

0017 GAR - LABOR RELATIONS
DIV. 1 - DEPARTMENT OF LABOR

Article 2
Fair Chances Hiring Process

- §6201. Definitions.
- §6202. Fair Chances Hiring Process.
- §6203. Signage Posting Compliance.
- §6204. Inspections & Investigations.
- §6205. Penalties.
- §6206. Hearings.
- §6207. Advisory Opinions.
- §6208. Public Posting of Repeat Offenders.
- §6209. Petitions.
- §6210. Severability.
- §6211. Interpretation.

§6201. Definitions – These definitions shall be used for the purposes of administering the Fair Chances Hiring Process.

- (a) ***Applicant*** means any person considered for, or who requests to be considered for, employment by an employer; or, any employee considered for, or who requests to be considered for, another employment position, by the employer.
- (b) ***Arrest*** means being apprehended, detained, taken into custody, held for investigation, or restrained by a law enforcement agency due to an accusation or suspicion that a person committed a crime.
- (c) ***Conditional offer*** of employment means an oral or written offer by an employer to employ an individual in a job, or placement in a staffing agency's staffing pool, that is conditioned solely on the employer's evaluation of the individual's criminal history.
- (d) ***Court Clearance*** means a document from a state, territorial, federal or foreign government which identifies information regarding an individual, concerning a court case that has not been dismissed or expunged.

(e) ***Criminal history*** means any conviction, plea of nolo contendere, or deferred adjudication arising from felony criminal accusation, or any misdemeanor criminal accusation, made under local or federal law, or a comparable law of a state of the United States. This does not include dismissed, expunged, or sealed cases.

(f) ***Employer*** means any person, company, corporation, general contractor, firm, labor organization, or association, including the government of Guam, that employs more than fifteen (15) employees in Guam.

(g) ***Employment*** means any occupation, vocation, job, or work for pay, including temporary or seasonal work, contracted work, contingent work, and work through the services of a temporary or other employment agency; or, any form of vocational or educational training with pay, where the physical location of the employment is in whole or in substantial part, within Guam.

(h) ***Fair Employment Practice Office*** - shall mean the Fair Employment Practice Division (FEPD) of the Guam Department of Labor, commonly referred to as FEPO.

(i) ***Inquiry*** means any direct or indirect conduct intended to gather criminal history information from or about the applicant, candidate, or employee, using any method, including application forms, interviews, and criminal history or background checks.

(j) ***Interview*** means any direct contact by the employer with the applicant in person, or by telephone or video-teleconferencing, to discuss the employment being sought or the applicant's qualifications.

(k) ***Police Clearance*** means a document from a state, territorial, federal or foreign government which identifies information, regarding an individual concerning an arrest which resulted in a filed criminal case.

(l) ***Reasonable*** means applying judgement expected of a typical person exercising ordinary prudence which is considered to be rational, appropriate, ordinary, or usual in the circumstances

§6202. Fair Chances Hiring Process (a) An employer shall not request or require a court clearance from an applicant prior to making a conditional offer of employment to the applicant.

(1) Complaints: Persons wishing to file a complaint for a violation of the Fair Chances Hiring Process may file such complaint with the Department of Labor Fair Employment Practice Office.

(A) Complaints and statements must be filled out on a Departmental complaint form.

(B) Complainant shall provide valid photo identification with their complaint.

(C) FEPD may assist complainant with obtaining information from the employer, as allowed in the statute.

(2) Investigations: An investigation may be triggered as a result of a complaint, fact finding process from a separate case, or the result of a formal inspection.

(A) When requesting information from an employer, the Department may require that such information be submitted within 15 calendar days.

(B) An employer may request an extension of this 15 day deadline. An extension must be approved in writing by the Department and shall not exceed 30 calendar days after the initial 15 day period.

(C) FEPD Investigators may interview employees at a jobsite and may also inspect employer records at the employer's establishment. Failure to allow reasonable access to FEPD investigators constitutes a violation and may subject an employer to civil penalties pursuant to 22GCA§6104(b).

(D) FEPD investigators may refer a matter or coordinate with other local or federal agencies when appropriate.

(3) Findings: FEPD investigators shall consider documents, statements and other pertinent information during fact finding investigations and formulate a report to the Director.

(A) The report shall contain a synopsis of the situation and recommendation to the Fair Employment Practice Officer on action.

(B) Findings shall take into consideration information gained during fact finding, exemptions in the statute and/or statements of denial issued by the employer.

(C) Fair Employment Practice Officer shall approve the synopsis prior to submission to the Director.

(4) Withdrawal of Conditional Offer: Should a conditional offer be proffered to an applicant, written notice must be given to the applicant no later than 15 calendar days, after the applicant provides Police and/or Court clearances, detailing the result of the employer's decision on whether the applicant has been hired or not.

(A) Following the extension of a conditional offer of employment, an employer may only withdraw the conditional offer to an applicant for a legitimate business reason. The employer's determination of a legitimate business reason must also be reasonable in light of the following factors:

(i) the specific duties and responsibilities necessarily related to the employment sought or held by the person;

(ii) the bearing, if any, that the pending criminal case or criminal history will have on the applicant's fitness or ability to perform one or more such duties and responsibilities;

(iii) the time which has elapsed since the occurrence of the pending criminal case or criminal history;

(iv) the age of the person at the time of the pending criminal case or criminal history;

(v) the frequency and severity of the pending criminal case or criminal history and;

(vi) any information produced by the person, or produced on his/her behalf, in regard to his/her rehabilitation and good conduct since the occurrence of the pending criminal case or criminal history.

(B) An employer may lawfully withdraw a conditional offer if the applicant fails to submit the required court/police clearance within 10 calendar days.

(C) Employer may request additional information from an applicant upon receipt of court/police clearances.

(D) An applicant has 90 days to file a complaint with the Department if they feel that the employer's proffered job offer was rescinded unjustly.

(E) Employer shall provide an applicant with a stamped received copy of an applicant's court clearance or a written notice acknowledging receipt of the clearance.

(F) Should the Department be unable to conclusively determine the day the clearances were submitted to the employer, the date of the applicant's clearances shall be used as the 1st day of the 90 day complaint period.

(G) Electronic transmittal may be considered a valid means of submittal of clearances to the employer and communication of the status of the conditional job offer to the applicant.

(b) An employer may not make reference to any requirement for Police and/or Court Clearances in a job advertisement, job posting, interview, or by any other means, prior to extending a conditional offer of employment, unless the specific job is exempt from the Fair Chances Hiring Process Act as stated in 22GCA§6102(e). Such reference shall constitute a violation of the Act.

§6203. Signage Posting Compliance.

(a) All employers shall have a visible FEPD posting present in their place of business. Any employer who fails to meet this requirement may be found in violation of the rules and may be subject to civil penalties at 22GCA§6104(b).

(1) Posting must be in a format designed and approved by FEPD.

(2) Posting may not be smaller than an 8 ½" x 11" document.

(3) Posting must be placed in a conspicuous location where it may be viewed by a majority of the company's employees, including but not limited to, employee break-rooms, Human Resource offices, jobsites, or other places where employees congregate.

§6204. Inspections & Investigations The staff and management personnel of the FEPD division may conduct site inspections and investigations as permitted by 22GCA Chapter 1 §1108.

- (a) Inspections may be unannounced and at random.
- (b) Inspections may be performed for purposes of monitoring compliance with required signage postings, or other fact-finding purposes.
- (c) Inspections may be performed in conjunction with other divisions of the department, local government and/or federal government agencies should it be determined necessary.

§6205. Penalties.

(a) In the event of a violation of this section of the Rules, the employer shall be served with a notice of violation, commonly referred to as a “citation”, which details the violation and the level of fine to be imposed. The citation shall be signed and approved by the Fair Employment Practice Officer.

(1) The “citation” shall be prepared on an official Departmental form approved by the Director of Labor.

(2) A violation of the rules may subject the employer to civil penalties. Penalties may be determined using factors such as: size of the company (total number of employees), FEPD penalty scale, and circumstances. Fines shall not exceed what is allowable pursuant to 22GCA§6104(b).

(3) Initial Penalty Scale chart shall be approved by the Director of Labor, and may be subsequently amended as deemed necessary by the Director of Labor.

(4) Penalties enumerated on the FEPD penalty scale shall be used as a general guide to determine assessed penalty on a citation. The Department may elect to exercise discretion and may deviate on a case by case basis.

(5) To be consistent with the statutory definition of employer, the monetary cap for employers who employ (16) Sixteen to (30) Thirty employees may be subject to a fine of not more than (\$1,000) One Thousand Dollars per violation.

(b) Non-Monetary Penalties

(1) The civil penalty on a citation may be conditioned by completion of certain required trainings. An employer may be required to attend and provide proof of completion of training activities which may consist of, but are not limited to Department trainings, One-on-one employer trainings, or designated Conferences. All external costs of training activities shall be borne by the employer.

(2) Re-Training – The employer may be required to re-take previously completed trainings at the discretion of the Department.

(3) Verification of compliance – Employer must provide verifiable documentation showing that required training has been completed.

(4) Penalties for non-compliance - If an employer does not complete required training within the specified period, then the non-monetary penalty shall be deferred and the maximum penalty allowable by statute shall be immediately due.

(c) The employer shall have the right to an administrative hearing conducted by the Director of Labor. The offender may either pay the fine, or appeal in writing, within fifteen (15) calendar days from the receipt of the notice of violation, to the Director of Labor, requesting a hearing to present facts and law in defense of the offender. The offender shall have the right to representation of counsel during the hearing and the rules of evidence shall not apply.

(d) Unpaid Penalties – The Department may request action from licensing authorities, as authorized in statute.

§6206. Appeals Hearings.

(a) Upon the filing of a timely request of an appeal of a violation, the Director of Labor shall hold a hearing of the facts, and shall give the employer the opportunity to be heard and to provide testimony in their defense or to present rebuttal evidence. Such hearing shall take place at a time and in a place to be designated by the Director of Labor.

(b) The Director may opt to convene a panel to hear testimony. However, the final decision rests with the Director of Labor as the Hearing Officer.

§6207. Advisory Opinions:

(a) The Department may issue advisory opinions upon request. Requests for advisory opinions must be in writing and clearly state the issue with specificity. The Department may request additional information as needed, but at a minimum, the request must state the name and address of the requestor.

(1) In general, advisory opinions should be completed within 60 days, however should external legal opinions be necessary, the Department is not obligated to any specific time period.

(2) The Director of Labor may, at his/her discretion, decline to address a request for advisory opinion. Reasons for refusal of an advisory opinion may include, but are not limited to the following:

(A) Frivolous requests.

(B) Situations that may require an Attorney General opinion.

(C) Repetitive or redundant requests which have already been addressed.

(D) Requests which are already clear in plain reading of the statute.

(E) Requests that have no bearing to the statute or rules.

§6208. Public Posting of Repeat Offenders: (a) Employers who have been cited for more than one violation of an Unlawful Withdrawal of a Conditional Offer, have their information posted on the Department's website for a period of seven years, in compliance with the statute at 22GCA§6105(b).

- (1) No Appeal – Should the employer choose not to appeal their citation; or should the employer fail to submit a timely appeal of their issued citation within the given 15 day appeal period, the employer's information shall be posted on the Department's website the first day after the deadline has past.
 - (2) Appeal – If a citation is appealed, the employer's information shall be posted on the Department's website after the case has been heard and a decision / Order has been rendered by the Hearing Officer.
- (A) Posting of the employer's information shall remain on the Department's website for a period of seven (7) years.

§6209. Petitions. (a) Any individual shall have the right to submit to the Director of Labor a petition for the establishment or modification of rules and regulations on subjects under the Authority of the Director, and shall have the right to request advisory rulings, consultations or declaratory rulings in relation to existing regulations. Such petitions and requests shall be submitted in writing and on a form provided by the Department of Labor, and shall be acted upon within 60 days by the Director. The Director shall respond to all petitions submitted under this Title in writing.

§6210. Severability. (a) If any part of these Regulations is for any reason declared to be invalid by a court of law, the remaining regulations under this Title shall not be affected thereby, and shall remain valid and enforceable.

§6211. Interpretation. (a) The provisions of these Regulations shall be liberally interpreted to ensure the compliance of employers in Guam with the objectives and purposes of the Fair Chances Hiring Process Act.