



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
OFFICE OF THE SECRETARY

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TO: 16th Legislature

FROM: Cinta M. Kaipat, Deputy Secretary of Labor /*cmk*

DATE: May 15, 2009

SUBJECT: Interim Progress Report #9 on the Implementation of PL 15-108

This is an interim report to keep you posted on the progress we are making at the Labor Department.

Effects of the Federalization Law. The budget bill for FY 2009 requested information by May 2009 about certain subject matters. That information is provided here.

1. An assessment of the effects of US Public Law 110-229 on the functions of the Department of Labor: PL 110-229 will have very limited effect on the functions of the Labor Department unless the federal government wins the current lawsuit brought by the Commonwealth. A further report on this will be issued by the Department after the court rules.
2. A detailed report of any anticipated and executed changes in the functioning of the Department: One principal change in the functioning of the Department will be the decrease in new foreign workers entering the Commonwealth. It is anticipated that very few foreign workers will qualify under U.S. visa requirements, perhaps fewer than 200 per year. Another change will be the transfer to the United States of the processing of applications to enter the Commonwealth. However, these applications have fallen off very substantially in 2008 because of the economic conditions in the Commonwealth.
3. An assessment of the manpower and financial needs of the Department starting June 1, 2009: One uncertainty with respect to manpower needs is whether the U.S. Executive Branch agencies and the Congress will provide an additional extension of time, beyond the first 180-day extension now in place. In most respects, the manpower needs of the Department will remain the same or increase.

4. Information adequate to clearly show trends in caseloads, hearing, and claims: The trend in the number of labor cases filed is downward. This is due primarily to the closure of the garment factories. Only 253 cases were filed in 2008.

The trend in the number of hearings is also downward. This is due primarily to the success of the Department in mediating cases. Of the 253 cases filed, 147 (or 58%) were settled.

The trend in claims is toward unpaid wages and away from claims of no job provided, poor working conditions, and lack of effective supervision. During the period 2006-2007, only four claims involved injuries on the job and only two claims alleged unwanted physical contact. During 2008, there were no claims that involved either injuries on the job or unwanted physical contact.

The number of foreign national workers legally present: As of December 31, 2008, the Department had recorded 22,917 permit transactions during 2008 in the 2406K (foreign worker) immigration category. The Department counts only its administrative operations; it does not conduct any census of foreign workers actually present in the Commonwealth.¹ The number of permit transactions is usually greater than the number of workers present in the Commonwealth at any given point in a typical year because some permit actions are contract amendments or extensions; some permit holders elect to leave the Commonwealth during the year for personal or employment reasons; some employers implement reductions in force and cancel their “issued” permits for some of their workers; some employers close their businesses entirely and their “issued” permits are cancelled by the Department; and other similar reasons. This year, there are also usually about 40 additional foreign workers who do not hold permits but who hold TWAs and about 70 foreign workers who do not hold permits but hold memoranda authorizing them to seek work while a labor case is pending.

5. The estimated number of “overstaying” foreign national workers in the CNMI during 2007, 2008 and 2009 to date: The Department’s overstayer project identified all of the overstaying workers in the CNMI who entered during the years 2003 through 2007 and in the first three quarters of 2008. The 2008 fourth quarter list will be issued shortly. The number certified to the Immigration Division as of December 31, 2008 was 600. The Department will report further on the 2008 total when that work is completed.

¹ The taking of the census with respect to all categories of persons present in the Commonwealth, including foreign workers, is the responsibility of the U.S. Census Bureau.

6. The number of residents enrolled with Employment services during 2007, 2008 and 2009 to date:

U.S. citizens and U.S. permanent residents enrolled with Empl. Serv.	2007	2008	1 st quarter 2009
	2,312	2,087	771

7. The number of residents successfully placed directly by Employment services during 2007, 2008 and 2009 to date:

U.S. citizens and U.S. permanent residents placed by Empl. Serv.	2007	2008	1 st quarter 2009
	477	233	89

A significant segment of unemployed persons who would, in prior years, have relied solely on Employment Services (and thus be counted in the numbers provided in the table above) are now able to find their own jobs using the Department's interactive website that lists available jobs. The Department currently has underway an upgrade for its website design that will provide these statistics.

8. The number of claims and their outcomes arising from perceived or real violations by private employers of PL 15-108 §§4521- 4529 since the law's enactment: There were 25 employment preference claims filed in 2007 and 6 filed in 2008. There were 21 minimum wage claims filed in 2007 and 15 in 2008. Many of the claims from U.S. citizens and U.S. permanent residents under PL 15-108 to date have been resolved by informal mediation and discussion.

Work on Rota and Tinian: We sent hearing officers to Rota and Tinian last week to clean up all outstanding labor cases and agency cases on those islands. We completed 25 cases on Rota and 26 cases on Tinian. Unfortunately, we still have nine cases outstanding on Rota because, for some reason, these cases were not on the final list prepared by the Rota Labor Office. So we will have to go back to Rota again to clean up these remaining cases. Both the Tinian and Rota Labor Offices provided very good assistance to the hearing officers.

Public Education Outreach. Our senior management team went to Tinian this week at the invitation of the Tinian Chamber of Commerce. We had a general information session and answered questions about the impact of federalization and the U.S. policies. We also had our management team meet with the Labor Office about their particular problems.

Integration of Information Technology. We dispatched our information technology specialist to Rota this week (and to Tinian next week) to complete the integration of their computers into our network in Saipan. When we finish this process, Rota and Tinian will be online with Saipan and will be able to do all their own processing.

Internet Videoconferencing for Rota and Tinian Proceedings: Severe budget restrictions necessitate our need to continue exploring alternative means of adjudicating cases in Tinian and Rota on a regular, timely basis. I have initiated discussions with Northern Marianas College to enter into an MOU that would allow the Department of Labor regular monthly access to NMC's videoconferencing facilities to conduct hearings and staff meetings. As we stated in our last report, we have started testing the free Skype service for hearings, but we are having some bandwidth issues. We hope to have some non-travel capability operational soon.

Progress in U.S. Citizen Hiring: We are proposing some small changes in our regulations to facilitate the placement of more U.S. citizen workers. We would cut back some of the exemptions to statutory requirements and make the job vacancy announcement requirement apply to all jobs. When our original regulations were written, it cost a considerable sum to advertise a job in the newspapers. When our interactive website went up in February 2008, this cost was reduced to zero. So, Employment Services sees no reason why any job should not be posted so that U.S. citizen applicants can see all jobs of any kind that may be available.

Progress on Cases: The Director of Labor completed the investigation and prosecution of over 100 agency cases in 2008. In addition, more than 200 permits were revoked as a result of the Department's investigations. The Department's investigators have only three 2008 agency cases remaining open. The Administrative Hearing Office has completed the hearings in all 2008 denial cases, all 2008 transfer objection cases, and all but 11 of the entire roster of labor cases filed in 2008. Most of these delays in hearings are by reason of continuances requested by lawyers. We expect to have all 2008 labor and agency cases completed and closed by June 1, 2009.

Bonding Claims: The Hearing Office heard 60 bonding claims last week and has another 45 claims on the schedule for hearing this week. We published 183 labor cases from 2008 that have been completed and asked the workers to register if they had not been paid. Only nine of the 183 presented claims. We also published labor cases from 2007 and 2006 so that workers could present their bonding claims. We are going to work our way through the backlog as quickly as we can. Going forward, we believe that the number of bonding claims will continue to be small because, during this Administration, the process has been much more effective than in the past. The ombudsman at one time estimated that over \$6 million in back wages was due foreign workers, and Wendy Doromal thinks the total is even higher. Both the ombudsman's estimate and Ms. Doromal's estimate are wrong. The ombudsman counted non-wage awards (such as liquidated damages) which are never covered by bonds. These awards were never earned by workers; they are, in essence, fines for employer practices. In

most states, these fines would go to the state, not to the worker. Ms. Doromal actually has no basis at all for her estimates. Our current estimate is that the Commonwealth bonding and enforcement was sufficiently effective that foreign workers collectively (the entire group taken together) lost less than \$1 per month to employer failures to pay wages. That total is extraordinarily far below the experience in the U.S. and other countries. A recent survey in the U.S. found that 25% to 50% of guest workers had back wages claims outstanding.

Complaints: Ms. Doromal released a report in December; however, she circulated her report only in Washington and did not give a copy to the Labor Department. When we received a copy from a Congressional source, we prepared a detailed response. Some of Ms. Doromal's assertions are based on very old information from years ago; some are simply wrong; and others are based on a partial and incorrect interpretation of the facts. A copy of our response is attached. For those of you who are interested, look particularly at the last few pages. Ms. Doromal finds the Commonwealth's guest worker system "un-American," yet, on every performance measure, the Commonwealth's system is better, more generous, and more progressive than the guest worker system in her home state of Florida or any other state.

Coordination with the Legislature: The Department would like to work closely with all legislators to deal quickly with any problems that constituents may have with our processes. Send me an e-mail at depsec2@gmail.com or call me at 236-0908, and I will direct it to the proper person and follow up personally to be sure things get done. If you need information or have questions, please let me know. I am here to work with you as efficiently as I can.

Thank you.

/cmk

Attachment

cc: The Honorable Benigno R. Fitial, Governor
The Honorable Eloy S. Inos, Lt. Governor
Gil San Nicolas, Secretary of Labor
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