

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

In the Matter of:)	CAC No. 17-006-04
Department of Labor)	
Enforcement and Compliance Section,)	
Complainant,)	ADMINISTRATIVE ORDER
)	
v.)	
)	
Noel M. Baitlon,)	
<i>dba</i> Taga Security Agency,)	
Respondent.)	
)	

This Compliance Agency Case came on for hearing on June 28, 2017, in the Administrative Hearing Office of the CNMI Department of Labor, located on Capitol Hill, Saipan. The Department’s Enforcement and Compliance Section was represented by Jack Deleon Guerrero. Respondent Noel M. Baitlon appeared without counsel and testified. 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 June 6, 2017, against respondent Noel M. Baitlon, *dba* Taga Security Agency (“Employer”). [A copy of the Determination was entered into evidence as Hearing Exhibit 1.]

The facts of this case are as follows. Employer operates Taga Security Agency in Saipan. During the first quarter of 2017, Employer employed 9 full-time workers, consisting of 3 CW-1 status employees and 6 U.S. citizens. [Hearing Exhibit 2 – copy of Total Workforce Listing re 1st Quarter of 2017, signed on 4/10/17.]

Enforcement alleged in its Determination that Employer committed two basic violations of CNMI labor law:

(1) Employer failed to post job vacancy announcements on the Department's website (www.marianaslabor.net) for jobs he then filled with CW-1 status employees. Such conduct violated the Employment Rules and Regulations ("Regulations"), codified in the Northern Mariana Islands Administrative Code ("NMIAC") at § 80-20.1-225(a); and

(2) Employer failed to keep time or payroll records regarding any of his employees, in accordance with Regulations at NMIAC § 80-20.1-501(b).

Job Posting on DOL's Website: Departmental Regulations require employers who are hiring or sssssssrenewing CW-1 status workers to post job announcements ("JVAs") on the Department of Labor ("DOL") website. [Regs. at NMIAC § 80-20.1-225(a).] In this case, Employer admitted that he had not posted JVAs on DOL's website for his CW-1 status workers since the CW Regulations went into effect (2011). Employer testified that as to his three CW-1 status employees (security guards), he advertised the jobs in local newspapers rather than posting JVAs on DOL's website.

At the hearing, Employer testified that he had not posted JVAs on the Labor website because he had not realized that he was required to use DOL's website by regulation. [Testimony of Mr. Baitlon.]

Keeping Written Employer Payroll and Time Records: Employer admitted that he has operated his business for the past several years by paying his employees in cash and keeping track of employee's hours without keeping written records. Such a practice violates labor Regulations [NMIAC at § 80-20.1-501(b)] as well as the CNMI Minimum Wage and Hour Act, 4 CMC § 9232(c). Moreover, the practice is problematic as it leaves an employer with no proof that he actually paid full wages to his employees. This may cause further problems when computing taxes on such payroll.

At the conclusion of testimony, Employer testified that he intends to post all future job announcements on DOL's website. Employer presented evidence that he has already begun to keep detailed time and payroll records for all of his employees in compliance with labor Regulations. [See Hearing Exhibit 4 - copies of payroll records, showing deductions taken, regular or overtime hours worked, etc.]

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DISCUSSION

Employer gave credible testimony in which he admitted that he had failed to post JVAs on DOL's website and failed to keep proper time and payroll records for all of his employees. Employer expressed genuine remorse for his conduct and he has taken immediate steps to correct these violations. Employer agreed to pay a substantial fine for past conduct and agreed to comply with the DOL's regulations in the future.

Recent Total Workforce Listing documents produced by Employer (Hearing Exhibit 2) reveal that more than 30% of Employer's workforce is comprised of U.S. citizens or permanent residents. This exceeds the minimum 30% ratio that is required in the Regulations [NMIAC § 80-20.1-210(c)(3)].

Based on the above-noted facts, Enforcement argued that Employer's deficient conduct justifies assessing sanctions against this Employer.

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 NMIAC §§ 80-20.1-485(c)(7) and (c)(14).]

The evidence in this case establishes that Employer violated several Regulations, as set forth above. In mitigation, Employer has taken steps already to correct the deficiencies charged in the Determination. For this conduct, the Hearing Officer finds that Employer should be sanctioned with a \$1,000 fine; however, half of the fine shall be suspended for a year, then extinguished, provided that Employer pays the unsuspended (\$500) portion of the sanction and commits no further violations of CNMI labor law during the one-year period.

Good cause having been shown, IT IS HEREBY ORDERED:

1. **Judgment:** For the reasons stated above, Judgment is entered against Respondent Noel M. Baitlon for failing to post numerous JVAs on the Department's website and failing to keep adequate time and payroll records and to produce them on demand. [NMIAC §§ 80-20.1-225(a) and 501(b).] For these multiple violations, respondent shall be sanctioned as set forth below.

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2. **Sanctions:** For the reasons stated above, Respondent Noel M. Baitlon is hereby SANCTIONED one thousand dollars (\$1,000); however, \$500 of the fine shall be SUSPENDED for ONE YEAR, then extinguished, provided that Respondent pays the remaining \$500 portion of the sanction as ordered and commits no further violations of CNMI labor law during the one-year period. 3 CMC §§ 4528(f)(2) and 4947(11). Payment terms are specified below.

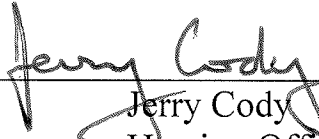
3. **Payment Terms:** Respondent is ORDERED to pay the \$500 portion of the fine no later than thirty (30) days after the date of issuance of this Order. Payment shall be made to the CNMI Treasury; a copy of the payment receipt shall be filed with the Hearing Office on or before the payment deadline.

4. **Posting on Website:** Respondent is reminded to post future job vacancies and renewals on DOL's website (www.marianaslabor.net) for those positions held by CW-1 status employees, in accordance with Regulations at NMIAC § 80-20.1-225(a). Respondent shall hire U.S. citizen and permanent resident job applicants when they are qualified to work.

5. **Warning:** The obligations described above are continuing obligations. If Respondent fails to comply with the terms of this Order he shall be subject to a possible reinstatement of the suspended sanction plus additional monetary sanctions, after a due process hearing on this issue.

6. **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 7, 2017



Jerry Cody
Hearing Officer