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Protection of Resident Workers Act [16 MIRC Ch 1]

16 MIRC Ch 1

MARSHALL ISLANDS REVISED CODE 2004

TITLE 16 – LABOR AND INDUSTRIAL RELATIONS

CHAPTER 1.

PROTECTION OF RESIDENT WORKERS

ARRANGEMENT OF SECTIONS

Section

- §101. Short title.
- §102. Ministry Responsible.
- §103. Interpretation; lists of nonresident workers.
- §104. Preference.
- §105. Labor Division Employment service.

- §106. Functions and duties of the Secretary agreements.
- §107. Functions and duties of Employment Service.
- §108. Procedures and requirements for importation of alien workers.
- §109. Employers records.
- §109A. Workers to be paid by Check.

- §110. Enforcement of Chapter.
- §111. Appeals to Secretary.
- §112. Appeals to court.
- §113. Rules and regulations.
- §114. Penalties for violation of Chapter.
- §115. Injunctions
- §116. Nonresident workers in the Republic on effective date of chapter.
- §117. Outside employment by nonresident worker.
- §118. Effective date of nonresident employment
- §119. Application of Chapter to employees of
- §120. Provision of transportation and room and board for non-resident labor.
- §121. Penalties for violation of Section 120.
- §122. Expiration of nonresident employment agreements.
- §123. Exemption.

An Act to regulate employment and to provide for training of workers in the Republic.

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 COM P.L. 4C-29 (1972)
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 COM P.L. 4C-51 (1972)
 COM P.L. 4C-77 (1972)
 COM P.L. 5-6 (1973)
 COM P.L. 5-76 (1974)
 COM P.L. 5-84 (1974)
 49 TTC 1980
 P.L. 1990-98
 P.L. 1993-38
 P.L. 1995-130
 P.L. 1995-133
 P.L. 1997-51
 P.L. 2004-13
 P.L. 2004-14

§101. Short title.

This Chapter may be cited as the [Protection of Resident Workers Act](#). [49 TTC 1970, §1; 49 TTC 1980, §1.]

§102. Ministry Responsible.

The Ministry of Foreign Affairs has full and exclusive control over the Division of Labor. Funding for the Division of Labor is reprogrammed to the Ministry of Foreign Affairs. [added by P.L. 1993-59, §2.]

§103. Interpretation; lists of nonresident workers.

(1) For the purposes of this Chapter, unless it is otherwise provided or the context requires a different construction, application, or meaning:

(a) 'available' means able to be on the island on which the employer desires workers on the date the employer states the workers are desired;

(b) 'employer' means any individual, partnership, association, or corporation hiring employees in the Republic and any individual who has in his employ a domestic servant, but does not include any branch or agency of the Government of the Marshall Islands;

(c) 'employment service' means the employment service established under Section 105 of this Chapter;

(d) 'employment service officer' means the official who is the head of the employment service established under Section 105 of this Chapter;

(e) 'nonresident worker' means any person who is capable of performing services or labor and who is not a citizen of the Republic or an immigrant alien admitted to the Republic for permanent residence under the provisions of the [Citizenship Act 1984](#), and the [Immigration and Emigration Act 1986](#), including persons acting in a professional, managerial, or executive capacity;

(f) 'resident worker' means any person who is capable of performing services or labor and who is a citizen of the Republic or an immigrant alien admitted to the Republic for permanent residence under the provisions of the [Citizenship Act 1984](#), and the [Immigration and Emigration Act 1986](#), including persons acting in a professional managerial, or executive capacity;

(g) 'Secretary' means the Secretary of Foreign Affairs.

(2) Any employer in the Republic who has nonresident workers acting in a professional, managerial or executive capacity in his employment on the effective date of this Chapter, shall submit a list of such workers to the Secretary within thirty (30) days after such date, containing the following information:

(a) name;

(b) citizenship;

(c) country of origin; and

(d) the expiration date of entry permit. The Secretary shall then, within thirty (30) days, provide each such nonresident worker with an identification certificate as defined in Section 108(6) of this Chapter. Upon the expiration of the entry permits of such workers, the employer shall either arrange for the repatriation or submit an application to authorize their employment under the provisions of this Part. **[49 TTC 1970, §3, COMP. L. 4C-46, §5 (1972); COMP. L. 4C-51, §1 and §2 (1972); 49 TTC 1980, §3, modified; amended by 1993-38, §3.]**

§104. Preference.

Notwithstanding any other law or regulation to the contrary, each employer in the Republic shall be required, unless exempted by order of the President, to:

(a) maintain by the commencement of its second year of its operations, a workforce, at least twenty-five per cent (25%) of which is comprised of resident workers;

(b) maintain by the commencement of its third year of operations, a workforce that is fifty per cent (50%) of which is comprised of resident workers;

(c) maintain by the commencement of its fourth year of operations and for every year of operations thereafter, a workforce at least seventy-five per cent (75%) of which is comprised of resident workers; and

(d) employ by the commencement of its second year of operations, thereafter, at least one Marshallese citizen to train as a counter-part to each non-resident worker employed at such time.

(e) In addition to the foregoing requirements, resident workers shall at all times be given

preference in employment in the Republic.

(2) Non-residential workers shall be employed only to supplement the labor force of available and qualified resident workers, and shall not be paid a higher salary or wage than equally qualified resident workers performing the same type of job in any industry or occupation. No employer shall employ a nonresident worker except in strict compliance with the provisions of this chapter and the Rules and Regulations issued hereunder, except that the provisions of this chapter shall not apply to temporary employees who are brought into the Republic for a period not to exceed ninety (90) days. If the employer bringing in such temporary employees to the Republic finds that the services are needed for a period of time exceeding the ninety (90) days, he may apply to the Secretary for the extension of the exemption and the Secretary may grant such extension of the exemption if he finds that the extension is reasonable. The Secretary may grant more than one extension, but the total time period, including any extensions, that a temporary employee may remain in the Republic under temporary employee status shall not exceed one hundred and eighty (180) days. Prior to the issuing of an exemption, the Secretary shall confirm that the Ministry of Justice has issued the nonresident worker a valid visa or entry permit for the period for which the exemption or extension is requested and that his employment is permitted under the visa or work permit. **[New section inserted by P.L. 2004-13, to address the conflict identified in the 1998 codification. P.L. 2004-13 also repeals P.L. 1995130 and P.L. 1995-133.]**

§105. Labor Division Employment Service.

(1) There is hereby established in the Ministry of Foreign Affairs a Labor Division Employment Service (hereinafter 'Employment Service').

(2) The Employment Service shall be headed by an Employment Service Officer, who shall report directly to the Secretary of Foreign Affairs.

(3) The purpose of the establishment of the Employment Service is to create a system of free public employment offices in the Republic for workers seeking employment and for employers seeking workers.

(4) The Employment Service shall have such powers, duties, and functions as may be established by this Chapter, other provisions of this Revised Code, and the manual of administration of the Government of the Marshall Islands. **[49 TTC 1970, §5; 49 TTC 1980, §5, modified; amended by 1993-38, §3.]**

§106. Functions and duties of the Secretary.

For the purposes of this Chapter, and without limitations on the scope or extent of powers, duties or responsibilities vested in him by other provisions of this Revised Code, manual of administration or order of the Cabinet, the Secretary shall:

(a) enforce the provisions of this Chapter and the agreements which the Secretary enters into with employers concerning the employment of nonresident workers, including the performance of investigatory functions as appropriate thereto;

(b) require that employers accept such agreements or conditions for the payment of wages or benefits to nonresident workers as the Secretary shall determine to be necessary and consistent with the policy and purposes of this Chapter and any such agreements or conditions agreed to by an employer shall be legally enforceable in the courts of the Republic, upon action taken by an aggrieved employee or in his behalf by

the Secretary. In any such action taken by the Secretary on behalf of an aggrieved employee, the Secretary shall be represented by the Office of the Attorney-General of the Republic;

(c) establish occupational categories for the occupations to which this Chapter is applicable, and, when the Secretary deems it necessary or desirable, establish minimum standards of qualification procedures, and minimum wage requirements for workers in certain occupational categories; and

(d) supervise the Employment Service in furtherance of the objectives of this Chapter and in the effectuation of the provisions of this Chapter. [49 TTC 1970, §6; COM P.L. 4C-46, §1 (1972); 49 TTC 1980, §6, modified.]

§107. Functions and duties of Employment Service.

For the purpose of this Chapter, and without limitations on the scope or extent of powers, duties or responsibilities vested in it by other provisions of this Revised Code, manual of administration, or order of the Cabinet, the Employment Service through its Employment Service Officer shall:

(a) in the placement of workers, assist the Secretary in determining occupational categories, and, for those occupational categories designated by the Secretary, perform certification functions regarding minimum standards of qualifications and minimum wage requirements;

(b) conduct continuing surveys of manpower needs, assist in preparing training programs and recommend other measures for alleviating shortages and reducing the need for nonresident workers;

(c) oversee, monitor and review the use of alien workers and all matters related thereto, including but not limited to the following: health, safety, meals, lodging, salaries, working hours and conditions, and specific contractual provisions for labor services; and

(d) conduct such investigations as may be necessary to fulfill the provisions of this Section and such other duties as may be required by the Secretary. [49 TTC 1970, §7; COM P.L. 4C-46, §2 (1972); 49 TTC 1980, §7, modified]

§108. Procedures and requirements for importation of alien workers.

(1) Any employer who desires to import alien workers for employment in the Republic shall file an application with the Employment Service stating the place and nature of the employer's business, the number of workers desired and occupational qualifications of such workers, the wages to be paid such workers, the date on which such workers are desired, and any other information the Employment Service may require or which the employer may deem appropriate.

(2) Upon receipt of an application pursuant to the provisions of Subsection (1) of this Section, the Ministry of Foreign Affairs shall first endeavor to fill the job vacancies reported by the employer by referral of qualified resident workers registered with the Ministry of Foreign Affairs and available for employment. In the event of inability to supply sufficiently qualified resident workers from such source, the prospective employer shall cause the existence of the vacancies and other applicable information regarding the jobs to be publicized. The publication shall be made by the use of radio and newspaper media, and such other means as the Ministry of Foreign Affairs may determine to be feasible. The publication shall also direct any interested person to submit one copy of his application to the prospective employer and another copy of the application to the Employment Service. No nonresident worker shall be permitted to be employed unless such publicity shall have been given for a

period of thirty (30) days in the Republic.

(3) Upon the expiration of thirty (30) days after the first advertisement by the prospective employer, the Employment Service Officer, upon a finding that there are no occupationally qualified resident workers available to fill all or some of the vacancies applied for, shall notify the Secretary of those positions for which no resident workers are available.

(4) Upon receipt of notice from the Employment Service Officer of those positions which the employer requires, and for which no resident workers are available, the Secretary shall determine whether the employment of such nonresident workers will be in the best interests of the Republic, and for what period of time and under what conditions the employer should be authorized to hire nonresident workers for those positions. Within seven (7) days after the receipt of notice from the Employment Service Officer, he shall notify the employer of his findings. For those positions for which he has determined the nonresident workers may be hired, he shall require that a nonresident employment agreement be entered into between the employer and the Government of the Marshall Islands, which agreement shall authorize the employer to hire nonresident workers. The agreement shall be signed by the Secretary, as representative of the Government of the Marshall Islands, and by the employer or his authorized representative. The agreement shall contain the following provisions, in addition to any other provisions the Secretary deems necessary in the circumstances:

(a) a statement that the employer requires such nonresident workers for immediate employment;

(b) a statement of the wages the employer is paying or intends to pay the nonresident workers for each occupational classification he is importing an alien to fill;

(c) a statement that the employer agrees to comply with the minimum employment conditions and other requirements consistent with the provisions of this Chapter and other applicable laws of the Republic;

(d) a statement of the period of time for which the employer will be allowed to fill each position with a nonresident worker before he must attempt to fill the position with a resident worker by filing a new application with the Ministry of Foreign Affairs;

(e) a statement of the period for which the nonresident worker is to be employed, not exceeding two (2) years; and, in the case only of a highly-skilled professional or managerial level nonresident worker, a statement that upon application by the employer, the initial period of employment may be extended upon the approval of the Secretary for a period not exceeding one (1) year;

(f) a statement that the employer unconditionally agrees to promptly return each nonresident worker to the worker's point of hire at the end of his or her period of employment;

(g) a statement that the employer agrees that with respect to the employment of a nonresident worker and during such employment, the employer shall hire, or shall have hired, and shall train one or more citizens of the Marshall Islands to perform the work for which the nonresident worker is employed.

(5) Prior to the execution of a nonresident employment agreement, the Secretary shall confirm that the Ministry of Foreign Affairs has issued the nonresident worker a valid visa or entry permit for the agreed period of employment and that his employment is permitted under the visa for work permit.

(6) The Secretary shall provide each nonresident worker covered by this Chapter with a copy of the

nonresident workers' agreement which authorized his employer to hire him, and a nonresident worker's identification certificate. The identification certificate shall contain the nonresident worker's name, his employer's name, his job classification, his legal residence, his country of origin and citizenship, the date of expiration of his entry permit, and the number of the nonresident workers agreement which authorized his employer to hire him. The nonresident worker shall be required to keep such certificate on his person at all times.

(7) Prior to entry of a nonresident worker into the Republic for employment under the provision of this Chapter, the following requirements shall be met:

(a) each nonresident worker shall present to the Secretary or his representative a sworn affidavit, on a form issued by the Government of the Marshall Islands, executed by him, and such other evidence as the Secretary may require, which indicates a minimum of two (2) years experience in the line of work for which he is being hired, marital status, and if married the name of the spouse, number and ages of dependent children and the addresses of the spouse and dependent children, and that he has not been convicted of a felony or other crime involving moral turpitude; and

(b) the employer of a nonresident worker shall present to the Secretary or his representative a copy of the nonresident worker's contract of employment, which shall include a statement of job title, the duration of the contract, location of work, weekly hours schedule, wage scale for regular and overtime work, any deductions for living costs, and such other information or contractual provisions as required by the Secretary.

(8) No nonresident worker who is under a labor contract with an employer shall work for or be employed by any other employer or the Government of the Marshall Islands during the term of such contract, unless the employer to whom the employee is under contract has first filed with the Secretary a written release and consent to such employment; and unless the transfer is approved by the Secretary.

(9) Notwithstanding Subsection (1) through (8) of this Section, a fish loining plant may be exempted from the application of the provisions contained in Subsections (1) through (8) by the Cabinet. This exemption shall only apply to qualified export oriented projects commenced after the date of certification of this Act. **[This subsection (9) was enacted by P.L. 1997-51, certified on 23 October 1997]. [49 TTC 1970, § 8; COM P. L. 4C-29, §1 and § 2 (1972); COM P.L. 5-84 (1974); 49 TTC 1980, §8, modified; amended by P.L. 1990-98, §2(2)-(7); P.L. 1993-38, §3; amended by P.L. 1 995-130, §2(3) and 2(4); amended by P.L. 199 7-51, §2.]**

§109. Employer's records.

Each employer hiring employees in the Republic shall keep and present immediately upon demand of the Secretary and quarterly to the Secretary, up-to-date records with the following information:

- (1) the name, address, age and legal residence of each of his employees;
- (2) the classification and wage rate of each of his employees;
- (3) payrolls showing the number of hours worked each week, the compensation earned, and deductions made for each of his employees;
- (4) the educational and experiential background of each of his nonresident employees (to be provided but once by an employer for each nonresident employee working in the Republic):

- (5) the number of employment related accidents, name of the injured, and disposition by the employer of the injured employee;
- (6) the number and types of illnesses by alien workers, the treatment and disposition of the alien worker, and whether hospitalization was required;
- (7) the citizenship, country of origin, and expiration date of entry permit of each alien worker employed;
- (8) a copy of the nonresident workers agreement authorizing the hiring of the alien worker in question;
- (9) the name of each Marshallese worker employed as a counterpart trainee, the position for which such person is training, and the general progress that such person is making in his or her training. [49 TTC 1970, §9; COM P.L. 4C-46, §3 (1972); 49 TTC 1980, §9, modified, amended by P.L. 1995-130, §2(5).]

§109A. Workers to be paid by Check

(1) Employers in the Republic are hereby prohibited from paying salaries and wages in cash or in any other form, except by check. Such check shall reflect on its face:

- (a) the name of the employer;
- (b) the name of the worker;
- (c) the number of hours worked, per pay period;
- (d) the amount of gross earnings per pay period; and
- (e) the taxes deducted from such earnings; and
- (f) the net earnings.

(2) Counterpart copies of such checks shall be maintained by the employer.

(3) Any employer who violates the provisions of subsections (1) and (2) herein shall be guilty of an offense, and upon conviction, shall be liable to the penalties set out under Section 114 below. [New section inserted by PL2004-14]

§110. Enforcement of Chapter.

(1) The Secretary is hereby authorized to conduct hearings or investigations as he may deem appropriate and necessary to enforce the provisions of this Chapter. In connection with such hearings or investigations, the Secretary may subpoena witnesses records, and documents.

(2) The Secretary shall upon a sworn affidavit by a person that a violation of this Chapter or any rule or regulation issued thereunder has occurred, investigate all complaints, and he shall have the power to schedule a public or closed hearing as he may deem appropriate under the circumstances Adequate notice shall be given to all parties involved in the controversy or investigation should a hearing be scheduled, and opportunity shall be made available to them to present such evidence as they may

desire The Secretary upon conclusion of his investigation or hearing shall have the power to issue an order disposing of the matter. Such order shall be in force and effect until modified, sustained, or repealed by the Minister of Foreign Affairs who shall review within thirty (30) days all investigations and hearings conducted by the Secretary.

(3) The Secretary may petition the High Court for the enforcement of an order issued under the provisions of this Chapter, and the appropriate temporary relief or restraining order. He shall file in the Court a transcript of the records in the proceedings, including, where appropriate, the pleading and testimony upon which the order was entered and the findings and order of the Secretary. Upon such filing, the Court shall cause notice to be served upon the person against whom the order is directed. Thereupon the Court shall have jurisdiction of the proceeding and may grant such temporary relief or restraining order as it shall deem just and proper, or issue a decree enforcing, modifying and enforcing as so modified, or setting aside in whole or in part, the order of the Secretary. In all such actions the Secretary shall be represented by the Attorney-General.

[49 TTC 1970, §10; COM P. L. 4C-46§4 (1972); 49 TTC 1980, s 10, modified; amended by 1993-38, § 3.]

§111. Appeals to Secretary.

Anyone aggrieved by a decision of the Employment Service in the implementation of this Chapter, or by a decision of the Secretary in the implementation or enforcement of this Chapter, may appeal such decision to the Secretary within ten (10) days after he received notice of such decision. In connection with such appeal, he shall be entitled to a public hearing, and may be represented in person or by counsel of his choice. Within ten (10) days after such hearing, the Secretary shall give notice to the appellant of his findings, and issue an order disposing of the matter. **[49 TTC 1970, §11, 49 TTC 1980, §11, modified.]**

§112. Appeals to court.

(1) Anyone aggrieved by an order of the Secretary issued under the provisions of Sections 110 and 111 of this Chapter may appeal the order to the High Court of the Republic within ten (10) days following the date of the order.

(2) The commencement of any proceedings in any court shall not operate as a stay of compliance with any provisions of this Chapter, or any rules, regulations, or orders issued hereunder.

(3) All findings, decisions, or orders of the Secretary on questions of fact shall be deemed final if supported by substantial evidence. **[49 TTC 1970, §12; 49 TTC 1980, §12, modified]**

§113. Rules and regulations.

The Secretary, subject to approval by the Cabinet, shall promulgate rules and regulations necessary or appropriate to effectuate the provisions of this Chapter. Such rules and regulations shall become effective immediately, or on the date which the Secretary shall determine, and shall have the force and effect of law. **[49 TTC 1970, §13; 49 TTC 1980, §13, modified]**

§114. Penalties for violation of Chapter.

(1) Any employer who willfully violates any of the provisions of this Chapter or any of the rules and regulations issued pursuant thereto shall be guilty of an offense and shall upon conviction be liable to a

fine not exceeding five thousand dollars (\$5,000), or to a term of imprisonment not exceeding twelve (12) months, or both.

(2) Any non-resident worker who fails to comply with the provisions of this Chapter shall be guilty of an offense and shall upon conviction be liable to a fine not exceeding five hundred dollars (\$500) or to a term of imprisonment not exceeding thirty (30) days, or both. **[49 TTC 1970, §14, 49 TTC 1980, §14, modified][penalties modified by P.L. 20004-14]**

§115. Injunctions.

In addition to any of the other penalties prescribed by this Chapter, the Attorney-General may bring action in the High Court to enjoin violations of the provisions of this Chapter or any of the rules and regulations issued pursuant thereto. **[49 TTC 1970, §15; 49 TTC 1980, §15, modified]**

§116. Nonresident workers in the Republic on effective date of Chapter.

(1) Any employer in the Republic who has nonresident workers in his employ on the effective date of this Chapter, shall submit a list of such workers to the Secretary within thirty (30) days after such effective date, containing the following information:

- (a) name;
- (b) citizenship;
- (c) country of origin; and
- (d) the expiration date of entry permit.

(2) The Secretary shall then, within thirty (30) days, provide each such nonresident worker with an identification certificate as defined in Section 108(6) of this Chapter. Upon the expiration of the entry permits of such workers, the employer shall either arrange for their repatriation or submit an application to authorize their employment under the provisions of this Chapter. **[49 TTC 1970, §16, 49 TTC 1980, §16, modified]**

§117. Outside employment by nonresident worker.

(1) It shall be unlawful for any nonresident worker admitted into the Republic under the provisions of this Chapter to engage in any other employment for compensation or for profit other than for the employer who has contracted with the Secretary for the employment of such nonresident worker in the Republic.

(2) Any employment of the nonresident worker in the manner prohibited under this Section shall constitute sufficient ground and cause for deportation and the Secretary of Foreign Affairs shall communicate to the Attorney-General any violation of this Section and the Attorney-General shall institute deportation proceedings against the alien worker if in the opinion of the Chief Secretary such would be in the best interests of the public.

(3) Violation of the provisions of this Section by an employer or nonresident worker shall

also be subject to penalties prescribed by Section 114 of this Chapter. **[COM P.L. 4C-77, §1 (1972); 49 TTC 1980, §17, modified; amended by 1993-38, §3]**

§118. Effective date of nonresident employment agreements.

(1) In addition to the requirements imposed by Section 108(4) of this Chapter, no nonresident employment agreement shall be effective until it has been signed by the Secretary.

(2) The provisions of Subsection (1) of this Section shall not be deemed to affect any nonresident employment agreement in effect as of the effective date of Subsection (1) of this Section, and, to this extent, the provisions of Subsection (1) of this Section are not retroactive. [COM P.L. 4C-42, §1 and 2 (1972); 49 TTC 1980, §18, modified, amended by P.L. 1990-98, §2(8), deleting the word 'Chief' from Subsection (1).]

§119. Application of Part to employees of Government of the Marshall Islands.

Nothing in this Chapter, shall be construed to exempt employees of the Government of the Marshall Islands in seeking employment during hours not engaged in the performance of government employment, and employers other than the Government of the Marshall Islands in hiring such employees or prospective employees, from complying fully with the provisions of this Chapter, and such Chapter shall be construed to apply to such persons for all purposes, except insofar as rendered inapplicable by a specific provision thereof. [COM P.L. 4C-30, §1 (1972); 49 TTC 1980, §19, modified]

§120. Provision of transportation and room and board for nonresident labor.

The Government of the Marshall Islands shall not enter into any contract whose primary purpose is the construction of any building, airport, road, harbor, or any other thing, unless such contract provides that if the contractor utilizes nonresident labor as defined in this Chapter and if such contractor provides either transportation, lodging or lodging expenses, or room or board expenses to any such employee, than such contractor shall provide the same benefits to resident employees, as defined in this Chapter; provided, however, that transportation, lodging or lodging expenses, or room or board expenses need not be provided when a resident employee maintains his principal place of residence within normal commuting distance from his place of employment with such contractor. [COM P.L. 5-6, §1 (1973); 49 TTC 1980, §20, modified]

§121. Penalties for violation of Section 120.

Any contractor who violates any provision of a government contract containing the requirements imposed by Section 120 of this Chapter shall be guilty of a misdemeanor, and shall upon conviction be liable to a fine of \$1,000, and shall also be ordered to pay reasonable expenses for transportation, lodging, and board to any employee entitled thereto to whom it was not so furnished. [COM P.L. 5-6 §2 (1973); 49 TTC 1980, §21, modified]

§122. Expiration of nonresident employment agreements.

Any nonresident employment agreement entered into by the Secretary with any employer pursuant to the requirements of Section 108(4) of this Chapter, shall expire sixty (60) days from the date thereof, except as to the employment of any nonresident worker, as defined in this Chapter who is employed and present in the Republic within sixty (60) days from such date. [COM P.L. 5-76, §1 (1974); 49

TTC 1980, §22, modified]**§123. Exemption.**

The Secretary, with the approval of the Cabinet may exempt from the provisions of this Chapter the citizens of other countries that exempt the citizens of the Marshall Islands from their work permit or similar requirements. [P.L. 1990-98, §2(9).]

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