

TITLE 52
PUBLIC EMPLOYMENT

CHAPTERS

1 Public Service System (§§ 111-170)

SUBCHAPTERS

I General Provisions (§§ 111-119)

II Administration (§§ 121-124)

III Appointment and Promotion of Employees (§§ 131-138)

IV Employee Rights and Tenure in Employment (§§ 141-147)

V Disciplinary Action (§§ 151-157)

VI Compensation Plan (§§ 161-166)

VII Home Leave Transportation (§§ 167-170)

2 Public Service Salaries (§§ 201-211)

3 Exempt Employees (§§ 301-307)

4 Health Insurance Plan (§§ 401-410)

5 National Government Employees' Early Retirement Program (§§ 501-511)

CHAPTER 1

Public Service System

SUBCHAPTER I

General Provisions

SECTIONS

§ 111. Short title.

§ 112. Definitions.

- § 113. **Merit principles.**
- § 114. **Preference to citizens.**
- § 115. **Tenure.**
- § 116. **Nondiscrimination.**
- § 117. **Application of chapter; Exemptions.**
- § 118. **Inapplicability of exemptions.**
- § 119. **Transition.**

SUBCHAPTER II

Administration

SECTIONS

- § 121. **Establishment of system.**
- § 122. **Personnel Officer—Appointment and qualifications.**
- § 123. **Personnel Officer—Functional duties.**
- § 124. **Regulations.**

SUBCHAPTER III

Appointment and Promotion of Employees

SECTIONS

- § 131. **Position classification.**
- § 132. **Recruitment and placement.**
- § 133. **Examinations.**
- § 134. **Eligible lists.**
- § 135. **Filling of vacancies.**
- § 136. **Disqualification from appointment.**
- § 137. **Provisional and short-term appointment.**

§ 138. Probationary service.

SUBCHAPTER IV

Employee Rights and Tenure in Employment

SECTIONS

§ 141. Performance evaluations.

§ 142. Outside employment.

§ 143. Employee associations.

§ 144. Grievances.

§ 145. Leaves of absence.

§ 146. Resignation.

§ 147. Reductions-in-force.

SUBCHAPTER V

Disciplinary Action

SECTIONS

§ 151. Suspension.

§ 152. Dismissal; Demotion.

§ 153. Appeals—Appeal panel.

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

§ 155. Hearing.

§ 156. Recommendations.

§ 157. Limitations on judicial review.

SUBCHAPTER VI

Compensation Plan

SECTIONS

- § 161. **Salary schedule.**
- § 162. **Periodic review of plan.**
- § 163. **Premiums.**
- § 164. **Differentials.**
- § 165. **Transfer allowance.**
- § 166. **Performance increase.**

SUBCHAPTER VII

Home Leave Transportation

SECTIONS

- § 167. **Definitions.**
- § 168. **Government payment prohibited.**
- § 169. **New-hire and terminated employee transportation exempted.**
- § 170. **Personnel on contract.**

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.

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.

(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.

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 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 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.

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/>.

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.

(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 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 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, 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 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.

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 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.

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).

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 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 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).

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.

(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 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:

(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 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.

