

REPORT ON THE STATE OF THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS ECONOMY, IMMIGRATION, AND MINIMUM WAGE ISSUES

The purpose of this report is to present a current picture of the economy of the Commonwealth of the Northern Mariana Islands ("CNMI" or "Commonwealth") and the progress made in addressing CNMI labor and immigration issues. This report illustrates the Commonwealth's genuine commitment to addressing its labor and immigration problems and that its efforts are beginning to have a positive effect. The report also reflects that the Commonwealth is experiencing the most severe economic contraction in its 20-year history as a result of the ongoing economic crises in its neighboring Asian countries. This is happening at the same time that fundamental questions are being asked about the structure of the CNMI's labor force, its immigration policies and its minimum wage laws.

I. CONTROL OF IMMIGRATION

The Covenant negotiators recognized that with the small local population, significant reliance on foreign workers would be necessary for the CNMI to achieve economic self-sufficiency. This was a significant reason that the CNMI was granted control of immigration and minimum wage under the Covenant. The intention of the framers has been realized in large measure as evidenced by the Commonwealth's decreased reliance on federal assistance, and the improved standard of living in the islands. However, the CNMI has made mistakes in its administration of immigration and related matters and has attracted much criticism, some fair and some unfair. The CNMI is committed to addressing the concerns of its critics. Although problems remain to be solved, reform efforts are beginning to produce results.

A. The Total Number of Guest Workers in the Commonwealth and Measures Taken to Control the Numbers.

1. The Number of Guest Workers Appears to be Slowly Decreasing. For the first time in Commonwealth history, the number of nonresident worker permits issued has decreased. The best estimate of guest workers lawfully in the Commonwealth comes from the Labor and Immigration Identification Documentation System (LIIDS), a computer system at the Department of Labor and Immigration (DOLI), with additional analysis from the Central Statistics Division of the Department of Commerce. The following table shows the number of nonresident worker permits issued for Calendar Years 1997 and 1998 (through October 15, 1998).

Non Resident Worker Permits Issued by Month, 1997 and 1998

Permits Issued	Total	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.
1998	25,185	2,206	2,656	4,028	2,255	1,603	4,890	2,479	2,157	2,161	750		
1997	33,402	3,734	2,628	3,477	2,597	3,039	2,499	2,115	2,838	2,685	3,621	1,333	2,836

Source: LIIDS Database, DOLI

Note: 1998 data covers January 1 1998 to October 15, 1998 only.

The number of permits issued to guest workers from January 1 through the end of September 1998 compared to the same time period for 1997 shows that the numbers dropped 5%:

January 1 - September 30, 1997 = 25,612
January 1 - September 30, 1998 = 24,435

It must be noted that the Commonwealth is faced with data collection difficulties. One of the fundamental difficulties with data collection is the lack of a computerized entry/exit system at Commonwealth ports of entry. Until the entry/exit module of LIIDS is on-line, the administration will not be able to track with certainty who actually enters and exits the Commonwealth. However, the collection and availability of statistical data continues to improve in the CNMI, and the numbers contained herein will be subject to continued further refinement as newer data becomes available.

Recognizing that the Commonwealth cannot wait for implementation of the entry/exit module to begin tracking those entering and exiting the Commonwealth, a manual tracking system at the Saipan International Airport is currently being implemented and is expected to be functional by January 1999.

The entry/exit module of the LIIDS system is under design, and the Office of Insular Affairs (OIA) recently informed the Commonwealth that Covenant Section 702 Capital Improvement Project funds may be used for LIIDS.

2. Measures Taken To Control The Number Of Nonresident Workers. In March of this year Public Law 11-6 was enacted, imposing a moratorium on the hiring of new nonresident workers. The goal of PL 11-6 was to stabilize the number of nonresident workers presently in the CNMI by prohibiting new nonresident workers from entering the Commonwealth unless they are replacing a worker who has left. Exemptions to the moratorium may be granted by the Governor for the limited purpose of supporting major new tourism developments or to provide critical services.

The law has been successful in stabilizing the number of nonresident workers despite the opening of several large new tourist oriented enterprises since the law's passage (the Tinian Dynasty Casino, the Hard Rock Cafe, and expansion of the Duty Free Shoppers Mall). This is a significant accomplishment for the Commonwealth, given that from Calendar Year 1996 to 1997 the number of nonresident workers increased by 28% from 26,039 to 33,402.

B. Illegal Guest Workers

1. The Number of Illegal Guest Workers in the Commonwealth. The Central Statistics Division's best estimate of the number of illegal guest workers present in the Commonwealth is approximately 3,000. We expect to have a more accurate count after the implementation of the limited immunity law discussed in section 3 below. The current estimate is based on the 1995 census, used as baseline data, the Labor Force Survey (Current Household Survey) which updated the census baseline, and administrative records. The census data provided the actual count of all persons in the CNMI, including all non-US citizens. Administrative records provided the total "valid" permits issued, both new permits and renewals. The Labor Force Survey provided updates to the census baseline.

2. Law Enforcement Efforts to Address the Problem of Illegal Guest Workers. The Division of Immigration conducts regular monitor and compliance inspections at work sites during which they check the immigration status of all workers. In addition, the Division investigates information on suspected overstays provided by the Division of Labor. They also respond to information received from public sources on suspected illegal guest workers. Training efforts have increased to improve the performance of the Division.

The Division's efforts have resulted in approximately 373 deportations of illegal guest workers, from January through October 1998, following a full evidentiary hearing in each case. Deportation hearings require full due process rights, including the right to counsel and the right to appellate review. In addition, there have been at least 49 voluntary departures of guest workers.

3. The Recently Enacted Limited Immunity Legislation. Public Law 11-33, passed by the Commonwealth Legislature and signed into law in September 1998, seeks to identify illegal guest workers and make them part of the legal work force by granting a period of limited immunity from

deportation. The Act, which becomes effective December 2, 1998, provides a six-month period for illegal guest workers to come forward to register with DOLI and to seek permanent employment. It is hoped that most illegal workers in the CNMI will come forward during the limited immunity period.

The law's implementing regulations have been published in local newspapers in several different languages, including Tagalog, Chinese, Bengali, and Korean. DOLI has employed the services of translators in these languages to assist guest workers who come forward. Necessarily, DOLI efforts to search for illegal guest workers in the community will diminish during the limited immunity period when they are encouraged voluntarily to come forward without fear of prosecution and deportation.

C. Health Screening of Guest Workers

The presence of large numbers of guest workers from developing countries, such as the Philippines and the People's Republic of China, among others, has resulted in a large increase in the number of people present in the Commonwealth with communicable diseases. Most notable of these is tuberculosis. Recognizing the threat to the public health from an alarming increase in the number of active cases of TB in 1997, the Department of Public Health (DPH) contacted the US Centers for Disease Control (CDC) to request their assistance in investigating the situation. In February 1998, DPH promulgated emergency regulations mandating the health screening of all guest workers in the Commonwealth within 90 days. From February through August, over 34,000 workers were screened. DPH considers this program astoundingly successful in devising strategies to screen, identify, diagnose and treat those at risk. The result has been to treat affected workers and return them into the active, productive work force, while removing the risk to the population by breaking the chain of infection. According to participating health care professionals, the number of people screened, diagnosed and treated, and the short time period in which this was done, with very limited staff, is unprecedented.

DPH has plans now to institutionalize this effort by creating a permanent annual health screening program. OIA assisted this effort through consultations with DPH and through establishing and facilitating contacts with the CDC and a University of Hawaii testing laboratory. Now, one-time seed money is needed to start the program. Funds will cover facilities, equipment, medications, and some staff. DPH intends to include permanent funding for this screening program in its annual budget beginning next year. OIA has indicated that it might favorably consider some funding from the Federal-CNMI Initiative on Labor, Immigration and Law Enforcement.

D. Pre-screening of Workers in Their Country of Origin

In addition to the public health threat presented by the lack of pre-screening in the country of origin, public safety is threatened when individuals enter the Commonwealth using fraudulent documents. An effective pre-screening program at the worker's place of origin would establish the identity of the worker and the validity of their documents, and ensure that the individual has no criminal record in their country of origin. OIA is coordinating a meeting with DOLI officials, relevant US State Department personnel, and embassy representatives from the Republic of the Philippines, The Peoples Republic of China and the Republic of Bangladesh to explore developing pre-screening programs in these countries. The meetings are scheduled for late November 1998 in Washington DC. Topics to be discussed include developing protocols for obtaining travel documents for citizens of Bangladesh and China and assistance in establishing a pilot pre-screening program in Manila.

The Administration is hopeful that the implementation of pre-screening programs at the country of origin, together with guest worker health screening in the CNMI, will effectively resolve the public health and public safety problems we have experienced in the past.

E. Abuse of Guest Workers

Efforts to eliminate the abuse of workers have been helpful but there still remain problems. The CNMI stands committed to ensuring that the laws protecting all workers in the Commonwealth are upheld and will continue to work to further improve the situation.

1. **Health and Safety Laws.** Occupational Safety and Health Administration (OSHA) officials enforce federal health and safety laws and standards. DOLI health and safety personnel enforce local health and safety laws and standards. Since the new Administration took office in January 1998, unannounced inspections at work places and living quarters have dramatically increased. From January through October 1998, the DOLI Safety and Health Office conducted the following inspections:

INSPECTIONS

Employee Housing and Business Establishments	511
Garment Factories	74
Garment Related Housing	<u>49</u>
TOTAL INSPECTIONS	634

NOTICES OF VIOLATION ISSUED

Housing/Business	110
Garment	<u>19</u>
TOTAL NOTICES OF VIOLATION ISSUED	129

The inspection numbers illustrate that garment factories are being visited on a regular basis. While there are only 33 factories in the CNMI, there were 74 inspections within a nine-month period

2. **Civil Enforcement and Criminal Prosecutions.** In the area of wage-related enforcement, DOLI, in cooperation with the Office of the Attorney General, has increased prosecution and civil enforcement efforts. DOLI's administrative procedures commence with the filing of a complaint by a worker. Complaints are investigated and there is an attempt to arbitrate a solution between the parties. If this fails, an administrative hearing is held. If the employer is determined to have violated the law, an administrative order is issued. If civil enforcement of the administrative order is necessary, either the employee or the CNMI Attorney General's office can file for enforcement in the Commonwealth Superior Court.

From January 1, 1998 through September 30, 1998, the DOLI Hearing Office issued orders in 920 cases, approximately 10% of which were referred to the Attorney General's Office for civil enforcement. In the past, civil enforcement efforts have been limited due to a lack of personnel. In August 1998, the Attorney General's Office, committed to strenuous civil and criminal enforcement, and assigned a full-time Assistant Attorney General to assist in filing both civil and criminal enforcement actions. Through November 15, 1998, there have been 35 civil enforcement actions brought for payment of back wages, failure to pay minimum wage, failure to pay medical costs, and civil penalties. In addition to the civil enforcement actions, 16 criminal cases have been brought against employers, principally for violations of immigration laws, such as hiring and harboring illegal guest workers, and charging illegal fees. Ongoing efforts to computerize the case management aspect of the DOLI hearing office will significantly streamline enforcement efforts.

3. **Federal Ombudsman Office.** In the past, for a variety of reasons, many workers have preferred to approach federal agencies and officials rather than DOLI with complaints. DOLI has made recent efforts at increasing confidence in nonresidents to bring their complaints to the Department. For example, they hired a Bangladeshi translator to facilitate communication and the comfort level of the Bangladeshi worker complainants. Congress recently directed the OIA to fund

an ombudsman office in the Commonwealth. OIA officials have communicated with Commonwealth officials regarding their plans and the Commonwealth will work closely with this office to ensure its success. As of late November 1998, the positions to support the office were being advertised.

4. Saipan Garment Manufacturer Association Code and Enforcement Efforts. On November 1, 1998, a Code Of Conduct, Employee Bill of Rights, and Principles of Monitoring (Code), adopted by the Saipan Garment Manufacturers Association (SGMA), became effective. Together, these documents are intended to ensure that garments produced in the CNMI are not produced by exploited workers. All 33 licensed garment factories in the CNMI are members of SGMA and voted to adopt the Code. Training under the Code will be implemented from January to August 1999. The local agreement was inspired by a Presidential Task Force, the White House Apparel Industry Partnership, that was set up in 1996. This Task Force was established to eliminate sweatshop conditions in foreign garment factories that export to US firms.

SGMA has been informed by its buyers that its standards are higher than those in place in other countries. SGMA signed a contract with Business for Social Responsibility (BSR) in San Francisco to implement the Code. In order to encourage compliance with the Code, SGMA- approved and rated factories will receive a larger share of production quotas.

F. Continuing Measures and Other Measures under Consideration

The Commonwealth shall continue identifying and implementing additional actions to resolve these problems. DOLI continues to institute administrative measures to streamline its service and improve its enforcement efforts. In addition, the Commonwealth Legislature is considering a number of bills that would resolve various labor and immigration issues. Among the bills for consideration are a cap on the number of workers for garment factories and a cap on the total number of years a nonresident is permitted to work in the Commonwealth.

II. EFFORTS TO ADDRESS MINIMUM WAGE CONCERNS

On July 10, 1998, Governor Pedro P. Tenorio signed Public Law 11-22, creating minimum wage review committees for the Commonwealth. Under the law, the Governor is directed to appoint one or more special industry committees to consider minimum wage rates to be paid in the Commonwealth.

The law is modeled after the industry committees established for American Samoa under the Fair Labor Standards Act of June 25, 1938. Similar to the American Samoa system, the committee(s) to be created by the Governor of the CNMI require three employee and three employer representatives from the Commonwealth community. A nonresident worker may be appointed to the committee(s). The Speaker of the US House of Representatives, the Majority Leader of the US Senate, and the Administrator of the Wage and Hour Division of the US Department of Labor are each entitled to name one member to the formed committee(s).

The committee(s) are tasked with recommending the "highest possible minimum wage rate," with due regard for economic and competitive considerations and the committees(s) are instructed to use the American Samoan methodology or criteria in performing the study to arrive at their recommendations. The recommendations of the committee(s) are to be transmitted to the Commonwealth Legislature, which is limited under the law to either passing the minimum wage rate proposed by the committee(s) or to passing a higher wage rate.

The Governor has decided to commence by establishing a single committee and then to request the committee's advice and the advice of the Administrator of the Wage and Hour Division on whether to establish additional separate committees for the different industries.

On August 14, 1998, letters to the Speaker of the United States House of Representatives, the Majority Leader of the United States Senate and the Administrator of the Wage and Hour