


MINA' BENTE NUEBI NA LIHESLATURAN GUÅHAN
2008 (SECOND) Regular Session

Bill No. 235(LS)

Introduced by:

FT Ishizaki 

**AN ACT TO AMEND SECTION 4406 AND TO ADD
SECTION 4410, BOTH OF ARTICLE 4, CHAPTER 4
OF TITLE 4 OF THE GUAM CODE ANNOTATED,
RELATIVE TO ADVERSE ACTION PROCEDURES
WITHIN THE CIVIL SERVICE COMMISSION.**

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2 **Section 1.** Title 4 GCA §4406 is hereby amended to read as follows:

3 **"§4406. Adverse Action Procedures and Appeals.**

4 (a) An employee in the classified service who is dismissed, demoted or suspended
5 shall be given immediate notice of the action, together with a specific statement of
6 the charges upon which such action is based in the manner required by Article 2 of
7 this Chapter. Copies thereof shall be filed with the Commission and, if applicable,
8 with the government entity charged with hearing that person's appeal under the
9 personnel rules governing that person's appointment not later than the working
10 day next following the effective date of the action.

1 (b) In no event may an employee in the classified service be given notice and
2 statement of the charges required by this Section after the sixtieth (60th) working
3 day after management ~~knew or should have known~~ becomes aware of the facts or
4 events which form the alleged basis for such action, or after the sixtieth (60th)
5 working day after the entry of a judgment of a conviction in any court of
6 competent jurisdiction. In situations of emergencies, acts of nature, disasters, or in
7 the event that an employee knowingly avoids the proper service of the notice of
8 action as stated and required by §4406 (a) in this Chapter, the department, agency,
9 or appropriate entity may petition the Civil Service Commission to suspend or
10 extend the time periods provided herein for taking final adverse action. Such
11 petition to must be made on or before the expiration of the time period provided
12 herein by providing just reason(s) to the Civil Service Commission. The petition
13 may be granted at the discretion of the Civil Service Commission. Any action
14 brought by management in violation of this Section is barred and any decision
15 based upon such action is void.

16 (c) While an employee's appeal is pending, the employee may be suspended by the
17 department, instrumentality or agency. The Commission or appropriate entity may
18 order the employee reinstated to active duty during pendency of the appeal,
19 except where the reinstatement of said employee may risk the safety of other
20 employees based upon the presented information before the Commission.

1 (d) The employee within twenty (20) working days of effective date of the action, may
2 appeal to the Commission or appropriate entity by filing ~~that person's~~ a written
3 answer to the charges against the employee, regardless whether the employee has
4 tendered any resignations, which shall have no effect upon the employee's appeal
5 rights. In the event an employee resigns before the issuance of the final notice of
6 adverse action, the employee's twenty (20) working day appeal period to the
7 Commission shall begin to run at the time the employee submits the resignation,
8 which notice of Proposed Adverse Action shall be deemed a final notice of adverse
9 action. Management may not fill the employee's position until the appeal time
10 frames or appeal, if taken, has been exhausted. The Commission or appropriate
11 entity shall then set the matter for hearing as expeditiously as possible. The
12 employee, or that person's representative, shall be given the opportunity to inspect
13 any documents relevant to the action which would be admissible in evidence at the
14 hearing, and to depose, interview or direct written interrogatories to other
15 employees having knowledge of the acts or omissions upon which the dismissal,
16 demotion or suspension is based. Such inspection, deposition, interview, or serving
17 of papers for said action shall occur only during the regular working hours and
18 during the regular working days after an appointment is requested to review these
19 documents, which will not be unreasonably withheld. The Commission or

1 appropriate entity may sustain, modify or revoke the action taken. The decision of
2 the Commission or appropriate entity shall be final, but subject to judicial review.

3 (e) As used in this Section, 'management' means the appointing authority of a
4 government agency, or any deputy, division head, or other senior assistant of the
5 appointing authority, however designated, having administrative power to
6 implement management policy and the supervisory responsibility to directly
7 advise the appointing authority regarding an adverse action or other personnel
8 decision involving an employee of the agency."

9 **Section 2.** A new §4410 is hereby *added* to Article 4 of Chapter 4 of Title 4 of the Guam
10 Code Annotated to read as follows:

11 **"§4410. Judicial Review.**

12 (a) Judicial review of a decision of the Civil Service Commission under 4 GCA §4406
13 may be taken by a party adversely affected such action by filing a notice of petition for
14 review and request for all or designated parts of the hearing record no later than ten (10)
15 working days after receipt by the party of the written decision of the Commission. The notice
16 shall stay any order of the Commission until disposition of the petition for review.

17 (b) Notwithstanding the requirements of 5 GCA Section 9241, Judicial review of a
18 decision of the Civil Service Commission under 4 GCA Section 4406 may be taken by a party
19 adversely affected by filing a Petition for Judicial Review. The party who filed the Petition
20 for Judicial Review shall be responsible for providing a certified transcript to the court.

1 Upon delivery of sufficient blank tape(s) to cover the recording of the hearing, the Civil
2 Service Commission will provide a copy of the Civil Service Commission's hearing on the
3 matter to the party. The party, after transcribing the tape, will submit the completed
4 document to the Civil Service Commission, which will review and certify the transcription.
5 All other provisions of 5 GCA Section 9241, as it relates to the request for and payment of the
6 expenses of preparation and certification for the other parts of the record shall remain in
7 effect.

8 (c) If the Court finds that the decision of the Commission is not in accordance with
9 the applicable law or is not supported by substantial evidence in the record, the Court shall
10 order the Commission to take action according to law or the evidence."

11 **Section 3. Severability.** If any provision of this act of its application to any person or
12 circumstance is found to be invalid or contrary to law, such invalidity shall not affect other
13 provisions or applications of this act which can be given effect without the invalid provisions
14 or application, and to this end the provisions of this act are severable.