragraph altered to add subsection designations pursuant to the authority granted by 1 GCA § 1606.

§ 6103. Purpose.

The intended purpose and objectives of the law and these Rules and Regulations are to promote equal employment opportunity and to assist all individuals in understanding their rights, duties and obligations, so as to effectuate compliance with the law.

§ 6104. Definitions.

(a) *Person* shall mean one or more individuals, partnerships, associations, corporations, legal representatives, business trustees, receivers or any organized group of persons.

(b) *Employer* shall mean any person employing an individual within the territory of Guam.

(c) *Employee* shall mean an individual employed by a person, but shall not include any individual employed in the domestic service of any family or person at his private home, or any individual employed by his/her parent, spouse or child.

(d) *Complainant* shall mean the individual who has filed a complaint.

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(e) *Complaint* shall mean a verified written statement filed with the Department pursuant to these Rules and Regulations alleging unlawful employment practice or discrimination within the meaning of the law.

(f) *Department* shall mean the Department of Labor, government of Guam.

(g) *Director* shall mean the Director of the Department of Labor, government of Guam.

(h) *Investigating Officer* shall mean the person duly designated by the Department to conduct an investigation of a verified complaint filed with the Department.

(i) *Representative* shall mean any person duly designated by one or more individuals and acting on behalf of the designator.

(j) *Respondent* shall mean any person or employer against whom a complaint has been filed alleging unlawful employment practice or discrimination with the meaning of the law.

(k) *Days* shall mean consecutive calendar days unless otherwise specified.

(l) *Verified* shall mean sworn to or affirmed before a notary public or other person duly authorized by the Director to administer oaths and take acknowledgments.

(m) *Employment Agency* shall mean any person regularly undertaking, with or without compensation, to procure employees for an employer, or to procure for employees opportunities to work for an employer, and includes an agent of such person.

(n) *Labor Organization* shall mean any organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining or of dealing with employers regarding grievances, terms or conditions of employment, or of providing other mutual aid or protection.

(o) The term *because of sex or on the basis of sex* shall mean to include sexual harassment or because of or on the basis of pregnancy, childbirth or related medical conditions, unless pursuant to permissible defense as enumerated in the law.

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(p) *Party or Parties* shall mean the complainant and/or the respondent.

(q) *Law* shall mean 22 GCA Chapter 3 and 22 GCA Chapter 7.

(r) Fair Employment Practice Office - shall mean the Fair Employment Practice Division (FEPD) of the Guam Department of Labor, commonly referred to as FEPO.

(s) Conciliation shall mean, bringing two opposing sides together to reach a compromise in an attempt to avoid taking a case to trial.

SOURCE: Subsections (r) and (s) added in 2018.

§ 6105. Complaint.

(a) Who May File:

(1) Any individual claiming to be aggrieved by an alleged unlawful employment practice or discrimination may make, sign and file a complaint with the Department.

(2) Any person claiming to have been discharged, expelled, refused employment or otherwise discriminated against by any person, employer, labor organization or employment agency because he has opposed unlawful employment practice or discrimination or because he has filed a complaint, testified or assisted in any proceeding under the law, may make, sign and file a complaint with the Department.

(3) The Attorney General may make, sign and file a complaint whenever he has reason to believe that a person, employer, employment agency or labor organization has engaged or is engaging in an unlawful employment practice or discrimination.

(b) Complaint Filing Assistance. Assistance in the filing of complaints is available to complainants at the Department's Fair Employment Practice Office.

(c) Complainants shall receive an update on the status of their complaint within 60 days of their filing with FEPD. The update shall bear the signature of the Director of Labor or the Director's designee.

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SOURCE: Subsection (c) added in 2018.

§ 6106. Same: Form and Contents; Time for Filing.

(a) Complaint Form. All complaints shall be on an official Department form approved by the Director of Labor.

(b) Contents of Complaint. Each complaint shall contain the following:

(1) The full name, address and telephone number (if any) of the complainant.

(2) The full name, address and telephone number (if any, and if known) of the respondent.

(3) A plain and concise statement of the facts constituting the alleged unlawful employment practice or discrimination.

(4) The date and place the alleged unlawful employment practice or discrimination occurred.

(5) Such other information as may be required by the Department.

(6) A sworn statement that the information in the complaint is true and correct.

SOURCE: Subsection (a) amended and subitem (b)(6) added in 2018.

§ 6107. Same: Filing.

(a) Time Limitation for Filing Complaint. No complaint shall be filed after the expiration of ninety (90) days from the date upon which the alleged act of unlawful employment practice or discrimination occurred.

(b) Manner and Place of Filing:

(1) The complaint shall be filed by personal delivery, fax or email to the Department's Fair Employment Practice Office. Complaints submitted via fax and/or email must be notarized.

(2) The Department may not accept complaint if it finds it to be lacking necessary information to appropriately conduct

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investigation and/or other action necessary to render appropriate decision.

(3) After verifying the identity of a complainant and witnessing the signature on the complaint form, any employee of the Department who is authorized by the Director, in writing, to enforce the labor laws of Guam may acknowledge a verified complaint filing.

(c) Filing Date. The complaint shall be deemed filed as of the date of receipt of the complaint at the Department's Fair Employment Practice Office. Receipts of the complaint shall be acknowledged by the Department's Fair Employment Practice Office by means of a date-time-stamp or other acceptable means and shall be initialed or signed by a staff of such office. The Fair Employment Practice Office may also send return email verifying receipt for complaints filed electronically. Return email shall serve as official receipt of complaint.

SOURCE: Subsections (b)(1) and (c) amended, and subitem (b)(3) added, in 2018.

§ 6108. Same: Service, Amendment or Withdrawal.

(a) Service of Complaint. Within fifteen (15) days after a complaint is filed with the Department, the Department shall personally serve upon the respondent a notice of the complaint, including the date, place and general description of the alleged unlawful employment practice or discrimination.

(1) Service of notice may also be effected via

(A) Email, to the email address of record

(B) Fax, to the fax number of record

(C) United States Postal Service Certified Mail, to the mailing address of record or

(i) by leaving a copy of the accusation and accompanying papers at their usual place of residence, or

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(ii) at their place of business, with some person of suitable age and discretion residing or working therein.

(2) Notice shall be considered served if any combination of two of the four methods have been made.

(b) Amendment of Complaint. The complainant shall be permitted to make amendments to his complaint as considered reasonable and fair, prior to issuance of a Department's order under 17 GAR § 61111.

(1) All such amendments related to or growing out of the subject matter of the original complaint shall be deemed to relate back to the original filing date.

(2) A complaint may be amended:

(A) To cure technical defects of omissions, including, but not limited to, failure to verify the complaint.

(B) To clarify and/or amplify allegations.

(3) Service of complaint amendment. Within fifteen (15) days after the amendment is filed, the Department shall serve a notice of the amended complaint upon the respondent by certified mail, return receipt requested or by personal delivery. Receipt of the amendment shall be acknowledged as in 17 GAR § 6105.

(c) Withdrawal of Complaint:

(1) Upon request of the complainant, a complaint, or any part thereof, may be withdrawn only on conditions as hereinafter set forth:

(A) If the request for withdrawal is received in the Department prior to the issuance of Department's order under the provisions of 17 GAR § 6111, only upon written consent of the Fair Employment Practice Officer.

(B) If the request for withdrawal is received after the issuance of the Department's order under the provisions

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of 17 GAR § 61111, only upon written consent of the Director.

(2) The request for withdrawal of the complaint shall be in writing, and shall set forth fully the reasons for such request. The request must be signed and verified by the complainant. If the request is approved, the Department shall promptly notify the respondent of such action. The Attorney General shall be provided a copy of the Department's notice of withdrawal.

SOURCE: Subsection (a) amended in 2018.

2018 NOTE: Subsections (a) and (b) altered to add subitem designations pursuant to the authority granted by 1 GCA § 1606.

§ 6109. Investigation.

(a) After the filing of a complaint, the Department shall assess the complaint and if reasonable cause exists, may open an investigation into the allegations contained in the complaint. The Investigating Officer shall have authority to request for records, interview persons and/or require statements necessary to make a fair determination. In cases where parties are uncooperative, the Department may issue a subpoena to obtain witness testimony or the production of necessary records pursuant to 22 GCA § 1109.

(b) Determination of No Reasonable Cause. If after investigation of the complaint, the investigating officer determines that no reasonable cause exists to believe that the respondent has engaged in an unlawful employment practice or discrimination within the meaning of the law, then the Department shall dismiss the complaint. Notice of the dismissal shall be given to the complainant and the respondent in accordance with 17 GAR § 6108.

(c) Determination of Reasonable Cause. If after investigation of the complaint, the investigating officer finds reasonable cause to believe that an unlawful employment practice or discrimination has occurred or is occurring, the Department shall immediately endeavor to eliminate the unlawful practice by conference, conciliation and persuasion.

SOURCE: Subsection (a) amended, and internal reference "investigating officer" altered, in 2018.

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§ 6110. Conciliation.

(a) Conference. The Department may require any or all of the parties to an informal conciliation conference for the purpose of attempting to informally resolve the matter. All parties shall be reasonably notified of the time, date and the place of the informal conciliation conference.

(b) Conciliation Efforts. In attempting to conciliate a case after a determination of reasonable cause has been made, the investigating officer shall endeavor to achieve a just resolution of all violations found and to obtain agreement that the respondent will eliminate the unlawful employment practice and provide appropriate relief.

(c) Successful Conciliation. Where such conciliation efforts are successful, the terms of such conciliation agreement shall be reduced to writing and shall be signed by all parties and the investigating officer, provided that the agreement provides, in the judgment of the investigating officer, full and fair relief to the parties. A copy of the signed conciliation agreement shall be sent to all parties and the Attorney General.

(d) Termination of Conciliation Efforts. Should a respondent fail or refuse to confer and otherwise cooperate with the Department or its representative, or fail or refuse to make a good faith effort to informally resolve any dispute, and the Department is unable to eliminate the unlawful employment practice or discrimination through informal conference, conciliation and persuasion, and it appears to the Department that further efforts at conciliation would be futile and non-productive, the Department shall terminate its conciliation efforts and proceed with issuing the Department's order as provided under 17 [GAR] § 6111.

(e) Compliance Reports. If conciliation efforts is successful, proof of respondent's compliance with the law in accordance with the terms of the conciliation agreement shall be obtained by the Department before the case is closed. In order to obtain such proof, the Department may require any party to submit to it such reports as the Department deems necessary to show the manner of compliance with the terms of the conciliation agreement.

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SOURCE: Subsection (a) amended, and internal reference “investigating officer” in subsection (b) altered, in 2018.

§ 6111. Dismissal of Complaints.

(a) The Department shall dismiss the complaint under the following conditions:

(1) If it is determined that the Department does not have jurisdiction over the complaint.

(2) If it is determined after investigation that reasonable cause does not exist to believe that the alleged unlawful employment practice or discrimination has been committed.

(3) If the complainant has failed or refused to appear for interviews or conferences, provide requested information, the Department deems necessary or in any way refused or failed to fully cooperate in the investigation or conciliation to the extent that the Department is unable to resolve the complaint, and the Department has received no response from the complainant within thirty (30) days after the notice to the complainant of the Department’s intent to dismiss the complaint.

(4) If the complainant cannot be located, provided that reasonable efforts have been made to locate the complainant and the complainant has not responded within thirty (30) days to a notice sent by the Department to the complainant's last known address.

(5) If the respondent has made a predetermination settlement offer as described in 17 GAR § 6109, which is in writing and specific in its terms, and the complainant refuses to accept the offer, provided, that the offer would, as determined by the Department, afford full relief for the harm alleged by the complainant and the complainant fails to accept such an offer within thirty (30) days after notice of the offer is made.

(b) Notice of Dismissal:

(1) In the event of any dismissal of a complaint, the complainant shall be notified by certified mail, return receipt requested or by personal delivery, of the reason or reasons for dismissal and of his right to apply to the Director for

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reconsideration of such dismissal as provided by 17 GAR § 6110. The respondent shall be notified, in like manner, of the dismissal of any complaint filed against him and of the reasons therefor.

SOURCE: Subsection (a) amended in 2018.

§ 6112. Predetermination Settlement.

(a) Settlement of all complaints at the earliest stage of the complaint processing is recommended and encouraged. The following action is suggested in endeavoring predetermination settlement:

(1) At any time after the filing of a complaint, but prior to the issuance of a determination, the investigating officer may encourage the parties to resolve the complaint through a predetermination settlement.

(2) If the complainant and the respondent agree to the terms of settlement, the same must be reduced in writing, signed by the parties and the investigating officer.

(3) If so approved, the case will be closed without a finding on the merits of the complaint and a copy of the final predetermination settlement shall be sent by certified mail, return receipt requested or personal delivery, to the complainant the respondent.

(b) Effect on Other Complaints. A predetermination settlement shall not affect the processing of any other complaint, including, but not limited to, complaints in which the allegations are like or related to the individual allegations settled.

(c) Department's General Policy in Predetermination Settlement. In any predetermination settlement discussion, the general policies of the Department shall include, but not be limited to the following:

(1) If a settlement is achieved, no determination will be made as to whether or not reasonable cause exists to believe that the allegations of the complaint are true;

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(2) The Department shall not subject either party to prejudice as a result of the party's either participating or refusing to participate in a predetermination settlement attempt;

(3) Participation by respondent in a predetermination settlement attempt will not be construed as evidence of a violation of the law or a waiver of the right to a departmental determination on the issues raised by the complaint if a settlement cannot be achieved; and

(4) If a predetermination settlement is achieved, the terms thereof shall not attribute fault to any of the parties involved.

§ 6113. Reconsideration of Decision for Dismissal.

(a) Request by Complainant. A complainant may submit to the Director a request for reconsideration of the dismissal of his complaint. Such request must be in writing, state specifically the grounds upon which it is based, and be filed with the Department within thirty (30) days from the date of the mailing of the notice of dismissal on which reconsideration is being requested.

(b) Director's Actions on Request for Reconsideration. Whenever a request for reconsideration is made, the Director shall review the entire file, and may, in his discretion, grant or deny such request. If a request is granted, the Director shall refer the entire matter, together with his recommendation, to the investigating officer for reevaluation in light of the Director's action. If the request for reconsideration is denied, the Director shall notify the complainant, in writing, of his determination by certified mail, return receipt requested or by personal delivery.

§ 6114. Department's Order.

(a) Issuance of Order. After determination is made that the respondent has engaged in unlawful employment practice or discrimination as defined in the law, and conciliation efforts terminated, the Department shall state its findings of facts and shall issue and cause to be served on respondent an order requiring such respondent to cease and desist from such unlawful practice and/or discrimination and to take such affirmative action to include, but not limited to those enumerated in the law, as, in the judgment of the Department, will effectuate the purpose of the law.

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(b) Notice of Rights of Hearing. In all cases where an order is issued, it shall include a notice to the respondent, advising him of his rights to a hearing in conformance with the Administrative Adjudication Law.

(c) Copy of Order to Attorney General. In all cases where an order is issued, a copy of such order shall be provided the Attorney General.

§ 6115. Hearings.

(a) Request for Hearing. In all cases where the respondent objects and/or opposes the order of the Department, in whole or in part, the respondent may request for a hearing on the case. Such request shall be in writing, signed by or on behalf of the respondent. The request must be received by the Department within fifteen (15) days from the date the Department's order is served upon the respondent. Failure to submit request within the time allotted will constitute a waiver of respondent's right to a hearing. In such instances, the Department's decision as enumerated in the Department's order shall be final.

(b) Department's Action on the Request for Hearing. Within ten (10) days upon receipt of a request for a hearing, the Department shall forward a copy of the request and a complete copy of the case to the Attorney General for his appropriate action.

(c) Assignment of Hearing Officer. Upon receipt of the request and the cases filed from the Department, the Attorney General shall assign a hearing officer to hear the case.

(d) Scheduling of Hearing. The hearing officer shall schedule the hearing on the case.

(e) Notice of Hearing. Upon establishing the time, date and place for the hearing, the hearing officer shall serve notice upon all parties. The notice shall inform all parties of the time, date and place of the hearing. Such notice shall be served upon all parties at least ten (10) days prior to the hearing.

(f) Conduct of Hearing. The hearing officer shall conduct the hearing in conformance with the Administrative Adjudication Law.

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(g) Decision. Upon completion of the hearing, the hearing officer shall serve upon all parties and to the Department a copy of the decision rendered upon the case heard.

(h) Conformity with the Administrative Adjudication Law. All procedures and action taken as relates to hearings and appeals shall be in conformance with the Administrative Adjudication Law.

**ARTICLE 2
FAIR CHANCES HIRING PROCESS**

- § 6201. Definitions.
- § 6202. Fair Chances Hiring Process.
- § 6203. Signage Posting Compliance.
- § 6204. Inspections & Investigations.
- § 6205. Penalties.
- § 6206. Hearings.
- § 6207. Advisory Opinions.
- § 6208. Public Posting of Repeat Offenders.
- § 6209. Petitions.
- § 6210. Severability.
- § 6211. Interpretation.

§ 6201. Definitions.

These definitions shall be used for the purposes of administering the Fair Chances Hiring Process.

(a) *Applicant* means any person considered for, or who requests to be considered for, employment by an employer; or, any employee considered for, or who requests to be considered for, another employment position, by the employer.

(b) *Arrest* means being apprehended, detained, taken into custody, held for investigation, or restrained by a law enforcement agency due to an accusation or suspicion that a person committed a crime.

(c) *Conditional offer* of employment means an oral or written offer by an employer to employ an individual in a job,

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or placement in a staffing agency's staffing pool, that is conditioned solely on the employer's evaluation of the individual's criminal history.

(d) *Court Clearance* means a document from a state, territorial, federal or foreign government which identifies information regarding an individual, concerning a court case that has not been dismissed or expunged.

(e) *Criminal history* means any conviction, plea of nolo contendere, or deferred adjudication arising from felony criminal accusation, or any misdemeanor criminal accusation, made under local or federal law, or a comparable law of a state of the United States. This does not include dismissed, expunged, or sealed cases.

(f) *Employer* means any person, company, corporation, general contractor, firm, labor organization, or association, including the government of Guam, that employs more than fifteen (15) employees in Guam.

(g) *Employment* means any occupation, vocation, job, or work for pay, including temporary or seasonal work, contracted work, contingent work, and work through the services of a temporary or other employment agency; or, any form of vocational or educational training with pay, where the physical location of the employment is in whole or in substantial part, within Guam.

(h) *Fair Employment Practice Office* shall mean the Fair Employment Practice Division (FEPD) of the Guam Department of Labor, commonly referred to as FEPO.

(i) *Inquiry* means any direct or indirect conduct intended to gather criminal history information from or about the applicant, candidate, or employee, using any method, including application forms, interviews, and criminal history or background checks.

(j) *Interview* means any direct contact by the employer with the applicant in person, or by telephone or video-conferencing, to discuss the employment being sought or the applicant's qualifications.

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(k) *Police Clearance* means a document from a state, territorial, federal or foreign government which identifies information, regarding an individual concerning an arrest which resulted in a filed criminal case.

(l) *Reasonable* means applying judgement expected of a typical person exercising ordinary prudence which is considered to be rational, appropriate, ordinary, or usual in the circumstances.

§ 6202. Fair Chances Hiring Process

(a) An employer shall not request or require a court clearance from an applicant prior to making a conditional offer of employment to the applicant.

(1) Complaints: Persons wishing to file a complaint for a violation of the Fair Chances Hiring Process may file such complaint with the Department of Labor Fair Employment Practice Office.

(A) Complaints and statements must be filled out on a Departmental complaint form.

(B) Complainant shall provide valid photo identification with their complaint.

(C) FEED may assist complainant with obtaining information from the employer, as allowed in the statute.

(2) Investigations: An investigation may be triggered as a result of a complaint, fact finding process from a separate case, or the result of a formal inspection.

(A) When requesting information from an employer, the Department may require that such information be submitted within 15 calendar days.

(B) An employer may request an extension of this 15 day deadline. An extension must be approved in writing by the Department and shall not exceed 30 calendar days after the initial 15 day period.

(C) FEED Investigators may interview employees at a jobsite and may also inspect employer records at the

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employer's establishment. Failure to allow reasonable access to FEPD investigators constitutes a violation and may subject an employer to civil penalties pursuant to 22 GCA§ 6104(b).

(D) FEPD investigators may refer a matter or coordinate with other local or federal agencies when appropriate.

(3) Findings: FEPD investigators shall consider documents, statements and other pertinent information during fact finding investigations and formulate a report to the Director.

(A) The report shall contain a synopsis of the situation and recommendation to the Fair Employment Practice Officer on action.

(B) Findings shall take into consideration information gained during fact finding, exemptions in the statute and/or statements of denial issued by the employer.

(C) Fair Employment Practice Officer shall approve the synopsis prior to submission to the Director.

(4) Withdrawal of Conditional Offer: Should a conditional offer be proffered to an applicant, written notice must be given to the applicant no later than 15 calendar days, after the applicant provides Police and/or Court clearances, detailing the result of the employer's decision on whether the applicant has been hired or not.

(A) Following the extension of a conditional offer of employment, an employer may only withdraw the conditional offer to an applicant for a legitimate business reason. The employer's determination of a legitimate business reason must also be reasonable in light of the following factors:

(i) the specific duties and responsibilities necessarily related to the employment sought or held by the person;

(ii) the bearing, if any, that the pending criminal case or criminal history will have on the

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applicant's fitness or ability to perform one or more such duties and responsibilities;

(iii) the time which has elapsed since the occurrence of the pending criminal case or criminal history;

(iv) the age of the person at the time of the pending criminal case or criminal history;

(v) the frequency and severity of the pending criminal case or criminal history; and

(vi) any information produced by the person, or produced on his/her behalf, in regard to his/her rehabilitation and good conduct since the occurrence of the pending criminal case or criminal history.

(B) An employer may lawfully withdraw a conditional offer if the applicant fails to submit the required court/police clearance within 10 calendar days.

(C) Employer may request additional information from an applicant upon receipt of court/police clearances.

(D) An applicant has 90 days to file a complaint with the Department if they feel that the employer's proffered job offer was rescinded unjustly.

[(Removed completely and re-lettered)]

(E) Employer shall provide an applicant with a stamp received copy of an applicant's court clearance or a written notice acknowledging receipt of the clearance.

(F) Should the Department be unable to conclusively determine the day the clearances were submitted to the employer, the date of the applicant's clearances shall be used as the 1st day of the 90 day complaint period.

(G) Electronic transmittal may be considered a valid means of submittal of clearances to the employer and communication of the status of the conditional job offer to the applicant.

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(b) An employer may not make reference to any requirement for Police and/or Court Clearances in a job advertisement, job posting, interview, or by any other means, prior to extending a conditional offer of employment, unless the specific job is exempt from the Fair Chances Hiring Process Act as stated in 22 GCA § 6102(e). Such reference shall constitute a violation of the Act.

§ 6203. Signage Posting Compliance.

(a) All employers shall have a visible FEPD posting present in their place of business. Any employer who fails to meet this requirement may be found in violation of the rules and may be subject to civil penalties at 22 GCA § 6104(b).

(1) Posting must be in a format designed and approved by FEPD.

(2) Posting may not be smaller than an 8 ½” x 11” document.

(3) Posting must be placed in a conspicuous location where it may be viewed by a majority of the company’s employees, including but not limited to, employee break-rooms, Human Resource offices, jobsites, or other places where employees congregate.

§ 6204. Inspections & Investigations

The staff and management personnel of the FEPD division may conduct site inspections and investigations as permitted by 22 GCA Chapter 1 § 1108.

(a) Inspections may be unannounced and at random.

(b) Inspections may be performed for purposes of monitoring compliance with required signage postings, or other fact-finding purposes.

(c) Inspections may be performed in conjunction with other divisions of the department, local government and/or federal government agencies should it be determined necessary.

[(Removed completely)]

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§ 6205. Penalties.

(a) In the event of a violation of this section of the Rules, the employer shall be served with a notice of violation, commonly referred to as a “citation”, which details the violation and the level of fine to be imposed. The citation shall be signed and approved by the Fair Employment Practice Officer.

(1) The “citation” shall be prepared on an official Departmental form approved by the Director of Labor.

(2) A violation of the rules may subject the employer to civil penalties. Penalties may be determined using factors such as: size of the company (total number of employees), FEPD penalty scale, and circumstances. Fines shall not exceed what is allowable pursuant to 22 GCA § 6104(b).

(3) Initial Penalty Scale chart shall be approved by the Director of Labor, and may be subsequently amended as deemed necessary by the Director of Labor.

(4) Penalties enumerated on the FEPD penalty scale shall be used as a general guide to determine assessed penalty on a citation. The Department may elect to exercise discretion and may deviate on a case by case basis.

(5) To be consistent with the statutory definition of employer, the monetary cap for employers who employ (16) Sixteen to (30) Thirty employees may be subject to a fine of not more than (\$1,000) One Thousand Dollars per violation.

(b) Non-Monetary Penalties

(1) The civil penalty on a citation may be conditioned by completion of certain required trainings. An employer may be required to attend and provide proof of completion of training activities which may consist of, but are not limited to Department trainings, One-on-one employer trainings, or designated Conferences. All external costs of training activities shall be born[e] by the employer.

(2) Re-Training – The employer may be required to re-take previously completed trainings at the discretion of the Department.

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(3) Verification of compliance – Employer must provide verifiable documentation showing that required training has been completed.

(4) Penalties for non-compliance - If an employer does not complete required training within the specified period, then the non monetary penalty shall be deferred and the maximum penalty allowable by statute shall be immediately due.

(c) The employer shall have the right to an administrative hearing conducted by the Director of Labor. The offender may either pay the fine, or appeal in writing, within fifteen (15) calendar days from the receipt of the notice of violation, to the Director of Labor, requesting a hearing to present facts and law in defense of the offender. The offender shall have the right to representation of counsel during the hearing and the rules of evidence shall not apply.

(d) Unpaid Penalties – The Department may request action from licensing authorities, as authorized in statute.

§ 6206. Appeals Hearings.

(a) Upon the filing of a timely request of an appeal of a violation, the Director of Labor shall hold a hearing of the facts, and shall give the employer the opportunity to be heard and to provide testimony in their defense or to present rebuttal evidence. Such hearing shall take place at a time and in a place to be designated by the Director of Labor.

(b) The Director may opt to convene a panel to hear testimony. However, the final decision rests with the Director of Labor as the Hearing Officer.

§ 6207. Advisory Opinions:

(a) The Department may issue advisory opinions upon request. Requests for advisory opinions must be in writing and clearly state the issue with specificity. The Department may request additional information as needed, but at a minimum, the request must state the name and address of the requestor.

(1) In general, advisory opinions should be completed within 60 days, however should external legal opinions be

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necessary, the Department is not obligated to any specific time period.

(2) The Director of Labor may, at his/her discretion, decline to address a request for advisory opinion. Reasons for refusal of an advisory opinion may include, but are not limited to the following:

(A) Frivolous requests.

(B) Situations that may require an Attorney General opinion.

(C) Repetitive or redundant requests which have already been addressed.

(D) Requests which are already clear in plain reading of the statute.

(E) Requests that have no bearing to the statute or rules.

§ 6208. Public Posting of Repeat Offenders:

(a) Employers who have been cited for more than one violation of an Unlawful Withdrawal of a Conditional Offer, shall have their information posted on the Department's website for a period of seven years, in compliance with the statute at 22 GCA § 6105(b).

(1) No Appeal – Should the employer choose not to appeal their citation; or should the employer fail to submit a timely appeal of their issued citation within the given 15 day appeal period, the employer's information shall be posted on the Department's website the first day after the deadline has past.

(2) Appeal – If a citation is appealed, the employer's information shall be posted on the Department's website after the case has been heard and a decision / Order has been rendered by the Hearing Officer.

(A) Posting of the employer's information shall remain on the Department's website for a period of seven (7) years.

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§ 6209. Petitions.

(a) Any individual shall have the right to submit to the Director of Labor a petition for the establishment or modification of rules and regulations on subjects under the Authority of the Director, and shall have the right to request advisory rulings, consultations or declaratory rulings in relation to existing regulations. Such petitions and requests shall be submitted in writing and on a form provided by the Department of Labor, and shall be acted upon within 60 days by the Director. The Director shall respond to all petitions submitted under this Title in writing.

§ 6210. Severability.

If any part of these Regulations is for any reason declared to be invalid by a court of law, the remaining regulations under this Title shall not be affected thereby, and shall remain valid and enforceable.

§ 6211. Interpretation.

The provisions of these Regulations shall be liberally interpreted to ensure the compliance of employers in Guam with the objectives and purposes of the Fair Chances Hiring Process Act.