

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

In the Matter of:	)	CAC No. 16-016-11
Department of Labor Enforcement	)	
and Compliance Section,	)	
Complainant,	)	<b>ADMINISTRATIVE ORDER</b>
	)	
v.	)	
	)	
Interpacific Resorts (Saipan) Corporation,	)	
<i>dba</i> Pacific Islands Club Saipan,	)	
Respondent.	)	
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This Compliance Agency Case came on for hearing on January 19, 2017, in the Administrative Hearing Office of the CNMI Department of Labor, located on Capitol Hill, Saipan. The Department of Labor Enforcement and Compliance Section was represented by James Ulloa. Respondent Interpacific Resorts (Saipan) Corporation appeared through its Human Resources Executive, Nhing B. Reyes, and its Human Resources Manager, Vanessa DL Guerrero. 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, Notice of Violation and Notice of Hearing (“Determination”) filed by the Department of Labor Enforcement and Compliance Section (“Enforcement”) in the Hearing Office on November 22, 2016, against respondent Interpacific Resorts (Saipan) Corporation, *dba* Pacific Islands Club Saipan (“Employer”). [A copy of the Determination was entered into evidence as Hearing Exhibit 1.]

The Determination alleges that Employer failed to comply with several Department regulations:

- (1) Employer failed to post a job vacancy announcement (“JVA”) on the Department of Labor website ([www.marianaslabor.net](http://www.marianaslabor.net)) in February 2015 for the position of Director of Engineering in violation of CNMI Rules and

Regulations (“Regs.”), codified in the Northern Marianas Administrative Code (“NMIAC”) at § 80-20.1-225(a).

- (2) Employer failed to post numerous Employer Declarations on the Department of Labor (“DOL”) website in 2015 and 2016, in connection with JVAs posted for the jobs of Director of Engineering and Assistant Restaurant Manager. Regs. at NMIAC at § 80-20.1-235(e).

Employer operates a tourist resort in Saipan that employs a total workforce of about 400 employees, including 112 foreign national workers (CW-1 status employees). [Testimony of Ms. Guerrero.]

**Failure to Post Job Announcement on DOL’s Website:** Department Regulations state that an Employer who intends to hire or renew a foreign national worker on a full-time basis “must” post the JVA on the DOL’s website. Regs. at NMIAC § 80-20.1-225(a). There are no waivers available with respect to this requirement. *Id.* at § 80-20.1-225(e).

In its Determination, Enforcement charged that Employer had failed to post a JVA for the job of Director of Engineering when it promoted a foreign national worker into that position in February 2015. At Hearing, Employer admitted that, effective on February 1, 2015, Employer had promoted its Engineering Manager, Paulo B. Bea, to the position of Director of Engineering, a promotion that resulted in an increased salary of an additional \$20,000 to Mr. Bea. Even though Employer’s management was familiar with the “posting” regulation at the time, Employer did not post a JVA for the Director of Engineering job at the time of Mr. Bea’s promotion.

In fact, Employer had already filed a CW-1 Petition in mid-2014 to renew Mr. Bea as Engineering Manager for 2015; this Petition had been approved by USCIS in December 2014. Within weeks of receiving that approval, Employer moved Mr. Bea into the new position (Director of Engineering), for which it had not sought a CW-1 permit. [Testimony of Ms. Reyes.] Ms. Reyes testified that the company felt pressured because it needed someone to serve in the Director’s position and Mr. Bea had functioned as a de-factor Director for some months without being promoted. The company decided to secure Mr. Bea’s CW-1 status in the manager’s position, then promote him to the director’s position. In so doing, Employer intentionally chose to forego any public announcement of a vacancy for the Director’s job. This conduct clearly violated DOL’s “posting” Regulation. *Id.* at § 80-20.1-225(a).

**Failure to Post “Employer Declarations” As to Prospective Job Applicants.** Departmental Regulations require any employer who hires a foreign national worker to file a “declaration” on the Department’s website, stating its reasons for rejecting each U.S. citizen or permanent resident who applied for the job. [See Regulations at NMIAC at § 80-20.1-235(e).] All citizens or permanent residents who post responses (or have their names posted) to JVAs on DOL’s website are considered potential job applicants.

In its Determination, Enforcement charged Employer with several counts of failing to post Employer Declarations in connection with posted JVAs. [Hearing Exhibit 1 at pp ¶¶ 5, 8 and 11.]

**Count 1:** Employer posted a JVA for the “Director of Engineering” job on the DOL website on July 15, 2015. Only one person responded online to the JVA. [A printout of the JVA with one listed response, was entered into evidence as Hearing Exhibit 3.] Employer admitted that it never posted an Employer Declaration with respect to that applicant. [Testimony of Ms. Reyes.]

At Hearing, Ms. Reyes testified that although Employer did not file an Employer Declaration, the company did contact the online job responder on two occasions, sending her a job application and inviting her to submit the job application to Employer. [Testimony of Ms. Reyes and Ms. Guerrero; copies of Employer’s two email messages to the responder were entered into evidence as Hearing Exhibits 4(a) and 4(b).] Despite the two email messages from the Employer, the online job responder never submitted a written application. *Id.*

**Count 2:** In May 2016, Employer posted a JVA announcing the renewal of the “Director of Engineering” job. Again, only one person posted a response to the JVA. [Hearing Exhibit 5 - printout of the JVA with one listed response.] Employer admits that it never posted an Employer Declaration with respect to that applicant. But again, Employer’s HR Manager, Ms. Guerrero, testified credibly that Employer’s HR Department contacted the online responder and invited her to submit a company application, which was attached to the email. The responder never submitted an application. [Testimony of Ms. Guerrero.]

**Count 3:** In May 2016, Employer promoted Rochiela C. Valdizno, a foreign national worker, to the job of Assistant Restaurant Manager, effective May 21, 2016. At that time, Employer posted a JVA, announcing the job. Twenty persons

posted online responses to the position.<sup>1</sup> [See Hearing Exhibit 6 - a printout of the JVA showing a list of 20 responders.]

In its Determination, Enforcement charged that Employer failed to post Employer Declarations as to these 20 responders. Employer (Ms. Guerrero) admitted that Employer's HR Department had mistakenly failed to post online "declarations" on the DOL website; however, she testified that Employer's HR Department sent emails to each of the 20 responders, attaching Employer's application form and inviting each person to submit the application. Yet, none of the responders submitted a completed application. [Testimony of Ms. Guerrero; Hearing Exh. 7 - copies of each email that Employer sent to all 20 responders.]

### **DISCUSSION**

The evidence established that: (1) Employer intentionally chose not to post a job announcement on DOL's website for the Director of Engineering job when it promoted a foreign national worker into that position in February 2015; and (2) Employer neglected to file Employer Declarations on three occasions in 2015 and 2016. The Hearing Officer finds that such conduct violated DOL Regulations that require employers to post JVAs and Employer Declarations. Regs at NMIAC §§ 80-20.1-225(a) and 80-20.1-235(e).

Given this conduct, the Department asked that Employer be sanctioned with a substantial monetary penalty for its conduct. Employer admitted its failures, but provided additional factual background to explain its actions.

As a migrating factor, HR Executive Nhing B. Reyes testified that her company employs a majority of U.S. citizens and permanent residents out of a total workforce of about 400 workers (i.e., 112 foreign national workers and 288 U.S. status-qualified workers). Ms. Reyes noted that Employer has, in general, an excellent record of complying with labor statutes and regulations involved in the hiring of foreign national workers. Not only does Employer hire and employ many U.S. citizens or permanent residents, it takes seriously its obligation to interview and consider citizens and permanent residents for announced positions. To this end, Employer employs HR Manager Vanessa DL Guerrero, who is assigned to oversee job hiring/renewals and JVA posting as to the 112 foreign national workers employed by Employer. [Testimony of Ms. Reyes and Ms. Guerrero.]

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<sup>1</sup> These names were either posted on the website by the person, himself, or else submitted automatically by the Citizen Job Placement system that automatically refers persons to jobs, based on pre-established, programmed criteria. [Testimony of Mr. Ulloa.]

Employer noted that in the context of its overall posting of JVAs and Employer Declarations for more than a hundred CW-1 positions, the three instances cited in this case occurred as oversights, rather than as a pattern of misconduct. Moreover, in the cited instances where Employer neglected to post Employer Declarations online, the evidence shows that Employer did contact the online job responders and made an effort to consider those responders for jobs. In other words, failure to post the declarations did not mean that Employer had failed to consider those persons for positions.<sup>2</sup>

**Sanctions:** In its Determination, Enforcement asked that Employer be sanctioned with the maximum fine of \$2,000 for each violation. [Hearing Exhibit 1 at p. 3.] If this were to be accepted, it would result in a sanction of \$8,000 against Respondent. At Hearing, Enforcement indicated that it would accept the Hearing Officer's discretionary ruling in this matter. [Testimony of Mr. Ulloa.]

In cases of violations under Chapter 2 of the Commonwealth Employment Act of 2007 (see 3 CMC § 4527), the Hearing Officer is authorized, but not required, to levy a maximum fine of \$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 the inherent powers ...to further the interests of justice and fairness in proceedings.” Regs. at NMIAC §§ 80-20.1-485(c)(7) and (c)(14).

The Hearing Officer examines the evidence to determine whether sanctions are appropriate and justified. In this case, the evidence established that Employer committed two basic violations. First, it promoted a foreign national worker into the management position of Director of Engineering without posting a JVA. Second, Employer neglected to post “employer declarations” with respect to JVAs on three occasions in 2015 and 2016. Of these violations, the Hearing Officer finds the first violation to be the most serious.

Employer admitted that it intentionally disregarded the JVA process by promoting a foreign national worker, Mr. Bea, into the Director of Engineering position in February 2015, without advertising the position, as required by regulation. [Testimony of Ms. Reyes.] The substance of this testimony is troubling as it shows

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<sup>2</sup> As testified by Ms. Guerrero, in each of the cited instances, Employer sent the online responders a job application and invited them to fill out the application to participate in the hiring process; however, none of the responders ever submitted an employment application. [Testimony of Ms. Guerrero and Ms. Reyes; Hearing Exhibits 4(a-b) and 7.]

that Employer deliberately chose to ignore the DOL “posting” regulation [NMIAC § 80-20.1-225(a)]. In mitigation, Employer noted that when it did post a JVA for this job several months later (July 2015), only one person responded online and that person failed to submit an application. [See Hearing Exhibits 4(a-b); testimony of Ms. Guerrero and Ms. Reyes.]

As to Employer’s failure to submit employer declarations, the Hearing Officer accepts Employer’s explanation that these lapses were oversights and not deliberate attempts to circumvent the law. Further, the Hearing Officer notes Employer’s overall record of compliance in submitting Employer Declarations.

**Holding:** Based on the evidence presented and the considerations noted above, the Hearing Officer finds as follows: As to Employer’s failure to post a JVA for the Director of Engineering position when it promoted Mr. Bea, the Hearing Officer finds that Employer should be sanctioned \$2,000, with \$1,500 paid and \$500 suspended. [NMIAC § 80-20.1-225(a)]. As to Employer’s failure to submit employer declarations on several occasions, Employer shall be issued a suspended fine of \$1,000 for these violations. The suspended sanctions shall remain in effect for a year, then they are automatically extinguished, provided that no similar violations occur within the one-year period. In summary, total sanctions amount to \$3,000, with \$1,500 of that amount suspended for a year.

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

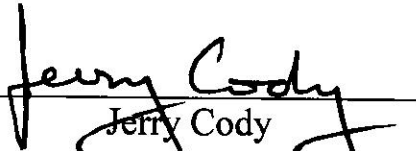
1. **Judgment:** Judgment is hereby entered against Respondent Interpacific Resorts (Saipan) Corporation on the charges of violating the Employment Rules and Regulations, NMIAC §§ 80-20.1-225(a) and 235(e), as set forth in the Determination. For these violations, Respondent shall be sanctioned in the manner set forth below.

2. **Sanctions:** Respondent Interpacific Resorts (Saipan) Corporation is hereby SANCTIONED a total of three thousand dollars (\$3,000) for its conduct; however, one thousand five hundred dollars (\$1,500) of the sanction shall be SUSPENDED for a period of one year, then extinguished, provided that Respondent commits no violations of Department of Labor regulations or statutes in that period. The Respondent is ORDERED to pay the remaining \$1,500 in sanctions no later than **thirty (30) 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).

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3. **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: January 24, 2017

  
Jerry Cody  
Hearing Officer