

## INSTRUCTIONS FOR RESIDENCY CERTIFICATION FORM (HRD 319a and 319b)

Hawaii Revised Statutes (HRS) § 78-1(c) requires that all public employees shall become residents of the State of Hawaii within thirty (30) calendar days after beginning their employment. Being a resident of the State is also a condition of eligibility for continued employment. These instructions explain how State agencies are expected to apply this requirement.

**IMPORTANT NOTE:** HRS § 78-1(c) was amended effective July 1, 2007 by Act 52 (SLH 2007), which eliminated the requirement that applicants for state or county public employment be residents of the State at the time of application. With the repeal of the "residency-at-time of application" provision, Act 52 instead requires that all persons seeking state or county public employment shall become residents within thirty (30) calendar days after beginning their employment and as a condition of eligibility for continued employment. This Legislative policy decision conforms to a United States District Court for the District of Hawaii ruling that found the "residency-at-time of application" provision unconstitutional.

### WHAT "RESIDENCY" MEANS

HRS § 78-1(c) defines resident as "a person who is physically present in the State of Hawaii at the time the person claims to have established the person's domicile in the State of Hawaii and shows the person's intent is to make Hawaii the person's primary residence."

In this context, when an individual becomes a Hawaii resident, he or she has no definite plans to make another place their primary residence. Making Hawaii your home, or "domicile," in this context means that it is your home, that is, the place to which you both intend to remain and intend to return to whenever you are absent. (Making a home in Hawaii does not mean you cannot at some later point in time establish a new home elsewhere.)

Therefore, under HRS 78-1(c), residency requires two things: (1) a person's present intent to make Hawaii his or her home, and (2) physical presence in the State of Hawaii when that intent is formed.

Physical presence is generally not a problem. Obviously a new employee is present if she is sitting in your office. Intent is harder to determine because intent is what the state of someone's mind is, that is, what is that person is thinking? You can only know what another person is thinking if that person shares his or her thoughts.

To establish residency under HRS § 78-1(c), a person must minimally believe or say, "I intend to make Hawaii my home" while he or she is in Hawaii. That is it.

Because intent is someone's state of mind, a person **does not have to show proof** in order to demonstrate intent. Therefore, it does not matter if, for example, the new employee still has a driver's license from another state, the new employee has not yet had the chance to register to vote in Hawaii, or the new employee just arrived in Hawaii last week. **NO PROOF IS REQUIRED TO SHOW INTENT.**

## INTRODUCTION TO RESIDENCY CERTIFICATION FORM

Each agency shall apply the statutory "residency within thirty calendar days of employment" requirement through the following simple steps:

- (1) Inform all successful job applicants of the requirement via a standardized form letter;
- (2) All new employees will be required to fill out the Hawaii Residency Requirement Acknowledgement Form, HRD 319b (Rev. 7/25/07), certifying that Hawaii is their state of residence or will become their state of residence within thirty (30) calendar days from the date they begin their employment;
- (3) All nonresident employees who elect to become Hawaii residents within thirty (30) calendar days from date they begin their employment shall also complete the Certification of Hawaii Residency Form, HRD 319a;
- (4) New employees who are currently Hawaii residents will only need to complete form HRD 319b (Rev 7/25/07), by affirming their residency status on the top portion of the form; and
- (5) If the employee chooses not to immediately affirm Hawaii residence, the agency shall provide the employee with HRD 319a (Rev. 7/1/07) to be completed and returned within thirty (30) calendar days of the start of employment.

Each agency's Departmental Personnel Officer (DPO) is **responsible for ensuring** that his or her department is in compliance with these instructions. DPOs are strongly advised by the Attorney General's office to centralize and standardize how the residency requirement is applied by each agency.

## HOW TO USE THE RESIDENCY REQUIREMENT ACKNOWLEDGEMENT AND RESIDENCY CERTIFICATION FORM ON THE EMPLOYEE'S FIRST DAY OF WORK

- On an employee's first day of work as a state employee, have the employee review and sign the Hawaii Residency Requirement Acknowledgment Form HRD 319b (Rev. 7/25/07).
- If the new employee is currently a Hawaii resident, they should proceed to complete HRD 319b (Rev. 7/25/07) on their first day of work. The employee must provide a residence, not mailing address. In these instances, the employee will not need to fill out any other residency form.
- If the employee plans to establish Hawaii residency within thirty (30) calendar days from the date they begin their employment, instruct the employee that he or she must complete the Certification of Hawaii Residency Form HRD 319a (Rev. 7/1/07) within thirty (30) calendar days, as a condition for continued employment.
- The Departmental Personnel Office is strongly encouraged to develop a system (e.g. tickler file), to monitor new, nonresident employees who plan to establish Hawaii residency within thirty (30) calendar days from the date they begin their employment.
- Because, as discussed above, intent is the state of someone's mind, you **shall not** request any proof when the new employee is filling out the certification form. That is, for purposes of the residency requirement,<sup>1</sup> you **shall not** request that a new employee show you a Hawaii driver's license, voter registration, or anything similar. **There are no exceptions to this requirement.**

### FREQUENTLY ASKED QUESTIONS

1. **Question:** Does a new employee have to show proof of Hawaii residency in order to fill out the Residency Certification Form HRD 319a (Rev. 7/1/07)?

**Answer:** No. The Residency Certification Form provides the employee with the means of expressing his or her intent for purposes of residency. A new employee's certification of his or her intent (i.e., what he or she believes) is sufficient to establish the new employee's residency.

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<sup>1</sup> Employees may be required to show identification to comply with federal law, such as filling out the I-9 form when a new employee begins work, to verify citizenship or that the person is a non-citizen who is permitted to work in the United States under federal law. The citizenship requirements are entirely different from the residency requirement. Do not get these two requirements mixed up.

2. **Question:** What do I do if the new employee, through simple oversight, illness, etc. fails to sign the Residency Certification Form HRD 319a (Rev. 7/1/07) within thirty days from the start of his or her employment? The employee has expressed willingness to sign the form. Can I allow them additional time to complete the form?

**Answer:** Yes. However, the employee should be instructed to return the completed form on the employee's first day upon returning to work.

3. **Question:** What do I do if the new employee is not willing to sign the Hawaii Residency Requirement Acknowledgement Form HRD 319b (Rev 7/25/07)?

**Answer:** Politely inform the new employee that Hawaii residency is required for all employees. Allow the new employee to review the discussion about residency in the form letter your agency sent the new employee earlier to make him or her aware of the requirement before he or she started work. If questions remain after this process, immediately consult with your DPO or ask your DPO to call DHRD's Employee Staffing Division. In most situations, discussion may resolve the new employee's questions. If not, the DPO should inform the new employee that he or she may not start employment.

4. **Question:** What do I do if the new employee initially checked off their intent to become a Hawaii resident within 30 days on Form HRD 319b (Rev 7/25/07) and is now not willing to sign the Residency Certification form HRD 319a (Rev. 7/1/07)? Will I be required to initiate termination proceedings if the new employee still refuses to sign Residency Certification Form?

**Answer:** Yes. The department should follow the termination procedures that are in place for terminating an employee who no longer meets the minimum public employment requirements for their position.

5. **Question:** I understand that the DPOs are advised to centralize how the residency requirement is applied. However, for logistical and practical reasons, can I delegate the responsibility for monitoring the Residency Certification Forms to the divisional or program level?

**Answer:** Yes. However, this delegation does not alter the DPOs ongoing responsibility for ensuring compliance of HRS 78-1.

6. **Question:** What do I do if the new employee has inconsistent residency status or gives contradictory information?

**Answer:** If it seems the employee is giving up their Hawaii residence for another state or country, you must advise the employee of the condition of public employment as stated in HRS 78-1. It would be prudent to follow up your verbal advice on this matter through email communication.

7. **Question:** Can the spouse of an active-duty military service member be a resident of the State of Hawaii?

**Answer:** Yes. For purposes of HRS § 78-1(c), the spouse of an active-duty military service member can be a resident if he or she meets the usual requirements for residence: states his or her present intent to make Hawaii his or her home while physically present in the State. If a military spouse certifies his or her intent to make Hawaii his or her home that is sufficient. Spouses can have different residences, so it does not matter if the active-duty spouse maintains residency in a different state. What matters is the new employee's present intent to make Hawaii his or her home, that is, the intent that they have right now.

8. **Question:** What should I do when I discover, or an employee gives me, inconsistent information about an employee's residency after signing the certification form?

**Answer:** Please inform your DPO and immediately provide information about a new employee's inconsistent residency information to DHRD's Employee Staffing Division if the new employee gives you information that is extremely concerning. The kinds of statements that should be brought to DHRD's attention include: "I'm running for Congress from Massachusetts" or "I pay non-resident Hawaii state income taxes," or if a new employee writes down an out-of-state residence address on the certification form. DHRD will consult with the Attorney General's office as necessary.

If a new employee discloses that he or she has definite plans to leave the State at some point in the future, please inform DHRD as well. Because residency is dependent on individual circumstances, such situations may require a case-by-case analysis.

If a new employee refuses to sign the certification form, see Questions # 3 & 4.

9. **Question:** How long does an employee have to be a resident of Hawaii?

**Answer:** An employee must be a resident of Hawaii for as long as they are employed by the State, because residency is a continued condition of public employment. HRS § 78-1(c).

10. **Question:** Once the new employee has certified their Hawaii residency status, is my agency expected to **enforce** the residency-during-employment requirement?

**Answer:** No. All your agency is expected to do is comply with these instructions. If, however, in the course of your normal duties, you come across information that seems inconsistent with an employee's residency certification that causes you concern, please contact DHRD's Employee Staffing Division. DHRD will consult with the Attorney General's office as necessary.

11. **Question:** Am I required to have everyone my department hires complete the Residency Certification Form HRD 319a (Rev. 7/1/07) and the new Hawaii Residency Requirement Acknowledgement Form (Rev. 7/25/07)?

**Answer:** Yes. Appointees to all civil service, non-civil service and exempt positions shall be required to complete these forms.

12. **Question:** Am I required to have my 89-Day Non-Civil Service Appointee complete a new Residency Certification Form HRD 319a (Rev. 7/1/07) for each 89-Day appointment?

**Answer:** **No** if the employee is appointed to successive 89-Day appointments. **Yes** if the employee is appointed to another 89-Day appointment in a different department.