

STATE OF HAWAI'I DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT POLICIES AND PROCEDURES	POLICY NO. 300.001 ESD/Recruitment	NO. of PAGES 10
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TITLE: TYPES OF APPOINTMENTS	APPROVED: <i>Ryker J. Wada</i> Ryker Wada, Director	

I. POLICY

A *civil service appointment* shall be granted when the individual is appointed through the internal vacancy recruitment process, the merit-based, open competitive civil service recruitment and selection procedures or through legislative action.

A *non-civil service appointment* shall be granted when the appointment is made without the benefit of the civil service recruitment and selection procedures to fulfill immediate and relatively short-term operational needs.

II. RATIONALE

While an effective civil service system is based upon a consistently applied scheme, it must still be flexible enough to meet permanent and temporary human resources needs. Appointments shall be appropriately responsive to program demands and conducted in a timely and efficient manner.

III. SCOPE

These procedures shall apply to the filling of civil service positions, including those that are exempt from the civil service classification system.

These procedures are not applicable to the filling of exempt positions (positions that are exempt from civil service under § 76-16(b), HRS).

IV. GENERAL PROVISIONS FOR CIVIL SERVICE APPOINTMENTS

A. A permanent *civil service appointment* may be granted through any of the following methods:

1. The individual is appointed to a vacant civil service position through a process that was initiated by the submission of a *Requisition for Certification of Eligibles*.
2. The individual is a member of the civil service and is appointed to the civil service position via the internal vacancy recruitment process.
3. The individual is appointed to an exempt position that is converted to civil service through departmental or legislative action.

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- B. A temporary civil service appointment may be made for the specific period of time needed to complete the temporary work. The appointment may be extended by the director upon adequate showing that the extension is necessary to complete the job for which the employee was originally employed. A temporary appointment may be made by the following methods:
1. The individual is a member of the civil service and is appointed through an internal vacancy recruitment process provided that a civil service member with a permanent appointment who is so appointed shall, upon release from the temporary appointment, be returned to the position which the employee last held a permanent appointment.
 2. The individual is appointed from a certificate of eligibles, provided that a civil service member with a permanent appointment who is so appointed shall, upon release from the appointment, be returned to the position which the employee last held a permanent appointment.
- C. A civil service member with a permanent appointment who elects to continue in a temporary appointment through an extension of that temporary appointment shall have return rights to his or her last held permanent appointment; provided that:
1. Prior to the start of the extension of the temporary appointment, the employee submits a written request and receives written approval for his or her return rights from the appointing authority that has control over such employee's last held permanent appointment.
 2. If the appointing authority does not provide written approval for the employee's return rights, the employee shall return to the employee's last held permanent position or forfeit their return rights, become a temporary member and be terminated from service at the end of the extension of the temporary appointment.
 3. Written approval of a request for an employee's return rights is required for each extension of a temporary appointment.

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V. GENERAL PROVISIONS FOR *NON-CIVIL SERVICE APPOINTMENTS*

A. Non-Civil Service Temporary Appointments Outside the List (“TAOL”)

A *Non-Civil Service Temporary Appointment Outside the List (“TAOL”)* may be granted when there is no available eligible on an appropriate list or when the director determines that the period of the temporary appointment makes it impracticable to fill the position by civil service recruitment procedures and there is insufficient time for an employee to complete an initial probation period. The following conditions shall apply:

1. When HRD determines recruitment needs to be conducted to fill a permanent vacancy, the appointment may be granted for a period not to exceed six months.
2. For temporary vacancies, the appointment shall be for a period not to exceed one year.
3. The appointing authority shall submit a request for a certified list of eligibles to HRD.
4. The appointee must meet the minimum qualification requirements of the position, public employment requirements under § 78-1, HRS, and possess the necessary occupational license, certification, or registration as required by applicable statutes or regulations. Reasonable steps shall be taken to ensure that applicants meet the suitability requirements of the class of work.
5. The appointing authority may request and be granted one extension to continue the employee in a *non-civil service temporary appointment outside the list* provided that the extension may be granted for and under the following circumstances:
 - a. For **permanent** positions, a six-month extension may be granted **only** for the following reasons:
 - i. Recruitment failed to produce qualified eligibles or the establishment of the eligible list is delayed;
 - ii. Selection and appointment of an eligible is pending the completion of Reduction-in-Force, or

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- iii. For any other reason approved by the director.
 - b. For **temporary** positions, an extension for a period not to exceed one year may be granted for and under the following circumstances:
 - i. When the temporary federal funded or special project is extended after the expiration of the period for which it was scheduled;
 - ii. When the leave of absence without pay of the incumbent is extended;
 - iii. When the circumstances which led to the filling of the permanent position on a temporary basis continues to exist;
 - iv. Pending position classification action, administrative review, or appeal of a classification action;
 - v. Pending reorganization; or
 - vi. Budgetary restrictions.
 - c. An extension may be granted, provided eligibles are not available on an appropriate list.
 - d. The extension of an employee in a permanent position shall not exceed six months.
 - e. The extension of an employee in a temporary position shall not exceed twelve months.
- B. Eighty-Nine Day (89-day) **Non-Civil Service** Appointment

- 1. An 89-day non civil-service appointment limitations apply only to positions that are **general funded**.

Act 246, SLH 2016 (H.B. 2008, H.D.2, S.D.2, C.D.1) reads in part as follows:

“Temporary employment in state positions. (a) No department or agency of the State shall temporarily employ the same person in the same position for more than two terms of eighty-nine days; provided that with the approval of the

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governor, a department or agency of the State may temporarily employ the same person in the same position for eight terms of eighty-nine days within a consecutive twenty-four month period.”

The law provides exceptions from the 89-day appointment limitations for vacant positions when the following circumstances apply:

- A workers’ compensation claim;
 - Medical leave;
 - An on-going investigation;
 - A shortage category;
 - A working condition differential;
 - A remote geographical location;
 - A seasonal demand for employees;
 - A leave of absence taken by an incumbent who has return rights;
 - A need to fill a department of education position for the delivery of special education services; or
 - A position pending reorganization.
- a. An *89-day non-civil service appointment* shall be for a period not exceeding 89 consecutive calendar days or less than twenty hours per week for 37 consecutive weeks.
- b. An 89-day non-civil service appointment shall be made without utilizing civil service recruitment and selection procedures, provided that:
- i. If at any time it is found that the need for services will exceed three months, the appointing authority shall attempt to fill the position by a certified list of eligibles; and
 - ii. The appointing authority is not precluded from requesting a certified list of eligibles for an appointment of less than three months.
- c. An 89-day non-civil service appointment may be made without regard to the minimum qualification requirements of the position, except that the employee must meet the public employment requirements under § 78-1, HRS, and possess the necessary occupational license, certification, or registration as required by applicable statutes or regulations. Reasonable steps

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shall be taken to ensure that applicants meet the suitability requirements of the class of work.

- d. A break in service of at least one workday is required when consecutive 89-day non-civil service appointments are made.
 - e. An appointing authority may temporarily employ the same person in the same position for more than two terms of eighty-nine days without HRD approval; provided that with the approval of the governor, a department or agency of the State may temporarily employ the same person in the same position for up to six additional terms of eighty-nine days (in total eight terms of eighty-nine days) within a consecutive twenty-four month period.
2. An *89-day non-civil service appointment* limitation apply only to positions that are ***non-general funded*** and are categorized by other means of financing. Examples of non-general funded positions are as follows: Special Fund, Federal Fund, County Funds, Trust Fund, Inter-departmental Transfer Fund, Revolving Fund, etc.
- a. An *89-day non-civil service appointment* shall be for a period not exceeding 89 consecutive calendar days or less than twenty hours per week for 37 consecutive weeks.
 - b. An *89-day non-civil service appointment* shall be made without utilizing civil service recruitment and selection procedures, provided that:
 - i. If at any time it is found that the need for services will exceed three months, the appointing authority shall attempt to fill the position by a certified list of eligibles; and
 - ii. The appointing authority is not precluded from requesting a certified list of eligibles for an appointment of less than three months.
 - c. An *89-day non-civil service appointment* may be made without regard to the minimum qualification requirements of the position, except that the employee must meet the public employment requirements under § 78-1, HRS, and possess the necessary occupational

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license, certification, or registration as required by applicable statutes or regulations. Reasonable steps shall be taken to ensure that applicants meet the suitability requirements of the class of work.

- d. A break in service of at least one workday is required when consecutive *89-day non-civil service appointments* are made.
 - e. An appointing authority may make two *89-day non-civil service appointments* for the position or employee without HRD approval. However, HRD approval is required when a third *89-day non-civil service appointment* is being considered.
 - f. If the employee has not received an *89-day non-civil service appointment* to the same or different position in the department within the past three months, the employee may be granted another *89-day non-civil service appointment* in the department without HRD approval.
- C. An employee who is granted a *non-civil service appointment* is not eligible for membership in the civil service.
 - D. Service that is acquired in a *non-civil service appointment* is not creditable toward meeting the requirements of an initial probation period.
 - E. An appointing authority must certify that the employee will be performing duties that are characteristic of the class.

VI. PROCEDURES FOR *NON-CIVIL SERVICE APPOINTMENTS*

- A. An 89-day non-civil service appointment limitations apply only to positions that are **general funded**.
 - 1. The appointing authority shall submit the *Requisition for Certificate of Eligibles*. When the appointing authority determines that the temporary period will extend beyond six months, a *Requisition for Certificate of Eligibles* shall be submitted. HRD will determine if an appropriate eligible list is available for immediate certification or if recruitment must be conducted for the position.
 - 2. The appointing authority shall be allowed two 89-day appointments to temporarily fill positions during the recruitment process. Before the completion of the second 89-

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day appointment and the appointing authority requires additional 89-day appointment approval(s), the appointing authority shall submit HRD Form 396, Request for Approval of 89-Day Appointment for approval by the Governor at least three weeks prior to the end of the second appointment, to receive approval for additional appointments, which the one-day break in service and not to exceed eight (8) terms of 89-day within a consecutive twenty-four (24) month period as provided for in Act 246, SLH 2016 (H.B. 2008, H.D.2, S.D.2, C.D.1). Attachment A, is required.

3. HRD Form 396 shall be denied or approved with the specific number of appointments allowed to continue temporary 89-day employment while attempting to fill the position. Recruitment information shall be provided on the required form for purposes to determine the number of 89-day terms approved up to a total of eight terms of eighty-nine days within a consecutive (24) month period by the Governor.
- B. An 89-day non-civil service appointment to positions that are **non-general funded**.
1. The appointing authority shall submit the *Requisition for Certificate of Eligibles*. When the appointing authority determines that the temporary period will extend beyond six months, a *Requisition for Certificate of Eligibles* shall be submitted. HRD will determine if an appropriate eligible list is available for immediate certification or if recruitment must be conducted for the position.
 2. In the event eligibles are not available, HRD will grant:
 - a. A *non-civil service 89-day appointment* for positions with a temporary duration of three months or less; or
 - b. A *non-civil service temporary appointment outside the list* for permanent positions pending the civil service recruitment process **or** temporary positions with a temporary duration of more than three months but not to exceed one year.
 3. When the appointing authority determines that a third *non-civil service 89-day appointment* is necessary for the position or employee, HRD's prior approval through HRD Form 397, *Request for 89-Day Non-Civil Service Appointment Approval (Attachment B)*, is required.

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4. HRD's prior approval through HRD Form 397a, *Request for Non-Civil Service Temporary Appointment Outside the List Approval (Attachment C)* and HRD Form 278, *Application for Non-Civil Service Appointment (Attachment D)*, is required when a *non-civil service temporary appointment outside the list* is being considered. The *Requisition for Certificate of Eligibles* will be kept active for the duration of the temporary appointment and in the event eligibles become available, HRD will certify a list and the appointing authority must consider the eligibles.
5. If the appointing authority determines that continuing the services of an employee in a *non-civil service temporary appointment outside the list* is necessary, HRD's prior approval through HRD Form 397a, *Request for Non-Civil Service Temporary Appointment Outside the List Approval*, is required.
6. An employee in a *non-civil service temporary appointment outside the list* may receive an *89-Day appointment* provided that there is a one workday break in service.

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VII. AUTHORITIES AND REFERENCES

§ 76-16 (b), Hawai'i Revised Statutes, *Civil service and exemptions*

§ 76-16 (d), Hawai'i Revised Statutes, *Civil service and exemptions*

§ 76-16 (e), Hawai'i Revised Statutes, *Civil service and exemptions*

§ 76-16 (f), Hawai'i Revised Statutes, *Civil service and exemptions*

§ 76-16 (i), Hawai'i Revised Statutes, *Civil service and exemptions*

§ 76-16 (j), Hawai'i Revised Statutes, *Civil service and exemptions*

§ 14-3.05-1 to § 14-3.05-2, Hawai'i Administrative Rules, *Types of appointments*

§ 14-3.05-4, Hawai'i Administrative Rules, *Membership in the civil service Act 246, SLH 2016 (H.B. 2008, H.D.2, S.D.2, C.D.1)*

VIII. ATTACHMENTS

Attachment A: Request for Approval of 89-Day Appointment, HRD Form 396

Attachment B: Request for 89-Day Non-Civil Service Appointment Approval, HRD Form 397

Attachment C: Request for Non-Civil Service Temporary Appointment Outside the List Approval, HRD Form 397a

Attachment D: Application for Non-Civil Service Appointment, HRD Form 278