

**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
SAIPAN, TINIAN, ROTA and NORTHERN ISLANDS**



COMMONWEALTH REGISTER

**VOLUME 45
NUMBER 06
June 30, 2023**

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ADOPTION

Public Notice of Certification and Adoption of the Amendments
to the Sick Leave Bank Regulations
Civil Service Commission 049807

DOL/PUA/CAC ORDERS

PUA Case No. 22-0211
Subject: Administrative Order
In the Matter of: Jenelyn Calica v. CNMI Department of Labor,
Division of Employment Services-PUA
Department of Labor 049811

PUA Case No. 23-0228
Subject: Administrative Order
In the Matter of: Jun Wang v. CNMI Department of Labor,
Division of Employment Services-PUA
Department of Labor 049812

Labor Case No. 23-008
Subject: Order Dismissing Complaint
In the Matter of: Chang-eon Ahn v. JK Investment & Development, LLC
Department of Labor 049813

Labor Case No. 23-009
Subject: Order Dismissing Complaint
In the Matter of: Chang-eon Ahn v. Pacific Palm Corporation Co., Ltd
Department of Labor 049817

Labor Case No. 23-010
Subject: Order Dismissing Complaint
In the Matter of: Chang-eon Ahn v. Big Bang Entertainment LLC
Department of Labor 049821



RAYMOND M. MUNA
Chairperson, CSC

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
CIVIL SERVICE COMMISSION
OFFICE OF PERSONNEL MANAGEMENT

P.O. BOX 5153 CHR, SAIPAN, MP 96950-5153
CSC TEL NO: (670) 233-1606 | FAX NO: (670) 233-4096
OPM TEL. NO: (670) 234-6925 / 6958 / 8036 | FAX NO. (670) 234-1013
CSC website: <http://www.cnicsc.net> | OPM website: <http://www.cnmioom.net>



FRANCES TORRES-SALAS
Director of Personnel

**PUBLIC NOTICE OF CERTIFICATION AND ADOPTION OF REGULATIONS OF THE
CIVIL SERVICE COMMISSION**

AMENDMENTS TO THE SICK LEAVE BANK REGULATIONS

ACTION TO ADOPT PROPOSED REGULATIONS: The Commonwealth of the Northern Mariana Islands, Civil Service Commission (“CSC”), HEREBY ADOPTS AS PERMANENT regulations the Proposed Regulations which were published in the Commonwealth Register at the pursuant to the procedures of the Administrative Procedure Act, 1 CMC § 9104(a). The CSC announced that it intended to adopt them as permanent, and now does so.

I certify by signature below that as published, such adopted regulations are true, complete, and correct copy of the referenced proposed regulations, and that they are adopted without modification.

PRIOR PUBLICATION: These regulations were published as proposed regulations in 2023 Volume 45, Number 03, Pages 049609 to 049610 of the Commonwealth Register dated March 28, 2023.

ATTORNEY GENERAL APPROVAL: The adopted regulations were approved for promulgation by the Attorney General in the above-cited pages of the Commonwealth Register pursuant to 1 CMC § 2153 (e).

MODIFICATIONS FROM PROPOSED REGULATIONS, IF ANY: None.

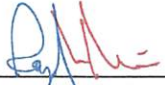
AUTHORITY: The Civil Service Commission has statutory authority to promulgate and effect personnel regulations pursuant to 1 CMC § 8117, as amended by Public Law No. 17-80, and specifically the Sick Leave Regulations, as authorized by Public Law No. 8-25.

EFFECTIVE DATE: Pursuant to the APA, 1 CMC sec. 9105(b), these adopted regulations are effective 10 days after compliance with the APA, 1 CMC §§ 9102 and 9104(a) or (b), which, in this instance, is 10 days after this publication in the Commonwealth Register.

COMMENTS AND AGENCY CONCISE STATEMENT: No written or oral comments regarding the proposed regulations were submitted during the 30-day comment period.

I DECLARE under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on the 8th day of June 2023, at Saipan, Commonwealth of the Northern Mariana Islands.

Certified and ordered by:



RAYMOND M. MUNA,
Chairperson, Civil Service Commission

6.13.2023

Date

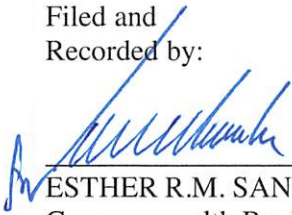
Pursuant to 1 CMC § 2153(e) (AG approval of regulations to be promulgated as to form) and 1 CMC § 9104(a)(3) (obtain AG approval) the certified final regulations, modified as indicated above from the cited proposed regulations, have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General, and shall be published (1 CMC § 2153(f) (publication of rules and regulations)).

Dated the 14 day of June, 2023.



EDWARD MANIBUSAN
Attorney General

Filed and
Recorded by:



ESTHER R.M. SAN NICOLAS
Commonwealth Registrar

6/14/2023

Date

TITLE 10: CIVIL SERVICE COMMISSION

§ 10-50-410 Disability

If the Director of Personnel ~~Management~~ determines that the expected disability precludes the employee from performing the essential job functions of any equivalent government position, the Director of Personnel ~~Management~~ shall deny additional sick leave hours to the employee. The Director of Personnel ~~Management~~ shall then recommend the employee apply for disability retirement benefits.

History: Adopted 19 Com. Reg. 15748 (Nov. 15, 1997); Proposed 19 Com. Reg. 15638 (Sept. 15, 1997).

Part 500 - Miscellaneous

§ 10-50-501 Appeal

Any employee denied hours from the sick leave bank has the following recourse:

(a) The employee shall, within ~~two~~five (5) business days of the denial, request the Director of Personnel ~~Management~~ reconsider his or her decision to deny the request. The employee may supplement the original withdrawal request with additional information. The Director of Personnel ~~Management~~ must issue a written final decision within five (5) business days of the request for reconsideration. If the Director affirms the original denial, the decision shall include the specific reason(s) for the denial and a summary of the evidence relied upon.

(b) If the employee chooses to appeal the Director of Personnel's ~~Management's~~ final decision, the appeal must be filed at the ~~office~~Civil Service Commission ("Commission") ~~office~~ within five (5) business days after the employee receives the final decision. The appeal shall be processed by the Commission in the same manner as it processes a grievance under Personnel Service System Rules and Regulations, NMIAC § 10-20.2-294(c) through § 10-20.2-294(h).

Modified, 1 CMC § 3806(c), (e), (f).

History: Adopted 19 Com. Reg. 15748 (Nov. 15, 1997); Proposed 19 Com. Reg. 15638 (Sept. 15, 1997).

§ 10-50-505 Records

The Director of Personnel ~~Management~~ or his designee shall maintain records of all hours contributed to, withdrawn from, and returned to the sick leave bank.

Modified, 1 CMC § 3806(f).

History: Adopted 19 Com. Reg. 15748 (Nov. 15, 1997); Proposed 19 Com. Reg. 15638 (Sept. 15, 1997).

§ 10-50-510 Effect on Family Medical Leave Act

All hours withdrawn from the sick leave bank shall be counted towards the leave time provided by the federal Family Medical Leave Act of 1993 and implemented in the Commonwealth by the Personnel Service System Rules and Regulations, NMIAC § 10-20.2-625 and the Excepted

TITLE 10: CIVIL SERVICE COMMISSION

Service Personnel Regulations, NMIAC § 10-10-135.

§10-50-515 Maintenance of the General Account

The general account of the sick leave bank shall be maintained and managed by the Office of Personnel Management. The Office of Personnel Management shall periodically advise government employees of these regulations, the purpose of the sick leave bank and the possibility of donating hours to the bank. It shall also provide an option on all exit interviews for employees leaving the government to donate their unused sick leave hours to the sick leave bank.¶

Modified, 1 CMC § 3806(c).

History: Adopted 19 Com. Reg. 15748 (Nov. 15, 1997); Proposed 19 Com. Reg. 15638 (Sept. 15, 1997).



**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE**

1)	
2)	
3)	
4)	Labor Case No. 23-008
5)	
6)	
7)	
8)	
9)	ORDER DISMISSING COMPLAINT
10)	
11)	

In Re the Matter of:
Chang-eon Ahn,
Complainant,
v.
JK Investment & Development, LLC,
Respondent.

I. INTRODUCTION

This matter came before the undersigned for an Order to Show Cause Hearing on May 22, 2023 at approximately 1:30 p.m. at the Administrative Hearing Office in Saipan. Complainant Chang-eon Ahn (“Complainant”) was present and self-represented. Respondent JK Investment & Development, LLC (“Respondent”) was not present but represented by Attorney Colin Thompson. Interpreter Sean Lee was also present and facilitated communications.

II. DISCUSSION

As a preliminary matter, the undersigned must note how ill-prepared both parties were for this hearing. First, while the undersigned recognizes that Complainant is appearing self-represented, it is his burden to prepare and prove each element of his claim. Complainant argued that he was not advised which documents to bring. It is beyond the hearing officer’s duty to establish the claim or advise Complainant how to prepare for their case. Second, while counsel for Respondent appeared for the hearing, the hearing was substantially delayed because counsel was appearing online for a hearing in the Superior Court at the same time. Counsel did not provide any advance notice of this conflict or file a request for a continuance which is a clear disregard for the opposing party, interpreter, and undersigned hearing officer’s time. Counsel argued he was not served with adequate notice of the hearing and did not have time to file. This is not persuasive. A notice was served to Respondent’s designated agent for service of process as of May 8, 2023. For whatever reason this was not shared or communicated with counsel is Respondent’s failure. Further,

1 Counsel submitted an entry of appearance on May 19, 2023 and had months' knowledge of his
2 conflicting schedule. If Counsel could file an entry of appearance, counsel could have filed a
3 request to continue to a later time— which would have been far more appropriate than failing to
4 communicate and trying to appear for both hearings at the same time. Third, Respondent violated
5 the undersigned's order when the company failed to send an authorized representative to appear
6 and meaningfully participate in the hearing. While counsel was present, all parties were ordered
7 to appear. Counsel cannot adequately stand in for the parties when he has no information on the
8 employment relationship or claims. Counsel argued that Complainant was ordered to show cause
9 and it was Complainant's burden. This argument is unpersuasive. The order specifically states
10 that all parties are ordered to appear. While it is Complainant's burden of proof, Respondent was
11 not excused from appearing and participating from the administrative hearing process. Further,
12 regardless of the burden of proof, in administrative hearings, it is the undersigned's duty to
13 develop a full record and that cannot be accomplished when Respondent fails to appear.
14 Considering the Respondent's failure to appear and the serious allegations of unauthorized
15 employment of a foreign worker over the last 2.5 years — justice is served by referring this
16 employer to Enforcement for further investigation of all labor compliance issues and the possible
17 initiation of an agency case against Respondent.

18 With respect to the labor complaint, the undersigned finds that dismissal is appropriate.
19 Pursuant to 3 CMC § 4947(a), “the hearing officer may, after notice and an opportunity to be
20 heard is provided to the parties, dismiss *sua sponte* a complaint that the hearing officer finds to
21 be without merit.” Pursuant to NMIAC § 80-20.2-130(c), dismissal is warranted on the following
22 grounds: (1) lack of jurisdiction over the subject matter; (2) lack of jurisdiction over the person;
23 (3) insufficiency of process; (4) insufficiency of service of process; and (5) failure to state a claim
24 upon which relief can be granted. *See also* NMIAC § 80-20.10485(b). Ultimately, Complainant's
25 arguments and allegations fail to address the deficiencies noted in the Order to Show Cause.

26 **1. Complainant fails to establish jurisdiction.**

27 “The Administrative Hearing Office does not have jurisdiction with respect to the claims of
28 tourists. Those claims are pursued in the Commonwealth Superior Court.” NMIAC § 80-20.1-
450(e). “It is the intent of the legislature that the [Commonwealth Employment Act of 2007] shall
not apply to persons admitted to the Commonwealth as tourists, or to persons employed
illegally... it is the intent of the Legislature that . . . illegally employed be prohibited from using
the terms of this Act to receive or avail themselves of a legal right or benefit.” PL 15-108.

1 Based on the evidence provided, Complainant was not lawfully working for Respondent.
2 While Complainant submitted an Approval Notice to work as a CW-1 in the CNMI, this notice is
3 valid only for a one-day time period of January 14, 2023 to January 14, 2023 and limited to
4 employment with Big Bang Entertainment LLC. There is no showing of a lawful employment
arrangement with Respondent and jurisdiction has not been established.

5 **2. Complainant fails to state a claim for unpaid wages within the six months statute of**
6 **limitations.**

7 Pursuant to 3 CMC § 4962, “[n]o labor complaint may be filed more than six months after the
8 date of the last-occurring event that is subject of the complaint, except in cases where the
9 actionable conduct was not discoverable upon the last-occurring event.” *See also* 4 CMC § 9246.
10 “If a complaint is not timely filed, the hearing office *shall* dismiss the complaint with prejudice.”
11 NMIAC § 80-20.1-465(e) (emphasis added). Pursuant to 3 CMC § 4947(a), “the hearing officer
12 may, after notice and an opportunity to be heard is provided to the parties, dismiss *sua sponte* a
13 complaint that the hearing officer finds to be without merit.”

14 Here, Complainant initiated a labor complaint against Respondent on May 3, 2023. Therein,
15 Complainant alleges that he was not paid wages for a period of two and a half years and is seeking
16 \$144,408.00 in damages. While these claims could be limited to those within the six months
17 statute of limitations (November 4, 2022 to May 3, 2023), there is insufficient information on: (1)
18 a lawful employment relationship; (2) authorization to work the hours sought; (3) an agreed wage;
19 (4) hours worked and when; and (5) how the claim for damages was calculated. Given the degree
20 of speculation required to move forward in this case, the undersigned finds that Appellant fails to
state a claim for unpaid wages within the six months statute of limitations.

21 **3. Complainant fails to state sufficient allegations to demonstrate an unlawful**
22 **reduction in force.**

23 The applicable law with respect to reductions in force does not take away a company’s
24 business judgement and discretion in initiating mass lay-offs or company closures. Instead, the
25 applicable reduction in force statutes and regulations prescribe a process and necessary notice
26 requirements to do so. “An employer who employs foreign national workers may reduce the
27 number of current employees based on economic necessity. The employer shall provide notice to
28 the Department at least sixty days prior to the reduction in force.” 3 CMC § 4937. *See also*
NMIAC § 80-20.1-240.

1 Here, there is no showing of a mass lay-off or company closure. In fact, there are no
2 allegations with respect to this claim. Instead, Complainant is contesting nonpayment of wages
3 and an alleged reduction in hours. This is not the same as a reduction in force. Accordingly,
4 Complainant fails to show an unlawful reduction in force.

5 III. CONCLUSION

6 Accordingly, pursuant to 3 CMC § 4947(a), this matter is hereby **DISMISSED**. In the event
7 Complainant can cure the above-mentioned deficiencies, Complainant is granted leave to amend
8 and file a new complaint. The amended complaint, if any, shall be due on or before June 5, 2023
9 and limited to claims from November 4, 2022 to January 3, 2023.

10 In light of the allegations of unauthorized employment or other labor compliance issues,
11 the clerk is **ORDERED** to copy and transmit the file to Enforcement for further investigation.¹
12 In the event that Enforcement finds a labor law violation or compliance issue, Enforcement may
13 initiate a Compliance Agency Case.

14 Any person or party aggrieved by this Order may appeal by filing the Notice of Appeal form
15 and filing fee with the Administrative Hearing Office within fifteen (15) days from the date of
16 this Order.²

17 So ordered this **26th** day of May, 2023.

18 /s/

19 **JACQUELINE A. NICOLAS**
20 Chief Administrative Hearing Officer

21 _____
22 ¹ Pursuant to 3 CMC § 4940, the Department's Enforcement, Compliance, and Monitoring Section has the authority
23 to conduct investigations as the Department may deem appropriate and necessary to ensure compliance with
24 applicable labor laws. Further, pursuant to NMIAC § 80-20.1-470(a), Enforcement may initiate such investigation
25 as warranted by the allegations, other information provided or available to the Department, and past complaints or
26 violations. Further, investigators may conduct interviews of the parties and others, request documents from the
27 parties, inspect worksites, and undertake such other investigative actions as are warranted. NMIAC § 80-20.1-470(a).
28 Enforcement "may conduct investigations as necessary and appropriate to enforce the provisions of the
Commonwealth Employment Act of 2007, as amended, and this subchapter to ensure lawful employment
arrangements, payment of wages and overtime, working condition, employer-supplied benefits, and health and safety
for employees." NMIAC § 80-20.1-445. In conducting these investigations, Enforcement "shall have all of the
powers delegated [under the Employment Rules and Regulations] and the powers to inspect any records that an
employer is required to keep, to make copies of records, and to interview employees." *Id.* Depending on the
investigation, Enforcement may initiate a consolidated agency action. NMIAC § 80-20.2-455(i).

² The Notice of Appeal Form is available online at www.marianaslabor.net or hard copies are available at the
Administrative Hearing Office. The aggrieved person or party must file the completed form at the Administrative
Hearing Office, with the applicable filing fee.



**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE**

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In Re the Matter of:)	Labor Case No. 23-009
)	
Chang-eon Ahn,)	
)	
Complainant,)	ORDER DISMISSING COMPLAINT
)	
v.)	
)	
Pacific Palm Corporation Co., Ltd.,)	
)	
Respondent.)	

I. INTRODUCTION

This matter came before the undersigned for an Order to Show Cause Hearing on May 22, 2023 at approximately 1:30 p.m. at the Administrative Hearing Office in Saipan. Complainant Chang-eon Ahn (“Complainant”) was present and self-represented. Respondent Pacific Palm Corporation Co., Ltd (“Respondent”) was not present but represented by Attorney Colin Thompson. Interpreter Sean Lee was also present and facilitated communications.

I. DISCUSSION

As a preliminary matter, the undersigned must note how ill-prepared both parties were for this hearing. First, while the undersigned recognizes that Complainant is appearing self-represented, it is his burden to prepare and prove each element of his claim. Complainant argued that he was not advised which documents to bring. It is beyond the hearing officer’s duty to establish the claim or advise Complainant how to prepare for their case. Second, while counsel for Respondent appeared for the hearing, the hearing was substantially delayed because counsel was appearing online for a hearing in the Superior Court at the same time. Counsel did not provide any advance notice of this conflict or file a request for a continuance which is a clear disregard for the opposing party, interpreter, and undersigned hearing officer’s time. Counsel argued he was not served with adequate notice of the hearing and did not have time to file. This is not persuasive. A notice was served to Respondent’s designated agent for service of process as of May 8, 2023. For whatever reason this was not shared or communicated with counsel is Respondent’s failure. Further,

1 Counsel submitted an entry of appearance on May 19, 2023 and had months' knowledge of his
2 conflicting schedule. If Counsel could file an entry of appearance, counsel could have filed a
3 request to continue to a later time— which would have been far more appropriate than failing to
4 communicate and trying to appear for both hearings at the same time. Third, Respondent violated
5 the undersigned's order when the company failed to send an authorized representative to appear
6 and meaningfully participate in the hearing. While counsel was present, all parties were ordered
7 to appear. Counsel cannot adequately stand in for the parties when he has no information on the
8 employment relationship or claims. Counsel argued that Complainant was ordered to show cause
9 and it was Complainant's burden. This argument is unpersuasive. The order specifically states
10 that all parties are ordered to appear. While it is Complainant's burden of proof, Respondent was
11 not excused from appearing and participating from the administrative hearing process. Further,
12 regardless of the burden of proof, in administrative hearings, it is the undersigned's duty to
13 develop a full record and that cannot be accomplished when Respondent fails to appear.
14 Considering the Respondent's failure to appear and the serious allegations of unauthorized
15 employment of a foreign worker over the last 2.5 years — justice is served by referring this
16 employer to Enforcement for further investigation of all labor compliance issues and the possible
17 initiation of an agency case against Respondent.

18 With respect to the labor complaint, the undersigned finds that dismissal is appropriate.
19 Pursuant to 3 CMC § 4947(a), “the hearing officer may, after notice and an opportunity to be
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21 be without merit.” Pursuant to NMIAC § 80-20.2-130(c), dismissal is warranted on the following
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23 (3) insufficiency of process; (4) insufficiency of service of process; and (5) failure to state a claim
24 upon which relief can be granted. *See also* NMIAC § 80-20.10485(b). Ultimately, Complainant's
25 arguments and allegations fail to address the deficiencies noted in the Order to Show Cause.

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19 (4) hours worked and when; and (5) how the claim for damages was calculated. Given the degree
20 of speculation required to move forward in this case, the undersigned finds that Appellant fails to
state a claim for unpaid wages within the six months statute of limitations.

21 **3. Complainant fails to state sufficient allegations to demonstrate an unlawful**
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24 business judgement and discretion initiating mass lay-offs or company closures. Instead, the
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13 initiate a Compliance Agency Case.

14 Any person or party aggrieved by this Order may appeal by filing the Notice of Appeal form
15 and filing fee with the Administrative Hearing Office within fifteen (15) days from the date of
16 this Order.²

17 So ordered this **26th** day of May, 2023.

18 /s/

19 **JACQUELINE A. NICOLAS**
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22 ¹ Pursuant to 3 CMC § 4940, the Department's Enforcement, Compliance, and Monitoring Section has the authority
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**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE**



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In Re the Matter of:)	Labor Case No. 23-010
Chang-eon Ahn,)	
)	
Complainant,)	ORDER DISMISSING COMPLAINT
)	
v.)	
Big Bang Entertainment LLC,)	
)	
Respondent.)	

I. INTRODUCTION

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II. DISCUSSION

As a preliminary matter, the undersigned must note how ill-prepared both parties were for this hearing. First, while the undersigned recognizes that Complainant is appearing self-represented, it is his burden to prepare and prove each element of his claim. Complainant argued that he was not advised which documents to bring. It is beyond the hearing officer’s duty to establish the claim or advise Complainant how to prepare for their case. Second, while counsel for Respondent appeared for the hearing, the hearing was substantially delayed because counsel was appearing online for a hearing in the Superior Court at the same time. Counsel did not provide any advance notice of this conflict or file a request for a continuance which is a clear disregard for the opposing party, interpreter, and undersigned hearing officer’s time. Counsel argued he was not served with adequate notice of the hearing and did not have time to file. This is not persuasive. A notice was served to Respondent’s designated agent for service of process as of May 8, 2023. For whatever reason this was not shared or communicated with counsel is Respondent’s failure. Further,

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13 develop a full record and that cannot be accomplished when Respondent fails to appear.
14 Considering the Respondent's failure to appear and the serious allegations of unauthorized
15 employment of a foreign worker over the last 2.5 years — justice is served by referring this
16 employer to Enforcement for further investigation of all labor compliance issues and the possible
17 initiation of an agency case against Respondent.

18 With respect to the labor complaint, the undersigned finds that dismissal is appropriate.
19 Pursuant to 3 CMC § 4947(a), “the hearing officer may, after notice and an opportunity to be
20 heard is provided to the parties, dismiss *sua sponte* a complaint that the hearing officer finds to
21 be without merit.” Pursuant to NMIAC § 80-20.2-130(c), dismissal is warranted on the following
22 grounds: (1) lack of jurisdiction over the subject matter; (2) lack of jurisdiction over the person;
23 (3) insufficiency of process; (4) insufficiency of service of process; and (5) failure to state a claim
24 upon which relief can be granted. *See also* NMIAC § 80-20.10485(b). Ultimately, Complainant's
25 arguments and allegations fail to address the deficiencies noted in the Order to Show Cause.

26 **1. Complainant fails to establish jurisdiction.**

27 “The Administrative Hearing Office does not have jurisdiction with respect to the claims of
28 tourists. Those claims are pursued in the Commonwealth Superior Court.” NMIAC § 80-20.1-
450(e). “It is the intent of the legislature that the [Commonwealth Employment Act of 2007] shall
not apply to persons admitted to the Commonwealth as tourists, or to persons employed
illegally... it is the intent of the Legislature that . . . illegally employed be prohibited from using
the terms of this Act to receive or avail themselves of a legal right or benefit.” PL 15-108.

1 Based on the evidence provided, Complainant did not have the authorization to work for Big
2 Bang for the entire contested time period. While Complainant submitted an Approval Notice to
3 work as a CW-1 in the CNMI, this notice is valid only for a one-day time period of January 14,
4 2023 to January 14, 2023 There is no showing of a lawful employment arrangement with
5 Respondent beyond that one day, and jurisdiction is not established to all other claims outside of
6 January 14, 2023.

6 **2. Complainant fails to state a claim for unpaid wages within the six months statute of**
7 **limitations.**

8 Pursuant to 3 CMC § 4962, “[n]o labor complaint may be filed more than six months after the
9 date of the last-occurring event that is subject of the complaint, except in cases where the
10 actionable conduct was not discoverable upon the last-occurring event.” *See also* 4 CMC § 9246.
11 “If a complaint is not timely filed, the hearing office *shall* dismiss the complaint with prejudice.”
12 NMIAC § 80-20.1-465(e) (emphasis added). Pursuant to 3 CMC § 4947(a), “the hearing officer
13 may, after notice and an opportunity to be heard is provided to the parties, dismiss *sua sponte* a
14 complaint that the hearing officer finds to be without merit.”

15 Here, Complainant initiated a labor complaint against Respondent on May 4, 2023. Therein,
16 Complainant alleges that he was not paid wages for a period of two and a half years and is seeking
17 \$144,408.00 in damages. While these claims could be limited to those within the six months
18 statute of limitations (November 4, 2022 to May 3, 2023), there is insufficient information on: (1)
19 a lawful employment relationship for the entire period; (2) authorization to work the hours sought;
20 (3) an agreed wage; (4) hours worked and when; and (5) how the claim for damages was
21 calculated. Given the degree of speculation required to move forward in this case, the undersigned
22 finds that Appellant fails to state a claim for unpaid wages within the six months statute of
23 limitations.

23 **3. Complainant fails to state sufficient allegations to demonstrate an unlawful**
24 **reduction in force.**

25 The applicable law with respect to reductions in force does not take away a company’s
26 business judgement and discretion in initiating mass lay-offs or company closures. Instead, the
27 applicable reduction in force statutes and regulations prescribe a process and necessary notice
28 requirements to do so. “An employer who employs foreign national workers may reduce the
number of current employees based on economic necessity. The employer shall provide notice to

1 the Department at least sixty days prior to the reduction in force.” 3 CMC § 4937. See also
2 NMIAC § 80-20.1-240.

3 Here, there is no showing of a mass lay-off or company closure. In fact, there are no
4 allegations with respect to this claim. Instead, Complainant is contesting nonpayment of wages
5 and an alleged reduction in hours. This is not the same as a reduction in force. Accordingly,
6 Complainant fails to show an unlawful reduction in force.

7 III. CONCLUSION

8 Accordingly, pursuant to 3 CMC § 4947(a), this matter is hereby **DISMISSED**. In the event
9 Complainant can cure the above-mentioned deficiencies, Complainant is granted leave to amend
10 and file a new complaint. The amended complaint, if any, shall be due on or before June 5, 2023
11 and limited to claims from November 4, 2022 to January 3, 2023.

12 In light of the allegations of unauthorized employment or other labor compliance issues,
13 the clerk is **ORDERED** to copy and transmit the file to Enforcement for further investigation.¹
14 In the event that Enforcement finds a labor law violation or compliance issue, Enforcement may
15 initiate a Compliance Agency Case.

16 Any person or party aggrieved by this Order may appeal by filing the Notice of Appeal form
17 and filing fee with the Administrative Hearing Office within fifteen (15) days from the date of
18 this Order.²

19 So ordered this **26th** day of May, 2023.

20 /s/

21 **JACQUELINE A. NICOLAS**
22 Chief Administrative Hearing Officer

23 ¹ Pursuant to 3 CMC § 4940, the Department’s Enforcement, Compliance, and Monitoring Section has the authority
24 to conduct investigations as the Department may deem appropriate and necessary to ensure compliance with
25 applicable labor laws. Further, pursuant to NMIAC § 80-20.1-470(a), Enforcement may initiate such investigation
26 as warranted by the allegations, other information provided or available to the Department, and past complaints or
27 violations. Further, investigators may conduct interviews of the parties and others, request documents from the
28 parties, inspect worksites, and undertake such other investigative actions as are warranted. NMIAC § 80-20.1-470(a).
Enforcement “may conduct investigations as necessary and appropriate to enforce the provisions of the
Commonwealth Employment Act of 2007, as amended, and this subchapter to ensure lawful employment
arrangements, payment of wages and overtime, working condition, employer-supplied benefits, and health and safety
for employees.” NMIAC § 80-20.1-445. In conducting these investigations, Enforcement “shall have all of the
powers delegated [under the Employment Rules and Regulations] and the powers to inspect any records that an
employer is required to keep, to make copies of records, and to interview employees.” *Id.* Depending on the
investigation, Enforcement may initiate a consolidated agency action. NMIAC § 80-20.2-455(i).

² The Notice of Appeal Form is available online at www.marianaslabor.net or hard copies are available at the
Administrative Hearing Office. The aggrieved person or party must file the completed form at the Administrative
Hearing Office, with the applicable filing fee.