On My Mind
3/26/10

Logically, then, the CNMI Department of Labor is left with control of only those "immigrants" or foreign workers who are working under an existing contract. Once their contracts come to an end, those foreign workers will also come under federal control. Since federal law supercedes local law, the CNMI's Department of Labor will no longer have any authority over them - regardless of what DoL officials, or the legislature, or the governor, or his advisors may say.

It is interesting to consider this definition of what <www.justia.com> - a neat url I've recently discovered - defines as the limits of labor law: "Employment law governs the relationship between workers and their employers. This law, contained in federal and state statutes, administrative regulations, and judicial decisions, specifies the rights and restrictions applicable to each party in the workplace. Employment law differs from labor law, which primarily deals with the relationship between employers and labor organizations." [emphasis added]

The article continues, "Employment law in the United States regulates such issues as employee benefits, discipline, hiring, firing, leave, payroll, health and safety in the workplace, non-compete agreements, retaliation, severance, unemployment compensation, pensions, whistle-blowing, worker classification as independent contractor or employee, wage garnishment, work authorization for non-U.S. citizens, worker's compensation, and employee handbooks."

Maybe the CNMI Department of Labor should re-name itself the Department of Employment, and take on some of those issues?
The CNMI was given control over immigration - a power given to no other jurisdiction in the U.S. - under the Covenant, the very same document the governor is now so sharply criticizing. But this same document stated that the power could be taken away by an act of Congress, which, after years of debate, has now occurred. The whys and wherefores are a story unto themselves, to be gone into some other time.

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More significantly, it points out that
Presumably, it is this "at-will" relationship that the CRNA, once fully implemented, will bring about in the CNMI.

The article does not discuss those circumstances under which employment is not an "at-will relationship," but clearly that is what exists now in the CNMI.
http://www.bls.gov/opub/mlr/2001/01/art1full.pdf for discussion of exceptions.....
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Whatever happened to that old and useful - albeit somewhat rude - rule of thumb: "KEEP IT SIMPLE, STUPID"???????
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It is

Overview

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When an employer promulgates a policy regarding an issue in the workplace, generally, that policy is legally binding provided that the policy itself is legal. Policies can be communicated in various ways: through employee handbooks and manuals, memos, and union contracts.

Relevant federal statutes on employment law include the Americans with Disabilities Act of 1990, Title VII of the Civil Rights Act of 1964, Age Discrimination in employment Act of 1967, Fair Labor Standards Act, Occupational Safety and Health Act, Employee Retirement Income Security Act, and Family and Medical Leave Act, though many more federal and state laws and regulations govern virtually every aspect of the employer/employee relationship in the workplace.
Show more
At-Will Employment

Most employment in the U.S. is an at-will relationship between employer and employee, meaning that either party can terminate the relationship with no liability if there was no express contract for a definite term governing the employment relationship. Although several exceptions to this legal doctrine exist, generally, the employer may freely discharge employees for any legal reason or even with no cause at all, and an employee may leave a job for any reason at any time.

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Extent to which legislators refuse to face/accept reality is wondrous indeed: re homesteads, re foreign workers, re value of education..... (did re budget in 3/19 column)

What follows first appeared in this column on 11/5/99. Nothing has changed in the interim - except in the balance of supply and demand. It is reprinted here, verbatim:

"While most eyes are focused elsewhere is probably the best time to introduce an unpopular and highly controversial idea - few will notice, or pay attention, but the seed will have been planted. So here goes. It's about time serious thought were given to abolishing - or at the very least, drastically revising - the CNMI homestead law. There's less and less public land left in the CNMI, and yet the number of people eligible for homesteads under the existing law grows and grows. Pretty soon, there's not going to be any land left. Then what?

"The Northern Islands are all public land, but opening them to homesteading will be difficult. There are few good harbors in the Northern Islands, through which to bring in equipment, supplies, people. To provide the necessary infrastructure required to support homesteads - from roads to schools to potable water and power - will be prohibitively expensive. And there's not much usable land anyway - most of it is steep and mountainous - not

to mention the still active volcanoes.
"Moreover, not all of the public land now still available should be used for residential homesteads. Some must be preserved for agricultural homesteads, to offset the high cost of importing food to the CNMI. Some should be left for conservation, to preserve endangered species, to simply provide green space. Some is needed to protect watersheds. There's also the matter of land exchanges, but more on that later.

"The homestead concept was apparently introduced in the CNMI by the Germans, who offered homestead lots to settlers, primarily from Guam and Germany, in an attempt to increase the population of the CNMI. In the U.S. mainland, homestead programs were used as a means of encouraging people to settle in the newly acquired western parts of what is now the U.S. Land was seen as being nearly limitless, and it was, relative to the size of the population at that time.

"When the current homestead program was begun in the CNMI, the same was probably thought true: the amount of public land available seemed limitless, relative to the size of the population at the time. It's unfortunate, but probably not surprising, that no one at the time could imagine that the CNMI would develop as much and as quickly as it has, and that no one, therefore, put any limit, or time-line, to the homestead program.

"But it's clear that the time has come. The homestead program should probably be stopped altogether. The younger generations will have to do with what land still is owned by their families, or rent or buy in the private sector on the open market. This might, in fact, create a rather active real estate market, which in turn could be a boon to the economy.

"It has already been suggested that one way to continue the homestead program would be to offer ownership of condominium units instead. But that would only serve to postpone the issue.

"Whatever path is taken, and surely one must be decided upon sooner rather than later, the first thing that needs to be done is change the way people think about what little public land remains. Normally, when there is a scarcity, the price for that commodity goes up. That has never happened in the CNMI in regard to its public land. The price for public land - whether used in land exchanges or in leases to developers - has been consistently and grossly undervalued. This use of public land, cheaply priced, as inducement to developers, or in exchange for road rights, wetlands, must be stopped. Instead, the remaining land still in government hands should be priced at a premium. After all, it is a vanishing resource. When it is gone, there is no more. So what's left should be thought of and treated as a rare and precious commodity.

"The difficult decision will be where, at what point in time, to stop the homestead program. Given the finiteness of the available land, and the need for other applications of

that land perhaps not even all the already identified homestead areas should be developed. A useful first step might be to declare a moratorium on all homestead programs and projects until the situation is studied, and some recommendations for dealing with the problem have been formulated [note: this has been done for the residential homestead program].

"There's no denying that it is a very controversial issue, and a very emotional one. But it's also a very real problem, and the sooner something is done about it, the better for all concerned."
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Last night's meeting of the Commonwealth Retirees Association revealed a number of other interesting things as well. CRA Board member David M. Sablan noted, for example, that the Retirement Fund is the only organization he knows where the agency and its board each have separate attorneys. Usually, he said, the agency and its board work closely together, but in this instance, that does not seem to be the case.

According to Mark Aguon, Fund Administrator, two attorneys are needed because Aguon - with support from an attorney - acts as "hearing officer" in benefit disputes, etc., and should his decisions be appealed, it is the Board that hears the appeal. The Board and Aguon needs separate attorneys, since the attorney who was involved in the original decision obviously cannot then advise the Board on an appeal of the decision he himself helped make.