

GOVERNMENT OF GUAM  
OFFICE OF THE GOVERNOR  
AGANA, GUAM

EXECUTIVE ORDER NO. 85-5

GOVERNOR'S SYSTEMS FOR THE DETERMINATION  
OF AVAILABLE U.S. WORKERS AND PREVAILING  
WAGE RATES RELATIVE TO ALIEN LABOR  
CERTIFICATION

WHEREAS, on the 18th of June, 1984, the Immigration and Naturalization Service published the final rule in the Code of Federal Register 8 CFR 214.2(h)(3); and

WHEREAS, the final rule transferred the authority to make determinations on temporary labor certifications for the Territory of Guam from the Secretary of Labor to the Governor of Guam; and

WHEREAS, the transfer of authority provides for closer control and monitoring of the certification process and will assure that local employment statistics and other information will be available and used in the certification process; and

WHEREAS, Section 101(a)(15)(h)(ii) of the Immigration and Nationality Act provides for a non-immigrant classification of aliens who are coming temporarily to the United States to perform temporary services or labor, if unemployed persons capable of performing such services or labor cannot be found; and

WHEREAS, 8 CFR 214.2(h)(3)(ii) mandates the Governor of Guam to establish systematic methods for determining the prevailing wage rates and working conditions for individual occupations of Guam and for making determinations as to availability of qualified United States residents; and

WHEREAS, the Commissioner of the Immigration and Naturalization Service has approved the Governor's systems and are currently being published in the Federal Register,

NOW, THEREFORE, I, RICARDO J. BORDALLO, Governor of Guam, by virtue of the authority vested in me by the Organic Act, Section 101(a)(15)(h)(ii) of the Immigration and Nationality Act and Part 214.2(h)(3) of Title 8 of the Code of Federal Register and the laws of the United States and Guam, do hereby order as follows:

1. That there is within the Office of the Governor the establishment of a Labor Advisory Committee on Alien Labor Certification which shall consist of the Special Assistant of the Governor on Legal Affairs, a Staff Assistant of the Governor, the Provost of the Guam Community College, the Director of the Agency for Human Resources and Development, a representative from the Guam Contractor's Association and a representative from the private sector. The Special Assistant of the Governor for Legal Affairs shall serve as Chairman of the Committee and shall preside at all meetings of the Committee. The purpose of this Committee is to advise the Governor of Guam on the determination of applications of temporary alien certification within the Territory of Guam.

2. That the Labor Advisory Committee on Alien Labor Certification be vested the authority to provide advisory opinions and consultations on matters relative to the systems to determine the availability of qualified United States residents and the prevailing wage rates and working conditions for individual occupations of Guam. The Committee shall assist the Guam Department of Labor implement the following guidelines:

(a) Requests for temporary labor certification may be filed for employment up to, but not exceeding twelve (12) months. If the original intended duration of the temporary employment requires non-immigrant aliens for a finite period not exceeding three (3) years, or if unforeseen circumstances required an extension of an approved certification, a new application must be submitted for each period beyond one year. Requests for extensions will be processed in the same manner as new applications.

(b) More than one alien may be requested on an application if they are to do the same type of services in the same occupation, in the same area of employment during the same period. However, the number requested may not exceed the actual number of job openings.

(c) Part-time employment is inappropriate for temporary labor certification.

(d) A temporary labor certification is valid only for the number of alien workers, the occupation, the area of employment, the specific activity, the period of time, and the employer specified in the certification.

(e) A temporary labor certification is limited to one employer's specific job opportunity; it may not be transferred from one employer to another. A non-immigrant alien may transfer to another employer only if the new employer obtains a labor certification and an approved petition from the Immigration and Naturalization Service.

(f) Employers petitioning for temporary alien labor certification shall assure that:

(1) During the period for which the temporary labor certification is granted, the employer will comply with the Administrative Policy, applicable Federal and local laws and regulations.

(2) The job opening(s) actually exist and that no qualified United States workers will be displaced as a result of the application for alien employment certification.

(3) Reasonable efforts have been and will continue to be made by the employer to obtain United States workers at prevailing wages and working conditions no less favorable than those offered to aliens.

(4) The job offer is open to all qualified United States workers without regard to race, color, creed, national origin, age, sex, citizenship, and to United States workers with handicaps who are qualified, willing, able, and available to perform the job and will not reject any qualified United States workers on the ground that the employer's supervisory personnel speak a language other than English.

(5) The wages, which must be at least equal to the prevailing wage rate for that occupation, and working conditions which will be offered and afforded by the employer to any foreign worker will be identical to those offered and afforded to United States workers.

(6) The job opportunity is not:

(a) Vacant because the former occupant is on strike or is being locked out in the course of a labor dispute, or

(b) At issue in a labor dispute.

(7) If the employer provides housing for his employees, it shall be optional on the part of the worker, and employer shall comply with all applicable Federal and local laws and regulations including building permits, zoning, and other safety and health requirements.

(8) The employer shall charge workers no more than actual costs for meals and lodging. This amount should not exceed \$80.00 per week, and any excess cost thereof must be supported by proper documentation.

(9) The employer will provide each worker with a copy of the worker's employment contract in English, the contract provided shall be in language which the worker is literate, and a copy shall be made available to the Guam Department of Labor.

(10) Benefits, terms, and conditions of employment offered to alien workers, e.g., costs of transportation, bonuses, and insurance shall be offered to United States workers who apply for the job opportunity.

(11) All other factors being equal, where there is a reduction in force, the employer agrees to terminate the alien non-immigrant workers first in those job classifications in which there are United States workers.

(12) It is contrary to the best interests of United States workers to have the alien, and/or agents or attorneys for the alien, participate in interviewing or considering United States workers for the job offered to the alien.

As the beneficiary of a labor certification application, the alien cannot represent the best interest of United States workers in the job opportunity. The alien's agent and/or attorney cannot represent the alien effectively and at the same time truly be seeking United States workers for the job opportunity. Therefore, the alien and/or the alien's agent and/or attorney may not interview or consider United States workers for the job offered to the alien.

(13) The employer's representative who interview or considers United States workers for the job offered to the alien shall be the person who normally interviews or considers, on behalf of the employer, applicants for job opportunities.

(14) No person under suspension or disbarment from practice before the United States Department of Justice's Board of Immigration Appeals pursuant to 8 CFR 292.3 shall be permitted to act as an agent or attorney for an employer under the Part.

3. The Guam Department of Labor Alien Labor Division shall assume the duty and responsibility of processing Alien Labor Certification applications consistent with applicable laws, rules and regulations and Administrative policies.

(a) To apply for a temporary labor certification, the employer must file an Application for Alien Employment Certification with the Guam Department of Labor, Alien Labor Processing and Certification Division (GALPC) at least 40 days before the worker's services are needed. A separate application must be filed for each occupation.

(b) The application shall include:

(1) An original and two copies of Form GDOL 750, Application for Alien Employment Certification, Offer of Employment, each bearing the original signature of the employer;

(2) A statement of employer assurances, contained in subsection (f) of this Administrative Policy, executed by the employer;

- (3) A statement explaining the temporary nature of the job;
- (4) A copy of the employment contract used to negotiate with and later signed by workers;
- (5) A completed agent authorization on Form GDOL 750, if the employer is represented by an agent;
- (6) A Notice of Appearance on INS Form G-28, if the employer is represented by an attorney;
- (7) Results of any recruitment conducted prior to filing the application;
- (8) All corrections or changes to documents submitted must be initialed by the employer or his authorized representatives (agent or attorney);

4. That the Labor Advisory Committee recommend to the Governor of Guam the approval or disapproval of applications for temporary labor certification, taking into consideration the following factors:

(a) Whether or not job opportunities have been provided to United States workers available for temporary employment. The Committee shall review the applications and shall weigh the results of the employer's recruitment efforts to employ U.S. residents. The Committee shall consider not only U.S. workers domiciled in Guam, but also workers who are willing to move from elsewhere to take the job at their own expense, if the prevailing practice among employers who employ workers in the occupation is to pay such relocation expenses, or if the employer will pay travel expenses for the alien. The Committee shall evaluate the United States worker's capability of being employed, education, training, experience and other factors and whether the individual can perform the duties involved in the occupation as customarily performed by other United States workers similarly employed and is willing to accept the specified job opportunity.

(b) Determination as to whether the employment of the alien will have an adverse effect on the wages and working conditions of United States workers similarly employed. The Committee shall consider such things as labor market information, special circumstances of the industry, organization, and/or occupation, the prevailing wage rate for the occupation in the area of intended employment, and prevailing working conditions, such as hours in occupation.

(c) The specified duties and responsibilities prescribed in the job order by the employer. The Committee shall review and determine whether the job opportunity contains requirements or conditions which preclude consideration of United States workers or which would otherwise prevent their effective recruitment.

(d) The employer's participation and continued support of the Apprenticeship Program as prescribed by Guam Community College, where a United States citizen or a lawful resident learns a craft through planned, supervised on-the-job training in conjunction with planned, related technical instruction and is covered by a written agreement registered with the Guam Community College and the United States Department of Labor, Bureau of Apprenticeship and Training.

(e) The employer's need for alien labor or service relative to the number of projects of the employer. The Committee shall consider the size of the project, the time for completion, the number of alien workers, the number of general helpers or apprentices, the total number of employees necessary for the project and other related factors.

(f) A temporary labor certification may be issued for the duration of the temporary employment opportunity, not to exceed twelve (12) months. If the temporary job opportunity extends beyond 12 months, the employer must file a new application; however, temporary certifications may not be granted for the same job opportunity for a total period (including extensions) of more than three (3) years.

(g) Dates on the temporary labor certification shall be the beginning and ending dates of certified employment and the date certification was granted. The beginning date of certified employment may not be earlier than the date certification was granted.

5. That the Labor Advisory Committee review and make policy recommendations relative to the prevailing wage rate determination. The prevailing wage shall be the average rate of wages paid to workers similarly employed on Guam. The Committee shall assist the Guam Department of Labor develop wage rate survey based on all occupations. Whenever necessary, the data will be supplemented with data from the Bureau of Labor Statistics (BLS) if BLS covers occupations or industries not surveyed by the Guam Government. The survey may include a representative mixture of types and sizes of establishments found in private industry, the Guam government and possibly the Federal government. The prevailing rate may be computed by totaling the wages paid to all similarly employed workers and dividing it by the number of such workers. In the computation, the private, Government of Guam and Federal sectors may be weighed in the proportion that they exist in Guam's economy.

6. Upon disposition of applications for alien labor importation or extension, the documents shall be transmitted by the Governor.

(a) Whenever, under this Executive Policy, any notice or other document is required to be sent to an employer, the document shall be sent to the attorney who has filed a notice of appearance on INS Form G-28 or the employer's authorized agent, if the employer has an attorney or agent.

(b) After making a temporary labor certification determination, the Governor or authorized representative shall notify the employer, in writing, of the determination.



(c) If the labor certification is granted, the Governor or authorized representative, shall send the certified application containing the official temporary labor certification stamp, supporting documents, and completed Temporary Determination Form to the employer or, if appropriate, the employer's agent or attorney. The Temporary Determination Form shall indicate that the employer should submit all documents together with the employer's petition to the appropriate INS office.

(d) If the labor certification is denied or a notice is issued that certification cannot be made, the Governor or authorized representative shall return a copy of the Application for Alien Employment Certification form, supporting documents, and completed Temporary Determination Form to the employer, or if appropriate, to the employer's agent or attorney. The Temporary Determination Form shall indicate specific bases on which the decision was made not to issue a temporary labor certification, and shall advise the employer of the right to appeal to the INS.

7. The Governor's approval or disapproval of temporary labor certification or a finding that a certification cannot be made constitutes final determination. An administrative appeal may be made to the Immigration and Naturalization Service consistent with the applicable rules and regulations.

(a) Pursuant to rules and regulations of the Immigration and Naturalization Service, the Governor's role is advisory. The Attorney General of the United States has the sole authority for the final approval or disapproval of a petition for temporary alien employment. The employer can submit countervailing evidence to the Immigration and Naturalization Service, according to 8 CFR 214.2(h)(3)(iii), that qualified persons in the United States are not available, that wages and working conditions of United States workers will not be adversely affected, and that the Governor of Guam's Administrative policies were observed.

8. A temporary labor certification issued by the Governor of Guam or authorized representative may be invalidated by an Immigration and Naturalization Service District Director, if it is determined by the District Director or a court of law that the certification request involved fraud or willful misrepresentation or that the certification was improvidently issued.

(a) If the District Director intends to invalidate a temporary labor certification, a notice of intent shall be served upon the employer, detailing the reasons for the intended invalidation. The employer shall have ten (10) days in which to file a written response in rebuttal of the notice of intent. The District Director shall consider all evidence submitted upon rebuttal in reaching a decision.

(b) An employer may appeal invalidation of a temporary labor certification in accordance with 8 CFR Part 103.

9. The petitioner or employer for alien labor certification shall submit quarterly reports to the Alien Labor Processing Division or a designated representative, beginning on the first day following the third full month for the purpose of providing closer control and monitoring of non-immigrant alien labor temporary workers. The quarterly report shall include, but is not limited, to the following:

(a) The full name, address, citizenship, occupation and hourly wage of each and every non-immigrant temporary worker performing labor or services.

(b) The commencement and termination dates of certification of each and every non-immigrant temporary worker performing labor or services.

(c) The nature and type of work and the projects that each non-immigrant alien is performing labor or service.

(d) Whenever petitioner or employer provides meals, lodging, transportation or any other fringe benefits, the petitioner or employer shall provide a statement as to the costs of each benefit.

(e) Whenever petitioner or employer charges non-immigrant temporary workers the actual costs for meals and lodging, such amount shall be stated by the employer.

(f) The name and occupation of each and every non-immigrant alien temporary worker transferred, or to be transferred to another employer, where the new employer obtains a labor certification and an approved petition from the Immigration and Naturalization Service.

(g) The name and occupation of each and every non-immigrant temporary worker who is residing at a place other than the employer's premises for lodging.

10. The petitioner or employer shall register each and every non-immigrant temporary worker immediately upon arrival of workers for temporary labor or services.

(a) The employer shall register and obtain a work permit for each and every non-immigrant temporary worker from the Guam Labor Department Alien Labor Processing and Certification Division, or from a designated individual.

(b) The work permits shall include the name, occupation, and address of each and every non-immigrant temporary worker.

(c) The employer shall ensure that all non-immigrant temporary worker display the work permit at all times during working hours.

11. The petitioner or employer shall obtain an exit clearance form from each and every non-immigrant temporary worker from the Guam Labor Department Alien Labor Processing Division, or from a designated individual.

(a) Exit clearance forms shall be obtained from the Department of Labor or from a designated individual no later than one (1) month prior to the termination date of the certification of the non-immigrant temporary worker.

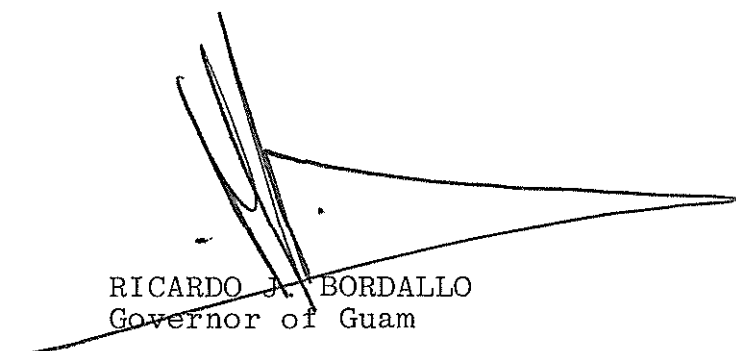
(b) No later than ten (10) calendar days following the departure of the non-immigrant temporary worker, the employer shall provide written notice to the Guam Labor Department of the departure and shall further provide the following:

(1) Name, occupation, citizenship, date of departure, transportation vessel and flight number, point of recruitment and point of return.

12. The Guam Department of Labor Alien Processing Division, or a designated representative, is vested the authority to enforce the requirements of Sections 9, 10, and 11 and shall be authorized to perform worksite inspections to ensure that employers comply with provisions of this order, provided prior notice and approval has been given by the Labor Advisory Committee on Alien Labor Certification.

13. Any violation of Federal or local laws, rules, regulations, or provisions of this order may result in denial of application for non-immigrant alien labor certification, or referral to the Immigration and Naturalization Service for appropriate action, or any action deemed appropriate.

Signed and promulgated at Agana, Guam this 15th day of February, 1985.



RICARDO J. BORDALLO  
Governor of Guam

COUNTERSIGNED:



EDWARD D. REYES  
Lieutenant Governor of Guam