

ANNUAL REPORT OF THE SECRETARY OF LABOR

Calendar Year 2009

This is the Secretary of Labor's Annual Report to the Legislature pursuant to Public Law 15-108 covering calendar year 2009. The Report has three parts: the Department's initiatives during calendar year 2009; the organization and activities of the Department's principal units during 2009; and 2009 statistics required under PL 15-108.

Introduction

The Department is a revenue-generating agency. Each year, we take in far more revenue than we have in expenditures. Our revenue for FY2009 was \$5.4 million. Our expenses of operation during FY2009 were \$1.1 million. About 95% of the Department's expenditures were for personnel costs. The other principal expenditures are rent for the Department's headquarters building, and operating costs for the Department's automation system that keeps track of all transactions in citizen and foreign worker employment and the Department's interactive website that makes job announcements available to everyone in the Commonwealth. We have a very lean and efficient operation. We are considering a reorganization for 2010 to expand the effectiveness of our U.S. citizen employment work.

Management Objective: The Labor Department's objective is to achieve high-quality employment for citizens of the CNMI in productive businesses that drive sustainable economic growth and opportunities. The Department seeks to make faster and more efficient match-ups of people's skills with the job opportunities that are available and to reduce skill shortages in the future by cooperating with government-private partnership efforts to help people make informed decisions about education and training. At the same time, the Department seeks to provide fair employment opportunities for global skills and talent that support the CNMI's economy in ways that recognize and balance the Commonwealth's objectives with respect to full employment for its citizens. Citizen and permanent resident employment and foreign national worker employment are both necessary components of the Commonwealth's economic success in the future.

Commonwealth Funding: The FY 2010 budget has limited the Labor Department's full-time personnel to 46 (from 85 in 2006) and has cut the funding for other expenses. The Department's overall workload has increased substantially on the Employment Services side as the economy has sunk into a depression and more U.S. citizens who are out of work seek assistance in finding jobs. The Department's overall workload on the foreign worker side has decreased slightly as the number of foreign workers present in the Commonwealth has dropped, but the Department's scrutiny of each proposed employment of a foreign worker has increased substantially, leading to more denials of employment applications and more denial hearings.

Federal Funding: The Department currently has no federal funding. Two grant proposals were generated in 2009, and we expect they will be re-packaged and resubmitted in 2010 under the President's job-creation initiative. PL 110-229 envisions technical assistance "including assistance in recruiting, training, and hiring of workers, to assist employers in the Commonwealth in securing employees first from among United States citizens and national residents in the Commonwealth." See Section 702(e)(1)(B). This is a completely unfunded mandate, and the Department of the Interior has very limited technical assistance funding available. However, the Department will submit an application for funding from the U.S. Department of Labor.

Coordination And Cooperation With Foreign And Federal Agencies

Philippines Consul General: During 2009, a new Philippines Consul General arrived in the Commonwealth and was briefed extensively by the Department. The Consul General's staff were consulted with respect to the new umbrella permit program and was also consulted during the process of drafting the revised regulations.

CEDA: During 2009, CEDA closed their CNMI office and recalled their official back to China. Hence, the Department was not consulted by CEDA on labor matters affecting Chinese workers in the Commonwealth.

Thailand Department of Labor: The Department of Labor in Thailand sent a delegation to consult with the Department about workers from Thailand currently in the Commonwealth.

GAO: The Government Accountability Office consulted the Department with respect to its study on the effect of the minimum wage. All requests were met.

EEOC: During 2009, the EEOC finished a major effort to complete old pending cases from the CNMI. At the end of the year, the number of pending cases had been reduced to 16. A few of these cases are more than three years old, and the Department, together with the Attorney General's office, continues to urge the EEOC to complete these cases. The EEOC Region 9 office in California has been helpful in providing materials and advice.

U.S. Labor: Coordination with U.S. Labor proceeded smoothly during 2009. One of the Department's investigators transferred to work as an investigator for U.S. Labor's office in the CNMI.

OSHA: The Department worked with OSHA on workplace health and safety matters during 2009. PL 15-108 restored the Department's investigation and inspection powers in this area, and OSHA is assisting the Department with

translation of materials so that Commonwealth employers can be informed of the requirements.

Federal ombudsman: The new federal ombudsman, Pam Brown, has worked cooperatively with the Department. Her cases have been expedited by the Department insofar as possible, and her comments have been sought on major policy decisions such as the umbrella permit program.

OPA Audits: The Labor Department has no outstanding OPA audit items.

PART I: LABOR DEPARTMENT INITIATIVES DURING 2009

The Labor Department faced challenging times during 2009. The Department's principal initiatives during the year are described below.

Accommodation Of Federalization

In May 2008, when the President signed PL 110-229 federalizing immigration functions in the CNMI, the Department had the immediate challenge of implementing the cap on the number of aliens permitted to work in the Commonwealth. From June 1, 2008 to September 1, 2009, the Department met this obligation each month, and posted on its website the arrivals and departures each month, showing the remaining room under the cap. This reporting was discontinued in September 2009 as it was no longer needed.

The federal legislation made clear that considerable adjustment would be needed in the Commonwealth's labor and immigration systems before the transition date in order to preserve the Commonwealth's labor functions and its foreign worker workforce. The Department amended its regulations twice, once in October 2008 and again in July 2009. The Department also collaborated with the Immigration Division and the Commerce Department to change their regulations as well. The new regulations gave additional flexibility before the federalization transition date and tailored Labor and Commerce functions after the transition date to conform to the federal law.

The Department prepared for the first transition date, in May 2009, by working with employers to extend and amend contracts under the new regulations. However, the statistics indicated that even with these improvements, a large number of foreign workers likely would be deported as the federal government pursued its goal of reducing the foreign worker population in the CNMI not holding a U.S. visa to zero by 2014 as the statute commanded.

When the transition date was extended to November 2009, the Department began a more extensive preparation. The Department of Homeland Security did not publish its

transitional worker regulations as anticipated, although those regulations had been prepared in draft in August 2008. When a year passed after this draft had been prepared with no federal regulations issued, the Department worked extensively on the Governor's Protocol for the Implementation of PL 110-229, which was delivered by the Governor to the Secretary of Homeland Security in September 2009 and published on the Department's website. The Protocol stated how the Commonwealth would deal with the worker transition program in the absence of federal regulations.

The Department developed an umbrella permit program under which every eligible foreign worker was issued a two-year permit providing status to remain in the Commonwealth, after the federalization transition date, for a maximum of two years. From October 15, 2009 when the Department rolled out the umbrella program to November 27, the last day before the transition date, the Department printed and distributed, with personal signatures, 19,404 umbrella permits including students, investors, and immediate relatives as well as workers. The umbrella permit program was staffed by personnel from all parts of the Department who worked long hours for four straight weeks to accommodate all eligible aliens.¹ In addition to umbrella permits for foreign workers, the Department also printed and issued umbrella permits for all of the Commerce Department programs (investors, business-owners, students, and retirees) and for all immediate relatives. The printing and issuing of regular permit cards was suspended during this time in order to meet the transition deadline.

After the umbrella permit program was underway, on the last available day, DHS issued "interim final" regulations directed at the temporary worker program under PL 110-229. Within a week, the Department filed very detailed comments specifying the harm to citizens seeking work, foreign workers, and employers that these proposed federal regulations would entail. The Commonwealth challenged these regulations as improper under the federal Administrative Procedures Act, and the federal court enjoined the implementation of these regulations.

Immediately after completing the umbrella permit program, the Department turned to the drafting of an omnibus bill to remove all of the immigration-related provisions from the Commonwealth Code, reflecting the federal assumption of immigration responsibilities, and to amend certain labor law provisions to keep the Department's programs intact under federalization. That bill was circulated for comment and readied for submission to the 17th Commonwealth Legislature when it convened on January 11, 2010. These proposed changes to the Commonwealth Code were also submitted to the Department of Homeland Security.

¹ The Department was assisted in the distribution effort by the Immigration Division which issued permits for some of the immediate relatives and the Department of Commerce which issued permits for all of the investors, business-owners, retirees, and students.

Public Law 110-229 does not preempt the Commonwealth's labor laws and nothing in the court decision upholding this law suggests otherwise. In the United States federal system, there are areas in which the States share responsibilities with the federal government. Labor (including the terms and conditions under which workers are employed) is such an area. The federal government can regulate labor through its control of interstate commerce and immigration. But the States remain free to regulate labor under the power to control *intrastate* commerce and the general police power. The Commonwealth has all of the powers of a State in this area, as well as the powers of local self-government under the Covenant. Employers and workers in the Commonwealth must comply with both federal and CNMI law. The omnibus bill permits the exercise of the authority of the Commonwealth to regulate labor conditions and practices within the Commonwealth to the full extent that this area could be regulated by a State and can be regulated under the Covenant. DHS representatives have acknowledged publicly that they will respect all of the CNMI-issued permits for two years and that the CNMI governs the terms and conditions for those permits.

In December 2009, the Department also assisted the former Immigration Division by absorbing four of its employees into the Labor Department workforce.

Enforcement against insolvent or unqualified employers

The Director of Labor has subjected applications to employ foreign workers to increased scrutiny, using our new automated processes, to weed out employers who are insolvent, who lack the necessary resources to pay their foreign workers, who may not be providing a real job, or who are otherwise unqualified. There has been a large increase in the number of applications denied. Appeals of these denials have increased the workload of the Hearing Office. However, all of these appeals have been processed efficiently by the Hearing Office, in addition to its normal caseload. The Director's disqualification has been upheld in many cases, and the employer has been denied permission to employ foreign workers. This has three beneficial effects: first, the number of unfit employers has been reduced very substantially, resulting in fewer labor complaints from foreign workers about not being paid; second, the number of employment scams set up solely for the purpose of allowing foreign workers to remain in the Commonwealth while unemployed has been reduced, resulting in fewer law enforcement problems; and third, the number of U.S. citizens hired has been increased because a business can hire a U.S. citizen without any scrutiny of its finances by the Labor Department.

Completion Of Adjudication Of Prior-Year Unpaid Wage Claims

During 2009, the Department solved the unpaid wage claims situation for 2008 and all prior years. As of the end of the year, all such claims had been determined – either as collectible (with awards against solvent bonding companies) or as uncollectible (with

orders or referral to the Attorney General for further action). The better procedures under PL 15-108 also solved the unpaid wage claims problem going forward. There were only nine such claims in 2009.

Advocates for foreign workers have long complained about unpaid wage claims. In some cases, after the Labor Department's hearing officers issue an order awarding back wages, the employer is unable or refuses to pay and the bonding company also is unable or refuses to pay. PL 15-108 did not give the Department any authority to enforce payment under administrative orders issued by the Hearing Office, preferring instead that enforcement be done through the Commonwealth courts. Foreign worker groups also prefer that enforcement be done directly in the courts.

After the enactment of PL 15-108, the Department put into place a new collections procedure. The Department provided a Small Claims Court Information Packet to each foreign worker who asserted that a Departmental order has not been paid. That packet included a notice of procedures and deadlines explaining how to use the Small Claims Court to collect on a Labor Department order, a map as to how to get to the court, the telephone number of the Clerk of Court's Office, a small claims complaint form, a small claims in forma pauperis (no fee) form, and a copy of the relevant bond notice form so that the court knows what bond backs the employer's obligation to pay. The court has powers to collect on orders (including sending people to jail) that the Department does not have, and these powers are necessary for effective enforcement in this area.

However, in two cases, *Smith & Williams v. Royal Crown Ins. Co.*, NMI Super. Ct. Small Claims Nos. 06-0676 et al. (February 5, 2007) and *Zhou v. Oceania Ins. Corp.*, NMI Super. Ct. Small Claims Nos. 08-0452 et al. (February 5, 2009), the Commonwealth Superior Court held that plaintiffs holding unpaid awards under orders issued by the Administrative Hearing Office of the Department of Labor may not proceed with collection actions in the Commonwealth courts without first exhausting collection remedies at the Department of Labor. The Department believes these decisions are wrong, but it was not a party to either of these cases and could not appeal these rulings.

In March 2009, the Department began work on an expensive procedure to carry out the court orders. Notices were published over a period of six months for registration by workers of claims of unpaid administrative awards. When claims were registered, the Labor Enforcement staff determined whether there was any available bond. In cases where workers were employed illegally, there are no bonds securing their wages. In cases where workers made claims long after the employment ceased, the coverage period of available bonds may have passed. And in cases where timely notice was not given to the bonding company, its responsibility may have been foreclosed. If a bond

was available, the bonding company was notified, and the Administrative Hearing Office held a hearing on the bond claim.

By the close of the long registration period for bond claims arising out of cases from 2008 and prior years, 202 bond claims had been registered totaling about \$450,000.² Of those, 85 claims were set for hearing, and 117 claims were forwarded to the Attorney General's Office for action in the courts.³ By year-end, hearings had been held in all 85 cases, and orders had been issued in 65 cases.⁴ The bonding companies had paid about \$55,000 with respect to these claims. In the remaining cases, the bonding companies appealed awards or were held by the hearing officer not to be responsible for the claim. The Department expects that this project with respect to 2008 and prior year cases will be completed by the end of January 2010.

The Department issued a notice to register claims of unpaid wages from 2009 administrative orders. The registration period closed on December 30. Workers registered only nine claims. The Department expects to complete work on these 2009 claims by March 30, 2010. Going forward in 2010 and subsequent years, the Department has proposed legislation to relieve it of this administrative burden and to put this responsibility back on the courts in the first instance.

In the process of dealing with these unpaid wage claims, the Department examined statistics going back to 1997 and discovered that the Commonwealth has a far lower rate of claims with respect to unpaid wages (lower than 0.1%) per man-year worked than any other jurisdiction (including the United States, Australia, New Zealand, and Germany) that keeps such statistics. Thus, although legitimate complaints have been made, overall, the Commonwealth's system is fair, incorporates appropriate dispute resolution methods, and exceeds international standards for guest worker programs.

Shift To NAICS And O-NET

The Employment Services staff supervised the shift to NAICS and O-NET from the old reporting systems in order to conform Labor Department data gathering to the same system used by other CNMI government departments (in the case of NAICS) and by

² Nearly all of these claims arose out of employment during the years 2006 and prior years. During 2007 and 2008, the Department conducted a major campaign to clean up all old labor cases that had piled up during 2005 and prior years going back to 1997. As a result, there were many more wage awards during 2007 and 2008 than in prior years. There have been relatively few unpaid wage claims arising out of employment in 2007 and subsequent years due to much more stringent examination of proposed employment arrangements and disqualification of prospective employers who do not have the requisite financial resources.

³ If no bond is available, it may still be possible to collect in the courts if an employer or responsible person is still in the Commonwealth.

⁴ The remaining orders will be issued by the end of January 2010.

United States government agencies (in the case of both NAICS and O-NET). NAICS⁵ is a classification system for employers which identifies the industry to which they belong. In the past, employers were identified using portions of the standard industrial classification system that had been the standard in the United States 30 years ago. O-NET is a system for classifying jobs. In the past, jobs were classified using the Dictionary of Occupational Titles or informal job titles created by employers. O-NET⁶ is an online resource which is available to the public at no cost. Employers can use it to obtain job descriptions for job vacancy announcements and job seekers can use it to compare their qualifications to a standard set of qualifications for job category. The database also provides a set of valuable assessment instruments for workers looking to find or change jobs. The shift to the O-NET system is incorporated into the Department's interactive website that assists U.S. citizens to find jobs. By standardizing job descriptions, prior problems of unnecessary specialized qualifications is avoided.

Decreasing The Number Of Court Cases

The Department took the initiative during 2008 to hire labor counsel when the previous assistant attorney general assigned to the Labor Department departed in August 2008 and the AG's office had not replaced her. The Department paid for the necessary advertising, reviewed resumes, selected a candidate, negotiated the salary and benefits, and completed the necessary approvals of the appointment. During 2009, the Department planned to reduce the number of pending court cases, which stood at 31 when new counsel was hired. However, during 2009, the Attorney General removed labor counsel from the Department's offices to the main office on Capitol Hill. Performance slid as the assistant attorney general was assigned tasks other than working on labor cases pending in the Commonwealth courts. The number of pending cases grew from 31 to 94. Nearly 360 aliens, most of them out of status, remain in the Commonwealth because these cases are not pressed to conclusion in the court. The won-lost record for 2009 was 1-22 (settled)-0. This initiative failed.

⁵ The North American Industry Classification System (NAICS) is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy. NAICS was developed under the auspices of the Office of Management and Budget (OMB), and adopted in 1997 to replace the Standard Industrial Classification (SIC) system. Its manual and website include definitions for each industry, background information, tables showing changes between 2002 and 2007, and a comprehensive index.

⁶ The Occupational Information Network is a program of the US Department of Labor that is the nation's primary source of occupational information. The O-NET database contains information on hundreds of standardized and occupation-specific descriptors.

PART II: ACTIVITIES OF THE DEPARTMENT'S PRINCIPAL UNITS

The Department currently has three divisions.

- ✓ The Employment Services Division operates the citizen hiring program
- ✓ The Labor Division operates the guest worker program
- ✓ The Administrative Hearing Division operates the dispute resolution system for both the citizen hiring program and the guest worker program.

In addition, within the Secretary's office, the Department has an Information and Data Services unit, which provides automation services and data on foreign worker employment, and an Administrative Services unit, which provides Department-wide services. The Secretary's Office handles department-wide management, coordination with other CNMI government agencies, public relations, and community outreach.

The Department has proposed a reorganization to flatten its management structure, improve its focus on citizen employment during the economic depression, and accommodate the federalization of the Department's former immigration functions. The proposed reorganization would not require additional jobs or funding.

Employment Services Division⁷

Employment Services operates the citizen jobs program. The Director of Employment Services position is held by Alfred A. Pangelinan. The Director is responsible for the supervision of all Employment Services functions and for outreach to other agencies and community organizations responsible for training and placement of U.S. citizen workers in the CNMI, including WIA, SWAT, and NMC.

The Division has four parts:

1. Job Placement: The Job Placement function is supervised by Alice Concepcion and staffed by Job Placement Assistants and Labor Law Enforcement Technicians. The Job Placement staff operates the Department's interactive website, www.marianaslabor.net, on which jobs are posted by employers and resumes and job applications are posted by job seekers. Job Placement staff counsel U.S. citizens, U. S. permanent residents, and CNMI permanent residents with respect to potential jobs, using the jobs posted on the website as a reference point, and assist with putting resumes on the website or applying for jobs from the website. Immediate relatives of U.S. citizens,⁸ FAS citizens, and immediate relatives of FAS citizens are also assisted

⁷ Employment Services Division is under BU #1330

⁸ Immigration category 240D

2. Enforcement Of Primary Preference: The Enforcement function is managed by Ben Castro and staffed by Labor Law Enforcement Specialists and Labor Law Enforcement Technicians. This staff manages the compliance reporting process with respect to the requirement that 20% of the workforce of each private sector employer be held by U.S. citizens or permanent residents. They manage the employment reporting process under which each employer who hires foreign workers must file a workforce plan to increase the employment of U.S. citizens. This staff operates the retail food stamp program that places at least one U.S. citizen in each outlet that handles food stamps and the small business preference program that requires each business with fewer than five employees to have at least one U.S. citizen employee. This staff investigates complaints with respect to citizen hiring and brings actions where necessary before the Administrative Hearing Office.
3. Job Vacancy Announcement Program: The Job Placement staff operates the Job Vacancy Announcement certification process and monitors prospective employers to ensure that all jobs are posted on the website. No job can be filled by hiring a foreign worker until the job vacancy has been published on the website for 14 days with no qualified U.S. citizen applicant.
4. Foreign Worker Transfer Registry: The Job Placement staff also operates the Job Transfer Registration process for foreign workers. This process allows the Job Placement staff to monitor the placement of foreign workers and ensure that the citizen hiring preference is observed. All foreign workers wishing to transfer must first register with Employment Services and secure an Employer Intent Form signed by the prospective employer. Employment Services circulates the proposed employment to all units in the Department for any objections to the proposed transfer. Employment Services staff lodge an objection with the Administrative Hearing Office if a transfer is proposed without a job vacancy announcement being published properly. This objection blocks the transfer until a hearing officer decides the matter.

During 2009, Employment Services registered 3,540 U.S. citizens seeking jobs and placed 736 U.S. citizens in jobs, generally with reference to jobs posted on the website. The Enforcement staff secured 100% compliance with the requirement of U.S. citizen employment in retail stores that handle food stamps; and secured about 50% compliance with the new (October 2009) program that requires small businesses to hire U.S. citizens.

During 2009, the Employment Services staff registered 1,854 foreign workers for transfer, including workers employed by the last three garment factories that closed during the

year and workers employed by other businesses that closed. This is far fewer transfers than in prior years, indicating that about 75% of the Commonwealth's current foreign workers are in stable jobs that are renewed from year to year. Of these registrations, 1,732 were on Saipan, 68 on Tinian, and 54 on Rota. Registrations were based on orders from a hearing officer (740), expiration of contracts (1,032), and umbrella permits (82).

Labor Division⁹

This unit operates the guest worker program¹⁰, and is the primary revenue-generating unit in the Department. The Director of Labor position was held for most of the year by Barry Hirshbein and currently is held on an Acting basis by James Ulloa. The Director manages the functions of Labor Processing, Health and Safety Inspection, and Labor Enforcement. He is responsible for decisions to accept or deny applications, investigation of labor cases, decisions to bring agency cases, and reviews of the credentials of new workers at orientation. The Director appears in person or through Labor Enforcement staff at hearings on agency cases, hearings on objections to transfers, and denial hearings. The Director also reviews applications, trains staff, and designs improvements to the automation systems.

1. Labor Processing Staff: This staff has three functions:
 - a) Application Intake: This work is done by Labor Certification Technicians who are the front-line staff at the windows. This function includes the initial examination of the application to ensure that it is complete and the processing of the voucher for payment of fees. Intake staff review conditional grants of transfer; assist with deficiency compliance when applicants return with the required documents; provide forms, and answer questions. Application intake personnel are cross-trained in selected application review functions.
 - b) Application Review: This work is done by Labor Certification Workers and Labor Certification Technicians. This function includes the detailed examination of the employer's credentials and financial information to determine if a valid job exists; the detailed examination of the employee's

⁹ The Labor Division is under BU #1280 and BU #3430

¹⁰ The foreign national workers governed by the guest worker program are not the only aliens in the Commonwealth who are permitted to work. The cap of 22,417 alien workers established under PL 110-229 (the federalization law) includes immigration categories 240B (government employees), 240D (immediate relatives of U.S. citizens), some persons in 240E (immediate relatives of aliens), 240G (investors who are permitted to work in their businesses), 240H (foreign students who are permitted to work part-time), 240L (ministers), 240M (missionaries), 240N (long-term business owners), 240O (retirees), and 240P (victims of crime, witnesses, refugees and others administered by the AG's office).

credentials and documents to ensure against fraud; the determination and clearing of deficiencies in applications; and the denial of applications for failure to meet statutory or regulatory requirements.

- c) Orientation of Foreign Workers: Every incoming foreign worker must take an orientation course with respect to the rights and responsibilities of foreign workers. At this orientation, foreign workers are interviewed, their documentation is checked for fraudulent papers, and their jobs are checked to ensure that they have legitimate employment.
 - d) TWA Processing: This position is held by Mary Laine C. Togawa Santos. When a labor case or agency case is pending, and a worker appears for mediation but the case does not settle, the worker may be given a Memorandum to Seek Work by the Labor Investigator assigned to the case. This Memorandum allows the worker to find temporary employment while the case is pending. If a worker finds temporary work, a Temporary Work Authorization is issued permitting the employer to employ the worker. TWAs may also issue for persons with pending EEOC, NLRB, U.S. Labor Dept., and court cases. This position ensures that the application is complete and has final approval authority.
2. Health and Safety Inspection: This work is done by Masaaki Nakamura, Ben Camacho and Arcelia Hossain. When an employer files an initial application to hire a foreign worker, an inspection is done at the work place and the housing provided (if any) to ensure that the environment meets health and safety standards. Safety inspections are done when employees are moved to new barracks (such as happened after the MGM fire) or when new facilities are opened. Mr. Nakamura is cross-trained in the review of applications.
3. Labor Enforcement: The officer in charge of the Labor Enforcement unit is Jeffrey T. Camacho. The Enforcement unit is responsible for enforcement in six areas of the guest worker program.
- a) Investigation of Cases: This work is done by labor investigators Frank Aguon and Joseph DLG Villagomez. In labor cases, investigators send document demands to employers for wage and hours records, interview workers, employers, and witnesses, write determinations with respect to whether labor laws have been violated; and testify at Administrative Hearing Office hearings. In consolidated agency cases, investigators determine if there have been systemic violations by employers involving numerous employees and investigate these violations, determining which workers have individual

claims and whether fines should be recommended against employers. Investigators also do field investigations to assess employer compliance with CNMI labor laws.

- b) Issuance of approvals to seek work and review of overstayer status: Labor investigators receive complaints filed with the Hearing Office that have not settled on mediation, issue Memoranda to Seek Work for workers in appropriate cases and follow up with workers to determine if they have become employed pending the hearing on their case. A Memorandum allows the worker to locate an employer, and the employer then applies for a TWA. This unit also reviews overstayer status. When an overstayer list is published, some workers may report to correct the Department's records or to present a reason for their failure to meet a deadline. This unit makes decisions on those matters.

- c) Issuance of Notices With Respect to Bond Claims: Labor investigators file bond notices with respect to labor complaints. A notice of potential claim is filed when a complaint is filed and a notice of claim is filed when an administrative order is issued that includes an award of damages normally covered by bonds.

- d) Management of Repatriation of Workers: When a foreign worker wishes to repatriate voluntarily, either after the end of a contract or the outcome of a labor case, the Enforcement unit contacts the last employer of record, obtains a repatriation ticket, and arranges for the worker to depart the Commonwealth. (This unit is not involved in involuntary deportations except to refer cases in which voluntary repatriation is refused.)

- e) Maintenance of Logs, Files, and Records: This work is done by Arlene Rafanan. She mans the public window for Labor Enforcement, receives requests from foreign workers for Memos and prepares drafts for signature by Investigators. Labor Enforcement is the repository for case files on all labor cases, consolidated agency cases, and bond claims. A log is kept with respect to the opening, status, and disposition of all cases.

During 2009, the Labor Processing staff issued 3,403 denials. Labor Processing had 944 deficiencies issued in 2009 still pending at year end, primarily from applications filed near the end of the year. No applications or deficiencies from 2008 and prior years were still pending at year end. Any potential appeals from denials issued in 2009 will be cleared by publication by the end of February 2010.

During 2009, the staff also conducted 47 orientation sessions (scheduled every Tuesday when workers had arrived the previous week).

During 2009, the TWA staff person handled 50 applications. There was no backlog in TWAs pending at year end.

During 2009, the Health and Safety staff made 764 inspections. There were 12 inspections pending at year end.

During 2009, the Labor Enforcement staff handled 82 investigations, issued 16 investigative reports on labor cases, and appeared at hearings on those cases. The Enforcement staff settled nine labor cases during the investigation. There remain 20 labor cases filed late in 2009 that are pending investigation. During 2009, investigators filed 354 agency cases and completed 317 of those cases, leaving only 37 open cases (most filed late in the year) at year end. During 2009, the Enforcement staff processed 202 bond claims and appeared at 64 bond hearings. The Enforcement staff has no backlog of 2008 or prior year cases.

Staff handled 116 collections of repatriation tickets.

Administrative Hearing Division¹¹

This unit is responsible for all administrative hearings within the Department and, when it assesses fines for violations of Commonwealth law, it is a revenue-generating unit. The Director of the Administrative Hearing Office position is held by Jerry Cody. The Director oversees the hearing docket and scheduling, handles inquiries from the public, correspondence for the division, supervises the clerical staff, and also is a full-time hearing officer.

The Administrative Hearing Office is currently staffed by two full-time hearing officers, Jerry Cody and Barry Hirshbein, two part-time hearing officers, Herb Soll and Deanne Siemer, a filing intake officer, Renita Camacho, and two clerks, Dennis Cabrera and Dolores Saures.

This division handles five major types of administrative tasks: complaint and claim intake, approving foreign worker transfers when no objection is raised, approving extensions of time to transfer, maintaining the Department's Barred List of employers who may not hire foreign workers, and preparing the overstayer list of those no longer qualified to work in the Commonwealth. The division handles two kinds of dispute resolution matters: mediations and hearings. The division also operates the intake

¹¹ Administrative Hearing Office is under BU #1283.

findings of violations of Commonwealth law as well as instances in which an employer closes the business or has a reduction in force so that the hearing officer must decide whether to grant transfer relief to the unemployed workers.

4. Denial Cases: These are appeals from the denial by the Director of Labor of various kinds of applications including initial applications to bring a new worker from off-island, renewal applications, transfer applications, and TWA (temporary work authorization) applications. Denial cases also include instances in which a worker or employer has not filed in time and requests an extension of time. The Director of Labor estimates that there may be as many as 2,000 of these cases. Stricter scrutiny by the Director of Labor has resulted in a large increase in the number of these cases over prior years. Most denials of applications by the Director of Labor are appealed to the Hearing Office because the alternative for a worker is usually repatriation.
5. Objection Cases: Under PL 15-108, permission to file a transfer application can be granted only by a hearing officer. Workers who wish to transfer must first register with Employment Services. The request to transfer is circulated electronically to all parts of the Department. If an objection is lodged, then the hearing officer conducts a hearing on the objection to determine whether the objection should be upheld or the worker should be permitted to transfer.
6. Bond Claim Cases: This task was added by two opinions of the Commonwealth Superior Court which held that the Department had a responsibility to try to collect on unpaid awards. The Department opposed this added task as impractical and burdensome, but after the court decisions, this new docket was added. The Department advertised for foreign workers to file their unpaid wage claims, held hearings, issued payment orders, and referred uncollectible cases to the Attorney General for processing in the courts.

During 2009, the division took in 166 labor complaints, a substantially lower number than in prior years.¹² The mediation service settled 87 or 52% of the labor complaints. Investigators settled another nine cases during investigation after referral. Hearing officers settled an additional six cases during hearings. A total of 102 cases were settled.

¹² The number of cases likely would have been far lower had it not been for the transition date for federalization of the immigration function. The filing of a labor case, under rules established by the Commonwealth Superior Court, allows a foreign worker who would otherwise be deportable to remain in the Commonwealth.

During 2009, the division heard and issued orders in 26 labor cases. There were 38 labor cases from 2009 pending hearing or orders at year end. Eighteen of these pending labor cases were filed late in the year and were scheduled for hearing in January and February 2010 under the Division's normal benchmark of hearings within 60 days of filing. All cases filed in 2009 are expected to be completed by the end of February.

During 2009, the division received 354 agency cases from the Enforcement Section. The division heard and issued orders on 317 of these agency cases by year end. There were 37 agency cases from 2009 pending hearing or orders at year end. All of these cases are scheduled to be heard in January 2010 and should be completed by February.

During 2009, the special unpaid wage claims project resulted in an intake of 202 claims, and 85 cases added to the Hearing Office docket. Of those, 65 were heard and orders were issued during 2009. Another 20 cases remained at year end and will be completed by the end of January. The remaining 117 cases were referred to the Attorney General for action in the courts. These are cases in which there is no bond (usually because the employment was illegal), no coverage (usually because the claim is more than the bond limits), or no liability (when notice was inadequate). The Attorney General will determine whether actions can be brought in the courts to collect on these awards.

During 2009, in addition to the regular hearing case load, the division issued about 1,500 transfer orders, either in uncontested cases or after hearings on transfer objections, and about 500 orders in denial appeal cases. There were 50 denial cases pending hearing or orders at year end and no transfer cases pending.

There were no cases of any kind from 2008 or prior years pending at year-end.

During 2009, the division issued four quarterly updates of the Barred List and three quarterly overstayer lists.

During 2009, the barred list named 196 employers. Some employers are barred temporarily for six, 12, or 24 months. Others are barred permanently.

During 2009, the division assessed fines of \$12,600 fines in labor cases, \$12,995 in denial cases, and \$3,550 in agency cases for an annual total of \$29,145.

Office Of The Secretary And Administrative Units¹³

The Office of the Secretary provides executive direction for the Department's three divisions and supervises two units that provide Department-wide administrative services.

¹³ Secretary's Office and Administration are under BU #1275.

The Secretary of Labor: This position is held by Gil M. San Nicolas. The Secretary of Labor provides overall management for the Department, coordinates with the Governor and Lt. Governor offices and other departments, provides liaison on labor matters with foreign governments, supervises the Administration unit, and signs and issues orders on appeals from the Administrative Hearing Office.¹⁴ The Secretary is staffed by one executive assistant to the Secretary, who also assists in preparing the Department's record on appeals to the Commonwealth Superior Court.

The Deputy Secretary of Labor: This position is held by Jacinta M. Kaipat. The Deputy Secretary holds weekly all-staff and senior-staff meetings at the Department; works with the senior staff managers to coordinate the activities of the divisions within the Department; handles public relations and the external affairs of the Department that involve agencies of the federal government, including the ombudsman's office, private-sector organizations, and community groups; and certifies the overstayer list after publication. The Deputy Secretary serves as Acting Secretary when the Secretary is away from the Commonwealth.

The Manager of the Administration Section: This position is held by Barbara T. Sablan. This Manager manages payroll, procurement, and contracts for the entire Department, and provides administrative support to the operating divisions. Payroll: This position is filled by Julie Inos. This position manages the Department's personnel and payroll and performs other duties as assigned. Administrative Services Assistant. This staffer also acts as Administrative Assistant to the Manager. This position provides process serving for appeals, phone answering for the main DoL line; and incoming and outgoing correspondence for the Director of Administration. This position is cross-trained as an Administrative Hearing Clerk for the Hearing Office. Procurement: This position is filled by Rio Mostales. This position manages the Department's procurement and provides centralized maintenance for equipment by outside vendors.

The Manager of the Information and Data Services Section: This position is held by Tommy A. Torres. This Manager manages the information and data services for the guest worker program, provides a Department-wide data automation system, and maintains the Department's computer equipment. This unit also monitored compliance with the federalization cap and each month posted the arrivals/departures for the previous month on the Department's website.¹⁵ Data Automation: This position is held by Omar Manicop. This position develops automation processes for the three divisions in the Department, maintains the LIDS database, and provides data analyses. LIDS

¹⁴ Appeals to the Commonwealth Superior Court from the orders of the Secretary are handled by the Attorney General's office.

¹⁵ This staff activity ended in September 2009 in advance of the federal takeover of immigration functions in the Commonwealth.

Processing: This unit processes, prints, and issues guest worker permit cards. It is staffed by three data specialists. Computer maintenance: This position is filled by Manny Domingo. The Department uses one personal computer for every employee. This position services and maintains this computer equipment and also maintains the recording equipment for the Administrative Hearing Office. This position is cross-trained in Applications Intake.

During 2009, the Secretary received 189 appeals. The large number of appeals resulted in part from the end of the cleanup of nearly 5,000 labor cases that was completed in 2007 and 2008. Appeals were also filed in anticipation of the transition date for federalization because the filing of an appeal allows an otherwise deportable alien to remain in the Commonwealth under rules established by the Commonwealth Superior Court. The Secretary issued orders in 186 appeals, almost all within 30 days of the filing of the appeal. There were three appeals pending at year-end.

During 2009, the Deputy Secretary certified three quarterly overstayer lists. This activity ended with the federal takeover of the deportation function in the Commonwealth in November 2009.

During 2009, the Information and Data Services unit developed two new modules of the Department-side automation system covering the Administrative Hearing Office and the Enforcement staff, and issued updates to the main module for the Labor Processing staff. This unit issued 23,405 LIDS cards to foreign workers and other aliens in the Commonwealth.¹⁶ This unit also developed the software processes for the umbrella permit program and printed all the required umbrella permits within a four-week period. By November 27, 2009, 19,404 umbrella permits had been issued.

PART III: INFORMATION REQUIRED UNDER PL 15-108

The data required under PL 15-108 are as follows:

1. Data With Respect To Foreign Workers

Section 4970(a)(1) of PL 15-108 requires the Secretary to report including data regarding the number of foreign national workers employed in the Commonwealth during the year, the citizenship of the workers, and the job classifications filled by foreign workers. In addition, Section 4969 of PL 15-108 requires statistical data in certain categories by industry.¹⁷

¹⁶ The LIDS staff processes cards for aliens governed by the Labor Department as well as aliens governed by other departments other than tourists.

¹⁷ The text of Section 4969 is set out with the tables.

The detailed tables providing this information are attached to this report. The Department's published statistics show a total of 15,067 permits issued during 2009 in the 240K (private sector employment) category.

Please note that Labor reports the number of permits issued. The Department counts only its administrative operations; it does not conduct any census of foreign workers actually present in the Commonwealth.¹⁸ The number of permits issued is greater than the number of workers present in the Commonwealth at any given point in a typical year because some permit actions are contract amendments or extensions and two or more actions may affect a single worker; some permit holders elect to leave the Commonwealth during the year for personal or employment reasons; some employers implement reductions in force and cancel their "issued" permits for some of their workers; some employers close their businesses entirely and their "issued" permits are cancelled by the Department; and other similar reasons.

At year-end, there were also 50 foreign workers who do not hold permits but who are working under temporary work authorizations (TWAs) granted to employers of workers who have labor cases pending with the Hearing Office or appeals pending in the Commonwealth Superior Court or federal court. There are also 460 foreign workers who do not hold permits and are not working under TWAs but are eligible for memoranda authorizing them to seek work while a labor case is pending. These are workers who have cases pending in Commonwealth Superior Court (361) or cases pending in the Administrative Hearing Office (38 complainants in labor cases and 111 workers involved in agency cases). Not all of the eligible workers actually obtain memoranda and some of those who do have not kept their memoranda current.

The Department's tables do not show umbrella permit numbers because these permits were optional, not mandatory, and not every worker elected to participate in the umbrella permit program.

2. Data Regarding U.S. Citizens And U.S. Permanent Residents

Section 4970(a)(1) of PL 15-108 requires the Secretary to report data regarding the number of citizens and permanent residents employed in the Commonwealth during the year, and the job classifications filled by these employees. In addition, Section 4529 of PL 15-108 requires statistical data in certain categories by industry.

The Department of Labor has not collected information about overall U.S. citizen employment due to lack of funding for this function. The table below shows employment of U.S. citizens and U.S. permanent residents from W-2 data collected

¹⁸ The taking of the census with respect to all categories of persons present in the Commonwealth, including foreign workers, is the responsibility of the U.S. Census Bureau.

Non U.S. Citizen/Blank	# W-2's	Total \$	Avg Wage
Government	547	\$16,221	\$29,654
Retail Trade	2,359	21,498	\$9,113
Construction	1,970	14,466	\$7,343
Hotel	2,570	27,939	\$10,871
Banking and Finance	205	2,901	\$14,151
Wholesalers	539	5,327	\$9,883
Garment			
Manufacturing	2,875	19,074	\$6,634
All Others	12,507	106,260	\$8,496
Totals	23,572	\$213,686	\$9,065

3. Data On Exemptions Granted With Respect To The Workforce Participation Requirements Covering U.S. Citizens And U.S. Permanent Residents

Section 4970(a)(2) of PL 15-108 requires "pursuant to Section 4526(c), the Secretary shall report any exemptions granted within thirty (30) days after the close of each calendar quarter."

Section 4526 provides four exemptions to the requirements of Chapter 2, which covers the employment preference for citizens and permanent residents. These are: (1) employers of fewer than five employees; (2) particular construction projects; (3) employers who hire more than 30% U.S. citizens in certain preference jobs; and (4) the garment industry exemption.

The reporting requirement relates only to the third exemption – for employers who have more than 30% of certain preference jobs (professional, managerial, human resources, office or administrative assistant, secretary, cashier, retail clerk, front desk receptionist, tour guide, boat captain, and sports and recreation positions) filled by U.S. citizens and permanent residents.

During 2009, there were three incentive exemptions granted in the first quarter, six exemptions granted in the second quarter, zero exemptions granted in the third quarter, and zero exemptions granted in the fourth quarter.

4. Data With Respect To Approved Security Contracts

Section 4970(a)(4) of PL 15-108 requires that: "Pursuant to Section 4924, the Secretary shall submit a yearly report on the status of approved security contracts not later than thirty (30) days after the close of the fiscal year. The report shall

These data on injuries and deaths were provided to the Department of Labor by the Workmen's Compensation Commission.²⁰

Conclusion

The Labor Department has performed well during 2009. We have largely met our performance benchmarks and close out the year with no significant backlogs at year-end. The Department's new automation system, funded in late 2007 and early 2008 with a special grant from the Governor, has made processing much faster and allowed the Department to undertake the enormous umbrella permit program successfully. We expect that the challenges ahead in 2010 lie primarily in securing employment for our unemployed U.S. citizens, U.S. permanent residents, and CNMI permanent residents. We have a number of proposals in these regards and look forward to working with the Legislature to accomplish our goals.

Dated: January 11, 2010

Respectfully submitted,



Gil M. San Nicolas
Secretary of Labor

²⁰ Letter dated January 5, 2010 from Frank D. Cabrera, Director.

ATTACHMENT A: TABLES WITH RESPECT TO FOREIGN WORKER EMPLOYMENT IN THE CNMI

Table 1: Application type by Citizenship for 240K Issued Permits

	Total	Bgd.	Chn.	Jpn.	Kor.	Tha.	Phl.	Oth.
industry	15,067	177	1,846	479	618	114	11,407	426
Amendment	2,207	11	193	92	95	13	1,751	52
Duplicate	47		14	1	7		22	3
Extension	846	14	57	19	3	12	707	34
New	522	1	87	68	82	2	267	15
Renewal	9,463	129	1,070	263	305	52	7,364	280
Transfer	1,849	22	419	35	64	35	1,235	39
Other	133		6	1	62		61	3

Notes: (1) The permits reflected in this table are CNMI permits issued during calendar year 2009 to work in the private sector in the Commonwealth. These numbers do not reflect umbrella permits, which were separate transactions related only to status. (2) The number of permits issued reflects transactions processed by the Department of Labor. It is not equivalent to the number of persons in each of these citizenship classes as a given person may have been affected by more than one permit action during a given year or may hold a two-year permit issued the prior year and thus not be reflected in these 2009 numbers at all. (3) This table reflects only the classification 240K (foreign worker) and does not include other classifications of aliens entitled to work in the Commonwealth. These other classifications are 240B (government), 240D (immediate relatives of U.S. citizens), 240G (investors), 240H (students, qualified for part-time work), 240L (ministers), 240M (missionaries), 240N (business owners), 240O (retirees), 240P (permissions from the Attorney

