

TITLE 19

LABOR

TITLE 19 LABOR

CHAPTER

- 1 [RESERVED]
- 2 RESIDENTS EMPLOYMENT
- 3 WAGE AND HOUR
- 4 & 5 [RESERVED]
- 6 APPRENTICESHIP PROGRAM
- 7 – 9 [RESERVED]
- 10 LABOR FINANCES

CHAPTER 1 [RESERVED]

CHAPTER 2 RESIDENTS EMPLOYMENT

Section

- | | |
|---|---|
| <ul style="list-style-type: none"> 2-101 Short title 2-102 Policy 2-103 Intent 2-104 Definitions 2-105 Duties and responsibilities of the Division of Personnel, Labor and Manpower Development 2-106 Employment policy and requirements 2-107 Employment classifications, requirements, and restrictions 2-108 Employment quotas 2-109 Application to employ a nonresident 2-110 Determination of nonavailability 2-111 Nonresident employment agreements | <ul style="list-style-type: none"> 2-112 Senior management officials of foreign-owned businesses 2-113 Annual registration fee: manpower development fund 2-114 Identification card 2-115 Employer's records 2-116 Rules and regulations 2-117 Investigations and enforcement 2-118 Orders 2-119 Judicial appeal 2-120 Prohibitions 2-121 Criminal penalties 2-122 Civil penalties 2-123 Conflict of interest |
|---|---|

§2-101. Short title. — This chapter is known and may be cited as the “Pohnpei Residents Employment Act of 1991.”

Source: S.L. No. 2L-204-91 §1, 7/10/91

§2-102. Policy. — The Legislature finds and declares that the establishment and growth of the local work force is a fundamental element of a strong and vital economy for Pohnpei, and essential for Pohnpei to meet its constitutional mandates to provide for a healthful, educated, and productive society. There are at present, however, numerous inhibiting factors that are severely limiting the

growth of this vital sector of the society. Many of these factors have become endemic to Pohnpei since the Trust Territory era and should be the focus of direct government attention.

(1) Of the many factors that are inhibiting the development of Pohnpei's resident work force, the Legislature finds a number of issues to be of prominence. These factors include:

- (a) An extremely high rate of unemployment among the employable sectors of the society;
- (b) A comparatively high number of unskilled laborers and relatively low levels of compensation for resident workers who are, in fact, employed;
- (c) The lack of training opportunities and private industry-sponsored apprenticeship programs in skills necessary for the future development of Pohnpei;
- (d) The lack of a supportive work environment and opportunities for career development in all categories of public and private employment; and
- (e) The lack of balanced and coordinated policies and standards for occupational classifications, wages, and working conditions.

(2) Factors inhibiting the growth of the resident work force have in turn created additional difficulties in manpower development. Foremost among these factors are:

- (a) The loss of job motivation among new workers;
- (b) High rates of absenteeism and employee turnover in existing employment positions;
- (c) Displacement of resident workers by nonresident employees;
- (d) Preference for nonresident workers over resident workers in the development of new fields of employment; and
- (e) Departure of better trained and more highly motivated resident workers from Pohnpei to the neighboring island jurisdictions and foreign countries where opportunities for better wages and employment support systems exist.

Source: S.L. No. 2L-204-91 §2, 7/10/91

§2-103. Intent. — It is the intent of the Legislature to target directly those limiting factors inhibiting the growth of Pohnpei's resident work force. The Legislature firmly believes that through the enactment of this statute, through the sponsorship of training and apprenticeship programs, and through the institution of other forms of directed governmental support, the problems confronting our resident work force can be overcome and that a strong and vital economy can be constructed for Pohnpei, built upon the solid and sure foundation of our own human resources, our own talents, and our own capabilities. To reach this goal, the Legislature is counting upon the cooperative and concerted efforts of each and every government agency and of all current and prospective employers. But to truly accomplish this goal, the Legislature is, most importantly, counting upon the spirit, the determination, and the drive of each and every member of our own resident work force.

Source: S.L. No. 2L-204-91 §3, 7/10/91

§2-104. Definitions. — Unless the context clearly indicates otherwise, the following meanings shall apply to this chapter:

(1) "Chief" and "Assistant" mean the Chief of the Division of Personnel, Labor and Manpower Development, or his designee.

(2) "DPL&MD", "Office", and "Division" mean the Pohnpei Division of Personnel, Labor and Manpower Development.

(3) "Employer" means any person hiring or otherwise engaging an individual to perform personal services or labor for compensation or other consideration, and such person's authorized representatives. For purposes of this definition, the term "person" shall mean any individual, firm, partnership, corporation, company, association, cooperative or any other association of individuals, but does not include foreign governments, public corporations or the governments of the Federated States of Micronesia, Pohnpei State, the local jurisdictions of Pohnpei or their agencies. The Chief may adopt additional exceptions for short-term employment or as other circumstances warrant.

(4) “Nonresident” means any individual who is not a citizen of the Federated States of Micronesia, but does not include holders of Pohnpei foreign investment permits.

(5) “Nonresident employment agreement” means the agreement between DPL&MD and the employer as required by §2-111.

(6) “Resident” means any individual who is a citizen of the Federated States of Micronesia and permanently residing in Pohnpei.

(7) “State Attorney” means the Attorney General for the Pohnpei Government.

Source: S.L. No. 2L-204-91 §4, 7/10/91; S.L. No. 5L-14-00 §3-9, 10/1/00

§2-105. Duties and responsibilities of the Division of Personnel, Labor and Manpower Development. — The Division of Personnel, Labor and Manpower Development shall serve as the lead agency in the development of policies and strategies to promote the growth and development of the resident work force and shall be the agency primarily responsible for the administration of this chapter. Specifically, the Division shall:

(1) Research and formulate comprehensive manpower development plans consistent with the terms of this chapter and in accordance with Article 7 §8 of the Pohnpei Constitution, which plans shall become the official policy on manpower development upon adoption thereof by the Legislature;

(2) Establish and maintain a skills registry and promote training in trades and other fields of employment as provided in Chapter 6;

(3) Assist in the development of apprenticeship programs and institute procedures for monitoring the quality and product of such programs;

(4) Identify and maintain accurate lists and institute other means to identify and track unemployment within Pohnpei, and develop strategies to alleviate unemployment in all sectors of Pohnpeian society;

(5) Research and formulate draft legislation and mandatory and voluntary procedures for:

(a) The advancement of minimum wage rules and fair labor standards;

(b) Equality among public and private sector employment opportunities; and

(c) The extension of benefits to resident workers that are provided by employers to nonresident workers;

(6) Administrate this chapter with respect to nonresident employment, and develop other incentive programs to encourage the replacement of nonresident workers by resident workers whenever feasible;

(7) Promote the development of employee and occupational interest groups dedicated to the betterment of manpower resources within Pohnpei and to the monitoring of their own categories of employment or service;

(8) Serve as an informal ombudsman to receive and investigate employee complaints and to assist in the development of sound and productive relationships between employees and their employers;

(9) Initiate public information programs to foster knowledge of and respect for the employment and advancement of the local work force;

(10) Develop means to periodically publish, broadcast, and otherwise disseminate classified lists, job announcements, and other forms of information among the residents of Pohnpei as to the availability of employment and opportunities for career advancement within Pohnpei;

(11) Enter into cooperative arrangements with other public and private entities to institute programs and activities designed to promote manpower development in Pohnpei; and

(12) Undertake such other initiatives and assume such other responsibilities as are consistent with the purposes and provisions of this chapter.

Source: S.L. No. 2L-204-91 §5, 7/10/91

§2-106. Employment policy and requirements. —

(1) It is the official policy of Pohnpei that residents shall be accorded priority over nonresidents to fill all positions of employment offered within this jurisdiction.

(2) No employer shall employ a nonresident except in strict compliance with this chapter and the rules and regulations issued thereunder.

(3) The equal opportunity for employment shall not be denied to those employers and nonresidents who have complied with this chapter and any rule or regulation promulgated hereunder.

Source: S.L. No. 2L-204-91 §6, 7/10/91

§2-107. Employment classifications, requirements, and restrictions. — The Division of Personnel, Labor and Manpower Development shall establish job listings in four classes, with as many subclasses as it deems necessary. The four classes and the requirements and restrictions that attach to each shall be as follows:

(1) “Class A” shall apply to all employment positions for which, in the opinion of the Division of Personnel, Labor and Manpower Development, there are a sufficient number of residents who are immediately available, qualified, and willing to meet the current and foreseeable demand for the services. No nonresident may be recruited or employed to fill any position within this class.

(2) “Class B” shall apply to all employment positions for which, in the opinion of the Division of Personnel, Labor and Manpower Development, there are a sufficient number of residents who have the capability, or with short-term education or on-the-job training, can master the skills required to perform the services. No nonresident may hold a position nor a successive number of positions in Class B for more than four years in any ten-year period; PROVIDED that the Chief may extend the time allotted to a nonresident worker under this subsection if said nonresident is operating an apprenticeship or education program approved by the Division of Personnel, Labor and Manpower Development with no less than an average of three residents continuously enrolled therein.

(3) “Class C” shall apply to all employment positions that are not covered by Classes A, B or D, for which, in the opinion of the Division of Personnel, Labor and Manpower Development, there are an insufficient number of residents who are available, qualified, and willing to meet the current and foreseeable demand for the services. No nonresident may hold a position or a successive number of positions in Class C for more than eight years in any 15-year period unless the nonresident demonstrates to the satisfaction of the Division of Personnel, Labor and Manpower Development that he has made a substantial effort to develop the knowledge and skills of two or more residents to fill counterpart positions within Pohnpei.

(4) “Class D” shall apply to high-level professional or executive positions, and other highly specialized positions for which, in the opinion of the Division of Personnel, Labor and Manpower Development, there are an insufficient number of residents available, qualified, and willing to meet the demand for the services. Positions listed in this class are not limited as to the duration of employment, but if the Division of Personnel, Labor and Manpower Development reclassifies the employment position from Class D to another class, the restrictions of the other class shall apply upon the replacement of the nonresident or upon the renewal of the nonresident’s employment in the same position.

(5) The Division of Personnel, Labor and Manpower Development may, from time to time, reclassify an employment position from one class to any other class as the potential to fill the position with residents changes. Such reclassifications shall be made in a manner that will best meet the policies and intent stated in this chapter. The reclassification shall not affect nonresident workers who were employed prior to the change, but the restrictions of the new class shall apply upon the replacement of said nonresident or upon the renewal of the nonresident’s employment in the same position.

(6) Determination as to time restrictions applied to nonresidents employed in positions classified in Classes B and C shall commence on the effective date of this chapter [*July 10, 1991*], notwithstanding previous employment. Determination as to whether service in a former class will be counted against maximum time of service in a new classification, either by a change in employment or by reclassification, shall be as determined in the rules and regulations promulgated under this chapter.

(7) Upon request or on its own initiative, the Division of Personnel, Labor and Manpower Development shall classify all employment positions not previously included in any class.

(8) Notwithstanding the restrictions on the duration of employment found in Subsections (2) and (3) of this section, the Chief may extend the period of allowable employment of a particular nonresident who is providing exceptional meritorious service to the people of Pohnpei. The specific criteria shall be set forth in the rules and regulations promulgated under this chapter. The Chief shall notify the Governor and Legislature whenever the period of employment is extended pursuant to this subsection, and said notice shall include a detailed description of the basis and reasons for the decision.

(9) The restrictions on the duration of employment found in Subsections (2) and (3) of this section shall not apply to nonresidents who are lawfully in Pohnpei under spousal entry permits or who have been granted special exception under immigration laws for hardship occasioned by the death of a spouse or the termination of marriage and who continue to provide support for one or more dependent resident children within Pohnpei.

Source: S.L. No. 2L-204-91 §7, 7/10/91

§2-108. Employment quotas. — In recognition of the relatively small size of the Pohnpeian community and the constitutional mandate to the government to respect and protect the customs and traditions of Pohnpei, the Chief is authorized to investigate the effect that various levels of nonresident employment and recruitment from specific geographical areas of nonresident origin are having on the social and cultural fabric of Pohnpei. The Chief may, following a finding of negative impact, recommend to the Legislature steps that may be taken to reduce or control the overall level of nonresident employment or the level of nonresident employment represented by one or more geographical areas. Any recommendation made by the Chief with respect to any quota to be imposed by Pohnpei on nonresident employment shall provide a means to ensure all employers will have reasonable and fair access to nonresidents within the quotas and that residents of Pohnpei who are dependents of nonresidents affected by any such policy are not unduly disadvantaged thereby.

Source: S.L. No. 2L-204-91 §8, 7/10/91

§2-109. Application to employ a nonresident. —

(1) Any employer who desires to hire a nonresident shall file an application with the Division of Personnel, Labor and Manpower Development stating the place and nature of the employer's business, the number of nonresidents desired, the occupational qualification and skill required of each nonresident, the wages and benefits to be paid each nonresident, the date on which each nonresident is desired, and any other information that the Division of Personnel, Labor and Manpower Development may require or which the employer may deem appropriate.

(2) The application may cover one or more nonresidents and may be amended or revoked in accordance with the rules and regulations adopted pursuant to this chapter.

Source: S.L. No. 2L-204-91 §9, 7/10/91

§2-110. Determination of nonavailability. —

(1) If, after receiving an application filed pursuant to §2-109, the Chief determines that there are no qualified residents for the job, then the Chief shall determine whether the employment of a nonresident to fill the job vacancy will be in the best interest of Pohnpei; PROVIDED that the Chief may not make a determination that a nonresident may be employed without first requiring that the job be publicized and according a reasonable opportunity for residents to apply therefor. The standards for determining whether employment of a nonresident is in the best interest of Pohnpei and the method and duration of the required publication and the information to be publicized therein shall be determined by the rules and regulations promulgated by the Division of Personnel, Labor and Manpower Development under this chapter.

(2) The determination of the Chief as to whether a resident is available and qualified for the job, and whether the employment of a nonresident is in the best interest of Pohnpei shall be final, subject only to an appeal as provided in §2-119.

Source: S.L. No. 2L-204-91 §10, 7/10/91

§2-111. Nonresident employment agreements. — If a qualified resident is unavailable and if the Chief decides that the employment of a nonresident is in the best interest of Pohnpei, then the Chief shall enter a nonresident employment agreement which authorizes the employer to hire one or more nonresidents. For those matters covered in the application required by §2-109, the nonresident employment agreement must be the same or substantially similar to the application. The agreement shall be executed by the Chief and the employer with a copy to the nonresident involved, and shall contain the following:

(1) A statement that the employer requires such nonresident for employment;

(2) A statement of the wages and benefits the employer is providing or intends to provide each nonresident;

(3) A statement that the employer agrees to comply with the minimum employment conditions and other requirements consistent with this chapter and other applicable laws, rules, and regulations of Pohnpei;

(4) A designation of the employment classification as identified in §2-107 under which the position to be filled is classified and the period of time for which the employer will be allowed to fill each position with a nonresident before the employer must attempt to fill the position with residents by filing a new application with the Division of Personnel, Labor and Manpower Development;

(5) A statement of the employer's responsibility for return transportation to the place of origin of each nonresident so employed;

(6) A statement that the term of the employer's contract with the nonresident shall not deviate from the nonresident employment agreement without first amending the nonresident employment agreement;

(7) The effective date and expiration date of the nonresident employment agreement;

(8) An obligation of the employer to provide the Division of Personnel, Labor and Manpower Development with a copy of the contract between the employer and the nonresident hired;

(9) A statement acknowledging that Pohnpei is not a party to nor liable for the contract between the employer and nonresident;

(10) At the discretion of the Chief, a provision to obtain a bond or other surety, or to make a deposit to secure the faithful performance of the employer's duties and responsibilities under the nonresident employment agreement;

(11) Provisions concerning the payment of the registration fee required by §2-113; and

(12) Such other provisions as the Chief deems appropriate.

Source: S.L. No. 2L-204-91 §11, 7/10/91

§2-112. Senior management officials of foreign-owned businesses. — Notwithstanding any other provision of this chapter, the Chief of the Division of Personnel, Labor and Manpower Development shall automatically award a Class D nonresident employment agreement for each noncitizen senior management official of a business with foreign ownership, which business has received a foreign investment permit under the Foreign Investors Permit Act, Title 37 Chapter 7, as amended.

Source: S.L. No. 2L-204-91 §11A, 7/10/91; S.L. No. 5L-14-00 §3-9, 10/1/00

Note: §11A was inserted by S.L. No. 4L-98-99 §13, 6/6/99.

§2-113. Annual registration fee: manpower development fund. —

(1) For each nonresident employee covered by a nonresident employment agreement the employer shall pay to Pohnpei an annual registration fee of \$100. Said fee may not be deducted from the wages

or benefits of the nonresident employee. The nonresident employment agreement shall contain a covenant to that effect.

(2) Payment shall be made in advance for the entire anticipated duration of each nonresident's employment. Refunds for earlier termination of employment shall be made only if the termination occurs after the first 12 months of employment. Failure to request a refund within three months of the termination shall result in the forfeiture of the fee. Payments and refunds for partial years shall be prorated.

(3) There is hereby established within the Pohnpei Treasury a manpower development fund into which all payments made under this section shall be deposited.

(4) There is hereby authorized for appropriation from the Treasury fund established by Subsection (3) of this section such sums as may be determined annually in the Comprehensive Budget Act to be administered and expended by the Chief solely for training and apprenticeship programs for the development of the resident work force of Pohnpei.

(5) The Chief shall submit to the Legislature an annual budget for the use of manpower development fund monies as an attachment to the annual budget presentation of the executive branch; PROVIDED that within a reasonable time prior to submission of the budget to the Legislature, the Chief shall provide employers who have paid monies into the fund in the previous fiscal year with a copy of his proposed budget and a request to comment on the same. The Chief shall append to his submission of the budget any written comments he has received from such employers concerning his proposed use of fund assets.

(6) Any monies appropriated from the manpower development fund remaining unexpended or unobligated for expenditure upon expiration of the fiscal year for which the appropriation was made shall revert to the manpower development fund.

Source: S.L. No. 2L-204-91 §12, 7/10/91

§2-114. Identification card. — The Chief shall provide each nonresident who is employed under this chapter with an identification card that must be kept on his or her person at all times. The identification card shall include the name of the nonresident worker, the employer for whom he is authorized to work, his classification of employment as prescribed in §2-107, and such other information as the Chief deems necessary.

Source: S.L. No. 2L-204-91 §13, 7/10/91

§2-115. Employer's records. — Complete and current records on each nonresident employee shall be kept by the employer. Such records shall be presented upon request of the Chief and shall contain the following information:

(1) Each nonresident employee's name, address, age, legal residence, citizenship, country of origin, and expiration date of his entry permit;

(2) The occupational category or job classification, the wage rate or salary, and the employment benefits such as insurance, room and board, travel, vacation, and sick leave;

(3) Payrolls showing the number of hours worked each week, the compensation earned, and deductions made;

(4) The education, training, and experience of each nonresident employee;

(5) The number of employment-related illnesses or accidents to nonresident employees, the name of the sick or injured employee, the type of illness or injury, the treatment, amount of time lost from work, and whether hospitalization was required;

(6) The number and types of non-employment-related illnesses of nonresident employees, the name of the employee, the treatment, amount of time lost from work, and disposition of the employee, and whether hospitalization was required; and

(7) Copies of the nonresident employment agreement and the contract between the employer and each nonresident employee.

Source: S.L. No. 2L-204-91 §14, 7/10/91

§2-116. Rules and regulations. — The Division of Personnel, Labor and Manpower Development is hereby granted the authority to take all lawful steps to achieve the aims, goals, and duties set out in this chapter. The Division of Personnel, Labor and Manpower Development may promulgate, amend, and enforce appropriate rules and regulations to carry out its duties and powers set out in this chapter. These rules and regulations shall be adopted pursuant to the procedures set forth in the Administrative Procedures Act, Title 8 Chapter 1, or its successor, and when approved by the Governor, shall have the force and effect of law. Subject to this chapter, such rules and regulations may include, but are not limited to, provisions establishing:

- (1) The form and provisions of the application required by §2-109;
- (2) The terms and conditions of the nonresident employment agreements including, but not limited to, wages, benefits and working conditions and other obligations of the employer;
- (3) The standards to determine whether nonresident employment is in the best interest of Pohnpei;
- (4) The method and means of publicizing job opportunities to residents;
- (5) The minimum standards, qualifications, and work experience that must be met by a nonresident before being hired for a particular classification and for any permissible extensions on his maximum length of employment in Pohnpei;
- (6) Requirements as to the documents or other evidence that the employer is required to produce to convincingly demonstrate that the nonresident has met the minimum standards, qualifications, and work experience;
- (7) The terms and requirements for renewing, modifying or transferring a nonresident employment agreement; PROVIDED, HOWEVER, that no nonresident may be allowed to transfer to another employer unless the subsequent employer can show to the satisfaction of the Chief that the prior employer, who is not in breach of his contractual agreements with said nonresident, has been satisfied or made financially whole with respect to his expenses in the recruitment of the nonresident employee and for any financial losses which may be incurred in the interim before the prior employer can reasonably fill the vacant position;
- (8) Provisions for the calculation, assessment, collection, and deposit of the registration fee required by §2-113;
- (9) The information and form of the identification card required by §2-114;
- (10) The procedures and requirements to coordinate the activities under this chapter with the authority and functions of the national government of the Federated States of Micronesia;
- (11) Requirements for physical examinations of nonresidents and for obtaining health clearance when reasonably related to the job of the nonresident;
- (12) Procedures to withhold or forfeit state financial assistance for failing to comply with this chapter where permitted under state law providing for such assistance. This applies to both the employer and the nonresident;
- (13) Procedures and requirements for the establishment and administration of a skills register to identify the residents of Pohnpei who possess appropriate training, skills, and experience at various jobs, occupations, and classification listings. This register may be combined with a similar or related register under any apprenticeship program that may be established by Pohnpei; and
- (14) Procedures for reporting, reviewing, and filing complaints and for conducting hearings.

Source: S.L. No. 2L-204-91 §15, 7/10/91

§2-117. Investigations and enforcement. — The Division of Personnel, Labor and Manpower Development shall establish procedures to ensure compliance with this chapter and the rules and regulations promulgated hereunder. In connection with such enforcement responsibilities:

- (1) The Office of the Attorney General shall assist as requested by the Division of Personnel, Labor and Manpower Development;
- (2) The Chief is authorized to conduct hearings and investigations; to subpoena witnesses, records, books, and documents; and to administer oaths;

(3) The Division of Personnel, Labor and Manpower Development may proceed on its own complaint or the complaint of any other person or entity;

(4) The Division of Personnel, Labor and Manpower Development may issue such orders and decisions as are necessary to ensure compliance with this chapter or any nonresident employment agreement. Such orders and decisions shall be subject to amendment or revocation in accordance with the rules and regulations promulgated hereunder. Such orders and decisions shall be in writing and served in the same manner as a summons under the Rules of Civil Procedure of the Pohnpei Supreme Court and, unless a hearing was held before the order or decision was issued, shall include a notice of the right to a hearing;

(5) Employers, employees or any other persons who are adversely affected by orders or decisions issued without a hearing shall have the right to a hearing upon request. If a hearing is requested, the Division of Personnel, Labor and Manpower Development shall provide a reasonable notice of the date of the hearing, an opportunity to present evidence, the right to be represented by an attorney at his own expense, and an opportunity to cross-examine witnesses. Such hearings may be public or closed, and a record of the hearing shall be made as provided in the rules and regulations;

(6) The Division of Personnel, Labor and Manpower Development may, with the advice and assistance of the Office of the Attorney General, petition the Pohnpei Supreme Court for such orders, decrees, writs or warrants as are necessary and appropriate to meet its responsibilities and exercise its powers under this chapter; and

(7) Except for an appeal under §2-119, the decision of the Chief shall be final.

Source: S.L. No. 2L-204-91 §16, 7/10/91

§2-118. Orders. — In addition to such orders and decisions that may be authorized elsewhere, upon finding a violation or noncompliance with this chapter, the rules and regulations promulgated hereunder, or the nonresident employment agreement, the Chief may:

(1) Cancel or modify the nonresident employment agreement. When the nonresident employment agreement is cancelled, the nonresident hired under such agreement shall immediately cease working for any employer in Pohnpei;

(2) Cancel, modify or suspend the nonresident identification card issued pursuant to §2-114;

(3) Temporarily or permanently disqualify an employer from hiring any nonresident;

(4) Transfer a nonresident to another employer with the consent of the nonresident and the new employer, subject to §2-116(7); and

(5) Impose such other sanctions or orders that reasonably give effect to the purposes and provisions of this chapter.

Source: S.L. No. 2L-204-91 §17, 7/10/91

§2-119. Judicial appeal. —

(1) Anyone aggrieved by an order or decision of the Chief must first request a hearing in accordance with §2-117(5) as a condition precedent to appealing to any court. If the aggrieved party fails to request a hearing, then the decision or order of the Chief shall be deemed to be accepted, and judicial appeal shall be barred except in cases of fraud, improper service of the order or decision, criminal conduct or violations of constitutional rights. A request for a hearing is not required, however, if a hearing is actually conducted pursuant to §2-117(5) on the initiative of the Division of Personnel, Labor and Manpower Development or at the request of another.

(2) Appeals of an order or decision of the Chief must be made to the Trial Division of the Pohnpei Supreme Court, within 15 days of the date of the decision or order. Service of the notice of appeal shall be made upon the Attorney General. Failure to serve and file a timely appeal shall bar the action.

(3) The judicial review shall be based on the record including the evidence presented at the hearing and any other evidence considered by the Chief. The decision or order of the Chief shall be upheld unless the court finds it to be arbitrary and capricious or fraudulent.

Source: S.L. No. 2L-204-91 §18, 7/10/91

§2-120. Prohibitions. — It is unlawful:

(1) For any nonresident to engage in any other employment other than for the employer who has entered a nonresident employment agreement with the Division of Personnel, Labor and Manpower Development pursuant to this chapter;

(2) For any employer to employ a nonresident without first executing a nonresident employment agreement with the Division of Personnel, Labor and Manpower Development pursuant to this chapter;

(3) For any employer to employ a nonresident in violation of the nonresident employment agreement with the Division of Personnel, Labor and Manpower Development;

(4) For any employer to employ a nonresident who is not lawfully in Pohnpei;

(5) For a nonresident to accept employment beyond the duration allowance therefore under this chapter; and

(6) For an employer or nonresident (or anyone on behalf of an employer or nonresident) to knowingly submit or provide the information required by this chapter which is false or misleading. For purposes of this chapter, “knowingly” includes when one actually knows or with reasonable investigation should have known that the information was false or misleading.

Source: S.L. No. 2L-204-91 §19, 7/10/91

§2-121. Criminal penalties. —

(1) Except as provided in Subsection (2) of this section, any person who willfully violates this chapter or any of the rules and regulations issued pursuant thereto, or anyone who knowingly aids and abets in such violation by the person shall, upon conviction thereof, be fined not more than \$5,000, or imprisoned for not more than one year, or both such fine and imprisonment.

(2) Any nonresident who fails to comply with §2-114 shall, upon conviction thereof, be fined not more than \$50, or imprisoned for not more than five days, or both such fine and imprisonment.

Source: S.L. No. 2L-204-91 §20, 7/10/91

§2-122. Civil penalties. —

(1) Any employer who employs a nonresident without complying with this chapter and the rules and regulations issued pursuant thereto shall be subject to a civil penalty equal to the amount of wages, including any overtime compensation, paid to the nonresident during the period of noncompliance.

(2) In addition to the foregoing, any employer who fails to comply with an order or decision issued by the Chief under this chapter shall be subject to a civil penalty of not more than \$200 for each day of such noncompliance beginning with the date on which the written order or decision was received by the employer.

(3) These civil penalties may only be assessed after a hearing held in accordance with §2-117(5), and may be compromised by the Chief with the approval of the Attorney General.

(4) Any refund owed to an employer under §2-113(2) shall be applied to the civil penalty assessed against said employer.

Source: S.L. No. 2L-204-91 §21, 7/10/91

§2-123. Conflict of interest. — If an employee or officer of the Division of Personnel, Labor and Manpower Development may benefit or gain by a decision or action under this chapter, either directly or indirectly, through business holdings, by disclosed or undisclosed agents or by a marital

relationship, such benefit or gain shall be disclosed, in writing, to the Chief, or in the case of the Chief, to the Governor. The person having such interest shall not participate in any further action, decision or discussion on the matter. The benefits or gains referred to in this section shall not include those that may be realized as a member of the general public.

Source: S.L. No. 2L-204-91 §22, 7/10/91

Note: S.L. No. 2L-204-91 §23 interpretation provision, §25 severability provision, and §26 transition provision have been omitted.

LABOR

CHAPTER 3 WAGE AND HOUR

Section

3-101 Short title	3-108 Duty of Chief; employer's records
3-102 Policy	3-108A Minimum wage review
3-103 Definitions	3-109 Willful violations; penalty
3-104 Minimum wage	3-110 Disclosure of information
3-105 Maximum hours	3-111 Penalties; collection of unpaid wages; injunctions; etc.
3-106 Wage discrimination prohibited	
3-107 Non-waiver	

§3-101. Short title. — This chapter is known and may be cited as the “Pohnpei Wage and Hour Law of 1991.”

Source: S.L. No. 2L-195-91 §1, 10/1/91

§3-102. Policy. — The Legislature finds and declares that it is essential that employee wages be sufficient to provide members of the private sector work force and their families money to adequately maintain a fair and reasonable standard of living.

Source: S.L. No. 2L-195-91 §2, 10/1/91

§3-103. Definitions. — As used in this chapter, the term:

- (1) “Chief” means the Chief of the Division of Personnel, Labor and Manpower Development.
- (2) “Division” means the Division of Personnel, Labor and Manpower Development.
- (3) “Employ” includes to permit or suffer to work.
- (4) “Employee” includes any individual employed by an employer, but shall not include:
 - (a) An immediate family member employed by the employer;
 - (b) A seaman; or
 - (c) A nonprofit school employee during the time such individual is a student attending such school.
- (5) “Employer” includes any individual, partnership, association, corporation, business trust, legal representative or any organized group of persons acting directly or indirectly in the interest of an employer in relation to an employee.
- (6) “Industry” means a trade, business, industry or branch thereof, or group of industries in which individuals are employed.
- (7) “Tipped employee” means any employee engaged in an occupation in which the employee customarily and regularly receives more than \$20 a month in tips.
- (8) “Wage” means legal tender of the United States of America or checks on banks convertible into cash on demand at a full face value thereof and, in addition thereto, the reasonable cost as determined by the office, to the employer of furnishing an employee with board, lodging or other facilities if such board, lodging or other facilities are customarily furnished by such employer to the employer’s employees.
- (9) “Week” or “work week” means a fixed and regularly recurring period of seven consecutive days.

Source: S.L. No. 2L-195-91 §3, 10/1/91; S.L. No. 5L-14-00 §3-21, 10/1/00

§3-104. Minimum wage. — Every employer shall pay to each employee employed by the employer wages at the rate of not less than \$1.75 per hour. The hourly wage of a tipped employee may be deemed to be increased on account of tips if the employee is paid not less than twenty cents below the minimum wage by the employee's employer and the combined amount the employee receives from the employee's employer and in tips is at least equal to the minimum wage.

Source: S.L. No. 2L-195-91 §4, 10/1/91; S.L. No. 7L-101-11 §1, 1/1/12

§3-105. Maximum hours. — No employer shall employ any employee for a work week longer than 40 hours unless the employee receives overtime compensation for the employee's employment in excess of the hours above, specified at a rate not less than one and one-half times the regular rate at which the employee is employed.

Source: S.L. No. 2L-195-91 §5, 10/1/91

§3-106. Wage discrimination prohibited. — No employer shall discriminate in any way in the payment of wages as between persons of different races or religions or as between the sexes; PROVIDED that nothing herein shall prohibit a variation of rates of pay for employees engaged in the same classification of work based upon a difference in seniority, length of service, substantial difference in duties or services performed, difference in the shift or time of day worked, or hours of work.

Source: S.L. No. 2L-195-91 §6, 10/1/91

§3-107. Non-waiver. — No provision of this chapter may in any way be contravened, waived or set aside by private agreement.

Source: S.L. No. 2L-195-91 §7, 10/1/91

§3-108. Duty of Chief; employer's records. —

(1) The Chief shall enforce this chapter.

(2) Every employer shall keep in or about the premises wherein any employee is employed a record of the name, address, and occupation of each such employee, of the amount paid each pay period to each such employee, of the hours worked each day and each work week by each such employee, and of such other information and for such periods of time as the Chief may prescribe by regulation. The Chief or the Chief's authorized representative shall, for the purpose of examination, have access to and the right to copy from such records. Every employer shall furnish to the Chief or the Chief's authorized representative such information relating to the employment of workers and in such manner as the Chief may prescribe.

(3) Every employer shall post and keep posted such notices pertaining to the application of the law, as shall be prescribed by the Chief in conspicuous places in every establishment where any employee is employed so as to permit the employee to readily observe a copy on the way to or from the employee's place of employment.

(4) Whenever the employee is paid, the employer shall furnish to the employee a legibly printed, typewritten or handwritten notice showing the employee's:

- (a) Total hours worked;
- (b) Overtime hours;
- (c) Straight-time compensation;
- (d) Overtime compensation;
- (e) Other compensation;
- (f) Total gross compensation;
- (g) Amount and purpose of each deduction;
- (h) Total net compensation;
- (i) Date of payment; and

(j) Pay period covered.

(5) The Chief shall cause this chapter to be printed and copies thereof shall be furnished to interested persons upon request without charge.

(6) Every employer shall permit the Chief or the Chief's authorized representative to confer with and interrogate any employee of the employer at the place of employment and during working hours with respect to any matter cognizable under this chapter.

Source: S.L. No. 2L-195-91 §8, 10/1/91; S.L. No. 5L-14-00 §3-21, 10/1/00

§3-108A. Minimum wage review. — At least once every three years, the Chief shall conduct necessary and appropriate studies of the minimum wage rate as set forth in 19 PC 3-104 and when he considers an amendment to the existing rate to be appropriate, the Chief shall submit such recommendation to the Governor for review, approval, and further transmittal to the Legislature for its consideration, and that such amendment shall become effective only after it has been enacted into law. In developing recommended amendments to the minimum wage rate, the Chief shall give consideration to:

- (1) The minimum standard of living which is compatible with decency and health;
- (2) The general economic conditions of the state;
- (3) The compensation practices and conditions of appropriate labor markets;
- (4) The conditions of employment in Pohnpei; and
- (5) Such other matters as the Chief may deem appropriate.

Source: S.L. No. 2L-195-91 §8, 10/1/91; S.L. No. 5L-14-00 §3-21, 10/1/00; S.L. No. 7L-101-11 §2, 1/1/12

§3-109. Willful violations; penalty. — Any employer who willfully hinders or delays the Chief or the Chief's authorized representative in the performance of the Chief's duties in the enforcement of this chapter; or who willfully refuses to admit the Chief or the Chief's authorized representative to any place of employment; or who fails to keep or who falsifies any record required under §3-108(2), or who refuses to make such records accessible or to give information required for the proper enforcement of this chapter, upon demand, to the Chief or the Chief's authorized representative, shall be fined not more than \$500, or imprisoned not more than 30 days, or both such fine and imprisonment.

Source: S.L. No. 2L-195-91 §9, 10/1/91

§3-110. Disclosure of information. — Information secured by the Chief or the Chief's authorized representative from inspections under this chapter shall be held confidential and shall not be disclosed nor opened to any person except for the purpose of the administration and enforcement of this chapter.

Source: S.L. No. 2L-195-91 §10, 10/1/91

§3-111. Penalties; collection of unpaid wages; injunctions; etc. —

(1) *Criminal penalties.*

- (a) Any person divulging information in violation of §3-110; or
- (b) Any employer who willfully violates this chapter; or
- (c) Any employer or the employer's agent or any officer or agent of a corporation who discharges or in any other manner discriminates against any employee because the employee has made a complaint to the employee's employer, to the Chief, or to any other person that the employee has not been paid wages in accordance with this chapter, or has instituted or caused to be instituted any proceeding under or related to this chapter, or has testified or is about to testify in any such proceedings; or
- (d) Any employer or the employer's agent or any officer or agent of a corporation who pays or agrees to pay any employee compensation less than that which the employee is entitled to under this chapter, shall be guilty of a misdemeanor and, upon conviction thereof, shall be

punished by a fine of not more than \$500, or by imprisonment for a period not to exceed one year, or by both such fine and imprisonment.

(2) *Liability to employee.* Any employer who violates any provision of §§3-104 and 3-105 shall be liable to the employee or employees affected in the amount of their unpaid minimum wages or unpaid overtime compensation, and in an additional equal amount as liquidated damages.

(3) *Collection suits; attorney's fee; assignments; relief from costs.* Action to recover such liability may be maintained in any court of competent jurisdiction by any one or more employees for and in behalf of oneself or themselves and other employees similarly situated, or the employee or employees may designate an agent or representative to maintain action for and in behalf of all employees similarly situated. The court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, in the event the plaintiff or plaintiffs prevail, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action.

Source: S.L. No. 2L-195-91 §11, 10/1/91

CHAPTERS 4 & 5 [RESERVED]

CHAPTER 6 APPRENTICESHIP PROGRAM

Section

<p>6-101 Short title</p> <p>6-102 Public policy; establishment of the Pohnpei apprenticeship program</p> <p>6-103 Definitions</p> <p>6-104 Pre-apprenticeship program</p> <p>6-105 Apprenticeship program</p>	<p>6-106 Government agencies, government projects, and private sector and other employers</p> <p>6-107 Skills register</p> <p>6-108 Powers and duties; rules and regulations</p> <p>6-109 Apprenticeship program administrator</p> <p>6-110 Authorization for appropriation; administration</p>
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§6-101. Short title. — This chapter is known and may be cited as the “Pohnpei Apprenticeship Program Act of 1990.”

Source: S.L. No. 2L-175-91 §1, 2/6/91

§6-102. Public policy; establishment of the Pohnpei apprenticeship program. —

(1) The Legislature recognizes the need to provide apprentice training for the unemployed and unskilled residents of Pohnpei so that they may contribute to the positive growth and development of this state. As a step toward meeting this need, Pohnpei must provide vocational training and job opportunities to the state’s young adults. This will ensure that they acquire the necessary skills and knowledge to engage in gainful employment and to lead meaningful and productive lives.

(2) To achieve the foregoing aims, the Pohnpei apprenticeship program is hereby established to develop highly-skilled journeymen thoroughly and broadly qualified in their trades, to provide a source of key employees and supervisors, and to reduce the need for foreign workers in the trades and crafts. The apprenticeship program must be developed and administered in a manner that emphasizes training within Pohnpei whenever practical, and in a manner that gives special emphasis to encouraging and motivating those who successfully complete their apprenticeship to remain and work in Pohnpei. This program shall be administered in accordance with this chapter.

Source: S.L. No. 2L-175-91 §2, 2/6/91

§6-103. Definitions. — Unless the context clearly indicates otherwise, the following meanings shall apply to this chapter:

(1) “A/G” means the Chief of the Division of Personnel, Labor and Manpower Development, or his or her designee.

(2) “Apprenticeship program” means the program established by §§6-102 and 6-105.

(3) “DPL&MD” means the Pohnpei Division of Personnel, Labor and Manpower Development.

(4) “Government agencies” means all departments, offices, commissions, authorities, boards, and agencies of Pohnpei’s Executive Branch.

(5) “Government project” means any development or construction project that is funded by Pohnpei or supported with Pohnpei’s funds. This includes, without limitation, projects directly funded or financed by Pohnpei, projects wherein the monies are administered or managed by Pohnpei, and projects using monies loaned by Pohnpei.

(6) “Person” means any individual, firm, partnership, corporation, company, association, cooperative, body politic, municipality or public corporation, including any receiver, assignee, or other representative thereof.

(7) “Trade training plan” means a well organized, effectively coordinated work experience and related training plan as is necessary to accomplish the established objectives of apprenticeship training. The trade training plan for each trade or craft should include schedules of required work experience and related training including numbers of hours required for each year of apprenticeship.

(8) “Trades” and “crafts” mean those trades and crafts selected by the A/G for application in Pohnpei, with the approval of the Governor, from the list promulgated by the U.S. Department of Labor, Bureau of Apprenticeship and Training. Additional trades and crafts may be added from time to time by the A/G.

Source: S.L. No. 2L-175-91 §3, 2/6/91; S.L. No. 5L-14-00 §3-8, 10/1/00

§6-104. Pre-apprenticeship program. — The Division of Personnel, Labor and Manpower Development shall establish a pre-apprenticeship program to identify and select those who have high potential for benefiting from the apprenticeship training. They must meet minimum standards of education and demonstrate a real interest in the trades and crafts. The pre-apprenticeship program shall include an orientation to the apprenticeship program.

Source: S.L. No. 2L-175-91 §4, 2/6/91

§6-105. Apprenticeship program. — The Division of Personnel, Labor and Manpower Development shall design and establish an apprenticeship program. It shall include a comprehensive training program to equip apprentices to perform all duties in a recognized skilled trade or craft at the journeyman level. This training shall consist of practical experience supplemented by related instruction in basic theories and their application to the particular trade. The basic concepts and theories must be broad enough to provide the apprentice with the knowledge required to grasp new technology. Job experience and demonstrated performance in all elements of the craft supplemented by related instruction must be satisfactorily completed before an individual may be considered a qualified skilled worker or journeyman. The apprenticeship program shall include trade training plans.

Source: S.L. No. 2L-175-91 §5, 2/6/91

§6-106. Government agencies, government projects, and private sector and other employers. —

(1) At such time and under such terms and conditions as determined by the Division of Personnel, Labor and Manpower Development, and subject to the availability of necessary funds:

- (a) Any or all government agencies shall participate in the Apprenticeship Program; and
- (b) Any or all government projects shall include provisions for apprenticeship training in accordance with the Apprenticeship Program.

(2) Private sector employers and agencies of governments other than Pohnpei may participate in the Apprenticeship Program by entering apprenticeship training agreements with the Division of Personnel, Labor and Manpower Development.

Source: S.L. No. 2L-175-91 §6, 2/6/91

§6-107. Skills register. — The Division of Personnel, Labor and Manpower Development shall create and maintain a skills register to identify the residents of Pohnpei who possess the necessary skills and experience in the trades and crafts. This register shall be used for the development of trade training plans, to assist with career planning, to locate employment for qualified residents, and to locate skilled tradesmen for employers in the private and public sectors.

Source: S.L. No. 2L-175-91 §7, 2/6/91

§6-108. Powers and duties; rules and regulations. —

(1) The Division of Personnel, Labor and Manpower Development shall have the responsibility of promoting and administering the apprenticeship program and this chapter.

(2) The Division of Personnel, Labor and Manpower Development may promulgate, amend, and enforce appropriate rules and regulations to carry out the duties and powers set out herein. These rules and regulations shall be adopted pursuant to the procedures set forth in the Administrative Procedures Act, Title 8 Chapter 1, as amended or superseded, and, when approved by the Governor, shall have the

force and effect of law. Subject to this chapter, such rules and regulations may include, but are not limited to, provisions establishing:

- (a) The standards and procedures for selecting candidates for apprenticeship training;
- (b) The time, terms, and conditions for the participation of government agencies and government projects in the Apprenticeship Program;
- (c) The minimum standard and amount of instruction, training, and job experience needed to qualify as a journeyman;
- (d) The minimum standard and amount of education, proficiency, and knowledge needed to be an instructor or trainer in the Apprenticeship Program;
- (e) The curriculum and minimum standards for the trade training programs for each trade or craft;
- (f) The terms and conditions of employing an apprentice under the apprenticeship program including, but not limited to, wages, benefits, and working conditions; PROVIDED that such terms may include wages below the minimum wage that may be established by Pohnpei law;
- (g) The terms and conditions of apprenticeship training agreements with private sector employers and with agencies of governments other than Pohnpei;
- (h) The terms and conditions of the pre-apprenticeship program;
- (i) Procedures to withhold or forfeit state financial assistance for failing to comply with or participate in the apprenticeship program, which applies to both the employer and the apprentice; and
- (j) Procedures for reporting, reviewing, filing complaints, and for conducting hearings and appeals.

(3) The Division of Personnel, Labor and Manpower Development shall establish procedures to ensure compliance with this chapter and the rules and regulations promulgated hereunder, and in connection therewith the Division of Personnel, Labor and Manpower Development shall have the power to subpoena witnesses, records, books, and documents.

Source: S.L. No. 2L-175-91 §8, 2/6/91

§6-109. Apprenticeship program administrator. — There is hereby established within the Division of Personnel, Labor and Manpower Development an apprenticeship program administrator (“APA”) who shall be responsible for administering the Pohnpei Apprenticeship Program. Without limiting the generality of the foregoing, the APA shall advise and assist the governmental agencies and private sector employers in the development, organization, and administration of the apprenticeship program, including trade training plans and apprenticeship agreements. The APA shall work closely with employers and educational institutions in preparing training materials, planning training schedules, ensuring that adequate instruction is available, and in coordinating the work experience and related training phases of the program. The APA shall participate in the supervision of classroom instruction and shall be responsible for the maintenance of apprentice training standards, the maintenance and review of apprentice records, the administration of apprentice advancements and graduation, the submission of reports, and the enforcement of this chapter and the rules and regulations.

Source: S.L. No. 2L-175-91 §9, 2/6/91

§6-110. Authorization for appropriation; administration. —

(1) There is hereby authorized for appropriation from the general fund of Pohnpei and such funds of the Pohnpei Treasury into which Compact monies are deposited a sum or sums to be determined annually in the Comprehensive Budget Act, or so much thereof as may be necessary, for the uses and purposes described in this chapter. The sums authorized for appropriation shall be administered and expended by the Chief of the Division of Personnel, Labor and Manpower Development solely for the purposes stated in this chapter. The sums appropriated under the authorization of this chapter shall remain available until fully expended or until completion of the project, whichever shall occur first;

PROVIDED that the Governor submits a report on or no later than 30 days after the end of each quarter of each fiscal year on the status of this project.

(2) The Division of Personnel, Labor, and Manpower Development may apply for, receive, and expend such additional funds from other sources for purposes of this chapter, and such funds are hereby authorized for appropriation.

(3) The Governor shall report to the Pohnpei Legislature on or before October 15 of each year on all matters concerning the expenditure of the sum or sums herein authorized for appropriation.

Source: S.L. No. 2L-175-91 §10, 2/6/91; S.L. No. 5L-14-00 §3-8, 10/1/00

CHAPTERS 7 – 9
[RESERVED]

CHAPTER 10 LABOR FINANCES

Section

10-101 Micronesian Trades Apprenticeship Program: authorization for appropriation; administration

§10-101. Micronesian Trades Apprenticeship Program: authorization for appropriation; administration. —

(1) There is hereby authorized for appropriation from the general fund of Pohnpei or such fund of the Treasury into which Compact of Free Association capital account monies are deposited a sum or sums to be determined annually in the Comprehensive Budget Act for the purpose of defraying or supplementing the costs of Pohnpei's participation in the Micronesian Trades Apprenticeship Program.

(2) The sum herein authorized for appropriation shall be administered and expended by the Governor solely for the purpose stated in Subsection (1) of this section. The Governor shall report to the Legislature on or before October 15 each year on all matters concerning the expenditure of the sum authorized for appropriation by this section. Any balance of a sum appropriated under the authorization of this section for a fiscal year not expended or obligated for expenditure on September 30 each fiscal year shall revert to such fund in the Treasury from which it was appropriated.

Source: S.L. No. 1L-109-86 §§1 & 2, 10/1/86; S.L. No. 1L-142-87 §§1 & 2, 7/14/87

LABOR

(Next page is Title 20 divider)