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PUBLIC EMPLOYMENT

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**SUBCHAPTER I
General Provisions**

§ 111. Short title.

This chapter is known and may be cited as the “National Public Service System Act.”

Source: TT Code 1966 § 91(a); TT Code 1970, 61 TTC 1(1); COM PL 4C-49 § 1; TT Code 1980, 61 TTC 1; PL 1-47 § 1.

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Case annotations: The National Public Service System Act’s provisions create a mutual expectation of continued employment for National Government employees and protect that employment right by limiting the permissible grounds, and specifying necessary procedures, for termination. This, in turn, is sufficient protection of the employment right to establish a property interest. *Suldan v. FSM (II)*, 1 FSM R. 339, 353-54 (Pon. 1983).

Where there are no directly controlling statutes, cases or other authorities within the FSM, it may be helpful to look to the law of other jurisdictions, especially the United States, in formulating general principles for use in resolving legal issues bearing upon the rights of public employees and officers, in part because the structures of public employment within the FSM are based upon the comparable governmental models existing in the United States. *Sohl v. FSM*, 4 FSM R. 186, 191 (Pon. 1990).

§ 112. Definitions.

In this chapter, unless the context requires otherwise, the following definitions shall apply:

(1) “Adjusted base salary” means the total of base salary plus marketplace premium, foreign service premium, or professional premium. If an employee is not entitled to any of these premiums, his adjusted base salary means his base salary.

(2) “Base Salary” means the specific rate of pay for a given pay level and step as contained within the base salary schedule established by law. “Base salary” does not include premiums under section 163 of this chapter, professional premiums, differentials under section 164 of this chapter, or transfer, travel per diem, or other similar allowances.

(3) “Class” or “class of positions” means a group of positions sufficiently similar so that all can reasonably be identified by the same title, be filled by applying the same qualification standards, and be equitably compensated by the same salary level. A class may consist of only one position or of any greater number of positions.

(4) “Eligible list” means a list of persons who have been found qualified for appointment to a position in a particular class. Such a list may be either reemployment, promotional, or open-competitive.

(5) “Eligible person” or “eligible” means a person whose name is on an active eligible list.

(6) “Employee” means a person holding a position in the public service, whether permanently or otherwise.

(7) “Foreign service premium” means a premium as set forth under subsection 163(2) of this title.

(8) “Government of the Federated States of Micronesia” includes the Legislative, the Executive, and the Judicial Branches and the agencies of the Government of the Federated States of Micronesia.

(9) “Management official” or “management” means a person authorized to make appointments or changes in status of employees in the public services.

(10) “Market place premium” means a premium as set forth under subsection 163(1) of this chapter.

(11) “Open-competitive examination” means an examination for positions in a particular class, admission to which is not limited to persons employed in the public service.

(12) “Open-competitive list” means a list of persons who have been found qualified by open-competitive examination for appointment to a position in a particular class.

(13) “Personnel officer” means the head of the Office of Personnel of the Government of the Federated States of Micronesia.

(14) “Position” means a group of duties and responsibilities assigned by competent authority to be performed by one person, working full-time or part-time. A position may be either occupied or vacant.

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(15) “Position classification plan” means the arrangement in a systematic order of the titles of all classes existing in the public service, with a description of each class.

(16) “Probation period” means a period of probationary employment status of not less than six months nor more than one year from the beginning of an employee’s service in a particular position or class in the public service.

(17) “Professional premium” means a premium as set forth under subsection 163(3) of this chapter.

(18) “Promotional examination” means an examination for positions in a particular class, admission to which is limited to regular employees in the public service.

(19) “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.

(20) “Public service” means all offices and other positions in the Government of the Federated States of Micronesia not exempted by section 117 of this chapter.

(21) “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 a lower salary range for which they meet the qualification requirements.

(22) “Regular employee” or “permanent employee” means an employee who has been appointed to a position in the public service who has successfully completed a probation period.”

Source: COM PL 4C-49 § 3; TT Code 1980, 61 TTC 3; PL 1-47 § 3; PL 11-81 § 1; PL 13-64 § 1.

Editor’s note: Subsections rearranged in alphabetical order in the 1982 edition of this code.

§ 113. Merit principles.

The National Public Service System shall be administered in accordance with the merit principles set forth below:

(1) equal opportunity for all regardless of sex, race, religion, political affiliation, ancestry, or place of origin;

(2) no discrimination against any person because of a physical handicap unconnected to his ability to perform effectively the duties of the position in which he is employed or in which he is seeking employment; provided that the employment of such physically handicapped person will not be hazardous to him nor endanger the health or safety of others, nor require major expenditures by the central Government to provide such employee or candidate for employment with an adequate place of work or access thereto;

(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 competent employees, including the right of appeal from adverse personnel actions as provided in this chapter;

(6) systematic classification of all positions through objective job analysis;

(7) fair and reasonable grievance procedures, appropriate to conditions of employment, for all employees;

(8) proper employer-employee relations to achieve a well-trained, productive, and happy work force.

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Source: TT Code 1966 §§ 91(b), 92, 93; TT Code 1970, 61 TTC 1(2); COM PL 4C-49 § 5; TT Code 1980, 61 TTC 5, 10(14); PL 1-47 § 4.

Cross-reference: Equal protection of the laws is guaranteed pursuant to FSM Const., art. IV, § 4. The provisions of the Constitution are found in Part I of this code.

§ 114. Preference to citizens.

(1) Notwithstanding the provisions of section 113 of this chapter, with a view to ensuring full participation by citizens of this country in its public service, preference shall be given to qualified citizens of the Federated States of Micronesia in making appointments and promotions and providing opportunities for training.

(2) The provisions of this section shall be enforced by appropriate regulations.

Source: TT Code 1966 § 91(c); TT Code 1970, 61 TTC 1(3); COM PL 4C-49 § 6; TT Code 1980, 61 TTC 6; PL 1-47 § 5.

§ 115. Tenure.

(1) Every regular employee shall be entitled to hold his position during good behavior, subject to the provisions of subsection (2) of this section, and to suspension, demotion, layoff, dismissal, or termination of employment through the Early Retirement Program, only as provided in this chapter or in chapter 5 of this title and in the regulations adopted in pursuance thereof; provided, however, that the tenure of a contract employee is the term of his contract; and provided further that an employee who must submit his resignation pursuant to section 207 of title 2 of this code is not entitled to continued employment with the National Government if he is not renominated by the President or if he is not reconfirmed by the Congress through advice and consent proceedings.

(2) Notwithstanding any other provision of this title, no person may be an employee of the National Government after the 60th anniversary of his birth, except for those employees who are made exempt from the National Public Service System by section 117 of this title.

Source: COM PL 4C-49 § 10(6)(a); TT Code 1980, 61 TTC 10(6)(a); PL 1-47 § 6(1); PL 9-155 § 7; PL 10-15 § 1; PL 14-56 § 2.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. Section 207 of title 2 of this code is on Appointment Authority.

Editor's note: Congress enacted PL 14-56, which became law without the signature of President Joseph J. Urusemal, and states its purpose in section 1:

Section 1. **Purpose.** The Federated States of Micronesia and its National Government face significant challenges presented by the decreasing availability of Compact funds, a growing population, impediments to sustainable economic growth, and a host of other issues and circumstances. The nation requires a National Public Service that has the energy, skills and intellectual vigor necessary to meet those challenges and to pursue the FSM's interests in an increasingly complicated and technically-demanding world. It is also critical that the nation create opportunities for each successive generation of Micronesians to become involved in public service so that its future leaders may be prepared for the day when responsibility for governing the nation passes to them. At present, there is no mandatory retirement age for employees of the National Government. Too often, National Government employees hold on to their positions for financial reasons, even though they no longer have the will, stamina and vigor necessary to fully perform their responsibilities. As a result, the effectiveness of the National Government is diminished and opportunities for younger citizens to enter and advance within the public service are significantly limited. To address these problems, this act establishes a mandatory retirement age for employees within

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the National Public Service System. Officials who, by law, are exempt from the Public Service System are also made exempt from the mandatory retirement requirement.

In subsection (1) of this section, “of the Code of the Federated States of Micronesia” is replaced with “of this code” for format consistency.

Case annotations: Government employment that is “property” within the meaning of the Due Process Clause cannot be taken without due process. To be property protected under the Constitution, there must be a claim of entitlement based upon governmental assurance of continual employment or dismissal for only specified reasons. *Suldan v. FSM (II)*, 1 FSM R. 339, 351-52 (Pon. 1983).

The National Public Service System Act’s provisions create a mutual expectation of continued employment for National Government employees and protect that employment right by limiting the permissible grounds, and specifying necessary procedures, for termination. This, in turn, is sufficient protection of the employment right to establish a property interest. *Suldan v. FSM (II)*, 1 FSM R. 339, 353-54 (Pon. 1983).

The National Public Service System Act, by implication, requires final decisions by unbiased persons. *Suldan v. FSM (II)*, 1 FSM R. 339, 362 (Pon. 1983).

When an individual begins working for a federal government agency, he is justified in believing that he will be allowed to hold that position until terminated by a supervisor and in believing that he will be compensated for his work. *Falcam v. FSM (II)*, 3 FSM R. 194, 198 (Pon. 1987).

An expectation of being paid for work already performed is a property interest qualifying for protection under the Due Process Clause of the FSM Constitution. *Falcam v. FSM (II)*, 3 FSM R. 194, 200 (Pon. 1987).

Any withholding of private property, such as a government employee’s paycheck, without a hearing can be justified only so long as it take the authorized payor to obtain a judicial determination as to the legality of the payment being withheld. *Falcam v. FSM (II)*, 3 FSM R. 194, 200 (Pon. 1987).

The National Public Service System Act and the FSM Public Service System Regulations establish an expectation of continued employment for nonprobationary national government employees by limiting the permissible grounds and specifying necessary procedures for their dismissal; this is sufficient protection of the right to continued national government employment to establish a property interest for nonprobationary employees which may not be taken without fair proceedings, or “due process.” *Semes v. FSM*, 4 FSM R. 66, 73 (App. 1989).

In the absence of statutory language to the contrary, the National Public Service System Act’s mandate may be interpreted as assuming compliance with the constitutional requirements, because if it purported to preclude constitutionally required procedures, it must be set aside as unconstitutional. *Semes v. FSM*, 4 FSM R. 66, 74 (App. 1989).

§ 116. Nondiscrimination.

No employee in the public service shall be suspended, demoted, dismissed, laid off, or otherwise discriminated against because of sex, marital status, race, religious or political preference, place of origin, or ancestry.

Source: COM PL 4C-49 § 10(6)(b); TT Code 1980, 61 TTC 10(6)(b); PL 1-47 § 6(2).

Cross-reference: FSM Const., art. IV, § 4. The provisions of the Constitution are found in Part I of this code.

§ 117. Application of chapter; Exemptions.

The National Public Service System shall apply to all employees of and positions in the Government of the Federated States of Micronesia now existing or hereafter established and to all

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personnel services performed for that Government except the following, unless this chapter or provisions thereof are specifically made applicable to them:

- (1) Members of the Congress of the Federated States of Micronesia;
- (2) the President and Vice President of the Federated States of Micronesia;
- (3) Justices and other Judges of the National Courts;
- (4) the legislative counsel, deputy legislative counsel, director of administration and budget, budget officer, administrator and the clerk of the Congress;
- (5) the Public Auditor;
- (6) the administrative officer of the National Courts;
- (7) the special assistants and secretaries to the President and Vice President and the secretaries to the Speaker and Vice-Speaker of the Congress of the Federated States of Micronesia;
- (8) persons appointed by the President to fill the following positions:
 - (a) Secretary of the Department of Foreign Affairs,
 - (b) Secretary of the Department of Finance and Administration,
 - (c) Secretary of the Department of Economic Affairs,
 - (d) Secretary of the Department of Transportation, Communication and Infrastructure,
 - (e) Secretary of the Department of Health, Education and Social Affairs,
 - (f) Secretary of the Department of Justice, and
 - (g) the Chief Public Defender, and
 - (h) their deputies, if any;
- (9) persons appointed to any other positions by the President with the advice and consent of the Congress;
- (10) the Representative in Washington and all ambassadors;
- (11) persons or organizations retained by contract when the Personnel Officer has certified that the service to be performed is special or unique and nonpermanent and 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 services through normal public service recruitment procedures;
- (12) persons presently under contract of employment not included in subsection (11) of this section, 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 in accordance with the provisions of this chapter;
- (13) temporary positions, required in the public interest, for which the need does not exceed six months;
- (14) positions requiring part-time or intermittent work which does not exceed 60 hours in any calendar month;
- (15) positions filled by inmates, patients, and students of institutions of the Federated States of Micronesia;
- (16) members of any board, public corporation, commission, or similar body, in their capacity as such;
- (17) officers, faculty, and employees of the Board of Regents and the College of Micronesia;
- (18) positions specifically exempted by any other law of the Federated States of Micronesia;
- (19) all personnel of the National Weather Service, provided that the National Weather Service shall be administered by the Office of the President.

Source: COM PL 4C-49 § 9; COM PL 5-67 §§ 1, 2; COM PL 6-38 § 1; TT Code 1980, 61 TTC 9; PL 1-47 § 8; PL 5-21 § 6; PL 11-81 § 2; PL 13-8 § 1; PL 13-78 § 1; PL 14-81 § 1.

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Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

The website of the FSM National Government contains announcements, press releases, news, forms, and other information on the National Government at <http://fsmgov.org>.

The FSM Supreme Court website contains court decisions, rules, calendar, and other information of the court, the Constitution, the code of the Federated States of Micronesia, and other legal resource information at <http://www.fsmcourtsupremecourt.org/>.

The official website of the Congress of the Federated States of Micronesia contains the public laws enacted by the Congress, sessions, committee hearings, rules, and other Congressional information at <http://www.fsmcongress.fm/>.

The statutory provisions on the Public Auditor are found in chapter 5 of title 55 (Government Finance and Contracts). The statutory provisions on the College of Micronesia—FSM are found in chapter 7 of title 40 (Education) of this code.

§ 118. Inapplicability of exemptions.

Nothing in section 117 of this chapter shall be deemed to affect the public service status of any incumbent as it existed on the effective date of this chapter.

Source: COM PL 4C-49 § 9(c); TT Code 1980, 61 TTC 9(3); PL 1-47 § 8(2).

§ 119. Transition.

A regular employee holding a valid appointment in the Trust Territory public service may be admitted without examination, or after the effective date of this chapter, to a position of the same class or an equivalent class in the National Public Service System of the Federated States of Micronesia. In subsequently computing the seniority of such an employee for retention and similar purposes, his time of service in the Trust Territory public service shall be credited in the same way as if it had been in the National Public Service System.

Source: PL 1-47 § 27.

SUBCHAPTER II Administration

§ 121. Establishment of system.

There is hereby established in the central Government of the Federated States of Micronesia 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 National Public Service System.

Source: TT Code 1966 § 91(a); TT Code 1970, 61 TTC 1(1); COM PL 4C-49 § 4; TT Code 1980, 61 TTC 4; PL 1-47 § 2.

§ 122. Personnel Officer—Appointment and qualifications.

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(1) The Personnel Officer shall be appointed by the President with the advice and consent of the Congress or its appropriate committee.

(2) The Personnel Officer shall direct and supervise all the administrative and technical activities of the Office of Personnel.

(3) The Personnel Officer shall be a person qualified for administrative responsibility by training and experience and of known sympathy with merit principles of personnel administration.

Source: COM PL 4C-49 § 8(1), (2); TT Code 1980, 61 TTC 8(1), (2); PL 1-47 § 6(1), (2), (3).

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

§ 123. Personnel Officer—Functional duties.

The Personnel Officer shall:

(1) be directly responsible to the President and serve as a principal adviser to the President and his staff on all matters concerning personnel administration and employee training;

(2) administer the system of personnel administration for the central Government of the Federated States of Micronesia;

(3) prepare proposed policies and regulations to carry out provisions of this chapter;

(4) cooperate fully with and attend, or assign a qualified representative to attend, all meetings of the ad hoc committees organized under section 153 of this chapter, and provide the committee with such technical advice as it may require;

(5) appoint other employees of the Office of Personnel, in accordance with all other applicable provisions of law;

(6) establish and maintain a current roster of all officers and employees in the public services, indicating for each the class of position held, the salary, and any other appropriate data;

(7) develop and maintain a system of performance evaluation for the purpose of appraising the productivity of employees in the public service;

(8) develop and maintain a position classification plan and a pay plan in accordance with this chapter and other applicable laws;

(9) develop and utilize recruitment and selection procedures and methods;

(10) develop training programs for the improvement of employee skills and for the development of a systematic career program for employees who are citizens of the Federated States of Micronesia; and

(11) perform any other lawful acts assigned to him by the President or otherwise required to carry out the provisions and purposes of this chapter.

Source: COM PL 4C-49 § 8(3)-(13); TT Code 1980, 61 TTC 8(3); PL 1-47 § 6(4).

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

§ 124. Regulations.

The Personnel Officer shall draft regulations for personnel administration in the central Government of the Federated States of Micronesia and shall submit such proposed regulations, together with his comments and recommendations thereon, to the President. The President, after considering the recommendations of the Personnel Officer, shall promulgate personnel regulations in the manner provided by law. When promulgated, such regulations shall have the force and effect of law. They may relate to any matter not inconsistent with law concerning the establishment and maintenance of a system

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of personnel management based on merit principles, including but not limited to matters set forth in this chapter, and may be amended or repealed through the same procedure by which they were adopted or by statute.

Source: COM PL 3C-49 § 1(4); TT Code 1970, 61 TTC 1(4); COM PL 4C-49 § 8(3)(c); TT Code 1980, 61 TTC 8(3)(c); PL 1-47 § 26.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on Administrative Procedure are found in title 17 of this code.

SUBCHAPTER III Appointment and Promotion of Employees

§ 131. Position classification.

All positions subject to the provisions of this chapter shall be classified by the Personnel Officer according to their duties and responsibilities and shall be grouped into classes on the basis of their similarities in duties, responsibilities, and desirable qualifications. Each class shall be given a title which shall apply to all positions therein, and which shall be used for all personnel, budgetary, and financial purposes. In preparing the position classification plan, the Personnel Officer shall consult with appropriate management officials. The Personnel Officer may change a position from one class to another when substantial changes have occurred in the duties and responsibilities of the position. The Personnel Officer shall determine the status of occupants of positions which have been so reclassified.

Source: TT Code 1966 § 98(a); COM PL 4-33 § 1; COM PL 3C_49 § 3; TT Code 1970, 61 TTC 101; COM PL 4C-49 § 10(9); TT Code 1980, 61 TTC 10(a); PL 1-47 § 16.

§ 132. 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 the period and by the media which are appropriate in the circumstances. The advertisement shall include at least the position title, the salary, a brief description of the class, the location of the vacancy or vacancies, the qualification standards required, and the time and place of the examination, if any. The closing date for filing applications shall be clearly stated. On applications which are mailed, the date stamp of the post office on the mailing envelope shall be used to determine compliance with the deadline stated in the advertisement.

Source: COM PL 4C-49 § 10(1); TT Code 1980, 61 TTC 10(1); PL 1-47 § 9.

§ 133. Examinations.

(1) *General character.* There shall be competitive examinations, whenever possible and as determined by the Personnel Officer, to test the relative fitness of candidates for public service positions covered by this chapter. Examinations may be written, oral, performance, or any combination thereof, and shall provide for ascertaining the physical and educational qualifications, experience, knowledge, and skill of applicants and their relative capacity and fitness for the duties of the positions they seek. All examinations shall be free and, except for promotional examinations, shall be open to all candidates, but with such limitations in regard to health, physical condition, education, training, experience, and other relevant matters as are appropriate to the class for which the examination is given. All examinations

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shall be under the control of the Personnel Officer or of such 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 may be specified by the Personnel Officer.

(2) *Promotional examinations.* Examinations may be promotional whenever, in the opinion of the Personnel Officer, such examinations are practicable and for the best advantage of the public service. The Personnel Officer shall give ample notice of any promotional examination.

(3) *Open-competitive examinations.* Examinations shall be open-competitive whenever, in the opinion of the Personnel Officer, such examinations are practicable and for the best advantage of the public service. The Personnel Officer shall give ample notice of any open-competitive examination.

(4) *Noncompetitive examinations.* Noncompetitive examinations may be given when, in the opinion of the Personnel Officer, the class for which the examination is to be given calls for special qualifications which could not practically be evaluated through competition, or when the number of qualified candidates does not exceed the number of vacancies to be filled.

Source: COM PL 4C-49 § 10(2); COM PL 5-51 § 11; TT Code 1980, 61 TTC 10(2); PL 1-47 § 10.

§ 134. Eligible lists.

(1) *General.* The Personnel Officer shall cause to be established and maintained separate eligible lists for all classes in which vacancies exist or are anticipated. Eligible lists may be open-competitive, promotional, or reemployment, depending on whether they result from open-competitive examinations, promotional examinations, or reemployment registration. An eligible list may remain active for one year, except that the name of a person otherwise eligible may remain on a reemployment list for three years. The active life of an open-competitive or promotional list may be extended by the Personnel Officer if candidates thereon remain available and there are more vacancies to be filled than names on the list.

(2) *Reemployment lists.*

(a) 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, or has voluntarily accepted a position in a lower class, or whenever such an employee's position has been reclassified to a lower class, he shall have the right to have his name registered on the appropriate reemployment list for a period of three years thereafter by filing a written application for registration. Such application form shall be provided to him at the time of notification of adverse personnel action. A person on a reemployment list shall be eligible for certification to positions in the class in which he last held permanent status or in a related class, in the same or a lower salary range, for which he meets qualification requirements.

(b) The Personnel Officer may remove the name of a person from any eligible list or refuse to certify his name from 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.

Source: COM PL 4C-49 § 10(3); COM PL 6-103 § 1; TT Code 1980, 61 TTC 10(3); PL 1-47 § 11.

§ 135. Filling of vacancies.

All vacancies and new positions in the public service shall be filled in the following manner:

(1) Whenever there is a position to be filled, the management official shall ask the Personnel Officer to submit a list of persons eligible. The Personnel Officer shall thereupon certify a list of five, or such lesser number as may be available, taken from eligible lists in the following order: first,

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reemployment lists; second, promotional lists; and third, open-competitive lists. The management official shall make the appointment from the list of eligibles submitted to him unless he finds no person available and acceptable to him on the list, in which case he will ask the Personnel Officer to certify a new list, stating in writing his reason for rejecting each of the eligibles on the list previously submitted to him. If the Personnel Officer finds such reasons adequate, he shall then submit a new list of no more than five eligibles selected in like manner, from which the management official shall make an appointment. If the Personnel Officer does not find the reasons adequate, he shall resubmit the list and the appointment shall be made therefrom.

(2) A management official may fill a vacant position in his department, office, or other agency by promoting any regular employee therein 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 a qualified employee who is a citizen of the Federated States of Micronesia shall be given preference for promotion over a noncitizen employee; and provided further, that when there is no material difference between the qualifications of employees holding the same citizenship status, the employee with the longest public service will receive first consideration for promotion.

Source: COM PL 4C-49 § 10(4); COM PL 5-51 § 11; COM PL 6-103 § 2; TT Code 1980, 61 TTC 10(4); PL 1-47 § 12.

§ 136. Disqualification from appointment.

(1) Conviction of a crime of moral turpitude shall not be a bar to employment in the public service unless the nature of the crime renders the candidate clearly unsuitable for the position applied for. The Assistant Secretary for Personnel Administration, Department of Finance and Administration shall 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.

(2) The Commission of or the attempt to commit any material deception or fraud in connection with any application or examination shall cause removal and permanent disqualification from appointment in the public service, after due notice and hearing by the Assistant Secretary for Personnel Administration, Department of Finance and Administration.

(3) Participation in a State Government's Early Retirement Program, shall be a basis for disqualification from appointment in the public service including appointment to a National Government position that is exempt from the National Public Service System. Such disqualification shall be effective for so long as the candidate would have been disqualified from such appointment if the candidate had participated in the National Government Early Retirement Program.

Source: COM PL 4C-49 § 10(5); TT Code 1980, 61 TTC 10(5); PL 1-47 § 13; PL 11-98 § 1.

Cross-reference: The statutory provisions on Crimes are found in title 11 of this code.

§ 137. Provisional and short-term appointment.

(1) *Provisional appointment pending establishment of an eligible list.* When there is no eligible person available on a list appropriate for filling vacancy in a continuing position and the public interest requires that it be filled before eligibles can be certified, the Personnel Officer may authorize the filling of the vacancy through provisional appointment. The Personnel Officer shall proceed without delay to announce an examination to fill the vacancy. The provisional appointment shall continue only

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for such period as may be necessary to make an appointment from an eligible list but shall not extend beyond 90 days; provided that the Personnel Officer may extend the provisional appointment for a maximum of 90 additional days if an examination has failed to secure any qualified available eligible person.

(2) *Emergency appointments.* To prevent the stoppage of essential public business, management officials may make emergency appointments, not to exceed ten working days, to fill positions temporarily in any serious emergency when time is insufficient to follow normal appointment procedure. The Personnel Officer may, for good and sufficient cause stated in writing by the management official concerned, extend the appointment for an additional period not to exceed 20 working days.

(3) *Qualifications.* Provisional and temporary appointees must meet the qualification requirements for the class of the position to be filled.

Source: COM PL 4C-49 § 10(7); TT Code 1980, 61 TTC 10(7); PL 1-47 § 14.

§ 138. Probationary service.

(1) Every employee shall successfully serve a probation period before becoming a regular employee. An employee whose services are unsatisfactory during his probation period may be dismissed from the public service at any time by the responsible management official. An employee so dismissed shall have no right of appeal; but, if the employee so requests, the Personnel Officer may in his discretion insert the employee's name on the eligible list or lists for other positions in the same class.

(2) A regular employee who is promoted or transferred to another position in the public service shall 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 removal from the new position, as distinguished from dismissal from the public service. In case of such removal, the employee shall be reinstated in his former position or in another position in the same class, without prejudice.

(3) When a provisional or temporary appointee subsequently becomes a probationary employee, the period of service in provisional or temporary status shall be counted toward meeting the probation period required by this section.

Source: COM PL 4C-49 § 10(8); TT Code 1980, 61 TTC 10(8); PL 1-47 § 15.

SUBCHAPTER IV Employee Rights and Tenure in Employment

§ 141. Performance evaluations.

The Personnel Officer shall develop and maintain a system of performance evaluation for the purpose of appraising the productivity of employees in the public service. Each agency shall develop performance evaluation criteria for every class or, if appropriate, for individual positions, and shall rate each employee under its jurisdiction at least once a year. The Personnel Officer shall standardize performance evaluation criteria, develop evaluating procedures, and certify the final evaluations. A copy of each evaluation shall be given to the employee affected, and the management official shall give written notification to any employee whose performance in his position is substandard. Performance evaluations shall be used in determining eligibility for step increases and retention status in reductions-in-force.

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Source: TT Code 1966 § 106; TT Code 1970, 61 TTC 5; COM PL 4C-49 § 10(11); TT Code 1980, 61 TTC 10(11); PL 1-47 § 18.

§ 142. Outside employment.

(1) No employee subject to the provisions of this chapter shall engage in any outside employment or other outside activity which is not compatible with the full and proper discharge of the responsibilities of his position or is 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 such that 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 or 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 employee subject to the provisions of this chapter 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.

Source: COM PL 4C-49 § 11; TT Code 1980, 61 TTC 11; PL 1-47 § 21.

Case annotations: The Title 51 provision barring nonresident workers from gainful employment for other than the employer who has contracted for him does not apply to national government employees because the national government is not an employer for the purposes of Title 51 of the FSM Code and does not contract with the Chief of the Division of Labor for employment of nonresident workers. *FSM v. Moroni*, 6 FSM R. 575, 578 (App. 1994).

Title 51 does not preclude nonresident national government employees from engaging in off-hours, secondary, private sector employment, but simply means that in order to engage in secondary employment nonresident national government employees must comply with its statutory provisions covering the private sector employment of nonresidents. *FSM v. Moroni*, 6 FSM R. 575, 579 (App. 1994).

§ 143. Employee associations.

Employees shall have the right to form associations for the purpose of presenting their view to the Government and shall be free from restraint or reprisal in exercising this right. The Government shall give reasonable opportunity to representatives of such associations to present their views.

Source: TT Code 1966 § 100; TT Code 1970, 61 TTC 6; COM PL 4C-49 § 10(17); TT Code 1980, 61 TTC 10(17); PL 1-47 § 20.

Cross-reference: FSM Const., art. IV, § 1. The provisions of the Constitution are found in Part I of this code.

§ 144. Grievances.

The regulations shall prescribe a system for hearing the views of employees on their working conditions, status, pay, and related matters and for hearing and adjudicating grievances of any employee

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or group of employees. These regulations shall ensure that employees are free from coercion, discrimination, and reprisals and that they may have representatives of their choice.

Source: TT Code 1966 § 104; TT Code 1970, 61 TTC 202; COM PL 4C-49 § 10(12); TT Code 1980, 61 TTC 10(12), 10(14); PL 1-47 § 22.

§ 145. Leaves of absence.

(1) Leaves of absence with pay may be granted to employees by management officials for reasons of vacation, illness, training, or education, or for such other reasons as will be in the best interests of the public service. Eligibility for such leaves, the method and rate of earning such eligibility, and the duration of the leave shall be established by regulations.

(2) Leaves of absence without pay may be granted for such reasons as management officials may deem proper and consistent with the best interests of the public service. Regulations may prescribe the characteristics of such leaves.

(3) Paid maternity leave of absence shall be granted to an employee for a period of six consecutive weeks per 12 month period:

(a) For purposes of this section, “maternity leave” means leave in connection with the birth of a child of the employee.

(b) Paid maternity leave shall not be considered to be annual leave or sick leave accrued in a calendar year.

(c) Paid maternity leave shall not accumulate for any subsequent use if not used by an employee before the end of each calendar year.

(d) The employer through its management officials may require the employee to provide a doctor’s certificate indicating general condition during pregnancy and the expected delivery date.

Source: TT Code 1966 § 101; TT Code 1970, 61 TTC 152; COM PL 4C-49 § 10(16); TT Code 1980, 61 TTC 10(16); PL 1-47 § 19; PL 16-15 § 1.

Case annotations: The government’s right to discipline an employee for unexcused absence is not erased by the fact that annual leave and sick leave were awarded for the days of absence. *Suldan v. FSM (II)*, 1 FSM R. 339, 357 (Pon. 1983).

§ 146. Resignation.

Resignations shall be in writing. If an employee ceases work without explanation for not less than six consecutive working days, the management official shall file with the Personnel Officer a statement showing termination of employment because of abandonment of position. The management official shall promptly transmit a copy of the statement to the employee by the most practical means.

Source: COM PL 4C-49 § 10(6)(b); TT Code 1980, 61 TTC 10(6)(b); PL 1-47 § 23.

§ 147. Reductions-in-force.

Regulations shall be developed and promulgated to govern the conditions under which an employee shall be laid off from his position when lack of work or lack of funds makes such action necessary. The regulations shall provide that, in establishing order of layoff, consideration shall be given, first, to the employee’s individual merit, as shown by performance evaluations; second, to his qualifications of education, training and experience; and, third, to his seniority as measured by total creditable service.

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Source: TT Code 1966 § 99; TT Code 1970, 61 TTC 151; COM PL 4C-49 § 10(13); COM PL 7-70 § 1; TT Code 1980, 61 TTC 10(13); PL 1-47 § 24.

SUBCHAPTER V Disciplinary Action

§ 151. Suspension.

A management official may, for disciplinary purposes, suspend any employee without pay for such length of time as he considers appropriate but not to exceed 30 days at any one time or 60 days in any 12-month period. No single suspension for a period of more than three working days, whether consecutive or not, shall take effect until the management official transmits to the employee, by the most practical means, a written notice setting forth the specific reasons for the suspension and the employee's rights of appeal. A copy of the notice shall be filed with the Personnel Officer without delay. With the approval of the Personnel Officer, an employee may be suspended for a period longer than 30 days pending the investigation of any charge against him. When an employee has been suspended pending such an investigation and the charge is subsequently dropped, he shall be reinstated in his position with full pay and benefits retroactive to the date of suspension.

Source: TT Code 1966 § 103; TT Code 1970, 61 TTC 201; COM PL 4C-49 § 10(15)(a); TT Code 1980, 61 TTC 10(15)(a); PL 1-47 § 25(1).

Case annotations: The government's right to discipline an employee for unexcused absence is not erased by the fact that annual leave and sick leave were awarded for the days of absence. *Suldan v. FSM (II)*, 1 FSM R. 339, 357 (Pon. 1983).

Title 52 F.S.M.C. 151-57 and PSS Regulation 18.4 establish an expectation of continuous employment for nonprobationary national government employees by limiting the permissible grounds, and specifying necessary procedures, for their dismissal. This is sufficient to establish a "property interest" for the nonprobationary employee which cannot be taken without fair proceedings, or "due process." *Isaac v. Weilbacher*, 8 FSM R. 326, 333 (Pon. 1998).

§ 152. Dismissal; Demotion.

A management official may, for disciplinary reasons, dismiss or demote an employee when he determines that the good of the public service will be served thereby. Demotions may also be made for reasons other than disciplinary ones; the personnel regulations shall specify the circumstances in which such demotions may be authorized. No dismissal or demotion of a permanent employee shall be effective for any purpose until the management official transmits to the employee, by the most practical means, a written notice setting forth the specific reasons for the dismissal or demotion and the employee's rights of appeal. A copy of the notice shall be filed with the Personnel Officer without delay.

Source: TT Code 1966 § 103; TT Code 1970, 61 TTC 201; COM PL 4C-49 § 10(15)(b); TT Code 1980, 61 TTC 10(15)(b); PL 1-47 § 25(2).

Case annotations: The National Public Service System Act plainly manifests a congressional intention that where there is a dispute over a dismissal, the FSM Supreme Court should withhold action until the administrative steps have been completed. *Suldan v. FSM (I)*, 1 FSM R. 201, 206 (Pon. 1982).

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The National Public Service System Act fixes two conditions for termination of a national government employee. Responsible officials must be persuaded that: (1) there is “cause,” that is, the employee has acted wrongfully, justifying disciplinary action; and (2) the proposed action will serve “the good of the public service.” 52 F.S.M.C. 151-157. *Suldan v. FSM (II)*, 1 FSM R. 339, 353 (Pon. 1983).

The National Public Service System Act’s provisions create a mutual expectation of continued employment for national government employees and protect that employment right by limiting the permissible grounds, and specifying necessary procedures, for termination. This, in turn, is sufficient protection of the employment right to establish a property interest. *Suldan v. FSM (II)*, 1 FSM R. 339, 353-54 (Pon. 1983).

The National Public Service System Act, by implication, requires final decisions by unbiased persons. *Suldan v. FSM (II)*, 1 FSM R. 339, 362 (Pon. 1983).

The National Public Service System Act places broad authority in the highest management official, authorizing dismissal based upon disciplinary reasons when the official determines that the good of the public service will be served thereby. *Semes v. FSM*, 4 FSM R. 66, 73 (App. 1989).

A wrongfully discharged government employee has a duty to mitigate his damages by actively looking for and accepting any reasonable offer of employment; otherwise back pay damages cannot be awarded. If the former government employee obtains other employment, the amount he is awarded in back pay must be reduced by the amount he mitigated his damages by the amount he received from the other employment since otherwise he could recover a windfall, which would violate the principles of compensatory damages. *Sandy v. Mori*, 17 FSM R. 92, 94 (Chk. 2010).

When the discharged employee has not presented any evidence about whether and where he sought employment during a certain time period, he has introduced no evidence of his efforts to mitigate his damages by attempting to secure a job during his periods of unemployment, and he is thus precluded from recovery of damages for those periods since it is the plaintiff’s burden to prove every element of his case, including all of his damages. *Sandy v. Mori*, 17 FSM R. 92, 95 (Chk. 2010).

Back pay compensatory damages are the measure of compensatory damages for wrongful discharge. Compensation for an injury is not doubled just because the plaintiff has two different causes of action on which to base that recovery because only the injury itself is compensated. *Sandy v. Mori*, 17 FSM R. 92, 95-96 (Chk. 2010).

From awards of back pay damages the employer must deduct the applicable wage and salary taxes and social security taxes, which must then be remitted to the appropriate tax authorities. *Sandy v. Mori*, 17 FSM R. 92, 96 (Chk. 2010).

Reinstatement to his former position (or its equivalent) is the usual remedy for a state public service system employee who has shown that he was wrongfully discharged. This is true even though the former position has been filled by another employee since if the existence of a replacement constituted a complete defense against reinstatement, then reinstatement could be effectively blocked in every case simply by immediately hiring an innocent third-party after the unlawful discharge has occurred, thus rendering the reinstatement remedy’s deterrent effect a nullity. *Sandy v. Mori*, 17 FSM R. 92, 96 (Chk. 2010).

Since the appropriateness of an equitable remedy of reinstatement is determined by current conditions rather than past conditions, the court may reinstate a wrongfully-discharged state employee provided that the former employee is ready, willing, and able to work and is ready for assignment. *Sandy v. Mori*, 17 FSM R. 92, 96 (Chk. 2010).

§ 153. Appeals—Appeal panel.

The President shall appoint not fewer than seven persons to constitute a panel from which ad hoc hearing committees may be drawn for the purpose set forth in this subchapter. The President may remove a member of the panel for cause. Persons appointed shall be nonexempt employees of the Government of the Federated States of Micronesia, of mature judgment and experience. The panel shall

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include at least one member from each of the three branches of Government. Exempt employees shall not be eligible for membership on the panel.

Source: TT Code 1966 § 94; COM PL 3C-49 § 2; TT Code 1970, 61 TTC 51(2); PL 1-47 § 25(3)(a); PL 7-90 § 1.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code.

Case annotations: The National Public Service System Act plainly manifests a congressional intention that where there is a dispute over a dismissal, the FSM Supreme Court should withhold action until the administrative steps have been completed. *Suldan v. FSM (I)*, 1 FSM R. 201, 206 (Pon. 1982).

The National Public Service System Act, by implication, requires final decisions by unbiased persons. *Suldan v. FSM (II)*, 1 FSM R. 339, 362 (Pon. 1983).

§ 154. Appeals—Right of appeal; Convening of panel.

Any regular employee who is suspended for more than three working days, demoted, or dismissed may appeal through the Personnel Officer within 15 calendar days after written notice of the suspension, demotion, or dismissal has been transmitted to him. Upon receiving such appeal, the Personnel Officer shall constitute an *ad hoc* hearing committee of three members, drawn from the panel established under section 153 of this chapter.

(1) The *ad hoc* committee shall comprise one member chosen by the Personnel Officer, one chosen by the appellant, and a third chosen jointly by the first two members. If the first two are unable to agree on the choice of a third member, the third member shall be selected by lot from among the remaining members of the panel.

(2) No member of an *ad hoc* committee shall be an officer or employee of the agency to which the appellant is or was assigned, or a close relative of either the appellant or the responsible management official.

(3) Members of *ad hoc* committees shall not be entitled to additional compensation for such service, but shall be reimbursed for necessary expenses connected with any hearing to which they are assigned.

Source: COM PL 4C-49 § 10(15)(c)(i); TT Code 1980, 61 TTC 10(15)(c)(i); PL 1-47 § 25(3)(b).

Case annotations: The National Public Service System Act plainly manifests a congressional intention that where there is a dispute over a dismissal, the FSM Supreme Court should withhold action until the administrative steps have been completed. *Suldan v. FSM (I)*, 1 FSM R. 201, 206 (Pon. 1982).

The National Public Service System Act, by implication, requires final decisions by unbiased persons. *Suldan v. FSM (II)*, 1 FSM R. 339, 362 (Pon. 1983).

§ 155. Hearing.

(1) The hearing shall be held within 15 calendar days after the Personnel Officer receives the appeal, unless the appellant requests a delay. At the hearing, the appellant and the responsible management official shall each have the right to be heard, to present evidence, to be confronted by all adverse witnesses, and to be represented by counsel of his own choosing.

(2) At the hearing, technical rules of evidence shall not apply and evidence shall be taken stenographically or by recording machine. The committee shall on its own motion or on that of the Personnel Officer, management, or the appellant, subpoena witnesses and tangible evidence, when such

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witnesses or evidence are relevant and material to the hearing. Hearings shall be public except when the appellant requests a closed hearing.

Source: COM PL 4C-49 § 10(15)(c)(i), (iii); TT Code 1980, 61 TTC 10(15)(c)(i), (iii); PL 1-47 § 25(3)(c), (d).

Case annotations: The National Public Service System Act plainly manifests a congressional intention that where there is a dispute over a dismissal, the FSM Supreme Court should withhold action until the administrative steps have been completed. *Suldan v. FSM (I)*, 1 FSM R. 201, 206 (Pon. 1982).

Constitutional due process requires that a nonprobationary employee of the national government be given some opportunity to respond to the charges against him before his dismissal may be implemented; including oral or written notice of the charges against him, an explanation of the employer's evidence, and an opportunity to present his side of the story. *Semes v. FSM*, 4 FSM R. 66, 76 (App. 1989).

Implementation of the constitutional requirement that a government employee be given an opportunity to respond before dismissal is consistent with the statutory scheme of the National Public Service System Act, therefore the Act need not be set aside as contrary to due process. *Semes v. FSM*, 4 FSM R. 66, 77 (App. 1989).

§ 156. Recommendations.

The committee shall prepare a full written statement of its findings of fact and its recommendations for action within seven calendar days after the close of the hearing. Its recommendations may include modification or reversal of the disciplinary action, from which appeal was taken. It shall forthwith transmit that statement, with such supporting documentation as it deems appropriate, to the highest management official responsible for the agency in which the appellant was employed. The decision of that management official shall be final.

Source: COM PL 4C-49 § 10(15)(c)(i), (ii); TT Code 1980, 61 TTC 10(15)(i), (ii); PL 1-47 § 25(3)(e).

Case annotations: The highest management official must base his final decision on a National Government employee's termination under section 156 of the National Public Service System Act, upon the information presented at the ad hoc committee hearing and no other information. *Suldan v. FSM (II)*, 1 FSM R. 339, 359-60 (Pon. 1983).

If, pursuant to section 156 of the National Public System Act, the highest management official declines to accept a finding of fact of the ad hoc committee, the official will be required by statutory as well as constitutional requirements to review those portions of the record bearing on the factual issues and to submit a reasoned statement demonstrating why the ad hoc committee's factual conclusion should be rejected. *Suldan v. FSM (II)*, 1 FSM R. 339, 362 (Pon. 1983).

The highest management officials cannot be said to be biased as a class and they cannot be disqualified, by virtue of their positions from final decision-making as to a National Government employee's termination under section 156 of the National Public Service System Act, without individual consideration. *Suldan v. FSM (II)*, 1 FSM R. 339, 363 (Pon. 1983).

Due process may well require that, in a National Public Service System employment dispute, the ultimate decision maker the ad hoc committee hearing, at least insofar as either party to the personnel dispute may rely upon some portion of the record. 52 F.S.M.C. 156. *Suldan v. FSM (I)*, 1 FSM R. 201, 206 (Pon. 1982).

The National Public Service System Act's provisions create a mutual expectation of continued employment for national government employees and protect that employment right by limiting the permissible grounds, and specifying necessary procedures, for termination. This, in turn, is sufficient protection of the employment right to establish a property interest. *Suldan v. FSM (II)*, 1 FSM R. 339, 353-54 (Pon. 1983).

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The National Public Service System Act, by implication, requires final decisions by unbiased persons. *Suldan v. FSM (II)*, 1 FSM R. 339, 362 (Pon. 1983).

§ 157. Limitations on judicial review.

Disciplinary actions taken in conformance with this subchapter shall in no case be subject to review in the Courts until the administrative remedies prescribed herein have been exhausted; nor shall they be subject to such review thereafter except on the grounds of violation of law or regulation or of denial of due process or of equal protection of the laws.

Source: PL 1-47 § 25(3)(f).

Cross-reference: FSM Const., art. IV, § 3. The provisions of the Constitution are found in Part I of this code.

The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code. The statutory provisions on Judicial Procedure are found in title 6 of this code.

Case annotations: It is not appropriate for the Court to consider a claim that a Government employee's termination was where the administrative steps essential for review by the Court of employment terminations have not yet been completed. 52 F.S.M.C. 157. *Suldan v FSM (I)*, 1 FSM R. 201, 202 (Pon. 1982).

The National Public Service System Act plainly manifests a congressional intention that where there is a dispute over a dismissal, the FSM Supreme Court should withhold action until the administrative steps have been completed. *Suldan v. FSM (I)*, 1 FSM R. 201, 206 (Pon. 1982).

In reviewing the termination of national government employees under the National Public Service System Act, the FSM Supreme Court will review factual findings insofar as necessary to determine whether there is evidence to establish that there were grounds for discipline. *Semes v. FSM*, 4 FSM R. 66, 71 (App. 1989).

Under the National Public Service System Act, where the FSM Supreme Court's review is for the sole purpose of preventing statutory, regulatory and constitutional violations, review of factual findings is limited to determining whether substantial evidence in the record supports the conclusion of the administrative official that a violation of the kind justifying termination has occurred. *Semes v. FSM*, 4 FSM R. 66, 72 (App. 1989).

When the statute provides that disciplinary actions taken in conformance with it shall be in no case subject to review in the courts until the administrative remedies therein have been exhausted, but when the plaintiff's termination was not the result of a disciplinary action but was either because the plaintiff held a position where he served at the governor's pleasure or that the proper Public Service System procedures were not used to hire the plaintiff, the lawsuit does not fall within the statute's reach and the case will not be dismissed for failure to exhaust administrative remedies. *Naka v. Simina*, 13 FSM R. 460, 461 (Chk. 2005).

It is not necessary to exhaust one's administrative remedies before filing suit when to do so would be futile. *Naka v. Simina*, 13 FSM R. 460, 461 (Chk. 2005).

When an administrative remedy is provided by statute, relief ordinarily must not only be sought initially from the appropriate administrative agency but such remedy usually must be exhausted before a litigant may resort to the courts. *Carlos Etscheit Soap Co. v. Do It Best Hardware*, 14 FSM R. 152, 157-58 (Pon. 2006).

SUBCHAPTER VI Compensation Plan

§ 161. Salary schedule.

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(1) *Salary schedule.* There shall be a single salary schedule for all employees and positions in the public service. The Personnel Officer shall assign each class of positions to an appropriate salary level of such schedule.

(2) *Statutory enactment.* No salary schedule or change in any salary schedule for employees of the National Public Service System, except those excluded by the provisions of this chapter, shall be effective unless it shall have been enacted into law by the Congress of the Federated States of Micronesia.

Source: COM PL 4C-49 § 10(a), (b), (c); TT Code 1980, 61 TTC 10(a), (b); PL 1-47 § 17(1), (2); PL 1-71 § 1.

Cross-reference: The statutory provisions on the FSM Congress are found in title 3 of this code.

Case annotations: A basic premise of public employment law is that the rights of a holder of public office are determined primarily by reference to constitutional, statutory and regulatory provisions, not by the principles of contract which govern private employment relationships. *Sohl v. FSM*, 4 FSM R. 186, 191 (Pon. 1990).

Subject to constitutional limitations, the public has the power, through its laws, to fix the rights, duties and emoluments of public service, and the public officer neither bargains for, nor has contractual entitlements to them. *Sohl v. FSM*, 4 FSM R. 186, 191 (Pon. 1990).

The amount of compensation a public employee receives is not based on quasi-contract doctrines such as quantum meruit or unjust enrichment, but instead is set by law, even if the actual value of the services rendered by a public officer is greater than the compensation set by law. *Sohl v. FSM*, 4 FSM R. 186, 192 (Pon. 1990).

Public employees are only entitled to receive the benefits prescribed by law for positions to which they have been duly appointed, even if an officer or employee has performed duties or services above and beyond those of the appointed office. *Sohl v. FSM*, 4 FSM R. 186, 192 (Pon. 1990).

A public officer claiming certain compensation or other benefits must show a clear legal basis for his right to these emoluments; hopes and expectations, even reasonable ones, are not enough to create that legal entitlement, nor are any moral obligations which may be incurred, without clear warrant of law. *Sohl v. FSM*, 4 FSM R. 186, 193 (Pon. 1990).

The compensation of public officials in the FSM is not determined by a contract for specific services, express or implied, but by the judgment of the people, through their elected representatives and executive officials who properly exercise delegated power pursuant to statutory or other authorization; specifically, the FSM Constitution and statutes establish how a person may attain public office, and the National Public Service System Act and regulations thereunder set the compensation to be paid to holders of the respective offices. *Sohl v. FSM*, 4 FSM R. 186, 194 (Pon. 1990).

Where a public official claims additional compensation, it is inappropriate to ask whether he received compensation equal to the value of his services to the public, but instead the court must inquire whether he received the amount that was due to him by law or whether he can demonstrate a clear legal entitlement to the office which would have provided the compensation he now seeks. *Sohl v. FSM*, 4 FSM R. 186, 194 (Pon. 1990).

§ 162. Periodic review of plan.

The Personnel Officer shall periodically conduct necessary and appropriate studies of rates of compensation and pay-related practices in all geographic areas from which employees for the public service are normally recruited and shall adopt such amendments to the existing compensation plan as he deems appropriate; provided that when the amendment includes changes in the salary schedule, the rates or nature of differentials or allowances, or other subjects covered in this subchapter or in other laws, the Personnel Officer shall submit the recommendations to the President for review, approval, and further

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transmittal to the Congress for its consideration, and that such amendment shall become effective only after it has been enacted into law. In developing amendments, the Personnel Officer shall give consideration to:

- (1) the minimum standard of living which is compatible with decency and health;
- (2) the general economic conditions of the Federated States of Micronesia;
- (3) compensation practices and conditions of appropriate labor markets;
- (4) conditions of employment in the National Public Service System;
- (5) the financial resources estimated to be available to the central Government of the Federated States of Micronesia;
- (6) such other matters as the Personnel Officer may deem appropriate.

Source: TT Code 1966 § 98; COM PL 3C-49 § 3(b); TT Code 1970, 61 TTC 102; COM PL 5-51 § 11(7); TT Code 1980, 61 TTC 10(10)(d); PL 1-47 § 17(3); PL 1-71 § 1.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

The official website of the Congress of the Federated States of Micronesia contains the public laws enacted by the Congress, sessions, committee hearings, rules, and other Congressional information at <http://www.fsmcongress.fm/>.

§ 163. Premiums.

To recognize circumstances of employment which make it appropriate that consideration be given to labor market conditions outside the Federated States of Micronesia, and to recognize and reward the attainment of certain advanced professional status, the following premiums are provided to public service employees:

(1) *Market place premium.* An employee who is recruited in a location outside the Federated States of Micronesia, who is a noncitizen of the Federated States of Micronesia, and at the time of original hire, a nonresident thereof, may be paid a premium based on labor market conditions in the place of recruitment and on the level of the base salary. A market-place premium may be paid if prevailing rates of pay for equivalent positions are substantially higher in the country of recruitment than in the Federated States of Micronesia. Upon request from the allottee of the funds from which the employee's compensation is to be paid, the Secretary of the Department of Finance and Administration shall report to the allottee on the difference, insofar as it can best be estimated, between the prevailing rates in the Federated States of Micronesia and in the country of recruitment. The allottee may then determine what portion, if any, of the difference will be paid as a market-place premium. The amount of the premium determined by the allottee shall not be greater than 90 percent of the value of the employee's base salary.

(2) *Foreign service premium.* An employee who is a citizen of the Federated States of Micronesia and who is assigned to a permanent duty station outside the Federated States of Micronesia may be paid a premium based on the cost of living in the place of assignment.

(3) *Professional premium.* An employee who has achieved advanced professional status in one of the following manners and who is employed in a position which requires or, directly utilizes such professional status may receive, in addition to the base salary of his position, a professional premium. The amount of professional premium to be paid, if any, shall be determined by the allottee of the funds from which the employee's salary is to be paid based upon the employee's education, experience and expertise. The amount of the premium determined by the allottee shall not be greater than 90 percent of the value of the employee's base salary. To be eligible for such a professional premium, the employee must meet one or more of the following requirements:

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(a) attainment of an earned degree in law from a law school accredited by the competent authority in the jurisdiction in which it operates, and admission either to the FSM Supreme Court Bar or to practice law in another jurisdiction;

(b) admission to the FSM Supreme Court Bar and eight years of experience in the legal field;

(c) full membership of one or more of the professional accountancy associations listed in the Public Service Regulations, as amended from time to time, or certification by the Public Auditor that the employee's qualifications and experience are equivalent to those which would be required to obtain full membership of such an association;

(d) attainment of an earned degree in engineering upon completion of a four-year course of study from a college, university or educational institution which is accredited by the competent authority in the jurisdiction in which the college, university or educational institution is located; and

(e) attainment of an earned doctorate in any field.

(4) The Public Auditor will conduct an annual audit of all professional and market place premiums being paid to public service employees. The audit findings shall be transmitted to the President and Congress.

Source: PL 1-47 § 17(4); PL 1-71 § 1; PL 11-81 § 3; PL 13-64 § 2.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Supreme Court and Judiciary are found in title 4 of this code. The statutory provisions on the Public Auditor are found in chapter 5 of title 55 (Government Finance and Contracts).

§ 164. Differentials.

To compensate for unusual circumstances of employment which create hardships for public service employees, the following differentials are provided for them; provided that in no case may an employee receive differentials under both subsections (1) and (2) of this section:

(1) *Night work differential.* An employee whose tour of duty includes regularly scheduled hours falling between 7:00 p.m. and 6:00 a.m. shall be paid a differential of 15 percent of the adjusted base salary for all hours falling within that period.

(2) *Hazardous work differential.* An employee whose position entails unusual and extreme hazards to his health or safety shall be paid a differential of 25 percent of the adjusted base salary for all hours in which hazardous work is performed.

(3) *Overtime differential.* If an employee is eligible to receive overtime compensation under section 509 of this title, he shall be paid overtime compensation at the rate of time and one-half of his adjusted base salary for all time when he is directed to work and does work in excess of eight hours in one day; or when he is directed to work and does work on the sixth or seventh day of the work week; provided that he has first worked forty hours at straight time in the same work week; and provided further, that overtime work performed on a holiday shall be subject to subsection (4) of this section.

(4) *Holiday differential.* An employee who is required to work on a legal holiday shall be compensated at double his adjusted base salary for all such hours worked.

(5) *Typhoon emergency differential.* Employees who are required to work in a location and a period in which a typhoon or other natural catastrophe has been declared by competent authority, and in which other Government employees are released from work because of such conditions, shall be compensated for the hours worked while such emergency remains in force at the rate of two and one-half times the adjusted base salary. The differential provided in this subsection shall not limit the

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employee's right to any other differential or allowance to which he may otherwise be entitled by law or regulations.

(6) *Sea duty differential.* An employee of the Maritime Wing of the National Police shall be paid his adjusted base salary plus a differential of ten percent of his adjusted base salary for all hours actually worked, up to but not in excess of eight hours per day, in any day or fraction thereof, including the sixth and seventh day of the work week, that he is on duty at sea. No compensation, regular or overtime, no differential of any sort, and no compensatory time shall be due for any additional hours worked in any such day, regardless of how many hours the employee was actually required to work in that day. Hours actually worked while at sea, up to but not in excess of eight hours per day, shall count as straight time hours for the purpose of determining compensatory time, if any, in a work week spent partially at sea and partially not at sea. The holiday differential shall apply in lieu of the sea duty differential while at sea on a holiday. The hazardous work differential shall apply in addition to the sea duty differential while at sea, provided that being at sea does not in and of itself constitute hazardous work. The typhoon emergency differential shall not apply while at sea.

Source: TT Code 1966 § 98(c); COM PL 3C-49 § 3(e); TT Code 1970, 61 TTC 105, 106, 107; COM PL 4C-49 § 10(10)(e); COM PL 5_51 § 11(e), 12; COM PL 5-67 §§ 3, 4; COM PL 6-65 § 11; COM PL 6-98 § 4; PL IC-13 § 18; TT Code 1980, 61 TTC 10(10)(e); PL 1-47 § 17(5); PL 1-71 § 1; PL 9-155 § 12; PL 11-96 § 1, modified.

Editor's note: Public Law 9-155 § 12 amended this section by removing the subsection dealing with overtime differential.

§ 165. Transfer allowance.

To compensate employees for unusual expenses resulting from changes of work location, the following allowance is provided to public service employees:

(1) When an employee is recruited or transferred beyond normal commuting distance from his place of permanent resident for work elsewhere, he shall be entitled to all justifiable expenses connected with travel of himself and his immediate family to the new work location and transportation of a reasonable quantity of household effects.

(2) He shall be entitled to an allowance equal to per diem at the established rate for the new duty station for a period not exceeding 15 calendar days from the date of entry into the new position.

Source: TT Code 1966 § 98(c)(1); COM PL 3C-49 § 3(e)(1); TT Code 1970, 61 TTC 105(1); COM PL 4C-49 § 10(10)(e)(v); TT Code 1980, 61 TTC 10(10)(e)(v); PL 1-47 § 17(6); PL 1-71 § 1.

§ 166. Performance increase.

When an employee's performance, as determined through an objective evaluation, has met accepted standards of productivity during a specified period, his base salary may be increased by one step in the appropriate level of the base salary schedule. For an increase to step 2, 3, or 4, the required period shall be 52 calendar weeks; for an increase to 5, 6, or 7, the required period shall be 104 calendar weeks. No employee shall have a base salary above the maximum step prescribed for his pay level unless he was receiving such compensation on the effective date of this section.

Source: TT Code 1966 § 98(b)(1); COM PL 3C-49 § 3(d); TT Code 1970, 61 TTC 104; COM PL 4C-49 § 10(10)(e)(vii); COM PL 6-65 § 11(6); TT Code 1980, 61 TTC 10(10)(e)(vii); PL 1-47 § 17(7); PL 1-71 § 1; PL 4-114 § 10.

Errata: Typographical error at beginning of third sentence corrected by PL 4-114 to read "No employee shall . . ."

**SUBCHAPTER VII
Home Leave Transportation**

§ 167. Definitions.

As used in this chapter:

- (1) “Interim-employment period” means the employment period occurring between the time of hiring and the time of final termination of employment.
- (2) “Termination of employment” means the actual end of employment services and not merely the end of an employment contract which may be extended for another period of employment.

Source: PL 2-37 § 1.

§ 168. Government payment prohibited.

From the effective date of the Act codified in this subchapter, no employee or official of the National Government shall be entitled at Government expense to transportation costs during his interim employment period to or from his home base or any other home leave, except for accrued vacation time.

Source: PL 2-37 § 2.

§ 169. New-hire and terminated employee transportation exempted.

This subchapter prohibits Government-paid home transportation costs during the interim-employment period and shall not be construed to prohibit Government-paid transportation costs from an employee’s home base to commence his employment with the National Government nor shall it be construed to prohibit Government-paid transportation costs to an employee’s home base after termination of employment with the National Government.

Source: PL 2-37 § 3.

§ 170. Personnel on contract.

Employees or officials entitled by contract existing at the effective date of the act codified in this subchapter to the benefits prohibited in section 168 of this subchapter shall not be affected by the provisions of section 168 of this subchapter for the duration of that contract only. All such contracts entered into after the effective date of the act codified in this subchapter shall conform to the provisions of this subchapter.

Source: PL 2-37 § 4.

CHAPTER 2
Public Service Salaries

SECTIONS

- § 201. **Short title.**
§ 202. **Statement of purpose.**
§ 203. **Definitions.**
§ 204. **Applicability.**
§ 205. **Base salary schedule of biweekly salary rate.**
§ 206. **Compensation of employees who are citizens of the FSM.**
§ 207. **Compensation of employees who are not citizens of the FSM.**
§ 208. **Compensation of employees who are third-country nationals. [REPEALED by PL 13-64 § 4].**
§ 209. **Entrance salary rate of employees.**
§ 210. **Existing employment contracts.**
§ 211. **Contract renewal bonus.**

§ 201. Short title.

This chapter is known and may be cited as the “Public Service Salary Act of 1979.”

Source: COM PL 5-51 § 1; COM PL 6-65 § 1; PL 1-46 § 1.

Editor’s note: Prior Trust Territory salary legislation, COM PL 5-51 and COM PL 6-65, was not codified.

Case annotations: A basic premise of public employment law is that the rights of a holder of public office are determined primarily by reference to constitutional, statutory and regulatory provisions, not by the principles of contract which govern private employment relationships. *Sohl v. FSM*, 4 FSM R. 186, 191 (Pon. 1990).

Subject to constitutional limitations, the public has the power, through its laws, to fix the rights, duties and emoluments of public service, and the public officer neither bargains for, nor has contractual entitlements to them. *Sohl v. FSM*, 4 FSM R. 186, 191 (Pon. 1990).

The amount of compensation a public employee receives is not based on quasi-contract doctrines such as quantum meruit or unjust enrichment, but instead is set by law, even if the actual value of the services rendered by a public officer is greater than the compensation set by law. *Sohl v. FSM*, 4 FSM R. 186, 192 (Pon. 1990).

Public employees are only entitled to receive the benefits prescribed by law for positions to which they have been duly appointed, even if an officer or employee has performed duties or services above and beyond those of the appointed office. *Sohl v. FSM*, 4 FSM R. 186, 192 (Pon. 1990).

A public officer claiming certain compensation or other benefits must show a clear legal basis for his right to these emoluments; hopes and expectations, even reasonable ones, are not enough to create that legal entitlement, nor are any moral obligations which may be incurred, without clear warrant of law. *Sohl v. FSM*, 4 FSM R. 186, 193 (Pon. 1990).

The compensation of public officials in the FSM is not determined by a contract for specific services, express or implied, but by the judgment of the people, through their elected representatives and executive officials who properly exercise delegated power pursuant to statutory or other authorization; specifically, the FSM Constitution and statutes establish how a person may attain public office, and the National Public Service System Act and regulations thereunder set the compensation to be paid to holders of the respective offices. *Sohl v. FSM*, 4 FSM R. 186, 194 (Pon. 1990).

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Where a public official claims additional compensation, it is inappropriate to ask whether he received compensation equal to the value of his services to the public, but instead the court must inquire whether he received the amount that was due to him by law or whether he can demonstrate a clear legal entitlement to the office which would have provided the compensation he now seeks. *Sohl v. FSM*, 4 FSM R. 186, 194 (Pon. 1990).

§ 202. Statement of purpose.

(1) It is the declared purpose of the Congress of the Federated States of Micronesia, in establishing a salary plan, to provide a single uniform base salary schedule from which shall be derived the base salary to be paid all employees of the Government of the Federated States of Micronesia in positions not specifically exempted by section 117 of this title, regardless of their nationality or form of employment.

(2) The Congress recognizes that, so long as the Government of the Federated States of Micronesia employs expatriate personnel, certain premiums must be provided in addition to base salary in order to attract and retain such personnel. Therefore, it is the further purpose of the Congress to establish reasonable standards and limitations for determining such premiums.

Source: COM PL 5-51 § 2; PL 1-46 § 2; PL 11-81 § 4.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the Congress of the Federated States of Micronesia are found in title 3 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

The website of the FSM National Government contains announcements, press releases, news, forms, and other information on the National Government at <http://fsmgov.org>.

The FSM Supreme Court website contains court decisions, rules, calendar, and other information of the court, the Constitution, the code of the Federated States of Micronesia, and other legal resource information at <http://www.fsmsupremecourt.org/>.

The official website of the Congress of the Federated States of Micronesia contains the public laws enacted by the Congress, sessions, committee hearings, rules, and other Congressional information at <http://www.fsmcongress.fm/>.

§ 203. Definitions.

Except as otherwise provided in this section, or unless the context clearly requires otherwise, terms used in this chapter shall have the meaning ascribed in section 112 of this title.

(1) “Prime contract” means an appointment to a full-time permanent position which requires the services of a noncitizen of the Federated States of Micronesia recruited and hired outside the Federated States of Micronesia, under an initial contract of not more than two years' duration.

(2) “Promotion” means movement of an employee to a position of greater difficulty and responsibility, usually compensated at a higher pay level than his current position, but in the same series of classes or clearly forming part of the same career ladder as his current position.

(3) “Transfer” means movement of an employee from his current position to a new position in the same class as his current position, or in a class so closely related that similar or identical qualification standards apply to both positions and compensated at the same pay level as his current position.

(4) “United States citizen” means, for the purpose of this chapter, a United States citizen eligible for a United States passport. The enactment of this definition shall not impair the obligation of any existing contract with a person who was classified as a United States citizen by prior law but is not

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so classified by this chapter. However, no renewal of such contract may classify such person as a United States citizen unless he shall have come eligible for such classification by the time of renewal.

Source: COM PL 5-51 § 3; COM PL 6-65 § 3; COM PL 6-98 § 2; PL IC-13 §§ 4, 5, 6; PL 1-46 § 3; PL 11-81 § 5.

§ 204. Applicability.

This chapter shall be applicable to all employees and positions in the central Government of the Federated States of Micronesia now existing or hereafter established except those exempt from the National Public Service System by the provisions of section 117 of this title, except insofar as other provisions of that chapter make this chapter specifically applicable.

Source: COM PL 5-51 § 4; PL 1-46 § 4.

§ 205. Base Salary schedule of biweekly salary rate.

Pay Level	Steps						
	1	2	3	4	5	6	7
1	\$137.46	\$141.46	\$145.46	\$149.46	\$154.26	\$159.06	\$163.86
2	141.46	145.46	149.46	154.26	159.06	163.86	169.46
3	145.46	149.46	154.26	159.06	163.86	169.46	175.06
4	149.46	154.26	159.06	163.86	169.46	175.06	181.46
5	154.26	159.06	163.86	169.46	175.06	181.46	187.86
6	159.06	163.86	169.46	175.06	181.46	187.86	195.06
7	163.86	169.46	175.06	181.46	187.86	195.06	202.26
8	169.46	175.06	181.46	187.86	195.06	202.26	210.26
9	175.06	181.46	187.86	195.06	202.26	210.26	218.26
10	181.46	187.86	195.06	202.26	210.26	218.26	227.06
11	187.86	195.06	202.26	210.26	218.26	227.06	236.66
12	195.06	202.26	210.26	218.26	227.06	236.66	246.26
13	202.26	210.26	218.26	227.06	236.66	246.26	256.66
14	210.26	218.26	227.06	236.66	246.26	256.66	267.86
15	218.26	227.06	236.66	246.26	256.66	267.86	279.86
16	227.06	236.66	246.26	256.66	267.86	279.86	291.86
17	236.66	246.26	256.66	267.86	279.86	291.86	304.66
18	246.26	256.66	267.86	279.86	291.86	304.66	318.26
19	256.66	267.86	279.86	291.86	304.66	318.26	332.66
20	267.86	279.86	291.86	304.66	318.26	332.66	347.86
21	279.86	291.86	304.66	318.26	332.66	347.86	364.66
22	291.86	304.66	318.26	332.66	347.86	364.66	382.26
23	304.66	318.26	332.66	347.86	364.66	382.26	400.66
24	318.26	332.66	347.86	364.66	382.26	400.66	420.66
25	332.66	347.86	364.66	382.26	400.66	420.66	441.46
26	347.86	364.66	382.26	400.66	420.66	441.46	463.86
27	364.66	382.26	400.66	420.66	441.46	463.86	487.06
28	382.26	400.66	420.66	441.46	463.86	487.06	511.86
29	400.66	420.66	441.46	463.86	487.06	511.86	538.26

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Pay Level	Steps						
	1	2	3	4	5	6	7
30	420.66	441.46	463.86	487.06	511.86	538.26	566.26
31	441.46	463.86	487.06	511.86	538.26	566.26	595.86
32	463.86	487.06	511.86	538.26	566.26	595.86	627.06
33	487.06	511.86	538.26	566.26	595.86	627.06	660.66
34	511.86	538.26	566.26	595.86	627.06	660.66	695.86
35	538.26	566.26	595.86	627.06	660.66	695.86	733.46
36	566.26	595.86	627.06	660.66	695.86	733.46	773.46
37	595.86	627.06	660.66	695.86	733.46	773.46	815.86
38	627.06	660.66	695.86	733.46	773.46	815.86	860.66
39	660.66	695.86	733.46	773.46	815.86	860.66	
40	695.86	733.46	773.46	815.86	860.66		
41	733.46	773.46	815.86	860.66			
42	773.46	815.86	860.66				

The provisions of this schedule shall not operate to decrease the base salary biweekly rate of employees employed on the effective date of the amending Act codified in this section. Furthermore, the base salary biweekly rate of such employees shall not be increased beyond the rate in effect on the effective date of the amending Act codified in this section.

Source: PL 7-121 § 2; PL 15-41 § 1.

Editor's note: The effective date of this section pursuant to PL 15-41 § 1, was October 1, 2008.

§ 206. Compensation of employees who are citizens of the FSM.

(1) Except as otherwise hereinafter provided, employees who are citizens of the Federated States of Micronesia shall receive as compensation a base salary as provided in section 205 of this chapter;

(2) Notwithstanding the provisions of subsection (1) of this section, any employee who is a citizen of the Federated States of Micronesia and who qualifies for either the foreign service premium or the professional premium shall receive the relevant premium in addition to the base salary for the position.

Source: COM PL 5-51 § 6; COM PL 6-65 § 5; PL 1-46 § 6; PL 11-81 § 6.

§ 207. Compensation of employees who are not citizens of the FSM.

(1) Employees who are not citizens of the Federated States of Micronesia and who are recruited and hired under a prime contract shall receive the following compensation:

- (a) a base salary as provided in section 205 of this chapter; and
- (b) if applicable, a market-place premium pursuant to section 163(1) of this title, or, if qualified, a professional premium pursuant to section 163(3) of this title.

(2) Employees who are not citizens of the Federated States of Micronesia and who are not covered by the provisions of subsection (1) of this section shall receive the same base salary and shall be eligible for the same premiums, differentials, and allowances as employees who are citizens of the Federated States of Micronesia in like positions.

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Source: COM PL 5-51 § 7; COM PL 6-65 § 6; COM PL 6-98 § 3; COM PL 7-10 § 2; COM PL 7-136 § 2; PL IC-13 § 2; PL 1-30 § 2; PL 1-46 § 7; PL 11-81 § 7; PL 13-64 § 3.

§ 208. Compensation of employees who are third-country nationals. [REPEALED by PL 13-64 § 4].

Source: COM PL 5-51 § 8; COM PL 6-65 § 7; COM PL 7-10 § 3; COM PL 7-136 § 3; PL IC-13 § 3; PL 1-30 § 3; PL 1-46 § 8; PL 11-81 § 8; PL 13-64 § 4.

§ 209. Entrance salary rate of employees.

(1) The initial base salary rate of a new employee shall be at step 1 of the pay level for the class of his position unless the Personnel Officer determines that a higher rate is needed for recruitment and that such higher rate is appropriate to the qualifications of the applicant; provided that in no case shall such rate be higher than step 4 of the pay level for the class of the position.

(2) Any employees who receives a promotion within the National Public Service System shall have his base salary increased to that step in the pay level for the new position which is next higher than the step at which his current salary is fixed, unless his current salary is higher than step 7 of the pay level, in which case his salary shall remain unchanged.

(3) An employee who receives a transfer within the National Public Service System shall continue to be paid at the same pay level and step as before the transfer, and his time in grade shall continue to be counted as if the transfer had not taken place.

(4) An employee who receives a promotion or transfer from the Trust Territory public service to the National Public Service System shall be entitled to a salary, within the pay level for the new position, which the Personnel Officer finds to be appropriate in view of the employee's qualifications and his salary in the Trust Territory administration. In no case shall the new salary be higher than step 7 of the pay level for the class of the position.

Source: COM PL 5-51 § 9; COM PL 6-65 § 9; PL 1-46 § 9.

§ 210. Existing employment contracts.

The provisions of this chapter shall not impair, change, increase, or decrease the obligations of any existing employment contract to which the central Government of the Federated States of Micronesia is or becomes party. Every position to be filled after the effective date of this chapter by initial contractual appointment or renewal shall provide for compensation as specified in the provisions of this chapter.

Source: PL 1-46 § 10.

§ 211. Contract renewal bonus.

Any full-time employee entitled to a professional premium hired under a prime contract and entitled to repatriation shall, upon completion of two full years of continuous employment with the Government of the Federated States of Micronesia, be eligible for a contract renewal bonus upon renewal of his/her contract; provided said contract renewal is for a period not less than one full calendar year. The bonus shall be awarded in an amount and under such terms as the Secretary shall determine by regulations issued within 90 days of the effective date of this Act.

Source: PL 11-81 § 9.

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CHAPTER 3
Exempt Employees

SECTIONS

- § 301. Definitions.**
- § 302. Annual leave.**
- § 303. Sick leave.**
- § 304. Compassionate leave.**
- § 305. Compensatory time.**
- § 306. Discretion to grant leave.**
- § 307. Transition provision.**

§ 301. Definitions.

In this chapter, unless the context otherwise requires, the following definitions shall apply:

- (1) “Annual leave” means vacation or home leave or the total hours of leave with pay due an employee annually, excluding other forms of leave with pay.
- (2) “Compassionate leave” means the hours of leave with pay due an employee, per occurrence, for imminent death or death in the immediate family.
- (3) “Compensatory time” means those hours worked by an employee outside established work hours and for which the employee is credited in the form of leave with pay.
- (4) “Exempt employees” means those employees of the National Government exempted by law from the provisions of the National Public Service System Act, section 111 et seq. of title 52 of this code.
- (5) “Sick leave” means the hours of leave with pay due an employee because of personal illness or disability.

Source: PL 3-16 § 1.

§ 302. Annual leave.

No exempt employee may receive or be credited with annual leave.

Source: PL 3-16 § 2.

§ 303. Sick leave.

No exempt employee may receive or be credited with sick leave.

Source: PL 3-16 § 3.

§ 304. Compassionate leave.

No exempt employee may receive or be credited with compassionate leave.

Source: PL 3-16 § 4.

§ 305. Compensatory time.

No exempt employee may receive or be credited with compensatory time.

Source: PL 3-16 § 5.

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§ 306. Discretion to grant leave.

(1) Notwithstanding the provisions of sections 302, 303, and 304 of this chapter, exempt employees may take annual leave, sick leave, and compassionate leave at the discretion of the President or his designee, if the employees are employed by the Executive Branch, the Speaker for those employed by the Congress, and the Chief Justice for those employed by the Supreme Court.

(2) No exempt employee may receive credit, compensation, reimbursement, or moneys for any accumulation or waiver of any untaken leave.

Source: PL 3-16 § 6.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code. The statutory provisions on the FSM Supreme Court and the Judiciary are found in title 4 of this code.

§ 307. Transition provision.

Exempt employees entitled by contract existing at the effective date of the Act codified in this chapter to annual, sick, compassionate, or compensatory leave shall not be affected by the provisions of this chapter for the duration of that contract only. All such contracts entered into after the effective date of the act codified in this chapter shall conform to the provisions of this chapter.

Source: PL 3-16 § 7.

CHAPTER 4
Health Insurance Plan

SECTIONS

- § 401. Short title.
- § 402. Definitions.
- § 403. Eligibility.
- § 404. Establishment of Employees' Health Insurance Fund.
- § 405. Premium contributions.
- § 406. Disposition of fund.
- § 407. Health Insurance Plan Board of Directors and Administrator.
- § 408. Reporting.
- § 409. Promulgation of regulations.
- § 410. Off-island medical referral.

§ 401. Short title.

This chapter shall be known as the “National Government Employees’ Health Insurance Plan Act of 1984.”

Source: PL 3-82 § 1.

§ 402. Definitions.

As used in this chapter:

- (1) “Administrator” means the National Government Employees’ Health Insurance Plan Administrator established by the provisions of this chapter.
- (2) “Agency” means any municipal, State or National Government public agency, institution or entity.
- (3) “Board” or “Board of Directors” means the National Government Employees’ Health Insurance Plan Board of Directors established under the provisions of this chapter.
- (4) “Business” means any quasi-public or private business entity which is duly licensed to do business under, and doing business under, the laws of the Federated States of Micronesia or its political subdivisions, which is also a participant in the Social Security system of the Federated States of Micronesia, and which has been qualified to participate in the plan pursuant to the regulations promulgated by the Director under section 409 of this chapter.
- (5) “Costs of administration” means the following costs of administering the plan:
 - (a) wages or salaries for personnel engaged in administering the plan;
 - (b) necessary travel for personnel engaged in administering the plan;
 - (c) costs and expenses for training of personnel engaged in administering the plan;
 - (d) the costs of processing claims;
 - (e) the costs of printing informational booklets, claim forms, and other necessary materials;
 - (f) the costs of necessary supplies and equipment;
 - (g) the costs of communications necessary to the operation of the plan;
 - (h) the costs of professional services necessary to the operation of the plan.
- (6) “Dependents” means the members of an employee’s immediate family, including grandchildren, dependent parents, and dependent parents-in-law.

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(7) “Employee” means an employee of the National Government of the Federated States of Micronesia, an employee of a participating agency, or an employee of a participating business.

(8) “Full-time employee” means an employee who works at least 32 hours of the regular and scheduled workweek.

(9) “Full-time student” means a student who currently enrolled in classes totaling 12 or more semester units at an accredited post-secondary educational institution.

(10) “Participating agency” or “participating agencies” means any public agency, public institution or other public entity, either municipal, State or National, participating in the plan pursuant to section 403 of this chapter.

(11) “Participating business” or “participating businesses” means any business entity, whether quasi-public or privately owned, participating in the plan pursuant to section 403 of this chapter.

(12) “Plan” means the National Government Employees’ Health Insurance Plan.

Source: PL 3-82 § 2; PL 7-16 § 1; PL 8-53 § 1; PL 8-133 § 1; PL 12-77 § 1.

Editor’s note: Subsection (6) of this section includes a lone paragraph (a) which has been omitted and made a part of subsection (6) itself to comport with standard code formatting.

§ 403. Eligibility.

(1) All full-time employees of the National Government of the Federated States of Micronesia shall participate in the plan.

(2) Other persons who may participate in the plan are:

(a) The full-time employees of each participating agency and business which has entered into a contract with the Director, as administrator of the plan, whereby such agencies or businesses have agreed to participate in the plan.

(b) The dependents of full-time employees of the National Government, participating agencies and participating businesses;

(c) Members of an employee’s household who are dependent upon the employee, but are not otherwise defined as “dependents” under the provisions of this Act, if the employee pays 100 percent of the premiums for such persons to the plan;

(d) Government employees whose State or agency does not participate in the plan, and their dependents, if they pay 100 percent of the premiums for themselves and the dependents to the plan;

(e) Former enrollees in the plan, and their dependents, if they pay 100 percent of the premiums for themselves and their dependents to the plan; and

(f) Full-time students enrolled at any postsecondary institution in the FSM, if the postsecondary institution has entered into a contract of participation with the plan and the students pay 100 percent of the premium for themselves to the plan.

Source: PL 3-82 § 3; PL 8-53 § 2; PL 8-133 § 2; PL 14-49 § 1; PL 15-52 § 1.

Editor’s note: PL 14-49 § 1 added subsection (2)(f) of this section, without moving the “and” from subsection (2)(d) to subsection (2)(e) of this section. This change has been made. In subsection (f) of this section, the two words “post secondary” have been changed to the one word “postsecondary” to correct a typographical error. These changes has been made for format consistency.

Pursuant to section 3 of PL 15-52, subsection (1) of this Act became effective on October 1, 2009.

§ 404. Establishment of Employees' Health Insurance Fund.

(1) There is established a National Government Employees' Health Insurance Fund, (hereinafter 'Employees' Health Insurance Fund) which shall be separate from the General Fund or other funds. All sums appropriated by Congress representing contributions of the National Government to the plan, all sums representing contributions of participating agencies to the plan, and all employee contributions to the plan, shall be deposited in the Employees' Health Insurance Fund. Any unexpended money in the Employees' Health Insurance Fund shall not revert to the General Fund or lapse at the end of the fiscal year, but shall remain in the Employees' Health Insurance Fund.

(2) The Board of Directors shall have the sole authority to administer the Employees' Health Insurance Fund in accordance with regulations promulgated under this Act. The Board shall maintain this Employees' Health Insurance Fund in a separate custodial trust account and may, from time to time, invest such moneys that are in excess of the amount deemed necessary for the operation of the plan during the reasonable future. Such investments shall be low-risk and made in consultation with the Secretary of the Department of Finance. The investments shall at all times be made so that all of the assets of the Employees' Health Insurance Fund shall be readily convertible into cash when needed for the purpose of this Act. All income earned on these investments shall be deposited into the Employees' Health Insurance Fund.

Source: PL 3-82 § 4; PL 8-53 § 3; PL 12-77 § 2.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

§ 405. Premium contributions.

Employees participating in the plan shall contribute the percentage of the premium not paid by their employer for insurance under the plan. The National Government of the Federated States of Micronesia shall contribute at least 52 percent of the premium for eligible employees of the National Government participating in the plan. Any participating agency or participating business shall contribute at least 50 percent of the premium for their employees participating in the plan, or may at their request contract with the Board to contribute more than 50 percent.

Source: PL 3-82 § 5; PL 8-53 § 4; PL 8-133 § 3; PL 12-77 § 3; PL 15-82 § 1.

Editor's note: Pursuant to section 2 of PL 15-82, subsection (1) of this Act became effective on January 1, 2010.

§ 406. Disposition of fund.

All money deposited in the Employees' Health Insurance Fund shall be used to pay claims, except that a sum representing not more than ten percent of the estimated income for that year from contributions and income on investments may be expended for costs of administration.

Source: PL 3-82 § 6; PL 6-114 § 1; PL 8-53 § 5; PL 15-52 § 2.

Editor's note: In amending section 406 to remove former subsections (2) and (3), which dealt with maintaining separate accounts for each state, PL 15-52 did not remove the subsection number from subsection (1). The subsection (1) designation has been removed to comport with standard code formatting.

§ 407. Health Insurance Plan Board of Directors and Administrator.

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(1) *Creation.* There is hereby established a National Government Employees' Health Insurance Plan Board of Directors to oversee the Plan and the assets of the Employee's Health Insurance Fund. There is also hereby established a new full-time position of National Government Employees' Health Insurance Plan Administrator. The Administrator shall be appointed by the Board. The Administrator shall serve at the pleasure of the Board of Directors and shall be exempt from the provisions of the National Public Service System Act.

(2) *Composition.* The National Government Employees' Health Insurance Plan Board of Directors shall consist of not less than seven members, including one representative from each State of the Federated States of Micronesia, who shall be recommended by the Governor of the relevant State; one representative from the National Government of the Federated States of Micronesia; one representative from the private healthcare sector; and the Administrator. Each appointed member of the Board shall be appointed by the President with the advice and consent of the Congress. The Administrator shall serve as *ex officio* member of the Board. All members of the Board shall be voting members of the Board.

(3) *Terms.* Each appointed member of the Board shall serve for a period of three years, except that initial appointments to the Board shall be made as follows: two members for a period of one year; two members for the period of two years; and two members for a period of three years. Successor to the first appointees hereunder shall be appointed for terms of three years each. Vacancies other than by expiration of term shall be filled by the President by appointment, in the same manner as the original appointment was made, for the unexpired term. Appointed members shall not hold-over at the expiration of their terms, but may be reappointed to consecutive terms in the manner set forth in this section.

(4) *Organization.* The Board shall provide for its own organization and procedure, except that the Board shall, at a minimum, designate a Chairman and a Secretary. The Secretary shall keep all records of, and actions taken by, the Board. These records shall be open to the public for public inspection. The Secretary of Justice of the Federated States of Micronesia shall act as legal advisor to the Board.

(5) *Meetings.* The board shall meet at least once every six months. Meetings may be held at any time or place within the FSM to be determined by the Board upon the call of the Chairman or upon written request of any four members. All meetings shall be open to the public and public notice of the time and place of such meetings shall be posted in public places and shall be announced on radio and television throughout the FSM and in newspapers of general circulation in the FSM. Four members of the Board shall constitute a quorum for the transaction of business.

(6) *Compensation.* Members of the Board shall be paid at a rate established by the Board when actually performing their duties under this chapter; provided that officials and employees of the State governments or the Government of the Federated States of Micronesia who are members of the Board shall not receive any compensation. All members shall be entitled to receive travel costs and per diem at standard National Government rates when actually attending Board meetings or engaged in the performance of duties authorized by the Board. Any employee of the National Government shall be granted leave with pay when actually attending Board meetings or engaged in the performance of duties authorized by the Board.

(7) *General powers and duties.*

(a) It shall be the responsibility of the Board to promote the soundness, stability, growth and development of the National Government Employees' Health Insurance Plan and the National Government Employees' Health Insurance Fund. To that end, the Board shall have overall responsibility for administration of the Plan, PROVIDED, however, that day-to-day

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operations of the Plan shall be the responsibility of Administrator. The Board shall have such other powers and duties as may be necessary to carry out the purpose of this chapter.

(b) Responsibility for the proper day-to-day operation of the Plan shall be vested in Administrator who shall have power to delegate duties and responsibilities to such employees of the Plan as the Administrator deems feasible and desirable to carry out the provisions of this chapter.

(c) The Board shall periodically consult with, and seek the advice of, interested members of the public in each respective State of the Federated States of Micronesia regarding the operation of the Plan and shall endeavor to ensure that such consultations are done with persons broadly representative of actual and potential participants in the Plan, including representatives of the medical profession and participating businesses.

(8) *Time for Implementation.*

(a) All nominations for all positions on the Board shall be transmitted to Congress within 90 days of the date this Act becomes law.

(b) The Board shall appoint an Administrator within 90 days of the date all Board members have been appointed by Congress. If no Administrator is appointed within this time, the Board shall submit to Congress a detailed account of the steps it is taking to appoint an Administrator and the reasons why it has not done so.

(c) Immediately upon the appointment of the Administrator, all employees of the Plan who hold a job title containing the word “Chief” shall be given a new job title and the word “Chief” shall be deleted from the job title.

Source: PL 3-82 § 7; PL 8-53 § 6; PL 12-77 § 4; PL 14-49 § 2.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

§ 408. Reporting.

Prior to the commencement of each regular May session of Congress, the Board, through the Administrator, shall prepare and submit to the President of the Federated States of Micronesia and to the Speaker of the Congress an annual report on the status of the plan. This report shall include a statement of the amount of money on deposit in the Employees’ Health Insurance Fund as of the date of the annual report, the amount of premiums collected and interest earned during the preceding fiscal year, the amount of money disbursed for claims during the preceding fiscal year, the number of claims paid during the preceding fiscal year, the costs of administration, and such other information as the Board may deem appropriate.

Source: PL 3-82 § 8; PL 8-53 § 7; PL 12-77 § 5.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

§ 409. Promulgation of regulations.

(1) The Board, with the approval of the President, shall promulgate regulations, pursuant to chapter 1 of title 17 of this code, governing the amount of the premium for insurance under the plan, the procedure for making claims under the plan, the amount and type of benefits under the plan, the policy limits under the plan, and such other matters as may be consistent with the contents and purpose of this

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chapter, including the implementation of those provisions of this chapter pertaining to participating agencies and participating businesses.

(a) The Board shall promulgate no regulation allowing a claim for benefits under the plan to be denied on the grounds that the medical condition giving rise to the claim existed before the person making the claim began participating in the plan. Any such existing regulation is hereby retroactively repealed for a period of six months from the date this Act becomes law.

(2) The plan may:

(a) provide, arrange for, pay for, or reimburse the costs of medical, dental and vision treatment and care, hospitalization, surgery, prescription drugs, medicine, prosthetic appliances, out-patient care, and other medical care benefits, in cash or the equivalent in medicines and supplies;

(b) provide life insurance benefits;

(c) contract with private sector insurance companies to provide benefits; and

(d) contract for other services as needed.

Source: PL 3-82 § 9; PL 8-53 § 8; PL 8-133 § 4; PL 12-77 § 6.

Cross-reference: Chapter 1 of title 17 of this code is on FSM Administrative Procedures. The statutory provisions on the President and the Executive are found in title 2 of this code.

§ 410. Off-island medical referral.

(1) No payment shall issue for any off-island medical referral unless:

(a) The procedure is one which must or may be performed off-island under the standard medical referral criteria, or cannot be effectively performed at the referring hospital, and the referral conforms to all referral procedures set forth in the regulations; or

(b) The Administrator determines that a medical emergency existed, the necessary surgery or treatment could not have been performed effectively at the referring hospital, and the delay necessary to follow proper procedures would have resulted in death or permanent serious damage to the health of the patient; or

(c) The patient is outside of the Federated States of Micronesia when a medical emergency arises, or is covered by a supplemental or non-resident plan, as set forth in the regulations.

Source: PL 8-53 § 9; PL 12-77 § 7.

Editor's notes: PL 12-77 § 7 omitted the word “determines” after “Administrator”. The word “determines” has been left in subsection (1)(b) to correct an obvious omission and typographical error. PL 12-77 § 7 also omitted subsection (2). Subsection (1) and its subsections have not been renumbered.

CHAPTER 5
National Government Employees’
Early Retirement Program

SECTIONS

- § 501. Short title.**
- § 502. Purpose.**
- § 503. Definitions.**
- § 504. Commencement of Early Retirement Program.**
- § 505. Eligibility; procedures.**
- § 506. Compensation.**
- § 507. Ineligibility for re-employment.**
- § 508. Program Loan; Fund. [REPEALED]**
- § 509. Freeze on salary increases; compensatory time and overtime compensation.**
- § 510. Annual report.**
- § 511. Act supersedes other laws.**

§ 501. Short title.

This chapter may be cited as the National Government Employees’ Early Retirement Program.

Source: PL 9-155 § 2.

§ 502. Purpose.

The purpose of this chapter is to lower the long-term cost of National Government operations in ways that will promote the shift in the economy toward private sector development and will minimize the negative impact on National Government employees.

Source: PL 9-155 § 3.

§ 503. Definitions.

As used in this chapter, unless the context clearly requires otherwise, the term:

(1) “Agency” means any authority, office, commission, board, bureau or other entity of the Government of the Federated States of Micronesia outside of the executive, legislative or judicial branches of government, the employees of which authority, office, commission, board, bureau or other entity are subject to the National Public Service System Act and regulations promulgated thereunder.

(2) “Base salary” means the average bi-weekly rate of pay to an employee over the most recent 26 pay periods based upon an 80 hour bi-weekly pay period. The most recent 26 pay periods shall be determined starting from the date such employee is approved for early retirement. Base salary does not include differentials, including but not limited to foreign service differentials, of allowances for night work, transfer, overtime, holiday work, travel per diem, or other similar allowances.

(3) “Permanent employee” means an employee who is not employed through a contract that has a specific date of termination and has been appointed to a position in the public service system who has successfully completed a probation period.

(4) “Program” means the early retirement program with its eligibility requirements and benefits as defined in this chapter.

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(5) “Public service” means all offices and other positions in the National Government of the Federated States of Micronesia not exempted by section 117 of chapter 1 of the National Public Service System Act.

Source: PL 9-155 § 4.

Cross-reference: The National Public Service System Act is codified in chapter 1 of this title 52.

§ 504. Commencement of Early Retirement Program.

(1) The program will commence on the date the President, or his designee, certifies that there are funds available in the program for disbursement to eligible program employees and shall continue from the date of certification through May 31, 2000.

(2) Copies of the certification shall be provided to each branch and agency of the National Government.

Source: PL 9-155 § 5; PL 11-35 § 1.

§ 505. Eligibility: procedures.

Eligibility for the benefits under this chapter shall be determined as follows:

(1) Within 60 days of the end of the First Regular Session of the Tenth Congress of the Federated States of Micronesia, before or during which session the President shall have submitted a National Government Restructuring Plan for review and action by the Congress, the President of the Federated States of Micronesia for the executive branch, the Chief Justice of the Supreme Court of the Federated States of Micronesia for the judiciary branch, the Speaker of the Congress of the Federated States of Micronesia for the Congress, and the chief executive officer of each agency of the National Government shall submit to the President, or his designee, a list for their respective branch or agency of the National Government. Each list may be updated from time to time and shall include each position:

(a) Ineligible for inclusion in the program. A position shall be ineligible if such position is exempt by law from the provisions of the Public Service System Act, or provides essential public services and if abolished would cause the National Government to fail to provide such essential public services;

(b) Which shall be terminated because such position is to be abolished; and

(c) Which may be eligible for inclusion in the program.

(2) A permanent employee in a position which shall be terminated under subsection (1)(b) of this section shall be automatically deemed a participant in the program subject only to the abolishment of the position. Such abolishment may occur at any time during the program period but not less than 90 days after the employee receives notice that the position is to be abolished, except that such 90-day period can be waived by the employee.

(3) A permanent employee in a position eligible for inclusion in the program under subsection (1)(c) of this section may participate in the program by submitting a written application to the Office of Administrative Services and if:

(a) There are funds available in the program;

(b) Long-term cost savings would be achieved by the employees participation in the program; and

(c) The respective branch or agency of government may abolish the position without compromising essential public services or such position may be filled by a permanent or probationary employee and such employees previous position is abolished.

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(4) A permanent employee holding a position identified as “ineligible” for the program under subsection (1)(a) of this section may become eligible for inclusion in the program if he submits a written application and:

- (a) A person who is eligible for the program through subsection (1)(b) or (c) of this section agrees, in writing, to become employed in the ineligible position;
- (b) The head of the branch or agency containing that ineligible position agrees, in writing, to employ that eligible person in the permanent employee’s ineligible position; and
- (c) Sufficient funds are available in the program.

Source: PL 9-155 § 6, modified.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code. The statutory provisions on the FSM Supreme Court and the judiciary are found in title 4 of this code.

The website of the FSM National Government contains announcements, press releases, news, forms, and other information on the National Government at <http://fsmgov.org>.

The FSM Supreme Court website contains court decisions, rules, calendar, and other information of the court, the Constitution, the code of the Federated States of Micronesia, and other legal resource information at <http://www.fsmsupremecourt.org/>.

The official website of the Congress of the Federated States of Micronesia contains the public laws enacted by the Congress, sessions, committee hearings, rules, and other Congressional information at <http://www.fsmcongress.fm/>.

§ 506. Compensation.

(1) Subject to the availability of funds, an employee eligible for participation in the program and less than 60 years of age may choose to receive either:

- (a) a lump sum payment equal to 48 bi-weekly base salary payments; or
- (b) 52 bi-weekly base salary payments.

(2) (a) Subject to the availability of funds, an employee eligible for participation in the program, who is more than 55 years of age and not yet eligible for FSM Social Security Administration (hereinafter “SSA”) retirement benefits, may retire and may choose to receive the benefits described in subsection (1)(a) or (b) of this section, or may receive a lump sum payment equaling six base salary pay periods and a monthly amount equal to the monthly SSA retirement benefits that the person would have received if he had been 60 years of age when his employment with the National Government ceased due to his participation in the Early Retirement Program. Such payments shall terminate upon the person reaching the age of 60 or becoming eligible for SSA retirement benefits, whichever occurs first. The Secretary of the Department of Finance may enter into an agreement with the SSA authorizing the SSA to administer the payments under this subsection. The agreement may also provide for the collection of reasonable administrative fees by the SSA.

(b) If a participating employee disputes National Government records that indicate what his age is, and if resolution of the dispute would control the amount of the benefits that the worker would receive under this section, the worker may request a determination of the dispute by the Director of the Social Security Administration (hereinafter, “the Director”). Such a request must be in writing. The Director must resolve the dispute promptly, and he may receive any evidence that he deems appropriate in resolving such a dispute. The Director must make written findings explaining his evaluation of the evidence presented to him and explaining his

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ultimate resolution of the dispute. The Director must also provide a copy of those written findings to the employee in question.

(c) After each eligibility list has been determined, it shall be promptly transmitted to the Director of Social Security, who shall promptly deliver written notification to each worker who is between 53 and 59 years of age and whose position is described in section 505(1)(c) of this chapter, of the following: how many “quarters of coverage” the worker has accumulated for the purposes of Social Security benefits, whether that number is sufficient to entitle the worker to Social Security retirement benefits at age 60 and, if not, how many more “quarters of coverage” the employee would have to accumulate to become entitled to such benefits.

(3) Subject to the availability of funds, an employee who is more than 60 years of age and eligible to receive SSA retirement benefits and who is otherwise eligible to participate in the program, shall receive a lump sum payment equal to six bi-weekly base salary periods.

(4) The following adjustments shall be made from each payment due to an employee:

(a) Any advance annual or sick leave owed by the employee;

(b) Any salary advance;

(c) Any per diem or other travel advance including outstanding travel authorizations; and any other adjustment which the employee may owe to the National Government, or which the National Government may owe to the employee.

(d) If authorized by the employee in writing, amounts requested by the employee to be deducted from compensation received pursuant to subsection (1)(b) of this section, and remitted to a third party, provided that no more than two such remittances shall be permitted for each employee at any one time and that each such remittance must be in effect for at least six months, unless otherwise provided by law. A remittance under this subsection shall be binding upon the employee in accordance with the terms of the request therefor, including but not limited to any prohibition on canceling remittance without the consent of the third-party payee, provided that the terms of the remittance are otherwise in accordance with applicable law, including but not limited to usury laws.

(5) For purposes of this chapter, compensation received by an employee pursuant to this chapter shall be exempted from the:

(a) Provisions of sections 901 and 902 of title 53 to the extent that such compensation shall not be deemed wages received by the employee;

(b) Provisions of section 121 of title 54 to the extent that such compensation shall not be deemed wages or salaries received by the employee; and

(c) Provisions of section 603(6) of title 53 to the extent that such compensation shall not be deemed dollars earned in a quarter by the employee.

(6) If a participating employee dies, his entitlement to compensation under the program shall survive and the remainder shall be paid to persons or entities in accordance with the general law of descent and distribution or in accordance with customary law if the applicable jurisdiction does not have general law of descent and distribution.

Source: PL 9-155 § 8.

Cross-reference: Title 53 of this code is on Social Security and Prior Service Benefits. Title 54 of this code is on Taxation and Customs.

§ 507. Ineligibility for re-employment.

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(1) Any employee who receives compensation under the program shall not be eligible for re-employment in any capacity by the National Government or any agency of the National Government prior to September 30, 2001, or two years from the effective date of the employee's early retirement, whichever comes later in time, except that such ineligibility shall not apply to program participants who are re-employed by the National Government in the following positions:

- (a) members of the Congress of the Federated States of Micronesia;
- (b) the President and Vice President of the Federated States of Micronesia; and
- (c) persons appointed to any positions by the President with the advice and consent of the Congress of the Federated States of Micronesia, except that program participants who receive compensation pursuant to section 506(4) of this chapter shall not be eligible for re-employment by the National Government in any position appointed by the President with the advice and consent of Congress prior to September 30, 2001, or two years from the effective date of the employee's early retirement, whichever comes later in time.

(2) For purposes of this section, a person paid from the National Government funds to render services for and under the direction of an entity that is not part of the National Government or an agency thereof is not to be considered re-employed by the National Government or any agency thereof notwithstanding the source of such funding and the fact that the person is rendering such services pursuant to a contract signed by a National Government official or employee in the latter's capacity as allottee or suballottee of such funds.

(3) For purposes of this section, a person is not re-employed by the National Government if he has entered into a contract to provide services to the National Government where:

- (a) the contract is an independent contract; and
- (b) the contract is not the primary source of revenue for the contractor during the contract period.

Source: PL 9-155 § 9; PL 11-35 § 2.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

§ 508. Program Loan; Fund. [REPEALED]

Editor's note: Section 508, originally created by PL 9-155 § 10, was repealed in its entirety by PL 12-17 § 17, which provided that:

Section 17. Termination of Retirement Fund. Title 52 of the Code of the Federated States of Micronesia, as amended, is hereby further amended by repealing section 508 thereof in its entirety. Funds currently in the National Government Employee's Early Retirement Fund created by that section 508 shall be deposited in the master repayment account of the External Debt Management Fund created by this act.

The External Debt Management Fund is created under subchapter XI of title 55 (Government Finance and Contracts).

§ 509. Freeze on salary increases; compensatory time and overtime compensation.

Notwithstanding any other applicable law, there is hereby enacted:

- (1) a freeze on annual salary step increases of all employees in the public service system; and
- (2) compensatory time, with which employees in the public service system shall be credited in lieu of receiving overtime compensation as otherwise authorized under the National Public Service System Act and regulations promulgated thereunder. Compensatory time means those hours authorized

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in advance and worked by an employee outside established work hours and for which the employee is credited with one hour in the form of leave with pay for each hour of work an employee is directed to work and performs in excess of the regular 40 hour workweek as provided by law. Compensatory time shall be accrued by National Government public service employees and shall be included in the compensation received by a program participant pursuant to subsection (4)(c) of section 506 of this chapter; except that any accumulation of time in excess of 280 hours shall be forfeited unless taken before the end of the calendar year in which the excess was accumulated. For purposes of computing whether a program employee's accrued compensatory and/or annual leave hours are in excess of 280 hours, accrued compensatory time and annual leave shall be included in computing the 280-hour ceiling.

(3) Notwithstanding the provisions of this section, an employee shall be entitled to receive overtime differential, retroactive to the effective date of Public Law No. 9-155, as authorized under the National Public Service System Act, for:

(a) time worked in the event that the National Government would be entitled to compensation for payment of such differential under section 115 of title 50 and section 416 of title 22;

(b) time worked in the event that the National Government would be entitled to compensation for payment of such differential through a written agreement with a legal entity that seeks to provide relief from emergency conditions, as long as the time worked is directly related to efforts to provide emergency relief, in accordance with an emergency declared by the President under article X, section 9 of the Constitution of the Federated States of Micronesia;

(c) time worked in the event that the National Government would be entitled to compensation for payment of such differential through a written agreement with the Water Users Corporation, as long as the time worked is directly related to management and maintenance of the Capital Water System; or

(d) time worked as follows:

(i) by personnel within the Division of Budget in preparation of the annual budget submission at the discretion of the Secretary of the Department of Finance and Administration;

(ii) by accounting personnel with the Division of Treasury in preparing the annual financial statements for the FSM National Government, at the discretion of the Secretary of the Department of Finance and Administration;

(iii) by accounting personnel within the Division of Treasury in preparing reports pursuant to section 226 of title 55 of this code, or a successor provision, at the discretion of the Secretary of the Department of Finance and Administration. Notwithstanding section 164 of this title, persons working hours entitling them to overtime differential pursuant to paragraph (d) of subsection (3) of this section shall receive compensation at straight time for those hours.

(4) Notwithstanding other provisions of this section, the employees of the National Weather Services may receive annual increments retroactive to the effective date of Public Law No. 9-155.

(5) Notwithstanding the provisions of this section, the following employees shall be entitled to receive overtime differential as authorized under the National Public Service System Act, except that overtime compensation shall be at the rate of straight time instead of time and one-half:

(a) food inspectors as designated pursuant to title 41 of this code;

(b) officers of the Division of National Police of the Department of Justice.

Source: PL 9-155 § 11; PL 13-43 § 1; PL 14-73 § 1.

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Cross-reference: Title 50 of this code is on Immigration. Title 22 of this code is on Agriculture and Livestock. Title 55 of this code is on Government Finance and Contracts. Title 41 of this code is on Public Health, Safety and Welfare.

§ 510. Annual report.

The President, or his designee, shall submit a report to the Congress of the Federated States of Micronesia not later than May 1 of each year, which report shall provide as of the end of the second quarter of the fiscal year the following information:

- (1) A full accounting of the status of the Retirement Fund;
- (2) A full accounting of the status of the Asian Development Bank funds received by the National Government in accordance with law;
- (3) The status of the program, including details regarding actual expenditures and estimated expenditures for the year in progress;
- (4) The status of repayments into the Retirement Fund and a projection of how the fund balance will meet or exceed the original principal amount before September 30, 2001, as required by law.

Source: PL 9-155 § 13.

Cross-reference: The statutory provisions on the President and the Executive are found in title 2 of this code. The statutory provisions on the FSM Congress are found in title 3 of this code.

§ 511. Act supercedes other laws.

The provisions of this chapter shall supersede in their entirety any other provisions of any law that may be interpreted as inconsistent with any provision of this chapter.

Source: PL 9-155 § 14.