

Title 61.

Public Employment.

Chap. 1. Public Service System, §§ 1 to 13.

CHAPTER 1.

PUBLIC SERVICE SYSTEM.

Sec.

1. Short title.
2. Statement of purpose.
3. Definitions.
4. Establishment; name.
5. Merit principles.
6. Preference to citizens of Trust Territory.
7. Trust Territory Personnel Board.
8. Director of personnel.

Sec.

9. Exemptions.
10. Elements in Trust Territory public service system.
11. Outside employment.
12. Status of employees on effective date of chapter.
13. Conflict with section 51 of title 2.

§ 1. **Short title.** — This chapter is known and may be cited as the "Trust Territory Public Service System Act." (Code 1966, § 91; Code 1970, tit. 61, § 1; P.L. No. 4C-49, §§ 1, 14.)

§ 2. **Statement of purpose.** — It is the declared purpose of the Congress of Micronesia in establishing a system of personnel administration to build a career service in the executive branch of the Trust Territory government which will attract, select, and retain the best available individuals on merit, free from coercion, discrimination, reprisal or political influences, with incentives in the form of genuine opportunities for promotions in the public service, which will eliminate unnecessary and inefficient employees, and which will provide technically competent and loyal personnel to render impartial service to the public at all times, and to render such service, according to the dictates of ethics and morality. (Code 1966, § 92; Code 1970, tit. 61, § 2; P.L. No. 4C-49, §§ 2, 14.)

§ 3. **Definitions.** — In this chapter, unless the context otherwise requires, the following definitions shall apply:

- (1) "*Board*" means the Trust Territory Personnel Board.
- (2) "*Director*" means the director of the department of personnel of the government of the Trust Territory.
- (3) "*Public Service*" means all offices and other positions in the executive branch of the government of the Trust Territory not exempted by section 9 of this title.
- (4) "*Class*" or "*class of positions*" means the logical and reasonable grouping of duties and responsibilities and their identification with respect to (a) kind of work, (b) level of difficulty and responsibility, and (c) qualification requirements of the work, so that positions which conform substantially to the same class would receive like treatment in the matter of title, and such personnel processes as salary assignment.
- (5) "*Promotional examination*" means an examination for positions in a particular class, admission to which is limited to regular employees in public service.

(6) "*Open-competitive examination*" means an examination for positions in a particular class, admission to which is not limited to persons employed in public service.

(7) "*Open-competitive list*" means a list of persons who have been found qualified by an open-competitive examination for appointment to a position in a particular class.

(8) "*Promotional list*" means a list of persons who have been found qualified by a promotional examination for appointment to a position in a particular class.

(9) "*Reemployment list*" means a list of persons who have been regular employees in the public service and who are entitled to have their names certified for appointment to a position in the class in which they last held permanent status, or, in a related class in the same or lower salary range for which they meet the qualification requirements.

(10) "*Eligible list*" means a list of persons who have been found qualified for appointment to a position in a particular class, such a list being either open-competitive, promotional, or reemployment.

(11) "*Eligible person*" means a person whose name is on an active eligible list.

(12) "*Regular or permanent employee*" means an employee who has been appointed to a position in the public service in accordance with this chapter and who has successfully completed his initial probation period.

(13) "*Initial probation period*" means a period of not less than six months nor more than one year from the beginning of an employee's service in the public service.

(14) "*New probation period*" means any probation period other than that defined in subsection (13) of this section.

(15) "*Position*" means a specific employment, whether occupied or vacant, consisting of a group of all the current duties and responsibilities assigned by competent authority, requiring the full or part-time employment of one person.

(16) "*Employee*" means a person holding a position in accordance with this chapter, whether permanently or otherwise.

(17) "*Position classification plan*" means classes of positions arranged in a logical and systematic order to reflect all of the kinds and levels of work utilized in the public service.

(18) "*Management official*" or "*management*" means a department or person having power to make appointments or changes in status of employees in the public service and includes such subordinate or subordinates as the department or person may designate to act for it or him. (Code 1966, § 93; Code 1970, tit. 61, § 3; P.L. No. 4C-49, §§ 3, 14.)

§ 4. Establishment; name. — There is hereby established in the executive branch of the government of the Trust Territory a system of personnel administration based on merit principles and accepted personnel methods governing the classification of positions and the employment, conduct, movement, and separation of public officers and employees. This system of personnel administration shall be referred to as the Trust Territory public service system. (Code 1966, § 97; Code 1970, tit. 61, § 4; P.L. No. 4C-49, §§ 4, 14.)

§ 5. Merit principles. — The Trust Territory public service system shall be administered in accordance with the merit principles as set forth below:

(1) Equal opportunity for all regardless of sex, race, religion, political affiliation or place of origin.

(2) No person shall be discriminated against in any case because of any physical handicap; provided, that the employment of a physically handicapped person will not be hazardous to the appointee or endanger the health or safety of his fellow employees or others.

(3) Impartial selection of the ablest person for public service by means of tests which are fair, objective, and practical.

(4) Just opportunity for competent employees to be promoted within the service.

(5) Reasonable job security for the competent employee, including the right of appeal from personnel actions as provided in this chapter.

(6) Systematic classification of all positions through adequate job analysis.

(7) Fair and reasonable grievance procedures for all employees pertinent to conditions of employment.

(8) Proper employer-employee relations to achieve a well trained, productive and happy work force. (Code 1966, § 106; Code 1970, tit. 61, § 5; P. L. No. 4C-49, §§ 5, 14.)

§ 6. Preference to citizens of Trust Territory. — (1) Notwithstanding the provisions of section 5 above, with a view of insuring the fullest participation by Trust Territory citizens in the executive branch of the government, preference shall be given to qualified citizens of the Trust Territory in making appointments and promotions and providing opportunities for higher education and in-service training.

(2) It is declared to be the policy of the government of the Trust Territory to encourage the professional, managerial, technical, and vocational education and training of Trust Territory citizens and to effect the maximum use of qualified Trust Territory citizens in filling positions in the public service whether by appointment or promotion.

(3) The director shall enforce the provisions of this section by appropriate regulations. (Code 1966, § 100; Code 1970, tit. 61, § 6; P.L. No. 4C-49, §§ 6, 14.)

§ 7. Trust Territory Personnel Board. — (1) Establishment. There is hereby established a Trust Territory Personnel Board responsible directly to the High Commissioner, consisting of five members, who shall be appointed by the High Commissioner with the advice and consent of the Congress of Micronesia. The High Commissioner shall designate one member to be the chairman of the board. No member of the Congress of Micronesia or of a district legislature or an employee of the Trust Territory Department of Personnel or of a district personnel department shall be eligible for membership on the board.

(2) Term of appointment. The term of office of a board member shall be three years; however, of the members initially appointed by the High Commissioner, one shall serve for one year, two for two years, and two for three years. Thereafter, all appointments shall be for a full three-year term. Any appointment to fill a vacancy occurring prior to the expiration of a member's term shall be for the remainder of such term. In the event any member is temporarily absent or incapacitated and cannot perform his functions as a board member, the High Commissioner may make a temporary appointment for the duration of the regular member's absence or incapacity. Members of the board may be removed by the High Commissioner for misfeasance or malfeasance in office.

(3) Meetings; quorum. The board shall meet at least once every three months, with the date, time and place to be designated by the chairman. Agenda for the meetings shall be circulated to all members at least one week prior to such meetings, and the minutes of the previous meeting shall accompany the agenda. Three members shall constitute a quorum. All meetings shall be open to the public.

(4) Expenses. Members of the board shall be paid at the rate of thirty dollars per day when actually on the business of the board. If a member of the board is concurrently employed in another post in the Trust Territory government,

he shall be granted leave to attend to the business of the board, and shall receive his regular salary while on the business of the board or thirty dollars per day, whichever is greater. In addition, members will be paid travel expenses and per diem while on the business of the board, at standard Trust Territory rates.

(5) Office; budget. The board upon request shall be given and maintain an office at Trust Territory headquarters. The chairman shall annually submit to the Congress of Micronesia a request for allocation of funds for all necessary salaries, office expenses, and travel and per diem.

(6) Powers and duties. The board shall represent the public interest in assuring compliance with basic policy concerning personnel administration, and in insuring that the integrity of the Trust Territory public service system is preserved. To this end the board shall have the following powers and duties:

(a) Review and take part in the formulation of policies and regulations for personnel administration of the Trust Territory. Approval of such policies and regulations by the board shall be required prior to promulgation by the High Commissioner. The board shall submit such policies and regulations, together with its comments and recommendations, to the High Commissioner for promulgation in the manner which is or may be provided by law. When promulgated, such policies and regulations shall have the force and effect of law. They may include any matter not inconsistent with law concerning the establishment and maintenance of a system of personnel management based on merit principles, including but not limited to matters set forth in this chapter, and may be amended or repealed in like manner as the same were adopted. They shall be in conformity with principles of good public administration.

(b) Maintain general surveillance and oversee the operation of the department of personnel and the Trust Territory public service system to insure the effectiveness of, and compliance with, the provisions of this chapter and to recommend revisions of this chapter and to recommend revisions or additional legislation and implementation of policies and regulations.

(c) Hear and decide appeals of employees from disciplinary actions, for suspensions for more than three working days, demotions, and dismissals from the service. The board may utilize the services of qualified hearing officers, where such services are deemed essential by the board. Hearings shall be public except when the appealing employee requests a closed hearing.

(d) Promote public interest in the Trust Territory public service system.

(e) Make such inquiries and investigations into the personnel administration in the public service as it may deem desirable.

(f) Administer oaths to witnesses in any matter pending before said board.

(g) Perform any other lawful acts required by law or deemed by them to be necessary to carry out their duties under this chapter. (P.L. No. 4C-49, § 7.)

§ 8. Director of personnel. — (1) The director of personnel shall direct and supervise all the administrative and technical activities of the department of personnel.

(2) Any appointee to the position of director shall be at least a graduate of a university of recognized standing and shall have had extensive experience in the field of personnel administration.

(3) Among other duties which may be assigned to him by the High Commissioner, the director shall:

(a) Be directly responsible to the High Commissioner, and serve as principal adviser to the High Commissioner and his staff on all matters concerning personnel administration, employee training, and staff housing.

(b) Administer the system of personnel administration for the executive branch of the Trust Territory government.

(c) Formulate and recommend to the board policies and regulations to carry out the provisions of this chapter.

(d) Cooperate fully with and attend, or arrange to have a qualified representative attend, all meetings of the board and provide the board with such technical advice as it may require.

(e) Appoint such assistants, and other employees in accordance with any other applicable provisions of law, as may be necessary to assist him in the proper performance of his duties.

(f) Establish and maintain a roster of all persons in the executive branch of the government in which shall be set forth, as to each, the class of position held, the salary or pay, any change in class, title, pay or status, and any other necessary data.

(g) Encourage and exercise leadership in the development of effective personnel administration within the several departments in the government and make available the facilities of his department to this end.

(h) Foster and develop, in cooperation with management officials and others, programs to promote the public service and to improve employee efficiency.

(i) Develop and maintain an adequate position classification plan and compensation plans in accordance with the provisions of this chapter and other applicable laws of the Trust Territory.

(j) Develop adequate and reasonable selection instruments and procedures for recruiting employees for the public service, and determine when employees meet specific qualification requirements for positions.

(k) Develop training programs for the improvement of employee skills and the public service, and for the development of a systematic career ladder for employees who are citizens of the Trust Territory.

(l) Administer a program for staff housing at the headquarters level.

(m) Perform any other lawful acts deemed by him to be necessary to carry out the purposes and provisions of this chapter. (P.L. No. 4C-49, § 8; P.L. No. 5-51, § 11(2).)

§ 9. Exemptions. — (1) The Trust Territory public service system shall apply to all employees of and positions in the executive branch of the Trust Territory government now existing or hereafter established and all personnel services performed for the executive branch, except the following, unless this chapter is specifically made applicable to them:

(a) Employees and positions covered by the United States civil service system, until and unless exempt by the United States Civil Service Commission or by United States law.

(b) Persons or organizations retained by contract where the director has certified that the service to be performed is special or unique and nonpermanent, is essential to the public interest and that, because of the degree of expertise or special knowledge required and the nature of the services to be performed, it would not be practical to obtain personnel to perform such service through normal public service recruitment procedures.

(c) Positions of a temporary nature needed in the public interest where certified by the director and when the need for the same does not exceed ninety days; provided, however, that in the event of a major disaster declared by the president of the United States or a disaster declared by the High Commissioner, the director may extend such ninety-day period for a maximum of an additional one hundred eighty days for positions engaged in relief, repair or rehabilitation as a result of such disaster.

(d) Household and domestic employees at the official residence of the High Commissioner.

(e) Members of any board, public corporation, commission or other agency whose appointments are made by the High Commissioner or are required by law to be confirmed by the Congress of Micronesia.

(f) Election inspectors, election clerks and other election employees.

(g) Positions filled by inmates, patients, and students of Trust Territory institutions.

(h) Persons appointed by the High Commissioner to fill the following positions: executive officer, special consultants and assistants, Attorney General, deputy attorney general, program and budget officer and his deputy, director of public affairs, deputy director of public affairs, director of finance, deputy director of finance, director of personnel, deputy director of personnel, director of transportation and communications, deputy director of transportation and communications, director of public works, deputy director of public works, director of education, deputy director of education, director of health services, deputy director of health services, director of resources and development, deputy director of resources and development, district administrators, and deputy district administrators.

(i) Persons appointed by the President of the United States or the Secretary of the Interior to fill any position.

(j) Positions specifically exempt by any other law of the Trust Territory.

(k) Personnel presently under contract of employment not included in paragraph (b) of this subsection during the life of such contract. No contract of employment shall be entered into, renewed, or amended after the effective date of this chapter, except subject to the provisions hereof.

(l) Persons who are appointed to occasionally serve as classroom teachers when regular classroom teachers are absent from work during any one school year.

(m) Any position involving intermittent performance which does not require more than forty hours in any one month.

(n) Positions of a part-time nature requiring the services of four hours or less a day but not exceeding one year in duration.

(o) Positions of temporary nature which involve special projects having specific completion dates which shall not exceed one year.

(p) Members of any board, commission, agency, authority, or other body created by a district legislature unless specifically included under the provisions of this title by district law.

(2) The director of personnel shall determine the applicability of this section to specific positions not expressly covered by this chapter.

(3) Nothing in this section shall be deemed to affect the public service status of any incumbent, as it existed on the effective date of this chapter.

(4) The provisions of paragraphs (i), (ii), (iii), (viii) and (ix) of paragraph (e) of subsection (10) of section 10 of this title shall apply to the persons and positions specified in paragraphs (l), (m), (n), and (o) of subsection (1) of this section. Persons and positions specified in paragraphs (l), (m), (n), and (o) of subsection (1) of this section shall be entitled to the base salary provided by law plus any other differentials to which they are otherwise entitled by law, prorated on the number of regularly-scheduled hours worked per pay period, if less than eighty, for any pay periods in which they are employed in such positions. (P.L. No. 4C-49, § 9; P.L. No. 5-67, §§ 1, 2; P.L. No. 6-38.)

§ 10. Elements in Trust Territory public service system. — The Trust Territory public service system shall consist of the following elements:

(1) Recruitment and placement. Except as otherwise provided in this chapter, all positions covered by this chapter and for which appropriations shall have been made, shall be recruited by advertisement for a period sufficient to recruit fully qualified candidates to meet the needs of the public service. Advertisements shall be by all available media, the use of which is reasonable under the circumstances. The advertisement shall consist of at least the position title, the salary, a brief description of the position or the class, the location of the vacancy or vacancies, and the qualification standards required

for admission to the examination if any. The closing date for filing applications shall be clearly stated, and in the case of applications which are mailed, the date and time stamp of the post office on the mailing envelope shall be the determinant as to compliance with the deadline established in the advertisement.

(2) Examinations.

(a) General character. There shall be competitive examinations, wherever possible and as determined by the director, for testing the relative fitness of candidates for positions in the public service covered by this act. Examinations shall be reasonable and practical in character and shall provide for ascertaining the physical and educational qualifications, experience, knowledge and skill of applicants and their relative capacity and fitness for the proper performance of the duties of the class of positions in which they seek to be employed. All examinations shall be open to the public and, except for promotional examinations or as otherwise provided by law, free and open to all candidates, but with such limitations as to health, physical condition, age, education, training, experience, and character, as the director may deem necessary and proper for the class for which the examination is to be given. To ensure the security and objectivity of the examining process, all examinations shall be under the control of the director or such suitable person or persons as he may designate to administer them. All persons who have passed an examination may be required to take such physical examination as required by the director.

(b) Promotional examinations. Examinations may be promotional examinations whenever in the opinion of the director the same is practicable and for the best advantage of the public service. Ample notice shall be given by the director of the fact that any promotional examination is to be conducted.

(c) Open-competitive examinations. Examinations shall be open-competitive whenever in the opinion of the director they are for the best advantage of the public service. Ample notice shall be given by the director of the fact that any open-competitive examination is to be conducted.

(d) Noncompetitive examinations. Noncompetitive examinations may be given when, in the opinion of the director, the class for which an examination is to be given calls for special qualifications and training which do not admit of competition or when the scarcity of qualified candidates is such that their numbers do not exceed the number of vacancies involved.

(3) Eligible lists.

(a) General. The director shall cause to be established and maintained separate lists for all classes of positions for which vacancies exist or are anticipated which shall be known as eligible lists. Eligible lists may be open-competitive, promotional, or reemployment, depending on whether they result from open-competitive examinations, promotional examinations, or from reemployment registration. A person whose name is placed on an eligible list shall be registered thereon for a period of one year; except that in the case of reemployment lists, a person otherwise eligible may remain thereon for a period of three years. Registration on an eligible list, other than reemployment lists, may be extended by the director if candidates thereon are still available and the number of vacancies to be filled is less than the number of names on the list.

(b) Reemployment lists. (i) Whenever any employee who has been performing his duties in a satisfactory manner, as shown by the appropriate records, is laid off or demoted because of lack of work or lack of funds, has voluntarily accepted a position in a lower class, or whenever his position has been reclassified to a lower class, he shall have the right to have his name placed on the appropriate reemployment list for a period of three years thereafter; provided, that in all cases other than reclassification to a lower class he files a written application for reemployment within three years of his

termination. A person on a reemployment list shall be deemed eligible for certification to positions in the class in which he last held permanent status or in a related class, in the same or lower salary range for which he meets qualification requirements.

(ii) The director may remove the name of a person on any reemployment list or refuse to certify his name on any list of eligible persons if he finds, after giving him notice and an opportunity to be heard, that the person is no longer able to perform the necessary duties satisfactorily.

(4) Filling vacancies. All vacancies and new positions in the public service shall be filled in the following manner:

(a) Whenever there is a position to be filled, the management official shall request the director to submit a list of persons eligible. The director shall thereupon certify a list of five or such fewer number as may be available taken from eligible lists in the following order: first, the reemployment lists; second, the promotional lists; and third, the open-competitive lists. The management official shall make the appointment only from the list of eligible persons certified to him unless he finds no person acceptable to him on the list certified by the director, in which case he shall reject the list and request the director to submit a new list, in which event the director shall submit a new list of eligible persons selected in like manner; provided, that the management official states his reasons in writing for rejecting each of the eligible persons on the list previously certified to him.

(b) A management official may fill a vacant position in his department by promoting any regular employee in the department without examination if the employee meets the minimum class qualifications of the position to which he is to be promoted, and if the position is in the same series as the position held by the employee or is clearly an upward progression in the same career-ladder of positions; provided, that when there is no material difference between the qualifications of the employees concerned, the employee with the longest public service shall receive first consideration for the promotion; and provided further, that given equal qualifications of employees concerned, a Trust Territory citizen employee shall be given employment preference over a noncitizen employee regardless of longevity in public service of the noncitizen employee.

(c) In the event that no eligible persons are available from any list, the management official may, with the approval of the director, make a provisional appointment, for a period no longer than ninety days, of any person who meets the qualification standards for the class involved. The director shall establish an eligible list within such ninety-day period.

(5) Persons disqualified from appointment. Conviction of a crime of moral turpitude shall not be a bar to employment in the public service, unless the nature of the crime committed renders the prospective employee clearly unsuitable for the position applied for. The director shall keep and maintain a list of positions and disqualifying crimes. A pardon shall operate to remove any bar to employment which would have arisen as a result of the crime for which the pardon was granted. The commission of or the attempt to commit any deception or fraud in connection with any application or examination shall be grounds for denial of any appointment in the public service.

(6) Tenure; resignations.

(a) Every member of the public service shall be entitled to hold his position during good behavior, subject to suspension, demotion, or dismissal only as provided in this act and in the regulations of the department of personnel.

(b) Resignations shall be in writing. In case an employee resigns without submitting his resignation in writing, the department head shall, within fifteen days following the resignation, file with the director a statement showing termination of employment.

(7) Provisional and short term appointments.

(a) Provisional appointment pending establishment of an eligible list. When there is no eligible person available on a list appropriate for filling a vacancy in a continuing position and the public interest requires that the vacancy be filled before eligible persons can be certified, the director may authorize the filling of the vacancy through provisional appointment. The director shall proceed without delay to announce an examination for the filling of the vacancy. The appointment shall continue only for such period as may be necessary to make an appointment from a list of eligible persons but shall not extend beyond ninety days in any twelve-month period; provided, that the director may extend the provisional appointment for a maximum of an additional ninety-day period if an examination has failed to secure any qualified, available eligible person.

(b) Emergency appointments. In order to prevent the stoppage of essential public business, emergency appointments, not to exceed ten working days, may be made to fill positions temporarily in any serious emergency when it is not practicable to ascertain whether there is an eligible list. The director for good and sufficient cause, and for reasons given in writing by the department concerned, may extend the appointment for an additional period not to exceed twenty working days.

(c) Qualifications. Provisional and temporary appointees must meet the minimum qualification requirements for the specific position to be filled.

(8) Probationary service and other requirements for membership.

(a) All employees shall successfully serve an initial probation period before becoming regular employees. In addition, prior to entering into regular employment, all employees shall be appointed in accordance with law and shall have satisfied all the requirements for employment prescribed by this act or by the regulations promulgated thereunder. A regular employee who is promoted or transferred to another position in the public service may be required to serve a new probation period in his new position, but he shall be entitled to all the rights and privileges of a member of the public service, except the right to appeal in case of a dismissal from the new position, as distinguished from dismissal from the service, for inefficiency in the new position during his probationary period, in which case he shall be returned to his former position.

(b) Where a provisional or temporary appointee subsequently becomes a probationary employee, the period of service performed in such provisional or temporary status shall be counted towards meeting the probation period required by this subsection.

(9) Position classification. All positions subject to the provisions of this act shall be classified by the director according to their duties and responsibilities, and shall be grouped into classes on the basis of their similarities in duties and responsibilities. Each class shall be given a title which shall apply to all positions in the class, the characteristics of which class and the standards for employment in any position in the class shall be prescribed by the director, after consultation with the board and the appropriate management officials concerned. The director may change a position from one class to another where substantial changes have occurred in the duties and responsibilities of such position. The director shall determine the status of occupancies of position which have been changed from one class to another class. Class titles established under the provisions of this section shall be the official titles of all positions involved and shall be used for all personnel, and for budgetary and financial, purposes.

(10) Compensation plan.

(a) Salary schedules. There shall be one or more salary schedules for all employees of the executive branch of the Trust Territory government, except those excluded by paragraphs (a) through (k), inclusive, of subsection (1) of section 9 of this chapter. Such schedule or schedules shall be formulated and developed by the director, in consultation with the board.

(b) Effective date. No salary schedule or changes in any salary schedule for employees of the executive branch of the Trust Territory government, except those excluded by the provisions of this subsection, shall be effective on or after July 1, 1973, unless it shall have been enacted into law by the Congress of Micronesia.

(c) Salary levels. The director shall assign a salary level, based on applicable salary schedules, to each position title.

(d) Periodic review. The director shall periodically conduct necessary and appropriate studies of rates of compensation and compensation practices in all geographic areas from which employees for the public service are normally recruited, and shall recommend and transmit the same to the board for its review. Following such review, the board shall submit the same, together with its comments and recommendations, to the High Commissioner for review and approval and further transmission to the Congress of Micronesia for its consideration. In developing such plan and schedules, consideration shall be given to the following:

(i) The minimum standard of living which is compatible with decency and health.

(ii) The general economic conditions of the Trust Territory.

(iii) Compensation practices and conditions of the labor market.

(iv) Conditions of employment in the public service of the Trust Territory.

(v) Such other matters as the director may deem appropriate.

(e) Differentials and transfer allowances. To compensate for unique circumstances of employment which create hardship or involve additional cost to them, the following differentials are provided Trust Territory public service employees; provided, however, that in no case may an employee's combined differentials, as set forth in subparagraphs (i) through (iv), exceed thirty percent of the base salary rate, or of the adjusted base salary for the employee concerned when provided by law.

(i) Standby. Employees whose duties require them to remain in a standby status, subject to call at any time, for a regularly scheduled period in excess of a normal forty-hour workweek and who, in fact, are frequently called during this period of scheduled standby, shall be entitled to a differential of twenty percent of the base salary rate, or of the adjusted base salary rate, when provided by law.

(ii) Hardship post. Employees assigned to duty stations which present unusual hardship because of such factors as geographical isolation, lack of amenities, lack of availability of shipping, lack of transportation and similar conditions may be paid a differential of twenty percent of the base salary rate, or of the adjusted base salary rate when provided by law.

(iii) Night work. Employees whose regular tour of duty includes regularly scheduled hours falling between 7:00 p.m. and 6:00 a.m. shall be paid a differential of fifteen percent of the base salary rate, or of the adjusted base salary rate when provided by law, for all those hours which fall during that period.

(iv) Hazardous work. Employees whose occupation involves unusual and extreme hazards to their health and safety shall be paid a differential of twenty-five percent of the base salary rate, or of the adjusted base salary rate when provided by law, for all those hours in which hazardous work is performed.

(v) Transfer allowance. Where employees are recruited or transferred beyond normal commuting distance from their places of permanent residence for work elsewhere in or for the Trust Territory, such employees shall be entitled to all expenses connected with travel of themselves and their immediate families to the work location and transportation of their household effects. They shall also be entitled to per diem at established rates for the new

location for a period not exceeding ninety calendar days from the date of entrance in the new position.

(vi) Temporary lodging allowance. When an employee who is otherwise entitled to housing is transferred to a new duty station, and housing is not immediately available, he shall be paid a temporary housing allowance pending occupation of his quarters at such rates as the director shall deem necessary and appropriate. An employee who receives housing allowance in lieu of government housing shall not, however, be entitled to a temporary lodging allowance.

(vii) Within-grade and merit increases. An employee may be granted a within-grade increase upon completion of the following periods of satisfactory performance at the following steps in the rate ranges of the base salary schedule:

<i>Steps</i>	<i>Full periods of satisfactory performance required before within-grade increase may be allowed</i>
1 to 2	52 calendar weeks
2 to 3	52 calendar weeks
3 to 4	52 calendar weeks
4 to 5	104 calendar weeks
5 to 6	104 calendar weeks
6 to 7	104 calendar weeks
7 to 8	156 calendar weeks
8 to 9	156 calendar weeks
9 to 10	156 calendar weeks

An employee may additionally be granted a merit increase not to exceed one step increase in the base pay rate in any one hundred four calendar week period for sustained superior performance over such period. Such additional merit increase will not alter the waiting period required for qualifying for the next within-grade step increase. No employee shall be compensated above the maximum step prescribed for his pay level except where he was receiving such compensation on the effective date of this subparagraph.

(viii) Overtime compensation. An employee shall be paid overtime compensation at the rate of time and one-half of his base salary rate or adjusted base salary rate for all time when he is directed to work and does work:

(a) in excess of eight hours in one day, or

(b) on the sixth and seventh days of the workweek, provided he has first worked forty hours at straight time in the same workweek.

(ix) Holiday pay. An employee who is required to work on a legal holiday which falls during his regularly scheduled workweek shall be compensated for the hours worked on that holiday at double the base salary rate, or adjusted base salary rate when provided by law, for his position. Any time worked in excess of eight hours will be compensated at the overtime rate provided in subparagraph (viii). Holiday pay for hours of work performed on a legal holiday will not be paid any employee who is paid for the same hours a standby differential. Any employee required to work on a holiday which falls outside of his regularly scheduled workweek shall be compensated for the hours worked in the same manner as for overtime work performed on any other day.

(x) Cooperating teachers. Cooperating teachers who are certified cooperating teachers shall be paid a differential of ten percent of their base pay for those hours spent in assigned extra duties with student teachers during the regular school day.

(xi) Supervisors of cooperating teachers. Supervisors of cooperating teachers who are certified as supervisors of cooperating teachers, but are classified as classroom teachers, shall be paid a differential of ten percent of their base pay for those hours spent in assigned extra duties with cooperating teachers during the regular school day.

(11) Performance ratings. The director shall develop and maintain a system of performance ratings for the purpose of appraising the service of employees in the public service and improving the employee's performance. Each department shall rate each employee under its jurisdiction in accordance with the system and shall transmit the final ratings to the director. A copy of the performance rating shall also be given to the affected employee. The department head shall inform an employee in writing whenever his performance in his position is substandard. Performance ratings shall be used for determining eligibility for step increases, incentive awards and retention status in the case of a reduction-in-force.

(12) Grievance procedure. The board shall develop a plan for the hearing and adjudication of grievances for all employees. The regulations relating to grievance procedure shall assure that employees are free from coercion, discrimination or reprisals and that they may have a representative of their own choosing.

(13) Reduction-in-force. Regulations shall be developed and promulgated to govern the conditions under which an employee is to be released from his position due to lack of work or lack of funds. The regulations shall provide that an employee's individual merit, including qualifications for the position, education, training, experience, and performance ratings shall be the primary basis for establishing order of layoffs. However, seniority based on total creditable service shall also be considered in the reduction-in-force formula when employees of equal qualifications are affected. Each administrative district shall be considered a competitive area for reduction-in-force actions for personnel in pay levels one through thirty. Trust Territory government headquarters shall be considered a separate competitive area for reduction-in-force actions for personnel in pay levels one through thirty.

(14) Racial, religious, or political consideration barred. No person holding any position in the public service shall be suspended, demoted, or dismissed from his position on account of sex, marital status, racial, religious, or political grounds, or place of origin.

(15) Disciplinary action.

(a) Suspension. A management official may, for disciplinary purposes, suspend any employee without pay for such length of time as he considers appropriate but not exceeding thirty days at any one time nor more than sixty days in any calendar year. No single suspension for a period of three working days or more, whether consecutively or not, shall take effect unless the management official gives the employee a written notice setting forth the specific reasons upon which the suspension is based and files a copy of the statement with the director. With the approval of the director, an employee may be suspended for a period longer than thirty days pending an investigation or hearing of any charge against him. Where an employee has been suspended pending an investigation or hearing of any charge against him and the charge is subsequently dropped or not substantiated, he shall be reinstated in his position without loss of pay and other benefits.

(b) Dismissal; demotion.

(i) A management official may, for disciplinary reasons, dismiss or demote an employee when he considers that the good of the service will be served thereby. Dismissals or demotions may be made only for such causes as will promote the efficiency of the public service.

(ii) Demotions may also be made for other than disciplinary reasons and the personnel regulations shall specify the circumstances under which such

demotions may be authorized. No dismissal or demotion of a permanent employee, for disciplinary reasons, shall be effective for any purposes unless at least ten working days before the effective date thereof, the responsible management official shall have given to the employee a written statement setting forth the specific reasons upon which the dismissal or demotion is based and his rights of appeal, as provided in this chapter, and shall have filed a copy of the statement with the director.

(c) Appeals from suspension, dismissals and demotions.

(i) Any regular employee who is suspended for more than three working days, or dismissed or demoted, may appeal to the board within fifteen calendar days after written notice has been sent to him of the suspension, dismissal or demotion. Upon such appeal, the appealing employee and the responsible management official shall each have the right to a hearing, to present evidence, and to be represented by counsel of his own choosing. At the hearing, technical rules of evidence shall not apply, and the evidence shall be taken stenographically or by recording machine. The board shall render its findings of fact and final decision in writing.

(ii) If the board finds that the reasons for the action are not substantiated in any material respect, the board shall order that the employee be reinstated in his position, without loss of pay and benefits, but if the board finds that the reasons are substantiated or only partially substantiated, the board shall sustain the action of management, provided that the board may modify the action of the management official if it finds the circumstances of the case so require and may, thereupon, order such disposition of the case as it may deem just and proper.

(iii) The board may, on its own motion or that of the director, management, or the employee, subpoena witnesses and material documents and administer oaths in connection with any hearings or investigations held within the scope of their authority.

(iv) When an appeal hearing is before the board, the Attorney General or his delegate shall be counsel for the government. Any employee affected shall have the right to counsel of his own choosing at all times.

(16) Leaves of absence.

(a) Leaves of absence, with pay, may be granted to employees by management officials for reasons of vacation, illness, maternity, training, education, or for such other reasons as will promote the good of the public service. Eligibility for such leaves, the method and rate of earning, and the length of time shall be established by regulation.

(b) Leaves without pay may be granted, but only for such reasons as management officials may deem proper and not of inconvenience to the public service, and consistent with applicable regulations.

(17) Employee representation. Employees shall have the right to form associations for the purpose of presenting their views to the government and shall be free from restraint or reprisal in the exercise of this right. Where such associations are formed, the government shall permit reasonable opportunity to such employees' representatives to present their views. Where such employee associations do not exist, the government shall provide clear and reasonable procedures for employees to make known their views regarding matters affecting their working conditions, status, or pay. Such procedures may include the use of elected representatives.

(18) Application to contract personnel. Subsections (1), (2), (3), (4), (6)(a), (7), (8), and (13) of this section shall not apply to personnel employed by contract, except to the extent that the provisions contained in such subsections, or similar provisions contained in other laws, apply to personnel employed by contract by virtue of other laws. Nothing in this chapter shall be construed as to prohibit the hiring of expatriate personnel by contract by the High

Commissioner or his delegate. (P.L. No. 4C-49, § 10; P.L. No. 5-51, § 11; P.L. No. 5-67, §§ 3, 4; P.L. No. 6-65, § 11; P.L. No. 6-103, §§ 1, 2; P.L. No. 7-70, § 1)

Cross reference. — Federated States of Micronesia, Part III, Title 61, ch. 1.

Personnel board to examine charges against government employee. — Whether charges made against employee under contract with government were valid and, if provable, sufficient to warrant his dismissal, was for the personnel board to decide, not the court. *Christensen v. Micronesian Occupational Center*, 6 TTR 346 (1973).

Statute and personnel regulation

regarding process before dismissal of employee not in conflict. — Statute providing that an employee being dismissed be given a written notice at least ten working days before the effective date of the dismissal, and Trust Territory personnel regulation requiring that an employee be given thirty days from receipt of letter of proposed action to reply and that no decision be made during that period, were not in conflict. *Tolhurst v. Micronesian Occupational Center*, 6 TRR 296 (1973).

§ 11. Outside employment. — (1) No employee subject to the provisions of this chapter shall engage in any outside employment or other outside activity not compatible with the full and proper discharge of the responsibilities of his office or position or otherwise prohibited by law. It shall be deemed incompatible with such discharge of responsibilities for any such employee to accept any fee, compensation, gift, payment of expenses, or any other thing of monetary value in circumstances in which acceptance may result in, or create the appearance of resulting in:

- (a) Use of public office for private gain;
- (b) An undertaking to give preferential treatment to any person;
- (c) Impeding government efficiency or economy;
- (d) Any loss of complete independence of impartiality;
- (e) The making of a government decision outside official channels; or
- (f) Any adverse effect on the confidence of the public in the integrity of the government.

(2) No such employee shall receive compensation or anything of monetary value, other than that to which he is duly entitled from the government, for the performance of any activity during his service as such employee and within the scope of his official responsibilities. (P.L. No. 4C-49, § 11.)

Violation not relieved by taking leave with or without pay. — If section is violated, taking leave with or without pay does not relieve the violation. *Armaluuk v. Mereb* (Tr. Div., May, 1975).

Contract violative of section is void. — Contract which is entered into in violation of section is illegal and void. *Armaluuk v. Mereb* (Tr. Div., May, 1975).

Intent of section. — The intent of congress in enacting section was to prohibit outside activities within the general scope of the employee's official responsibilities. *Armaluuk v. Mereb* (Tr. Div., May, 1975).

Nature of office of public defender representative makes rendering service for fee a violation. — The very position, training and the physical facilities of the office make it impossible for public defender's representative to separate himself from governmental service

and render services for a fee without violating section. *Armaluuk v. Mereb* (Tr. Div., May, 1975).

Taking leave from government does not terminate employment relationship. — For purposes of this section, taking leave from the government does not terminate the relationship between the employee and the government. *Armaluuk v. Mereb* (Tr. Div., May, 1975).

Contract which results in what law seeks to prevent is unenforceable. — Where legislative intent in enacting section was such as to prohibit outside employment by the public defender's representative in rendering legal services, the contract which brings about the results which the law seeks to prevent is unenforceable. *Armaluuk v. Mereb* (Tr. Div., May, 1975).

§ 12. Status of employees on effective date of chapter. — All employees of the public service covered by this chapter who, on the effective date of this chapter, hold valid appointments in the public service shall continue in their

particular status. The status of temporary employees on the effective date of this chapter shall be resolved as soon as practicable thereafter. (P.L. No. 4C-49, § 13.)

§ 13. Conflict with section 51 of title 2. — In case of any conflict or inconsistency between any provisions of this chapter and section 51 of title 2 of this Code, the provisions of this chapter shall control and supersede the provisions of such section. (P.L. No. 4C-49, § 15.)