

## **REQUIREMENTS FOR EMPLOYERS OF FOREIGN WORKERS SAFETY AND HEALTH IN THE WORKPLACE**

Public Law 15-108, which came into effect on January 1, 2008, contains new provisions with respect to health and safety protections for foreign workers. The following excerpts from the law and the regulations are provided for your information. For further details, call the Chief, Enforcement Section, Department of Labor, 236-0960, or come to the Labor Department, Second Floor, Afetna Square Building, San Antonio, Saipan MP 96950.

### **PUBLIC LAW 15-108: COMMONWEALTH EMPLOYMENT ACT OF 2007**

#### **§ 4939. Inspection of worksites.**

1. Administrative inspections of worksites. In order to enforce the labor laws of the Commonwealth, the Secretary or a designee may inspect any worksite where foreign national workers are employed.
  - (1) No warrant is required for inspection of a worksite, and the Department need not present any evidence of a violation of labor laws or regulations as a basis for such an inspection. As a condition of enjoying the privilege of employing foreign national workers in the Commonwealth, every employer who executes an approved employment contract with a foreign national worker shall be deemed to have consented, expressly and in writing, to administrative inspections of the employer's worksites in accordance with the provisions of this chapter.
  - (2) No notice of the date and time of the inspection need be given to the employer in advance of the actual inspection.
  - (3) The Department shall furnish, at a reasonable cost, to every employer of foreign national workers whose worksite is subject to inspection a list of revised statutes and regulations describing the employer's obligations and defining the inspector's authority.
2. Frequency of inspections. The rules governing the frequency of administrative inspections shall be prescribed by regulation and published in an administrative schedule.
3. Scope of inspections. The inspector may inspect:
  - (1) All public areas of the worksite and premises to which the general public might reasonably be expected to have access to during normal business hours;

- (2) All areas of the worksite and premises in which workers are observed, or might reasonably be expected to have access to during the normal operation of the employer's business;
  - (3) The employer's payroll records, approved foreign national worker contracts, or any other documents or business records the employer is required to collect, maintain or produce for inspection pursuant to this chapter, regulations, and the Minimum Wage and Hour Act;
  - (4) All equipment, machines, tools, or devices any worker might reasonably be expected to use, operate or maintain, in the normal course of the employer's business;
  - (5) All safety devices, safeguards (such as machine guarding, electrical protection, scaffolding, safe walking-working surfaces, means of egress in case of emergencies or fire, ventilation, noise exposure protection, personal protective equipment for eyes, face, head and feet, fire protection and sanitation), drinking water supply and toilet facilities;
  - (6) All waste disposal equipment, trash and refuse containers; and
  - (7) Employer-provided housing and common areas, including, but not limited to: fire protection devices or improvements; sanitation equipment; ventilation, whether natural or mechanical; drinking water supply; toilet facilities; cooking facilities, equipment and appliances; food and food storage equipment and facilities; lighting; windows and screens; bedding; laundry facilities, equipment and supplies.
4. Authority of inspectors.
- (1) If a violation of any labor law or regulation is found, the inspector may issue a citation, notice of violation, or other process intended to correct the violation or enjoin the employer from certain practices or commence an enforcement action against the employer.
  - (2) The inspector may contact all persons on the worksite to ascertain whether they are foreign national workers and whether they are in possession of valid entry permits, as required by law.
  - (3) The inspector shall not detain or arrest any person, but may refer any person to another enforcement agency for further action consistent with the laws of the Commonwealth or of the United States.
5. Show cause hearing. The Administrative Hearing Office shall disqualify an employer who has refused inspection from employing foreign national workers for a period of at least six (6) months, unless the employer can prove by clear and convincing evidence, that the inspection:
- (1) Was not requested during normal business hours;

- (2) Exceeded the frequency of inspections allowed;
  - (3) Exceeded the scope of inspections allowed or was outside the regulatory authority of the Department;
  - (4) Was motivated by spite, harassment, or some improper motive unrelated to the enforcement of this chapter;
  - (5) Was contrary to specific, valid privacy concerns to the employer that are not accommodated by provisions (1) through (4) of this subsection.
6. Personnel for inspections. For purposes of carrying out responsibilities pursuant to this section, the Secretary may, by agreement with other agencies of the Commonwealth government, utilize with or without reimbursement, the services, personnel, or facilities of the other agencies including without limitation the Commonwealth immigration authority.
7. Inspections of worksites pursuant to warrant.
- (1) In those instances where the Secretary or a designee intends to inspect any location or worksite in furtherance of obtaining evidence related to a specific criminal investigation, a search warrant from the Commonwealth Superior Court, requiring a showing of probable cause, shall be required.
  - (2) In the event that an employer refuses consent for an inspection or if the Department's inspection will exceed the scope or frequency of the inspections authorized under subsections (a) through (e) of this section, the Secretary or a designee may seek an administrative warrant from the Department's Administrative Hearing Office.
  - (3) An administrative warrant shall be granted if the Department demonstrates to the satisfaction of a hearing officer that one of the following standards has been met:
    - (i) The worksite has been chosen for an inspection on the basis of a general administrative plan derived from neutral criteria for the enforcement of Commonwealth labor laws and regulations;
    - (ii) The Department has presented evidence establishing reasonable suspicion of a recent, ongoing or imminent violation of this chapter, regulations, the Minimum Wage and Hour Act, or any other Commonwealth law protecting the health and safety of employees, at the worksite for which the administrative warrant is sought; or

- (iii) The Department has presented evidence that the employer has been cited for a violation of Commonwealth labor laws or regulations within the past twelve (12) months at the worksite in question, and the past violation is one that is easily repeated, easily concealed, and poses a risk to the health and safety of one or more employees.

**§ 4940. Investigations.**

The Director of Labor or a designee shall conduct investigations as the Director may deem appropriate and necessary to enforce the provisions of this chapter and regulations, and to ensure lawful working conditions, employer-supplied benefits, and the health and safety of foreign national workers.

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## **EMPLOYMENT RULES AND REGULATIONS**

### **Part VI, Section 3(A):**

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13. Safe workplace conditions. Every employer shall provide safe workplace conditions for all employees, including domestic helpers and farmers.

(a) Every employer shall furnish and ensure the use of such safety devices and safeguards (such as machine guarding, electrical protection, scaffolding, safe walking and working surfaces, means of egress in case of emergency or fire, ventilation, noise exposure protection, personal protective equipment for eyes, face, head, and feet, fire protection, and sanitation) and shall adopt and use such means and practices as are reasonably adequate to render safe the employment and place of employment of all employees.

(b) An employer shall provide an adequate supply of drinking water and sufficient and sanitary toilet facilities at the worksite or reasonable access thereto.

(c) The U.S. Department of Labor's Occupational Safety and Health regulations as published and amended in the Code of Federal Regulations are recognized as the minimum standards required of every employer in the Commonwealth.

14. Safe housing conditions. Every employer who provides housing for employees shall provide safe housing conditions.

- a. The site of the housing shall be safe.
  - (i) Grounds around worker housing shall be adequately drained to prevent flooding, collection of waste water, and mosquito breeding.
  - (ii) Grounds around worker housing shall be maintained in a clean and sanitary condition, free of rubbish, debris, waste paper, garbage, and other refuse. Occupants of employer-supplied housing are responsible for assisting in this maintenance to the extent that they generate such refuse.
  - (iii) Whenever worker housing is closed on a temporary or permanent basis, the employer shall ensure that all garbage, waste, and other refuse is collected and disposed of, and that the grounds and housing are left in a clean and sanitary condition.
- b. The building structure for housing shall be safe.
  - (i) Worker housing shall be constructed in a manner which will provide protection against the elements, including, wind, rain, flood, and fire.
  - (ii) Each room for sleeping purposes shall contain at least 50 square feet of floor space for each occupant. At least a seven-foot ceiling shall be provided.
  - (iii) Separate bedding, which may include bunks, shall be provided for each occupant. Spacing of single bedding shall not be closer than 36 inches both side-to-side and end-to-end. Elevation of single bedding shall be at least 12 inches from the floor.
  - (iv) Where workers cook, live, and sleep in a single room, a minimum of 100 square feet per person shall be provided.
  - (v) Natural ventilation consisting of operable windows shall be provided, the area of which shall be not less than one-fourth the floor area of the living quarters. In lieu of natural ventilation, mechanical ventilation may be provided which shall supply at least 15 cubic feet of fresh air per person per minute.
  - (vi) All exterior openings shall be screened with at least 16-mesh per inch material.
  - (vii) An adequate and convenient water supply shall be provided for drinking, cooking, bathing, and laundry purposes.
- c. Toilet facilities shall be safe.
  - (i) The sit down toilets provided shall be no fewer than one per fifteen (15) persons. Where there are ten (10) or more persons of different sexes using the toilets, separate toilet facilities, appropriately identified, shall be provided for each sex.

- (ii) Toilet facilities shall be located within 200 feet of the sleeping quarters. No toilet facility shall be located in a room used for other than toilet purposes.
  - (iii) Natural ventilation consisting of operable windows or other openings shall be provided, the area of which shall not be less than one-tenth of the floor area of the toilet facility. In lieu of natural ventilation, mechanical ventilation capable of exhausting at least two cubic feet per minute per foot of floor space may be used.
  - (iv) All outside openings shall be screened with at least 16-mesh per inch material.
  - (v) Toilet facilities shall be of sanitary and easily cleanable construction and shall be maintained in sanitary condition by the Individuals using the facilities or by the employer.
  - (vi) Toilet facilities shall have adequate lighting.
  - (vii) An adequate supply of toilet paper shall be assured by the employer.
  - (viii) Access to toilet facilities shall not intrude upon sleeping quarters.
- d. Laundry, hand-washing, and bathing facilities shall be safe.
- (i) Sanitary laundry, hand-washing, and bathing facilities shall be provided in the following ratio: one laundry tray or tub for every fifteen (15) or fewer persons or an equivalent laundry alternative; one hand-wash basin per family or per six or fewer persons; and one showerhead for every ten (10) or fewer persons.
  - (ii) Facilities shall be of sanitary and easily cleanable construction and shall be maintained in sanitary condition by the individuals using the facilities or by the employer. Floors shall be of a smooth, but not slippery, surface.
- e. Sewage and refuse disposal shall be safe.
- (i) Where public sewers are available, all sewer lines and floor and sink drains from toilet, laundry, hand-washing, bathing, or kitchen facilities shall be connected thereto. Septic tanks shall be installed or constructed where public sewers are not available.
  - (ii) Where public sewers are not available, facility wastewater shall be treated or disposed of using an on-site wastewater treatment system meeting all applicable Commonwealth regulations.
  - (iii) Garbage shall be stored in disposable or cleanable containers that are secured from flies, rodents, other vermin, and water. Containers shall be kept clean. Containers

shall be emptied not less than twice a week. Refuse shall be disposed of only in Commonwealth-approved solid waste landfills. Burning trash is prohibited.

- f. Food storage, kitchen, and eating facilities shall be safe.
  - (i) Cooking facilities are to be provided wherever workers are provided common living quarters.
  - (ii) Cooking facilities shall be in an enclosed and screened shelter.
  - (iii) Food shall be stored safe from contamination by water, dirt, poisonous substances, rats, flies, or other vermin.
  - (iv) Refrigeration facilities shall be provided for storage of perishable food.
  - (v) Facilities shall be adequate for ensuring sanitary maintenance of eating and cooking utensils.
- g. Health measures.
  - (i) Adequate first aid supplies shall be available at the living site for the emergency treatment of injured persons.
  - (ii) The employer shall report to the Division of Health Services the name and address of any foreign national worker known to have or suspected of having a communicable disease.
  - (iii) The employer shall report to the Division of Health Services and the Health and Safety Section any case of food poisoning or unusual prevalence of any illness in which fever, diarrhea, sore throat, vomiting, or jaundice is a prominent symptom.
  - (iv) The employer shall provide adequate access to medical care if the employee's condition appears to be serious.

### **Part VI, Section 3**

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- I. Inspection of worksites .
  - 1. Timing and frequency of inspections. An administrative schedule of worksite inspections shall be established each year. Normally worksites are inspected once per calendar year, and not more than four times in any calendar year, except that follow up inspections of worksites where violations have been found may be conducted with more frequency.
  - 2. Procedure for inspections and investigations.

- (a) Inspections shall be conducted during normal business hours or, if an administrative warrant is obtained, at any other reasonable time under the circumstances.
  - (b) The investigator shall present himself or herself to the authorized representative at the worksite and shall provide identification as a Department investigator. The investigator shall inform the authorized representative at the worksite that the worksite has been chosen for inspection by the Department, and shall furnish to such person a copy of the current statutes and regulations authorizing worksite inspections.
  - (c) The investigator shall ask the authorized representative at the worksite if he or she consents to the inspection. If the authorized representative consents to the inspection, the investigator is authorized to inspect all areas of the worksite and premises and perform all functions listed in subsection (b) above. If the authorized representative refuses to permit entry, or does not consent to allow inspection of the worksite, the investigator may not proceed with the inspection unless an administrative warrant is obtained.
  - (d) In all cases where the authorized representative refuses to permit entry, does not consent to allow inspection of the worksite, or unreasonably obstructs the investigator in carrying out the inspection, the investigator shall serve notice upon the authorized representative of an administrative hearing at which the employer shall be required to show cause why the employer should not be disqualified by the Department from employing foreign national workers or enjoined from future refusals with respect to inspection.
3. Violations. If upon inspection a violation is found of any provision of the Commonwealth Employment Act of 2007, the Minimum Wage and Hour Act, or the Departments regulations promulgated pursuant to Commonwealth law, the Director may, within thirty (30) days:
- a. Warning. Issue a warning to the responsible party to correct the violation. If the responsible party does not comply within ten (10) days and correct the violation, the Director may issue a Notice of Violation.
  - b. Notice of violation. Issue a notice of violation to the responsible party. Upon issuance of a notice of violation, an action is opened in the Administrative Hearing Office with the Director of Labor as the complainant. If the notice of violation is issued in circumstances where a complaint has been filed with the Administrative Hearing Office by an individual complainant, the caption on the case may be amended to reflect the Director of Labor as the complainant. The Division of Labor’s legal counsel shall represent the Division of Labor and the Director in such actions.
4. Inspections pursuant to warrant. For purposes of Section 4939(g) of PL 15-108, “reasonable suspicion” means specific facts about the suspected employer or worksite justifying inspection efforts beyond the norm for businesses of that type.

J. Investigations. The Director of Labor may conduct investigations as necessary and appropriate to enforce the provisions of PL 15-108 with respect to foreign national workers and these regulations to ensure lawful working conditions, employer-supplied benefits, and health and safety for foreign national workers. In conducting these investigations, the Director shall have all of the powers delegated and described with respect to inspections and investigations pursuant to Part VI of these regulations.

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