
 <p style="text-align: center;">STATE OF HAWAII DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT POLICIES AND PROCEDURES</p>	POLICY NO. 1000.002 ECCD	NO. of PAGES 4
	EFF. DATE 02/03/05	REV. NO./Date Rev. No. 1 11/30/11
TITLE: APPOINTMENT OF EXEMPT EMPLOYEES TO REPLACEMENT CIVIL SERVICE POSITIONS		APPROVED:  Barbara A. Krieg, Interim Director

I. POLICY

Article XVI, Section 1 of the State of Hawaii Constitution and Section 76-16 of the Hawaii Revised Statutes (HRS) mandate the employment of persons in the civil service, as defined by law, be governed by the merit principle. In addition, and as affirmed by Act 253, SLH 2000, the State policy is that all positions and personal services in the State should be covered by civil service unless specifically exempted.

Furthermore, the Director of the Department of Human Resources Development (DHRD) is responsible for determining whether positions should continue to remain exempt from civil service, or whether they should be replaced by civil service positions. Exempt positions that are replaced by civil service positions shall remain in the civil service.

The compensation and conditions of employment of exempt employees who are appointed to replacement civil service positions must be fair and comparable relative to the compensation and conditions of employment of other civil service employees. The exempt employees' service to the State should also be recognized.

II. RATIONALE

When it is determined that services which have previously been provided by exempt positions should instead be provided by civil service positions, appropriate processes must be established in order to facilitate the conversion of exempt employees to civil service. Conversion processes have previously been established by Act 300, SLH 2006. Those processes are hereby extended to all appropriate conversions.

Pursuant to Section 76-1, HRS, all employees within the civil service, whether they initially entered State service as a civil service employee or as an exempt employee, should be treated fairly and equitably.

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III. DEFINITIONS

“Initial probation period” is the probation period required of a person entering the state civil service that is the final test of the person’s fitness and ability for the position before acquiring membership in the civil service.

“Replacement position” or “replacement civil service position” means a civil service position established with substantially the same functions of an existing exempt position (which will be abolished upon the filling of the civil service position). The replacement position shall remain in the civil service.

IV. SCOPE

This policy applies to all exempt positions identified as appropriate for replacement by civil service positions, unless otherwise designated by the DHRD Director.

V. ELIGIBILITY OF EXEMPT EMPLOYEES TO BE APPOINTED TO REPLACEMENT CIVIL SERVICE POSITIONS WITHOUT COMPETITION

- A. The incumbent of an exempt position that is being replaced by a civil service position shall be appointed to the replacement civil service position without competition, provided that the incumbent occupied the exempt position for a minimum of one (1) year of continuous creditable service, satisfactorily performing essentially similar functions, immediately preceding the filling of the replacement civil service position.
- B. Periods of unpaid absences such as leaves without pay and suspensions shall not be credited toward calculation of the one (1) year requirement. Such absences shall not constitute a break in service.
- C. The exempt employee must meet all applicable requirements (e.g., minimum qualification requirements, selective certification requirements, and public employment requirements) to be considered a qualified candidate.
- D. An employee who occupies an exempt position for at least one year of continuous creditable service at the time it is to be replaced by a civil service position shall have a one-time election to remain exempt from civil service (as long as there is a legal basis for the position to be exempt from civil service). If the employee elects to remain exempt, the position shall be converted to civil service when the employee vacates the position.

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VI. EXEMPT EMPLOYEES WHO ARE NOT ELIGIBLE TO BE APPOINTED WITHOUT COMPETITION TO REPLACEMENT CIVIL SERVICE POSITIONS

Employees who have not occupied the exempt position for a minimum of one (1) year (continuous creditable service), satisfactorily performing essentially similar functions, immediately preceding the filling of the replacement position, are not eligible to be appointed to the replacement civil service position without competition. However, they may apply through an open-competitive recruitment, if one is conducted.

VII. SEVERANCE OF EXEMPT EMPLOYMENT

Upon filling of the replacement civil service position, the employee's exempt appointment shall be simultaneously terminated.

VIII. PUBLIC EMPLOYMENT AND SUITABILITY REQUIREMENTS

Exempt employees appointed to civil service positions must meet the same public employment and suitability requirements as individuals who are initially appointed to civil service positions, unless they have already fulfilled those requirements as a result of their exempt employment.

IX. INITIAL COMPENSATION

Provisions covering the compensation of exempt employees who are appointed to replacement civil service positions within the same bargaining unit (BU) are covered by the applicable collective bargaining agreement, supplemental agreements negotiated with the exclusive representative for the respective BU (included employees) or executive orders (excluded employees).

X. INITIAL PROBATION PERIOD

Pursuant to Section 14-3.05-3 of the State of Hawaii Human Resources Rules, and Section 76-27, HRS, exempt employees who receive civil service appointments must serve an initial probation period.

XI. BACKGROUND

Act 253, SLH 2000 (effective July 1, 2002), affirmed the State policy that all positions and personal services in the State should be covered by civil service, unless specifically exempted, and directed DHRD to submit a report, each legislative session, of positions that were permanently exempted from the civil service prior to the effective date of the Act.

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House Concurrent Resolution 94, H.D. 1, SLH 2003, and Act 128, SLH 2004, reiterated the Legislature's request for a review of exempt positions as required by Act 253.

Act 128, SLH 2004, which allowed exempt employees with six consecutive years of satisfactory service to apply for civil service positions through internal recruitments, was repealed on July 1, 2006.

Act 300, SLH 2006, was enacted to "comply with Act 253, SLH 2000." The Act amended a number of statutory provisions that required positions to be exempt from civil service to allow discretion as to whether the positions should be civil service or exempt from civil service, and also directed DHRD and the Hawaii Government Employees Association "to work collaboratively to establish a logical, workable and fair process for converting positions in various departments, which are currently exempt from chapter 76, Hawaii Revised Statutes, to civil service positions." The Act also granted rights to exempt employees who occupied the affected exempt position for at least one year, as reflected in section V. above, and requires DHRD to submit a report on the conversions of exempt positions to the Legislature prior to each regular session.

AUTHORITIES AND REFERENCES

Article XVI, Section 1, State Constitution

§76-1, Hawaii Revised Statutes, *Purposes; Merit Principle*

§76-16, Hawaii Revised Statutes, *Civil service and exemption.*

§76-27, Hawaii Revised Statutes, *Probationary service and other requirements for membership in civil service*

Act 253, SLH 2000

Act 300, SLH 2006

§14-1-15, Hawaii Administrative Rules, *Definitions*

§14-3.01-2, Hawaii Administrative Rules, *Appointment Through the Merit System*

§14-3.05-3, Hawaii Administrative Rules, *Initial Probation Period*