

**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS  
DEPARTMENT OF LABOR  
ADMINISTRATIVE HEARING OFFICE**

In the Matter of:	)	CAC No. 18-027-07
Department of Labor	)	
Enforcement and Compliance Section,	)	
Complainant,	)	<b>ADMINISTRATIVE ORDER</b>
	)	
<b>v.</b>	)	
	)	
Saipan Marine Corporation,	)	
Respondent.	)	
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This Compliance Agency Case came on for hearing on July 24, 2018, in the Administrative Hearing Office of the CNMI Department of Labor (“DOL”), located on Capitol Hill, Saipan. DOL’s Enforcement and Compliance Section was represented by investigator Arlene Rafanan. Respondent Saipan Marine Corporation appeared through its Executive Assistant Michelle H. Tomokane. Hearing Officer Jerry Cody, presiding.

**After hearing the testimony and reviewing the record, the Hearing Officer makes the following Findings of Fact and Conclusions of Law:**

This case is based on a Determination and Notice of Violation (“Determination”) filed by DOL’s Enforcement and Compliance Section (“Enforcement”) in the Hearing Office on July 10, 2018, against respondent Saipan Marine Corporation (“Employer”). [A copy of the Determination was entered into evidence as Hearing Exhibit 1.]

The Determination alleges that Employer failed to post several job announcements in violation of CNMI Rules and Regulations (“Regs.”). See Regs. at the Northern Mariana Islands Administrative Code (“NMIAC”) at § 80-20.1-225(a). The relevant Regulations state that an employer who intends to hire or renew a foreign national worker for employment “must” post the job vacancy announcement on the Department’s website. *Id.*

The facts of this case are straightforward. In the past, Employer has posted job vacancy announcements (“JVAs”) on DOL’s website with the assistance of its

Executive Assistant, Michelle H. Tomokane. In June 2018, while Ms. Tomokane was on a one-month leave from her job, Employer placed a newspaper advertisement in the Saipan Tribune that announced three job vacancies – for the jobs of master, engineer and deckhand. [A copy of the newspaper advertisement announcing the vacancies was entered into evidence as Hearing Exhibit 2.]

Employer advertised in the newspaper instead of posting on the DOL website because Ms. Tomokane, who was on leave, was the only employee with knowledge about how to post JVAs on the website. [Testimony of Ms. Tomokane.]

Employer received no responses from any job applicants as a result of its newspaper advertisement. Employer has not submitted any Petitions for CW-1 status workers to fill these positions. At Hearing, Employer stated that it would have no objection to re-posting these JVAs on DOL's website in the near future. [Testimony of Ms. Tomokane.]

In July 2018, Enforcement was notified by DOL's Employment Services Section that Employer had advertised the above-noted job vacancies in the local newspaper but had not posted those JVAs on DOL's website. Based on its belief that Employer had violated the Department's Rules and Regulations by failing to post the job on the website [Regs. at NMIAC § 80-20.1-225(a)], Enforcement filed its Determination. This hearing followed.

## **DISCUSSION**

CNMI Employment Rules and Regulations state that an Employer who intends to hire or renew the employment of a foreign national worker must post a job vacancy announcement on the Department's website. Regs. at NMIAC § 80-20.1-225(a). No waivers are available with respect to this requirement. *Id.* at NMIAC § 80-20.1-225(e).

Employer admits that it announced these three job vacancies in a local newspaper rather than filing JVAs on DOL's website. It further admits that it may hire foreign national workers if it cannot find U.S status-qualified workers to fill the positions. Based on the evidence presented, Employer appears to have violated the Regulations at NMIAC § 80-20.1-225(a), by failing to post the vacancies on the DOL website.

**Sanctions:** The Commonwealth Employment Act of 2007, as amended, notes with respect to job vacancy announcements that “[a]ny employer seeking permission to employ workers other than citizens or CNMI permanent residents and U.S. permanent residents shall utilize the Department as provided in this chapter. 3 CMC § 4522. As stated above, DOL Regulations require Employer to post JVAs on DOL’s website as to any JVA that may result in full-time employment of a foreign national worker. [Regs. at NMIAC § 80-20.1-225(a).]

In cases of violations under Chapter 2 of the Commonwealth Employment Act of 2007, the Hearing Officer is authorized to levy a fine not to exceed \$2,000 for each violation. 3 CMC § 4528(f)(2).

The amount of fines in this area is left to the discretion of the Hearing Officer. The standard in determining appropriate sanctions should be one of reasonableness and fairness, in accordance with the general principle that “[t]he hearing officer is authorized to...[u]se [his] inherent powers ...to further the interests of justice and fairness in proceedings.” [Regs. at § 80-50.4-820(h) and (o).]

The Hearing Officer finds that the facts here do not justify the maximum sanction. Past cases in which the Hearing Officer imposed a \$2,000 sanction involved cases in which the Employer had willfully disregarded its legal obligations to search for available U.S. citizens or permanent residents. (*See, e.g.,* CAC No. 14-008-03, *Department of Labor Enforcement Section v. RJCL Corporation*, Admin. Order by J.Cody on 4/07/2014, *aff’d* by Secretary of Labor on 4/29/2014.)

Several factors in this case justify mitigating the amount sanctions assessed in this case. First, Employer’s conduct was not willful. This Employer simply assumed that it could use a local newspaper because its normal route of posting on the DOL website was frustrated by its Executive Assistant going on leave. Second, Employer has not finished its hiring process and has offered to remedy this error by re-posting the three JVAs on DOL’s website in the near future. Third, unlike recent Agency cases in which employers failed to post JVA, but then hired CW-1 status workers, no foreign national worker has yet been hired for these positions.

Notwithstanding the above factors, Employer’s claimed ignorance of the regulations should not absolve Employer from its responsibility to follow the law. Accordingly, having considered the matter carefully, the Hearing Officer finds that Employer should be ordered to pay a sanction of \$300; and should be ordered to

re-post the JVAs for the three positions (master, engineer and deckhand) on DOL's website as ordered below.

**Good cause having been shown, IT IS HEREBY ORDERED:**

1. **Judgment:** Based on the above findings and conclusions, judgment is entered against Respondent Saipan Marine Corporation for failing to post job vacancy announcements on DOL's website in accordance with DOL's statutes and regulations. [Regs. at NMIAC § 80-20.1-225(a); 3 CMC §§ 4522 and 4528(f)(2).] Accordingly, Respondent shall be ordered to pay sanctions and re-post three job vacancy announcements, as set forth below. [3 CMC §§ 4528(f)(2) and 4947(11).]
2. **Sanctions:** Respondent Saipan Marine Corporation is SANCTIONED three hundred dollars (\$300) for failing to post JVAs in violation of Regulations. Respondent is ORDERED to pay the fine no later than twenty (20) days after the date of issuance of this Order. Proof of payment shall be submitted to the Hearing Office on or before the due date. 3 CMC §§ 4528(f)(2) and 4947(11).
3. **Posting on Website:** Respondent Saipan Marine Corporation is ORDERED to post three job vacancies for the positions of master, engineer and deckhand on the Department's website ([www.marianaslabor.net](http://www.marianaslabor.net)) no later than fifteen (15) days after the date of issuance of this Order. Respondent shall submit proof of posting of the JVAs to the Hearing Office on or before the due date. [Regs. at NMIAC § 80-20.1-225(a) and 3 CMC § 4947(11).]
4. **Further Sanctions:** If Respondent fails to comply with the terms of this Order, it shall be subject to further sanctions after a due process hearing on the issue.
5. **Appeal:** Any person or party aggrieved by this Order may appeal, in writing, to the Secretary of Labor within **fifteen (15) days** of the date of issuance of this Order. 3 CMC §§ 4948(a) and 4528(g).

DATED: July 25, 2018

  
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Jerry Cody  
Hearing Officer