EMPLOYER – EMPLOYEE

Where the employee seeking damages for injuries sustained while working does not, either in his complaint or elsewhere, point to any particular act or omission by the employer, who had been stripped of any supervision and control over the activities of the employee before the injury, that employer cannot be held responsible for any wrongful direction or lack of direction at the scene which might have led to the alleged injury. Semens v. Continental Air Lines, Inc. (I), 2 FSM R. 131, 144 (Pon. 1985).

An employer who assigns employees to work under the supervision of another is not legally responsible to the assigned employees for injuries caused by failure of the other employer to provide labor-saving or safety equipment where the hazards known to the employer were equally obvious to the assigned employees. Semens v. Continental Air Lines, Inc. (I), 2 FSM R. 131, 144 (Pon. 1985).

In absence of statute pertaining to rights of employees of insolvent companies to receive preference against other creditors of employer, an appropriate source of guidance is the common law as it existed in absence of statute. In re Mid-Pacific Constr. Co., 3 FSM R. 292, 300 (Pon. 1988).

Claims for wages asserted by low level employees and laborers are entitled to preference over all other claims, except wage and salary tax lien rights of the national government, which are given priority over all other claims and liens by 54 F.S.M.C. 135(2). In re Mid-Pacific Constr. Co., 3 FSM R. 292, 301 (Pon. 1988).

An employee's preference for wage claims is determined by reference to the equities among the parties rather than exclusively by specific dates upon which particular liens were established. In re Island Hardware, 3 FSM R. 332, 341 (Pon. 1988).

Where an employee is commanded to take an action which creates a known risk of injury, his obedience to the command will not bar subsequent recovery for injuries suffered, even where the risk of injury is apparent, but this will not excuse clearly reckless conduct by the employee where he had full knowledge of reasonable means to limit or prevent the injury. Epiti v. Chuuk, 5 FSM R. 162, 169 (Chk. S. Ct. Tr. 1991).

A plaintiff employee is not barred from recovery for his failure to exercise due care because defendant employer's conduct amounted to a reckless disregard for the safety of its employees. Alfons v. Edwin, 5 FSM R. 238, 241 (Pon. 1991).

Where prior course of dealing and surrounding circumstances make it apparent that the parties' intention was that pay for unused vacation time would be an implied term the former employee is entitled to the pay for unused vacation time minus the applicable taxes. Ponape Transfer & Storage, Inc. v. Wade, 5 FSM R. 354, 356 (Pon. 1992).

An employer owes a duty of care toward its employee to see that the employee is properly educated about the operation of clearly dangerous machinery. Fabian v. Ting Hong Oceanic Enterprises, 8 FSM R. 63, 65 (Chk. 1997).

Where the employer is aware that unsafe procedures are being used and safe procedures

are possible, but the employer does not demand them, the employer breaches its duty of care toward its employees. Fabian v. Ting Hong Oceanic Enterprises, 8 FSM R. 63, 65 (Chk. 1997).

When a general manager's actions in hiring, supervising and paying the employees of a sawmill were within the scope of authority granted to him by the principals, the sawmill's joint owners, the principals are bound by their agent's actions in hiring or authorizing the hiring of a sawmill employee. Sigrah v. Timothy, 9 FSM R. 48, 52 (Kos. S. Ct. Tr. 1999).

The determination of an employee-employer relationship for tort liability purposes will not be based upon an employer's decision on whether to report the persons as "employees" for the purposes of reporting Social Security contributions and FSM Income Tax deductions. Sigrah v. Timothy, 9 FSM R. 48, 52 (Kos. S. Ct. Tr. 1999).

For the purposes of determining the employee status of an individual person for FSM Social Security contributions or for the FSM Income Tax law, the statutes look to the usual common law rules applicable in determining the employer-employee relationship. An employer includes any association or group employing any person. Employment means any service by an employee for the employer employing him, irrespective of where such employment is performed. Sigrah v. Timothy, 9 FSM R. 48, 52 (Kos. S. Ct. Tr. 1999).

Under common law generally, "employment" includes any service performed for remuneration under any oral agreement of hire. To "employ" is to make use of the services of another, and to "be employed" means to perform a function under orders to do so. An "employee" is normally defined as a person in the service of another, through an agreement, which may be express, implied or verbal, and which gives the employer the right to control and direct the person in the way the work is to be performed. An employee performs services for an employer and is paid by the employer for those services. Sigrah v. Timothy, 9 FSM R. 48, 52-53 (Kos. S. Ct. Tr. 1999).

If a person performed services at the defendants' sawmill and was paid compensation for his services by the defendants through their sawmill operations manager, who gave employees directions for the performance of labor, he was the defendants' employee under the common law rules for determining the employer-employee relationship for individuals. Sigrah v. Timothy, 9 FSM R. 48, 53 (Kos. S. Ct. Tr. 1999).

Under the common law, there are only two reasons for distinguishing between agents of a principal who are "servants" or "employees" of the principal and agents who are independent contractors. The most common is to determine the principal's possible liability for torts of the agent within the scope of employment. The second purpose is to determine the obligations, rights and immunities between the principal and the agent. Sigrah v. Timothy, 9 FSM R. 48, 53 (Kos. S. Ct. Tr. 1999).

An employer owes a duty of care toward its employee to see that the employee is properly educated about the operation of clearly dangerous machinery. An employer who recognizes the potential danger of a work situation, but who fails to take steps to reduce the danger or warn his employees of the danger is negligent. Sigrah v. Timothy, 9 FSM R. 48, 53 (Kos. S. Ct. Tr. 1999).

A general contractor in control of a structure or premises owes to the employees of any other contractor rightfully thereon a duty to exercise ordinary care to keep the structure or

premises in a safe condition for their use. Amayo v. MJ Co., 10 FSM R. 244, 250 (Pon. 2001).

An employer has a duty to exercise ordinary or reasonable care commensurate with the nature of the business to protect the employee from the hazards incident to it, and the employer is bound to exercise this degree of diligence in providing his employee with a safe working place. Amayo v. MJ Co., 10 FSM R. 244, 250 (Pon. 2001).

An owner/general contractor who actively supervises daily construction operations has a duty to keep the premises safe for all workers on the job and is ultimately liable for injuries occurring on the worksite when those injuries result from failure to perform that duty. Amayo v. MJ Co., 10 FSM R. 244, 250 (Pon. 2001).

When one company assigned its employee to work for another company, and the assigning company was effectively stripped of control over the way the work was done, and when the assigning company had no knowledge of facts unknown to the employee that would have affected the risk faced by him, and did nothing else to cause the employee's injury, there is no negligence liability on the part of the assigning company. Amayo v. MJ Co., 10 FSM R. 244, 251 (Pon. 2001).

When an employee is directed or permitted by his employer to perform services for another employer he may become the employee of such other in performing the services and since the question of liability is always raised because of some specific act done, the important question is whether or not, as to the act in question the employee was acting in the business of and under the direction of one or the other employer. Amayo v. MJ Co., 10 FSM R. 244, 251 (Pon. 2001).

A cause of action to collect salary or wages accrues when an employee has a right to collect the money allegedly owed to him. Thus the statute of limitations began to run from the time that each plaintiff's pay for any specific pay period was due. Segal v. National Fisheries Corp., 11 FSM R. 340, 342 (Kos. 2003).

Even assuming that the Pohnpei Wage and Hour Law applies to a governmental organization employer and assuming that a claim under the statute was pled although the statute was not mentioned in the complaint, the claim is without merit when the court has determined that the positions of full-time and part-time teachers are different and the college may maintain different pay scales for them. Berman v. College of Micronesia-FSM, 15 FSM R. 76, 82 (Pon. 2007).

A full-time teacher's added duties, the need to forgo other employment, and the long-term commitment (three years as opposed to one semester) to teaching at the College, makes a full-time teaching position a substantially different job from a part-time teaching position. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 593 (App. 2008).

Regardless of the applicability of a U.S. case, the appeal of the denial of the plaintiff's equal pay claim turns on whether full-time teaching positions and part-time teaching positions are similar positions and on whether there is a rational relationship between a full-time teacher's pay and a part-time teacher's pay. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 593-94 (App. 2008).

When full-time teachers and part-time teachers are not similarly situated, a plaintiff does not have a factual basis for relief under the Pohnpei Wage and Hour Law when the claim is that she

was paid less than male full-time teachers because she did not perform the same work as a full-time teacher. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 595 (App. 2008).

The College is an instrumentality of the national government in the same way that the FSM Development Bank is even though its employees are not considered government employees. The College was created by Congress and is subject to suit only in the manner provided for and to the extent that suits may be brought against the National Government. So, since the national government is not subject to suit under the Pohnpei Wage and Hour Law, neither is the College. Berman v. College of Micronesia-FSM, 15 FSM R. 582, 596 (App. 2008).

An employee or agent is liable to a third person for injuries resulting from the breach of any duty which the employee or agent owes directly to such third person, and is not liable to a third person for injuries resulting from a breach of duty which the employee or agent owes only or solely to his employer. Individual Assurance Co. v. Iriarte, 16 FSM R. 423, 438-39 (Pon. 2009).

An employment applicant was not discriminated against when the employer chose an applicant more qualified than she. Berman v. Pohnpei Legislature, 16 FSM R. 492, 497 (Pon. 2009).

Because it makes no sense to authorize an official to conduct hearings and investigations without also authorizing that official to do something with the information thus obtained, when the statute authorizes the Pohnpei Treasury Director to conduct hearings and investigations and, except for an appeal, makes the Director's decision final, it follows that the finality of the Director's decision applies to the entire administrative process before a judicial appeal. Smith v. Nimea, 17 FSM R. 125, 130 (Pon. 2010).

Whereas the Pohnpei Division of Personnel, Labor and Manpower Development may issue orders and decisions, the Treasury Director has the final decision, and to give meaning to that finality, the Director's powers include issuing any orders necessary to arrive at and give effect to the decision. Smith v. Nimea, 17 FSM R. 125, 130 (Pon. 2010).

While the Pohnpei PL&MD Division must establish procedures to ensure compliance with the Pohnpei Residents Employment Act of 1991 and the rules and regulations promulgated thereunder, the statute does not mention a "Chief of the Division," and where the Division of PL&MD is mentioned specifically, it is specifically envisioned that the Division must establish procedures to ensure compliance. By providing the Division with the responsibility for making the rules, the Act nevertheless does not empower only the Division to ensure compliance. Rather, it establishes that responsibility as part of the overall effort to ensure compliance and the statute vests the power of the final decision for effecting compliance with the Director, not the Division or its Chief. Smith v. Nimea, 17 FSM R. 125, 130 (Pon. 2010).

Since the Pohnpei Residents Employment Act of 1991 does not solely empower the Division of PL&MD to hold hearings, and since it does vest the power of the final decision in the Director, it follows both that the hearing before the Director was legitimate pursuant to the Act, and that there was a legitimate hearing pursuant to the Act. Smith v. Nimea, 17 FSM R. 125, 130 (Pon. 2010).

When the statute subjects the finality of the Director's decision to judicial appeal, and when it directs that judicial appeals of the Director's order or decision must be made to the Pohnpei Supreme Court trial division within 15 days of the date of the decision or order, the statute

creates a statutory obligation to appeal a decision to Pohnpei Supreme Court, and, as the statutory law governing the administrative review of labor contracts disputes, it is a necessary part of the administrative process. Smith v. Nimea, 17 FSM R. 125, 130-31 (Pon. 2010).

An employer has a duty to exercise ordinary or reasonable care commensurate with the nature of the business to protect the employee from the hazards incident to it, and the employer is bound to exercise this degree of diligence in providing his employee with a safe working place. Duty of care is one of the four elements of a negligence cause of action. Roosevelt v. Truk Island Developers, 17 FSM R. 264, 265-66 (Chk. 2010).

When the employer instructed the employees to use safe procedures such as pulling rebars out (or inserting them) from the oceanside and not the roadside and when the employer provided its employees with a safe working place and did not knowingly permit unsafe procedures to be used, it did not breach its duty of care to its employees. Accordingly, since the plaintiff has failed to prove this essential element of a wrongful death claim, she cannot prevail. Roosevelt v. Truk Island Developers, 17 FSM R. 264, 266 (Chk. 2010).

The Constitution's investment in the national government of the power to regulate immigration, emigration, naturalization, and citizenship does not deprive the states of the ability to regulate employment within their own jurisdictions whenever such employment involves non-residents. To the degree that a state law regulating employment of non-resident workers does not directly conflict with national law, such state law is not preempted; and when there is possible conflict, the state law should be construed so as to avoid such conflict. Smith v. Nimea, 17 FSM R. 333, 337-38 (Pon. 2011).

Pohnpei Code Title 19 and its definitions, apply only to private employers and their employees, not to Pohnpei public employees. Berman v. Lambert, 17 FSM R. 442, 447 (App. 2011).

A subcontractor's status, when compared to that of an employee, is ordinarily that of an independent contractor. FSM v. GMP Hawaii, Inc., 17 FSM R. 555, 571 (Pon. 2011).

No national statute directly addresses overtime pay for private sector employment although 51 F.S.M.C. 139(2) does require an employer of a nonresident worker to present a copy of the worker's contract, which must contain certain information including a wage scale for regular and overtime work, before approval of the nonresident worker's entry to the FSM. Villarena v. Abello-Alfonso, 18 FSM R. 100, 102 & n.1 (Pon. 2011).

Wage and hour laws are a complex field in which there is substantial public concern. Villarena v. Abello-Alfonso, 18 FSM R. 100, 102 (Pon. 2011).

Private employment is governed by the principles of contract law. Ihara v. Vitt, 18 FSM R. 516, 524 (Pon. 2013).

When, under the employment contract, compensation is to be figured on the "net total amount for the specific job" not on the net total amount for only a part of the contract job, the employee's commission compensation must be figured on a contract job by contract job basis, not on a task-by-task basis within the contract job. Smith v. Nimea, 19 FSM R. 163, 172 (App. 2013).

Since the College of Micronesia is an agency and instrumentality of the government, the Administrative Procedures Act should apply to all COM board decisions including employment disputes. Accordingly, a COM employee is required to bring his grievances to the agency tribunal, as the court of first instance under the primary jurisdiction doctrine, and complete the administrative procedures before the FSM Supreme Court will adjudicate the complaint. Ramirez v. College of Micronesia, 20 FSM R. 254, 263 (Pon. 2015).

All College of Micronesia employment contract disputes are to be treated as a grievance, subject to the mandatory grievance procedure which has two components: the informal and the formal. The aggrieved employee must first pursue the grievance informally, and if the efforts to resolve the grievance through the informal procedure have failed, the aggrieved employee may proceed to the formal grievance procedure. Ramirez v. College of Micronesia, 20 FSM R. 254, 264 (Pon. 2015).

The discretion an aggrieved College of Micronesia employee has when the grievance has not been resolved informally is the choice to further pursue the grievance through the formal procedure or to abandon the grievance altogether. It is not the discretion to either pursue the formal grievance procedure or to go directly to court. Ramirez v. College of Micronesia, 20 FSM R. 254, 264 (Pon. 2015).

An aggrieved College of Micronesia employee's failure to appeal an adverse decision to the Board of Regents within the specified time limit, a required administrative step, is deemed as acceptance of the decision. Thus, when the aggrieved employee did not request an appeal before the Board, he failed to complete the administrative process, and thereby accepted the adverse committee decision. Ramirez v. College of Micronesia, 20 FSM R. 254, 264 (Pon. 2015).

All College of Micronesia disputes must be brought before its administrative body, as a court of first instance, before it will be heard by this court, and, under the primary jurisdiction doctrine, the administrative processes created by that agency must ordinarily be completed before the court will entertain either a petition for review or an independent common law complaint. Ramirez v. College of Micronesia, 20 FSM R. 254, 264-65 (Pon. 2015).

Private employment is governed by the principles of contract law. Ramirez v. College of Micronesia, 20 FSM R. 254, 265 (Pon. 2015).

Pohnpei and the FSM have no workers' compensation law. Hairens v. Federated Shipping Co., 20 FSM R. 404, 406 (Pon. 2016).

The underlying purpose of Workers' Compensation Statutes is removal of the burden regarding work-place injury from an employee and instead, place it on the industry he served, irrespective of the cause for said injury. For employees within the statute's reach, Workers' Compensation is the exclusive remedy for accidental injuries sustained in the work place. While providing workers with benefits on a no-fault basis, the flip side of this arrangement is the provision for immunity from common law negligence suits for employers covered by the statute. Hairens v. Federated Shipping Co., 20 FSM R. 404, 407 (Pon. 2016).

The central tenet of Workers' Compensation is that of true no-fault insurance. In essence, employees were provided wage replacement and medical benefits resulting from industrial accidents for their respective injuries, in exchange for relinquishing the right to pursue a civil

remedy. This exclusive remedy doctrine has been gradually eroded. Hairens v. Federated Shipping Co., 20 FSM R. 404, 407 (Pon. 2016).

When an insurance carrier's endorsement contained within an employer's policy limited the applicability of the CNMI Workers' Compensation Program to "the benefits provided under the Workers' Compensation Law of the CNMI," (which would entail that statute's "determination of pay," that statute's exclusive remedy provision setting forth tort immunity does not apply, and an employee would not be forestalled from also bringing a civil action sounding in negligence. Hairens v. Federated Shipping Co., 20 FSM R. 404, 409 (Pon. 2016).

Employment contracts generally do not make the employee's family members or dependants intended third-party beneficiaries. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 175 (Pon. 2017).

Even if public policy did not allow at-will employment in private industry as the default position, private parties could still contract for that provision. FSM Dev. Bank v. Gilmete, 21 FSM R. 159, 176 (Pon. 2017).

When, even though the employment contract was printed with a Pohnpei state government letterhead, the Pohnpei Visitors Bureau's actual function and operation shows that it is independent of the Pohnpei state government; when the PVB's funding is provided for under the Compact of Free Association, but is deposited with the Pohnpei Department of Treasury and Administration for custodial purposes and disbursement; and when the PVB's actual decision-making lies with its Board, the PVB is an entity that operates independent of the state government, and its Board is responsible for its General Manager's hiring, thus making the state's non-renewal of the plaintiff's contract unlawful. Santos v. Pohnpei, 21 FSM R. 495, 499 (Pon. 2018).

An employer has a duty to exercise ordinary or reasonable care commensurate with the nature of the business to protect the employee from hazards incident to it. The employer is bound to exercise this degree of diligence in providing its employee with a safe working place. Duty of care is one of the four elements of a negligence cause of action. Luzama v. Mai Xong, Inc., 22 FSM R. 23, 28 (Pon. 2018).

An employer has a duty to provide its employee with proper training, equipment, and a safe work environment. Luzama v. Mai Xong, Inc., 22 FSM R. 23, 28 (Pon. 2018).

In a place like Pohnpei, where industrial and economic development continues to take shape and the people are not quite sophisticated about the uses or proper handling of certain machinery or equipment, a procurer, user, owner, or seller of equipment or machinery must take extra precautionary measures in educating the people about the proper handling, operation, or storage of any such machinery or equipment and also inform the people about the potential harm if such machinery or equipment is not properly handled, operated, or stored. Failure to observe such extra precautionary measures may render the equipment's procurer, user, owner, operator, or the seller liable for any injury that might result from such failure. Luzama v. Mai Xong, Inc., 22 FSM R. 23, 28 (Pon. 2018).

Education or information about dangerous machinery or equipment can be made in writing, or by oral explanation, through demonstration, or uses of signs easily understood and noticeable. Luzama v. Mai Xong, Inc., 22 FSM R. 23, 28 (Pon. 2018).

When an employer is aware that unsafe procedures are being used and safe procedures are possible but the employer does not demand them, the employer breaches its duty of care toward its employees. Luzama v. Mai Xong, Inc., 22 FSM R. 23, 28 (Pon. 2018).

An employer breaches its duty of care when it fails to provide its employee with proper footwear appropriate for the hazardous work site despite being aware of the importance of proper footwear on the work site and despite it being company policy to require proper work equipment. Luzama v. Mai Xong, Inc., 22 FSM R. 23, 28 (Pon. 2018).

When the employer provided the employee with a short safety briefing prior to his beginning work, but failed to provide him with the proper safety equipment necessary to safely perform his work duties, namely proper protective work shoes which are standard to the industry, it is clear that but for the employer's breach in not providing for or otherwise requiring the proper working boots before allowing him to begin work, he would not have been injured. Luzama v. Mai Xong, Inc., 22 FSM R. 23, 29 (Pon. 2018).

When the employer paid the employee's salary during the time he was attempting to recover from his workplace injury, even after his discharge from the hospital, until the termination of his employment, and when the employer also paid his medical bills, damages for lost wages during that time and for his medical bills is inappropriate. Luzama v. Mai Xong, Inc., 22 FSM R. 23, 30 n.1 (Pon. 2018).

Since Pohnpei is a mixed subsistence and cash economy, people rely on a person's employability to bring in the cash necessary to help support himself and his family in addition to the farm and fish products which he could produce through farming on his lands and fishing. Thus, a workplace injury, may greatly impair both the person's employability and his ability to provide from farming and fishing. Luzama v. Mai Xong, Inc., 22 FSM R. 23, 30 (Pon. 2018).

When an employer is liable to an employee for a workplace injury permanently disabling the employee, the court must in all fairness determine a reasonable time frame to aid in calculating the amount of lost wages damages to award the plaintiff. Wages up to age sixty is a reasonable time frame. Luzama v. Mai Xong, Inc., 22 FSM R. 23, 30 (Pon. 2018).

Generally, an employer is required to withhold the wages and salaries tax from its employees' pay, and the penalties and interest imposed for the failure to withhold the wages and salaries tax from an employee's pay are imposed upon the employer, not the taxpayer. Basu v. Amor, 22 FSM R. 557, 567 (Pon. 2020).

– Employee Handbook

Termination for just cause as described in a written employment contract precludes the former employee from seeking redress for the termination as the breach of an implied contract embodied in the personnel manual. Nakamura v. Bank of Guam (II), 6 FSM R. 345, 353 (App. 1994).

When failure to adopt a manual of administration was not a violation of statute because the statute does not set a time limit for the board to adopt one and when the employer is specifically exempted by statute from the Public Service System Act, summary judgment will be granted

against a terminated employee on his claim that failure to adopt a manual made the employer liable for his termination. Livaie v. Micronesia Petroleum Co., 10 FSM R. 659, 665 (Kos. S. Ct. Tr. 2002).

Provisions in a personnel handbook may be enforceable as an employment contract if they meet the requirements for the formation of a unilateral contract. The offer must be definite in form and must be communicated to the offeree. Whether a proposal is meant to be an offer for a unilateral contract is determined by the outward manifestations of the parties, not by their subjective intentions. An employer's general statements of policy are no more than that and do not meet the contractual requirements for an offer. Reg v. Falan, 14 FSM R. 426, 431 (Yap 2006).

It does not matter whether a personnel handbook was received at the time the employee was hired or at some later time because the distribution of the manual may act as an offer of a unilateral contract even if there was no unilateral contract offered at the time of hiring. This is because the consideration for the contract was supplied when the employee continued to work, after receipt of the manual, when he had no obligation to do so. Reg v. Falan, 14 FSM R. 426, 431 n.2 (Yap 2006).

When a personnel policies manual is detailed and the court finds that it was intended to set the terms of employment; when a review of the employee handbook makes it clear that the employer intended its employees to be bound by the manual's terms and that it intended to bind itself to these terms, the personnel policies manual was meant to be an offer for a unilateral employment contract and an employee has accepted the offer through his continued employment. Reg v. Falan, 14 FSM R. 426, 431-32 (Yap 2006).

A terminated employee's contract was not violated when he was not given a hearing before termination since the personnel manual did not require any hearing. Reg v. Falan, 14 FSM R. 426, 435 (Yap 2006).

When an employee is presented with an employee handbook, instructed to read and understand it, told to sign-off on it, and when the employee does so, the employee handbook will constitute a unilateral contract between the parties. Ihara v. Vitt, 18 FSM R. 516, 525 (Pon. 2013).

Personnel handbook provisions can be enforceable as an employment contract if they meet the requirements for the formation of a unilateral contract, which are: the offer must be definite in form and must be communicated to the offeree. An employer's general statements of policy are no more than that and do not meet the contractual requirements for an offer. George v. Palsis, 19 FSM R. 558, 564 (Kos. 2014).

When a personnel policies manual is detailed and the court finds that it was intended to set the terms of employment; when a review of the employee handbook makes it clear that the employer intended its employees to be bound by the manual's terms and that it intended to bind itself to these terms, the personnel policies manual was meant to be an offer for a unilateral employment contract and an employee has accepted the offer through his continued employment. George v. Palsis, 19 FSM R. 558, 564 (Kos. 2014).

When the Personnel Manual, read as a whole, authorizes the payment of the full amount (if it is 600 hours or less) of accrued annual leave to a former employee only when that employee

has resigned with two weeks' written notice, the result must be that an employee's right to accrued annual leave pay is contingent upon certain events and if those events do not occur, the right never becomes a vested property interest. When it is undisputed that those events (written resignation with two weeks' notice) never occurred, the former employee, as a matter of law, did not have a vested property interest in his accrued annual leave. George v. Palsis, 19 FSM R. 558, 566 (Kos. 2014).

When an employee is presented with an employee handbook, instructed to read the handbook, told to sign off on the handbook, and when the employee does so, the employee handbook will constitute a unilateral contract between the parties. Ramirez v. College of Micronesia, 20 FSM R. 254, 266 (Pon. 2015).

Since an employee handbook can provide contract terms between the employer and employee, when the employment contract explicitly states that the employee's position, construed employment, compensation, leaves of absences, additional employment, benefits, performance evaluations, and termination are governed by the employee manual and when that manual includes terminations provisions explicitly providing the employer with the right to initiate layoffs, the employer had the contractual right to lay off employees before the expiration of the contract term, although this right to lay off employees is limited to the procedures as set forth in the manual. Ramirez v. College of Micronesia, 20 FSM R. 254, 266 (Pon. 2015).

– Wrongful Discharge

Where an employer terminates an employee without proper notice the termination will be given effect at the end of the proper notice period and the employee is entitled to any compensation he would have received during that period. Alik v. Kosrae Hotel Corp., 5 FSM R. 294, 296 (Kos. 1992).

Where there is sufficient evidence in the record for the trial judge to have found that an employee was terminated for the just cause of insubordination as permitted without notice in the parties' written employment contract, the trial court ruling that the plaintiff failed to prove he was terminated without just cause is sufficiently comprehensive and pertinent to the issue to form a basis for the decision. Nakamura v. Bank of Guam (II), 6 FSM R. 345, 352-53 (App. 1994).

Termination for just cause as described in a written employment contract precludes the former employee from seeking redress for the termination as the breach of an implied contract embodied in the personnel manual. Nakamura v. Bank of Guam (II), 6 FSM R. 345, 353 (App. 1994).

A plaintiff's firing by a private employer does not state a cause of action for unconstitutional deprivation of due process because no governmental entity or official is a defendant; the defendant is not alleged to be performing an essential governmental function; and a government action is not at issue. Semwen v. Seaward Holdings, Micronesia, 7 FSM R. 111, 113 (Chk. 1995).

An employee fired because he had filed suit against the defendant seeking compensation for injuries received while working on the job for the employer appears to state a cause of action in either tort or implied contract for wrongful discharge or termination. Semwen v. Seaward Holdings, Micronesia, 7 FSM R. 111, 114 (Chk. 1995).

When an employee has been laid off for the summer, it is not a termination for disciplinary reasons or a reduction-in-force. A layoff is a termination of employment at the will of the employer, which may be temporary or permanent. Langu v. Kosrae, 8 FSM R. 427, 434 (Kos. S. Ct. Tr. 1998).

Summary judgment will be granted against a terminated employee on his claim for breach of his verbal employment contract when he has failed to show that he had an assurance of continued employment through actions of a supervisor with authority to establish employment terms; when even assuming that former general manager did give the employee verbal assurances of continued employment, those verbal assurances ended with the general manager's termination; and when cause was not required for an employee's termination because the statute permitted employees to be terminated for other reasons, as the employer deemed appropriate. Livaie v. Micronesia Petroleum Co., 10 FSM R. 659, 664 (Kos. S. Ct. Tr. 2002).

When failure to adopt a manual of administration was not a violation of statute because the statute does not set a time limit for the board to adopt one and when the employer is specifically exempted by statute from the Public Service System Act, summary judgment will be granted against a terminated employee on his claim that failure to adopt a manual made the employer liable for his termination. Livaie v. Micronesia Petroleum Co., 10 FSM R. 659, 665 (Kos. S. Ct. Tr. 2002).

When the employer is empowered to create bylaws in which the rights and obligations of employees with regard to termination might be spelled out, but none have been introduced into evidence in this case, only the terms of the contract itself may control the question of whether the plaintiff's termination was in material breach of his employment agreement. Hauk v. Board of Dirs., 11 FSM R. 236, 241 (Chk. S. Ct. Tr. 2002).

An employee's diversion of funds can be construed to violate employment contract provision that bars unethical conduct, but when the contract provides the employer with the right to terminate the employee if he does not discharge his duties and responsibilities to his "employer's satisfaction," the employer could discharge the employee upon sixty days written notice if the employer was dissatisfied in any manner with his job performance, even without the apparent ethical lapse which occurred. Hauk v. Board of Dirs., 11 FSM R. 236, 241-42 (Chk. S. Ct. Tr. 2002).

When a contract provision for written notice of termination was inserted in the contract to assure that the employee had actual notice of the adverse action and when there is no dispute that the employee received actual notice of his termination, the employer's failure to provide written notice is not actionable breach of contract. Hauk v. Board of Dirs., 11 FSM R. 236, 242 (Chk. S. Ct. Tr. 2002).

When an employment contract has no provision for immediate termination under any circumstances, even where it is undisputed that the employer's property was misappropriated by an employee under contract, the court, construing the contract against the drafter, must conclude that the employer was required to provide the employee with sixty days written notice of his termination, which must run from the date of actual notice of impending termination. Hauk v. Board of Dirs., 11 FSM R. 236, 242 (Chk. S. Ct. Tr. 2002).

An employer may fire an employee who was convicted of a violent felony while already employed when its personnel manual states it will refuse employment to such persons since an employer who fires an employee is refusing employment to the former employee. Reg v. Falan, 14 FSM R. 426, 433 (Yap 2006).

When a personnel manual gives the director the responsibility of carrying out employee terminations, but another superior carried it out, this variation from the procedure is inconsequential because the requirement that the director perform the termination is a responsibility placed on the director rather than a procedural right vested in the employee. Reg v. Falan, 14 FSM R. 426, 434 (Yap 2006).

When nothing in the personnel policies manual requires that an employee be given notice of his right to object to his termination and that this notice should have informed him of his right to write to the supervisor, director and the policy council, this notice was not required. Reg v. Falan, 14 FSM R. 426, 434 (Yap 2006).

When the preamble to a personnel manual section states that the disciplinary actions are not mandatory, but the involuntary termination portion of that section is stated in mandatory terms, and when read together, the manual requires that the involuntary dismissal procedure be followed, and where the procedure is set out in such detail and phrased with mandatory language, the earlier general statement that disciplinary procedures are guidelines must give way. Reg v. Falan, 14 FSM R. 426, 435 (Yap 2006).

When the personnel manual provides for an employee's involuntary dismissal two weeks after the director has recommended it, and when the employee was not afforded the two weeks of pay that he should have received had the procedure been followed, in this regard, the contract has been breached and the plaintiff is due his expectation damages under the contract, the amount he would have been paid for those two weeks. Reg v. Falan, 14 FSM R. 426, 435 (Yap 2006).

A terminated employee's contract was not violated when he was not given a hearing before termination since the personnel manual did not require any hearing. Reg v. Falan, 14 FSM R. 426, 435 (Yap 2006).

When a plaintiff is due what he should have been paid during the two-week notice period that was required by his contract, but was not paid, the court will award that as damages and the employee's share of taxes should be deducted from this amount and paid to the appropriate taxing agencies as required by law and the employer's share of applicable taxes should not be deducted from this amount, but should be paid to the appropriate taxing agencies as required by law. Reg v. Falan, 14 FSM R. 426, 435 (Yap 2006).

Reinstatement to his former position and back pay to the date of his termination to the date he is reinstated are remedies are generally available to an employee who has shown wrongful discharge. But the amount awarded in back pay should be reduced to the extent the plaintiff has mitigated his damages by securing other employment. Reg v. Falan, 14 FSM R. 426, 436-37 (Yap 2006).

When a plaintiff suing for wrongful discharge has introduced no evidence of his efforts to mitigate his damages by attempting to secure a job during his periods of unemployment, the plaintiff is precluded from recovery of damages for these periods. Reg v. Falan, 14 FSM R. 426,

437 (Yap 2006).

When an employer has unlawfully discharged an employee in violation of his civil rights and the former employee obtains alternative employment, in calculating damages, the income from the alternative employment will be deducted from the back pay owed to the employee, since otherwise the plaintiff could recover a windfall, which would violate the principles of compensatory damages. Robert v. Simina, 14 FSM R. 438, 443 (Chk. 2006).

Reinstatement to his former position and back pay to the date of his termination to the date he is reinstated are remedies generally available to an employee who has shown wrongful discharge with the amount awarded in back pay reduced to the extent the plaintiff has mitigated his damages by securing other employment. But the court cannot reinstate a terminated employee in his former position when he is past the mandatory retirement age. It can only award him back pay for time before his retirement date, and any income through alternative employment that was received for employment after he would have had to retire from his Public Service System employment will not be used to reduce the back pay award. Kimeuo v. Simina, 15 FSM R. 664, 666 (Chk. 2008).

The applicable employment taxes should be deducted from a back pay award and paid to social security and the national government as required by law. Kimeuo v. Simina, 15 FSM R. 664, 667 (Chk. 2008).

When no evidence was introduced at trial of how much, if any, unused annual leave the plaintiff had accrued before he was wrongfully terminated, the court cannot make an award for unused accrued annual leave. Kimeuo v. Simina, 15 FSM R. 664, 667 (Chk. 2008).

In order to be eligible to be paid sick leave, an employee must be ill. The employee will not be paid sick leave when he was not sick. When a plaintiff was not sick when he was wrongfully terminated, he is not entitled to any sick leave. Kimeuo v. Simina, 15 FSM R. 664, 667 (Chk. 2008).

Redress for a wrongfully-terminated state employee would include reinstatement and back pay, except when the former employee could not be reinstated due the Public Service System Act's mandatory retirement policy. But the former employee could be awarded back pay if he had mitigated his damages. Simina v. Kimeuo, 16 FSM R. 616, 624 (App. 2009).

The remedies generally available to a state public service system employee who has shown that he was wrongfully discharged are reinstatement to his former position and back pay to the date of his termination. Sandy v. Mori, 17 FSM R. 92, 94 (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).

When an employee did not report to work for a total of twelve days before the termination

action was taken, such action on the employee's part constituted voluntary job abandonment. Peniknos v. Nakasone, 18 FSM R. 470, 480 (Pon. 2012).

When an employee had been requested to come into the work place to meet with management and did not and when the employee subsequently did not report to the work place for twelve days at which point she was administratively terminated, the existing evidence is sufficient for the employer to make out a prima facie case of entitlement for summary judgment. To survive summary judgment, the employee must establish that genuine issues of material fact exist as to whether she voluntarily abandoned her job and when she failed to offer any evidence setting forth specific facts to overcome the employer's voluntary job abandonment evidence, she has not shown that there exists any genuine issues of material fact for trial and the employer will be granted summary judgment that she abandoned her job. Peniknos v. Nakasone, 18 FSM R. 470, 481 (Pon. 2012).

When a job applicant certified that she provided all the information requested in her employment history, and when the employer later discovered that one of the applicant's past employers was intentionally omitted, such omission constitutes a "material" omission to her work experience and would be sufficient grounds for termination. Peniknos v. Nakasone, 18 FSM R. 470, 482 (Pon. 2012).

The employment-at-will doctrine avows that, when an employee does not have a written employment contract and the term of employment is of indefinite duration, the employer can terminate the employee for good cause, bad cause, or no cause at all. Peniknos v. Nakasone, 18 FSM R. 470, 482 (Pon. 2012).

There is no inherent right to continued private sector employment. Peniknos v. Nakasone, 18 FSM R. 470, 483 (Pon. 2012).

When the plaintiff was a new hire and had not completed her probationary period and when the employer included in its employee handbook a clear and unambiguous disclaimer that the handbook is not to be construed as a contract, the disclaimer is effective and the employee handbook does not create an implied employment contract and the plaintiff was an at-will employee who could have been terminated at any time within the introductory period with or without cause. Peniknos v. Nakasone, 18 FSM R. 470, 483-84 (Pon. 2012).

"Just cause" or "good cause" for termination means a fair and honest cause or reason regulated by good faith on the employer's part. Ihara v. Vitt, 18 FSM R. 516, 526 (Pon. 2013).

There are situations which would provide just cause for immediate termination even if not specifically set forth in an employment handbook. These situations could include severe or multiple instances of disobedience, insubordination, dishonesty, criminal conduct, theft, and actions detrimental to the business. All circumstances constituting just cause for immediate termination cannot be anticipated and listed in an employee handbook. Ihara v. Vitt, 18 FSM R. 516, 526 (Pon. 2013).

Even when insubordination is not included in the employee handbook as a cause for termination, severe and/or multiple acts of insubordination can provide just cause for immediate termination. A private sector business cannot be required to retain an employee who acts in a way that actively harms the employer's business interest. Ihara v. Vitt, 18 FSM R. 516, 526 (Pon. 2013).

The fact that an employment contract authorizes the employer to terminate it for certain specified causes does not ordinarily prevent the employer from discharging the employee for a legal cause not specified. Ihara v. Vitt, 18 FSM R. 516, 527 (Pon. 2013).

It is implied in every employment contract that the employee will conduct himself with such decency and propriety as not to injure the employer in his business. Ihara v. Vitt, 18 FSM R. 516, 527 (Pon. 2013).

The plaintiff's discharge was justified when her inappropriate behavior in not coming to work to book an airline ticket for a client seaman who had suffered a stroke was so prejudicial from a business standpoint and from a personal health and safety standpoint because of the urgent medical emergency situation and because the employer was directly involved in booking airline tickets for clients. Ihara v. Vitt, 18 FSM R. 516, 527 (Pon. 2013).

As an exception to progressive discipline, an employee's immediate discharge was justified when she refused to come to work to issue airline ticket for client seaman, although she was aware that the client had suffered a stroke and needed to urgently depart Pohnpei to seek additional medical attention off-island since her conduct ran contrary to her employer's integrity, safety, and quality improvement objectives in providing needed, expected, and necessary services to its clients, especially when it involved a medical emergency. Ihara v. Vitt, 18 FSM R. 516, 527 (Pon. 2013).

Three factors are used to determine whether immediate termination is justified even though the employer has a progressive discipline policy in its employee handbook: 1) culpability, 2) knowledge of expected conduct, and 3) control over the offending conduct. Ihara v. Vitt, 18 FSM R. 516, 527 (Pon. 2013).

An employee's immediate termination was justified when not only did the employer have holiday pay but it also offered its employees overtime because of its need to work outside of normal hours; when the employee by refusing to come to work twice on March 21, 2008, engaged in conduct that was materially adverse to the employer's financial interest in not being able to promptly provide needed airline booking services and related assistance to its client who needed the flight arrangements to be made at the soonest possible time; when she was the only employee who could book airline tickets, and after being explained the situation's emergency nature and urgency, she must have known that by her not showing up to work as ordered, a serious interruption of the employer's operations would occur which would have possibly endangered the its client's health; when her absence placed unexpected pressure on other employees in what was already an emergency situation; and when she had control over her actions that day and her decision not to come into work was not abrupt and she had adequate time to consider the consequences of her actions. Ihara v. Vitt, 18 FSM R. 516, 528-29 (Pon. 2013).

An employee's repeated acts of insubordination provide just cause for her immediate termination and do not require the progressive discipline in the employee's handbook and therefore the employer is not liable to her for any wrongful termination. Ihara v. Vitt, 18 FSM R. 516, 529 (Pon. 2013).

An employee's immediate termination based on multiple acts of disobedience and insubordination was not a wrongful termination and was based on just cause and did not have to proceed through the employee handbook's progressive discipline. Having not prevailed on

the wrongful termination claim, the plaintiff's other claims for pain and suffering, punitive damages, and attorneys' fees are also denied. Ihara v. Vitt, 18 FSM R. 516, 531 (Pon. 2013).

Even when the plaintiffs failed to make reasonable efforts to secure alternative employment, the burden of proof falls on the former employer to show that the former employees could have found alternative employment in their chosen field. Pacific Skylite Hotel v. Penta Ocean, 19 FSM R. 265, 276 (Pon. 2014).

When the former employer has demonstrated that suitable alternative employment was available and that the former employees failed to make reasonable efforts to secure alternative employment, the court must conclude that plaintiffs could not recover for breach of contract due to their failure to mitigate damages. Pacific Skylite Hotel v. Penta Ocean, 19 FSM R. 265, 276 (Pon. 2014).

The failure to mitigate damages is an affirmative defense for which the defendant bears the burden of proof. The common law rule establishing failure to mitigate damages as an affirmative defense is sound because to hold otherwise would be to impose a burdensome requirement upon every plaintiff in a wrongful termination case and because a holding that failure to mitigate damages is an affirmative defense puts the burden of proof on defendants, who presumably would refrain from litigating this issue unless the question of failure to mitigate damages is actually in dispute. Manuel v. FSM, 19 FSM R. 382, 391 (Pon. 2014).

When the court has not held that the implied covenant of good faith and fair dealing could never be applied to an employment contract, the court, at the summary judgment stage of the proceeding, will not dismiss this cause of action as it might apply to the plaintiff's claim for wrongful termination in violation of his employment contract. George v. Palsis, 19 FSM R. 558, 568 (Kos. 2014).

The constitutional guarantee of due process only protects persons from the governments, and those acting under them, established or recognized by the Constitution. Thus, a person's termination by a non-governmental employer does not state a cause of action for unconstitutional deprivation of due process because no governmental entity or official is a defendant; the defendant is not alleged to be performing an essential governmental function; and a government action is not at issue. George v. Palsis, 19 FSM R. 558, 569 (Kos. 2014).

An employer is not a governmental entity when it was not created by the FSM national government nor by any government established or recognized (national, state, or local) by the FSM Constitution; when it is merely funded, in part, by the FSM national and four state governments; when it is incorporated in the United States Commonwealth of the Northern Marianas and its parent corporation was created by the act of the United States Congress so that even if it were a governmental entity, it would be an entity of a government to which the FSM Constitution's due process clause does not apply. It will therefore be entitled to summary judgment on a former employee's wrongful termination in violation of constitutional due process cause of action. George v. Palsis, 19 FSM R. 558, 569 (Kos. 2014).

A former employee's allegation that his termination violated public policy under the FSM Constitution and the right to be free of religious discrimination does not state a cause of action. To the extent that any defendant could be held civilly liable for the violation of public policy, it would be under 11 F.S.M.C. 701(3), and the public policy as expressed in the civil rights statute. George v. Palsis, 19 FSM R. 558, 569 (Kos. 2014).

A former employee's allegation that his termination violated human rights policy under the FSM Constitution and his right to work and enjoy just and favorable working conditions under Article 23 of the United Nations Universal Declaration of Human Rights does not state a recognized cause of action. These claims are actionable under FSM domestic law. George v. Palsis, 19 FSM R. 558, 569-70 (Kos. 2014).

The three factors used to analyze whether there is just cause for immediate termination are: 1) culpability, 2) knowledge of expected conduct, and 3) control over the offending conduct. Ihara v. Vitt, 19 FSM R. 595, 601 (App. 2014).

The proper emphasis under the culpability requirement for employee termination should not be upon the number of violations; rather, it should address the problem of whether the discharge was necessary to avoid actual or potential harm to the employer's rightful interest. Ihara v. Vitt, 19 FSM R. 595, 601 (App. 2014).

The trial court's conclusion upholding an employee's termination is sound when the factual findings on which the conclusion is based are not clearly erroneous and the facts meet the three-factor test to permit immediate termination despite an employee handbook provision requiring progressive discipline. Ihara v. Vitt, 19 FSM R. 595, 602 (App. 2014).

When an employee failed to discharge his duties in a prompt and efficient manner, and he was insubordinate; when the failure to discharge one's duties in a prompt and efficient manner constitutes just cause for termination from the employer; and when insubordination is also just cause, the employer did not materially breach the employee's employment contract (the employee manual) by terminating him since just cause for termination existed. George v. Palsis, 20 FSM R. 111, 116 (Kos. 2015).

When the plaintiff had the burden to prove by a preponderance of the evidence that his employer's termination of his employment was not for just cause and he failed to do so, he has not shown upon the facts and the law a right to relief and the defendants' motion to dismiss will therefore be granted. George v. Palsis, 20 FSM R. 111, 116 (Kos. 2015).

A plaintiff has not proven a material breach of his employment contract merely because he lost his job. George v. Palsis, 20 FSM R. 174, 177 (Kos. 2015).

When the plaintiff produced no evidence from which the court could reasonably calculate a damages amount and when the plaintiff's termination was not a material breach of his employment contract, even if the plaintiff were permitted to proffer evidence now about the measure or the amount of his damages it would not help his case since he failed to prove a material breach and that failure is enough to bar any recovery. George v. Palsis, 20 FSM R. 174, 177-78 (Kos. 2015).

The public policy reasons for requiring that a matter be first placed within the administrative body's competency include the uniformity and consistency in the regulation of business entrusted to a particular agency are secured and the judiciary's limited functions of review are more rationally exercised by preliminary resort for ascertaining and interpreting the circumstances underlying legal issues to agencies that are better equipped than courts by specialization, by insight gained through experience, and by more flexible procedure. Although wrongful termination claims rarely involve complex or technical issues that are outside of the

court's competence, policy reasons also include avoiding conflict, indications of legislative intent, and other factors, and there are many policy reasons to abstain even when administrators lack identifiable expertise because the purpose is simply to promote the uniform application of the law and a proper relationship between the agencies and the judiciary. Ramirez v. College of Micronesia, 20 FSM R. 254, 262-63 (Pon. 2015).

Since an employee handbook can provide contract terms between the employer and employee, when the employment contract explicitly states that the employee's position, construed employment, compensation, leaves of absences, additional employment, benefits, performance evaluations, and termination are governed by the employee manual and when that manual includes terminations provisions explicitly providing the employer with the right to initiate layoffs, the employer had the contractual right to lay off employees before the expiration of the contract term, although this right to lay off employees is limited to the procedures as set forth in the manual. Ramirez v. College of Micronesia, 20 FSM R. 254, 266 (Pon. 2015).

A permanent employee is an employee who has successfully completed a probationary period. Ramirez v. College of Micronesia, 20 FSM R. 254, 266 n.5 (Pon. 2015).

The employer is entitled to a judgment as a matter of law when, even viewing the uncontested facts in the light most favorable to the discharged employee, there are no genuine issues of material fact and the discharged employee cannot prevail on his breach of contract claim because he was properly laid off in accord with the contract terms incorporated from the personnel manual; because the employer had the right to layoff employees; because the employer created a specific layoff procedure in its personnel manual, and because the employee was laid off according to that procedure. Ramirez v. College of Micronesia, 20 FSM R. 254, 267 (Pon. 2015).