



**BREAKFAST BRIEFING DISCUSSION**  
*Dusit Thani Guam*  
*July 13, 2022*

**Lourdes A. Leon Guerrero**  
*Governor*

**Joshua F. Tenorio**  
*Lieutenant Governor*



**David Dell'Isola**  
*Director*

**Gerard Toves**  
*Deputy Director*

Wage and Hour Division  
414 West Soledad Avenue  
Suite 401, GCIC Building  
Hagatña, GU 96910

# MEET THE TEAM



**GREG  
MASSEY**

ALPCD  
Administrator  
&  
WHD Acting  
Administrator



**DORINDA  
MENO**

ALPCD  
Employment  
Development  
Supervisor



**THEA  
JUANEZA**

WHD  
Labor Law  
Enforcement  
Specialist III

# DIVISIONS

- DOL Administration
  - Guam Registered Apprenticeship Program (GRAP)
- Alien Labor Processing and Certification Division (ALPCD)
- American Job Center (AJC)
  - Disabled Veterans Outreach Program (DVOP)
  - Division of Workforce Development and Training (WDT)
  - Guam Employment Services (GES)
  - Senior Community Service Employment Program (SCSEP)
  - Apprenticeship State Agency
- Bureau of Labor Statistics (BLS)
- Division of Occupational Safety and Health (DOSH)
- Fair Employment Practice Office (FEPO)
- Occupational Safety and Health Administration Consultation (OSHA On-Site Consultation)
- Wage and Hour Division (WHD)
- Worker's Compensation Commission (WCC)
- Pandemic Unemployment Assistance Program (PUA)

# OVERVIEW

- Guam H-2B Program – General Overview
- Guam Military Build Up – Manpower Overview
- Wage & Hour Compliance Consultations
- Wage & Hour Audits
- Record Keeping Requirements
- Child Labor Laws
- Leave for Victims of Violence
- Right to Privacy Act
- Nana yan Patgon Act “The Mother and Child Act”
- Proposed Pregnant Workers Fairness Act

# OUR MISSION

## ALIEN LABOR PROCESSING & CERTIFICATION DIVISION

To oversee the employment of H-2B workers in Guam and monitor employers of such workers. To review, receive, process and adjudicate applications for Temporary Alien Labor Certifications for Guam.



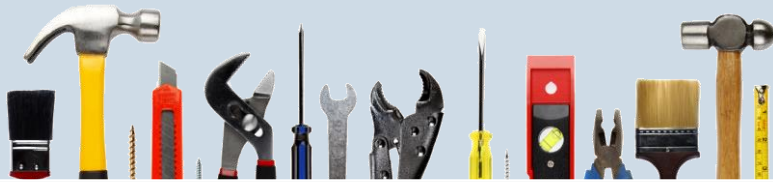
# GUAM H-2B PROGRAM OVERVIEW

## WHAT ARE H-2B WORKERS?

Foreign nationals entering the U.S. to perform temporary non-agricultural work.

Foreign nationals whom have no intention of abandoning their citizenship.

Approvals may be for up to 1 year, and may be extended yearly by USCIS up to 3 years.



## WHAT ARE THEY USED FOR?

H-2B workers are primarily utilized in the construction industry, but may be used for any non-agricultural occupation.



# GUAM H-2B PROGRAM OVERVIEW

## WHAT ARE THE MOST COMMON OCCUPATIONS?

Carpenter

Cement Mason

Reinforcing Metalworker

Electrician

Heavy Equipment Operator



## WHAT COUNTRIES DO THEY COME FROM?

99% are from the Philippines, but we have workers from Korea, New Zealand and Australia.



# GUAM H-2B PROGRAM OVERVIEW

## KEY CRITERIA FOR APPROVALS

Guam's H-2B program is unique in nation. Requires Temporary Labor Certification from Governor of Guam; approval from USCIS; and issuance of visa from a U.S. Embassy.

Regular H-2B petitions must show a temporary need.

Temporary Need is exempt via a NDAA exemption for contracts which are directly connected, associated, supporting or which were adversely affected by the military realignment.

“Outside/inside the fence” myth- although military project are easier to obtain approvals for, projects outside the fence are still able to be approved using the ‘supporting’ or ‘adverse affect’ criteria.





# LABOR MARKET TESTING



When do I start recruitment?

- 90-120 days

Testing period

- 30 days

Required job advertisements

- 3 consecutive business days
- Guam Daily Post

Recruitment reports

Tips



# GUAM H-2B PROGRAM OVERVIEW

## WHY IS H-2B IMPORTANT?

During the military build up, the vast majority of skilled U.S. construction workers are already employed and supplemental workers are needed for virtually any construction project for local infrastructure, housing and commercial facilities.



# GUAM H-2B PROGRAM OVERVIEW



## KEY H-2B REGULATIONS

An H-2B may only work for the employer who petitioned for their entry to Guam

H-2B workers may only work on job sites approved in their labor certification

H-2B workers may only work in the occupation for which they were imported

H-2B workers and similarly employed workers must be paid at least the H-2B prevailing wage

Additional laws and regulations are contained in 22 GCA Chapter 7 and 17 GAR Chapter 7

Penalties may be assessed for any violation of the H-2B rules

# STATISTICS AND FORECAST

## Current H-2B Workers on Guam:

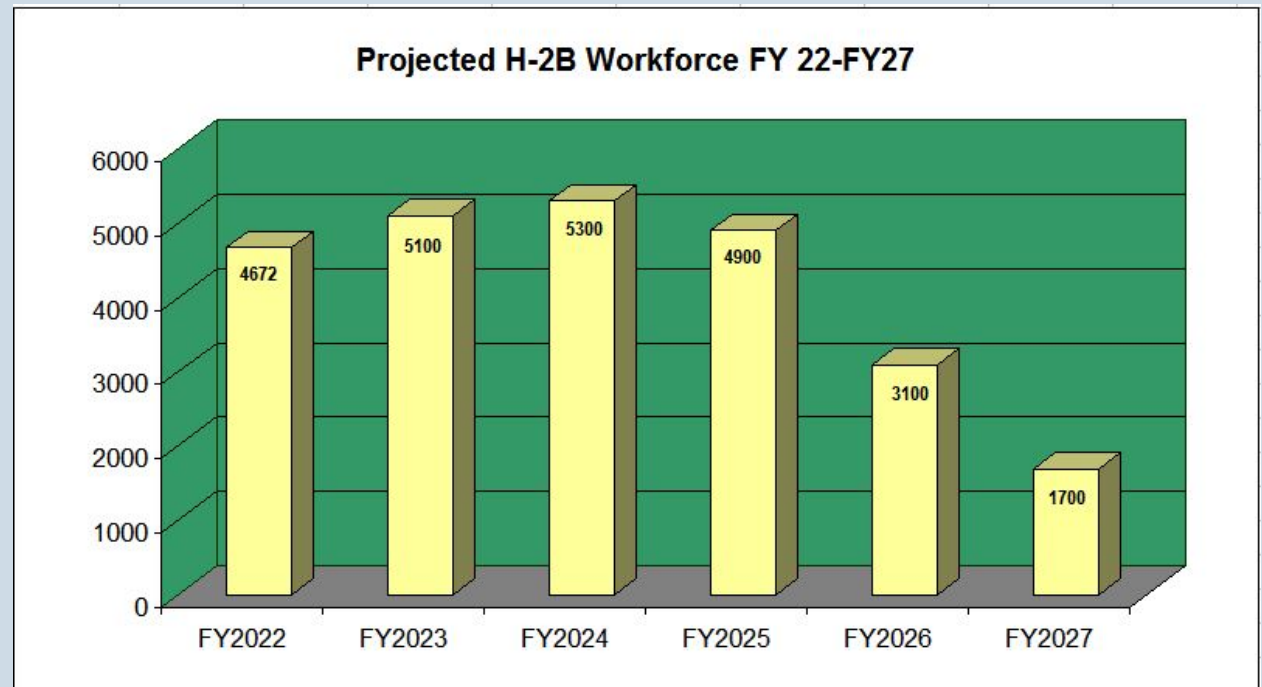
**2,902**

as of 07/12/2022

Highest number since 1995

## **CURRENT FORECAST:**

Stats subject to change





**Questions**

**Comments**

# OUR MISSION

## WAGE & HOUR DIVISION

To administer and enforce the Fair Labor Standards Act and Child Labor Laws.  
To protect workers against unpaid hours worked whether they are alien workers, U.S. citizens, persons with disability, trainees or minors.



# CONSULTATIONS

## COMPLIANCE



Employer is forthcoming with existing issues and/or concerns

No penalty/fee will be imposed as a result of the consultation

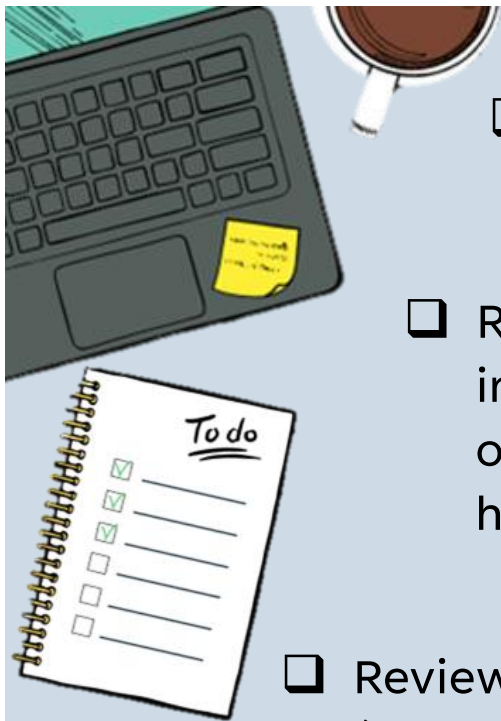



Any backwages (if found) shall be payable

2<sup>nd</sup> offense considered willful violation; shall include penalties/fees

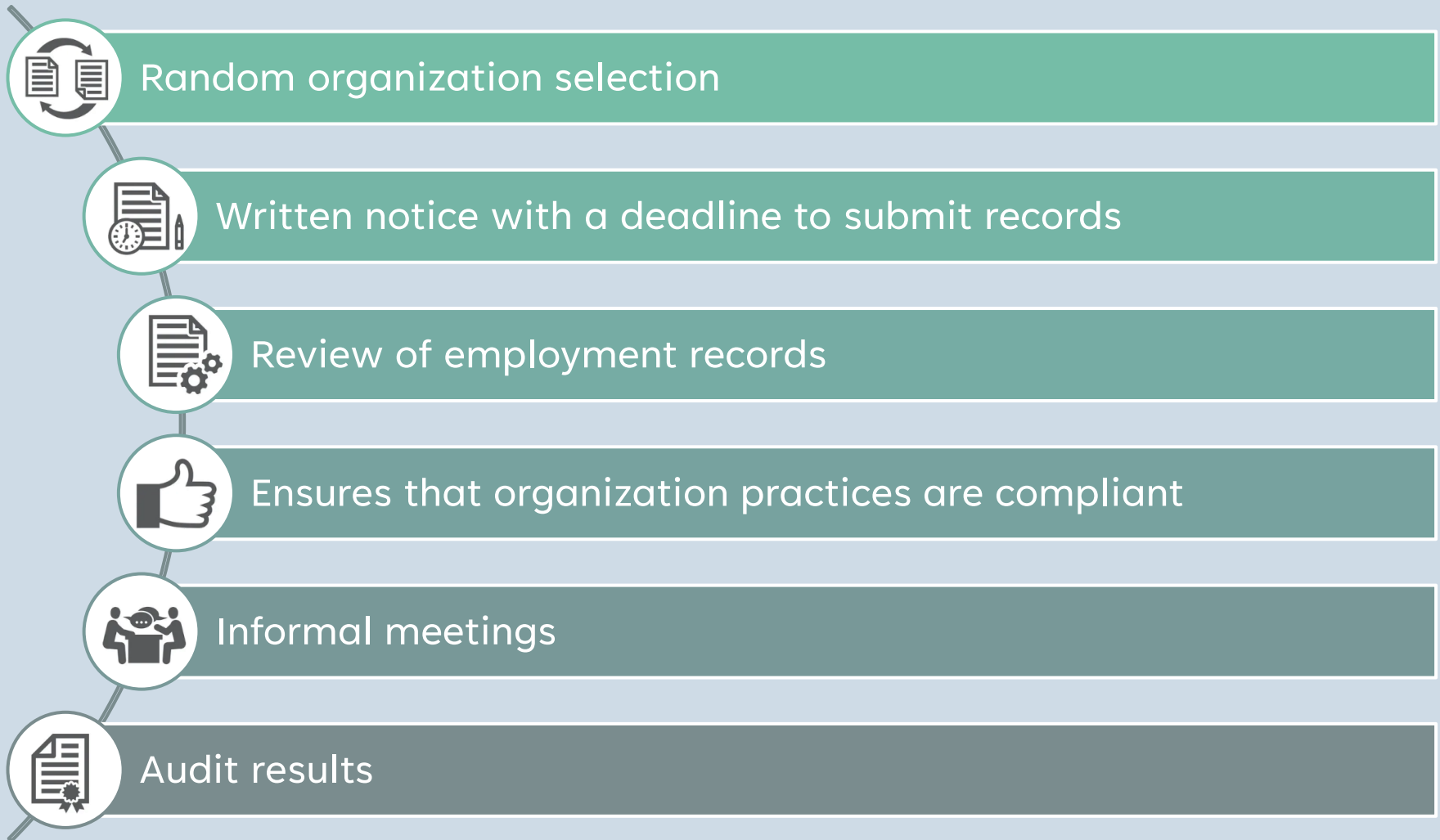


# CONSULTATIONS

- 
- Review job descriptions and employee classifications for exempt and non-exempt employees
  - Review existing policies or develop new policies that include procedures for managing work hours, working off-the-clock, whether meals and breaks are paid, how deductions are handled, etc.
  - Review what is compensable time (training, meetings, volunteering, travel time, etc.)
  - Provide insight into industry best practices and help establish effective procedures and policies
- 



# WHD AUDITS



# RECORD KEEPING

How long am I required to keep employee records for?

## 22 GCA FLSA, Chapter 3, §3110 (a).

Every employer **shall keep in or about the premises where any employee is employed**, a record of the name, address, social security number or, in the case of alien workers, the passport number 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 workweek by each such employee, and of such other information, and **for such periods of time as the Commissioner, may by regulation prescribe.**



# RECORD KEEPING

How long am I required to keep employee records for?

## 17 GAR Labor Relations, Chapter 4, §4104. Employers' Records.

(a) Every employer **shall maintain and keep records** in English containing the following information and data on each employee to whom 22 GCA §3105 and §3107, as amended apply:

- (1) Name in full.
- (2) Home address.
- (3) Date of birth.
- (4) Occupation.
- (5) Rate of pay and length of pay period.
- (6) Hours worked each workday and total hours worked each workweek.
- (7) Total daily or weekly straight-time earnings or wages.
- (8) Total weekly overtime compensation.
- (9) Total additions to or deductions from wages paid each pay period.
- (10) Total wages paid each pay period, date of payment and pay period covered.

(b) Such records shall be preserved by the employer for a period of at least **six (6) years**.



# YOUTH EMPLOYMENT



# RESTRICTIONS

30 minute  
**MEAL PERIOD**



for every 4 hours worked



No work during  
**school hours**



No work in  
**HAZARDOUS**  
**ENVIRONMENTS**



# WORK CONDITIONS

## 14 - 15 YEARS OLD

“APPLICATION FOR A MINOR’S CERTIFICATE”



The form is titled "Certificate TO EMPLOY A MINOR" and is issued by the Department of Labor. It includes fields for the minor's name (JOSEPH CRUZ), date of issuance, date of expiration, address, gender, date of birth, place of birth, and document(s) submitted for proof of age (Guam ID, U.S. Passport, Birth Certificate, or Other). It also includes fields for occupation, hourly rate, name of employer, address of employer, industry, and employer's contact number. The form is signed by Greg S. Massey, Acting WHD Administrator, and David M. Dell'Isola, Director of Labor. It is issued pursuant to Child Labor Law, 190CA 31104. To verify authenticity, contact the Wage and Hour Division at Tel. (671) 326-4501 / Email: WAGE.SUBSTANCES@GUM.GOV. The form is provided in three versions: ORIGINAL - Employer, GREEN - Office Copy, and PINK/PURPLE - Employer's Copy.

To be completed by: a parent/legal guardian, employer, and the minor

## 16 - 17 YEARS OLD

“APPLICATION FOR A MINOR’S CERTIFICATE” is NOT required



# SCHOOL DAYS

## 14 - 15 YEARS OLD

No work before 7:00 AM

No work after 7:00 PM

May **not** work more than three (3) hours per day

May **not** work more than eighteen (18) hours per week

School **and** work hours may not exceed nine (9) hours in a day



8:30am – 3:30pm = 7 hours  
Work availability = 2 hours

## 16 - 17 YEARS OLD

No work before 6:00 AM

No work after 10:00 PM

May **not** work more than eight (8) hours per day

May **not** work more than forty (40) hours per week



# NON-SCHOOL DAYS

## 14 - 15 YEARS OLD

June 1<sup>st</sup> – Labor Day

No work before 7:00 AM

No work after 9:00 PM

## 16 - 17 YEARS OLD

Friday-Saturday & Holidays

No work before 6:00 AM

No work after 12:00 AM



May **not** work more than eight (8) hours per day

May **not** work more than forty (40) hours per week





# PENALTIES



## § 1119. Penalty

Any person, whether a parent or guardian, employer or otherwise, and any firm or corporation, who permits a minor to work in violation of this chapter shall be guilty of a...

misdemeanor

punishable by a fine not exceeding \$1,000

or by imprisonment not exceeding 1 year

or by both fine and imprisonment

In the event that the court finds the violation to be flagrant and willful

the fine may be increased to up to \$10,000



# VICTIMS OF VIOLENCE

## GPD: 1,030 family violence reports in 2020

OYAOL NGIRAIKIL | THE GUAM DAILY POST  
OCT 3, 2021 UPDATED JAN 5, 2022



**HONORING:** Candles are lit near the silhouettes representing victims of domestic abuse during the 2020 Ceremony at St. Anthony Catholic Church on Oct. 1, 2021. Post file photo



### LEARN MORE

Visit the Guam Coalition Against Sexual Assault & Family Violence website at [www.guamcoalition.org](http://www.guamcoalition.org) for more information.

Even as officials and victims' advocates grope for solutions, COVID-19 is dampening reports of family violence.

### CASES

Family violence cases on Guam in 2020: 1,030

#### Victim gender

- Male: 269
- Female: 761

#### Victim age range

- 0-17: 218
- 18-30: 299
- 31-59: 446
- 60+: 67

*Source: Guam Police Department*

Assault:	505
Aggravated assault:	113
Criminal sexual conduct:	113
Terrorizing:	100
Harassment:	95
Child abuse:	53
Violation of court order:	41
Stalking:	10

# VICTIMS OF VIOLENCE

## 22 GCA FLSA, Chapter 3, §3401. Required Leave.

An employer must grant **reasonable and necessary leave** from work, with or without pay, for an employee to:

- (a) Prepare for and attend court proceedings;
- (b) Receive medical treatment or attend to medical treatment for a victim who is the employee's daughter, son, parent or spouse; or
- (c) Obtain necessary services to remedy a crisis caused by domestic violence, sexual assault or stalking.



The leave must be needed because the employee or the employee's daughter, son, parent or spouse is a victim of a crime of violence to include, but not be limited to, domestic violence, assault, sexual assault, stalking or any act that would support an order for protection. An employer may not sanction an employee or deprive an employee of pay or benefits for exercising a right granted by this section.



# VICTIMS OF VIOLENCE

## **22 GCA FLSA, Chapter 3, §3404. Civil Penalties.**

The Department of Labor may assess civil penalties of up to Two hundred dollars (\$200) for each violation of this section, if notice of the violation was given to the employer and the department within six (6) months of the occurrence.

## **22 GCA FLSA, Chapter 3, §3405. Application.**

This Article applies to all public and private employers.



# RIGHT TO PRIVACY

## 22 GCA FLSA, Chapter 3, §3501. Prohibit Inquiries.

- (a) It shall be unlawful for any employer to **ask any employee** to provide any username, password, or other related account information in order to gain access to a **social networking website where that employee maintains an account or profile**.
- (b) It shall be unlawful for any employer to **ask any prospective employee** to provide any username, password, or other related account information in order to gain access to a **social networking website where that prospective employee maintains an account or profile**.



# RIGHT TO PRIVACY



## 22 GCA FLSA, Chapter 3, §3501. Prohibit Inquiries.

- (c) It shall be unlawful for any employer to ask any **employee** to provide any username, password, or other related account information in order to gain access to a non employer provided **email account**.
- (d) It shall be unlawful for any employer to ask any **prospective employee** to provide any username, password, or other related account information in order to gain access to a non-employer provided **email account**.

# RIGHT TO PRIVACY

## 22 GCA FLSA, Chapter 3, §3501. Prohibit Inquiries.

(e) The prohibitions in Subsections (a), (b), (c) or (d), supra, **shall not apply** to inquiries made pursuant to a valid court order, or that are required by federal law for purposes of national or homeland security, or to an employee or prospective employee who is registered or required to be registered under the provisions of Chapter 89 of Title 9, GCA.

## 22 GCA FLSA, Chapter 3, §3501. Prohibit Inquiries.

(f) Violations of Subsections (a), (b), (c) or (d) of this Section are civil violations punishable by a fine of One Thousand Dollars for the first offense and Two Thousand Dollars for subsequent offenses.



# NANA YAN PATGON ACT (MOTHER & CHILD ACT)

## 10 GCA Health and Safety, Chapter 92A, §92A103. Purpose and Declaration of Policy.

The purpose and policy of this Chapter is to ensure that women have a right to breastfeed children or express breast milk in a **safe and clean environment** or **private designated area** without the fear of social constraints, discrimination, embarrassment, or even prosecution.



## 10 GCA Health and Safety, Chapter 92A, §92A105. Breastfeeding – Prohibition Against Discrimination.

It is a discriminatory practice to deny, or attempt to deny, the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodations to a woman because she is breastfeeding a child.



# NANA YAN PATGON ACT

## (MOTHER & CHILD ACT)



### 10 GCA Health and Safety, Chapter 92A, §92A106.

#### Nursing Mothers-Workplace Accommodations.

For the purposes of this Section, employer means a person or entity that employs one (1) or more employees.

- (a) An employer must provide **reasonable paid break time** each day to an employee who needs to express breast milk for an infant child up to the age of two (2). The break time must, if possible, run concurrently with any break time already provided to the employee. An employer is required to provide reasonable break time under this Chapter.
- (b) An employer must make **reasonable efforts** to provide a room or other location, in close proximity to the work area, other than a toilet stall, where the employee can express her milk in privacy.
- (c) An employer may not discriminate – meaning to restrict, harass or penalize – against an employee who chooses to express breast milk in the workplace.

# PREGNANT WORKERS FAIRNESS ACT

BILL 297-36

ELIMINATING DISCRIMINATION & PROMOTING WOMEN'S HEALTH & ECONOMIC SECURITY BY ENSURING REASONABLE WORKPLACE ACCOMMODATIONS FOR WORKERS WHOSE ABILITY TO PERFORM THE FUNCTIONS OF A JOB ARE LIMITED BY PREGNANCY, CHILDBIRTH, OR A RELATED MEDICAL CONDITION.



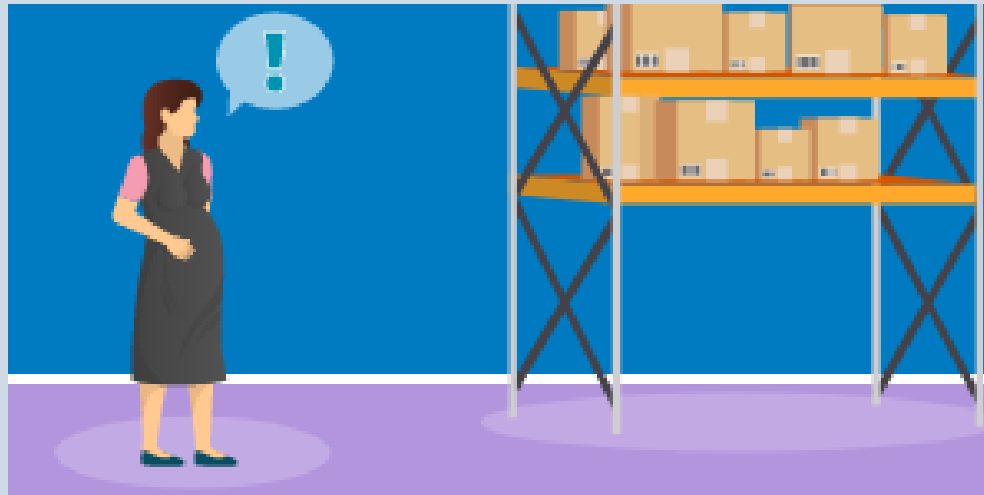
# PREGNANT WORKERS FAIRNESS ACT

BILL 297-36

## Nondiscrimination with Regard to Reasonable Accommodations Related to Pregnancy

(a) Unlawful to NOT make reasonable accommodations to the known limitations

(b) Unlawful to require an employee to accept an accommodation that is not reasonable



# PREGNANT WORKERS FAIRNESS ACT

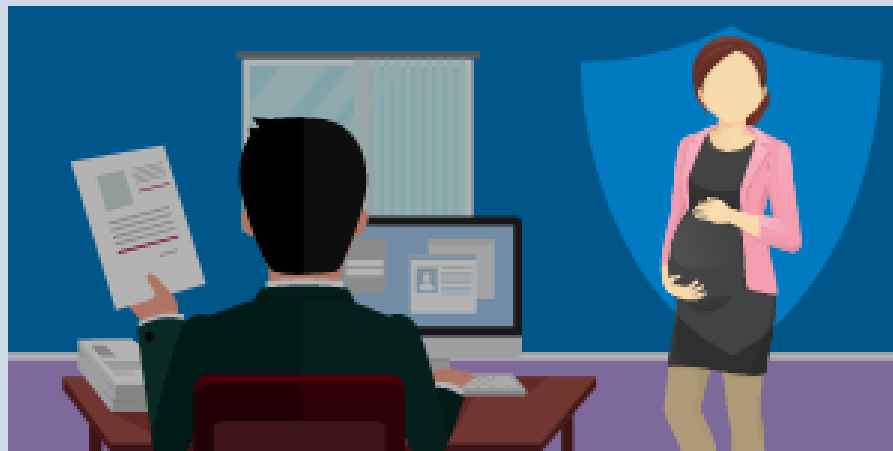
BILL 297-36

## Nondiscrimination with Regard to Reasonable Accommodations Related to Pregnancy

(c) Unlawful to deny an employment opportunity to an employee, if the denial is based on the need of the employer to make reasonable accommodations

(d) Unlawful to require an employee to take leave (paid or unpaid), if there are reasonable accommodations are available

(e) Unlawful to take adverse actions against an employee requesting for reasonable accommodations



# PREGNANT WORKERS FAIRNESS ACT

BILL 297-36

## Enforcement

(a) Civil violation by a fine of \$1,000 for the first offence; \$2,000 for subsequent offences

(b) Any person alleging a violation may file bring a civil action in the Superior Court for legal or equitable relief

(c) The court shall have jurisdiction to grant legal/equitable relief, recovery of attorney fees, reinstatement/promotion, or unpaid wages





**Questions**

**Comments**

# WHO TO CONTACT

[www.dol.guam.gov](http://www.dol.guam.gov)  
[alpcd@dol.guam.gov](mailto:alpcd@dol.guam.gov)  
[wage.questions@dol.guam.gov](mailto:wage.questions@dol.guam.gov)



## **DORINDA MENO**

*Employment Dev. Supv.*

(671) 475-8013

[dorinda.meno@dol.guam.gov](mailto:dorinda.meno@dol.guam.gov)

## **THEA JUANEZA**

*LLES III*

(671) 300-4602

[thea.juaneza@dol.guam.gov](mailto:thea.juaneza@dol.guam.gov)

## **GREG MASSEY**

*ALPCD Administrator/WHD Acting Administrator*

(671) 475-8005

[greg.massey@dol.guam.gov](mailto:greg.massey@dol.guam.gov)