



**STATE OF HAWAII
DEPARTMENT OF HUMAN RESOURCES
DEVELOPMENT
POLICIES AND PROCEDURES**

POLICY NO. 1000.001 ECCD/Exempt	NO. of PAGES 7 2 Attachments
EFF. DATE 11/17/03	REV.NO./Date Rev. No. 1 08/15/16

TITLE:

EXEMPT SERVICE

APPROVED:
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I. POLICY

It is the policy of the State to employ persons within the civil service system whenever possible.

When it is necessary to establish and fill positions that are exempt from civil service, all aspects of the exempt employment shall follow sound human resource management principles, including the selection based upon fitness and ability for public employment, and all applicable statutory requirements.

II. RATIONALE

Exempt employees of the State should be qualified, proficient and productive. In order to further this goal, the exempt service shall be administered in accordance with sound human resource management principles and applicable provisions of law. A consistent approach to human resource management minimizes friction and dissatisfaction among all categories of employees, facilitates development of a cooperative team, and contributes to productivity.

III. DEFINITIONS

“Appointing authority” means the department head or designee having power to make appointments or changes in the status of employees.

“At will employment” means that employees may be discharged at the prerogative of the employer, subject to all applicable federal and State employment laws.

“Exempt employee” means a person who is appointed to and who occupies a position exempted from civil service pursuant to § 76-16, HRS.

IV. SCOPE

This procedure applies to State of Hawaii positions and employees that are exempted from civil service pursuant to § 76-16, HRS, other than elected and appointed officials and exempt employees covered by other statutorily

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established personnel systems in the Judiciary, within the Department of Education (e.g., teachers, educational officers, etc.), the University of Hawai‘i (e.g., faculty and administrative, professional and technical employees), the Department of Defense (National Guard), and the Hawai‘i Health Systems Corporation.

V. RESPONSIBILITIES

A. DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT (“HRD”)

HRD shall be responsible to:

1. Determine whether a position qualifies for exemption from civil service (NOTE: To be covered by a separate Policy and Procedure);
2. Establish procedures governing the exemption of positions and employment of persons in the exempt service;
3. Promote the objectives of providing equal opportunity in public employment and compliance with all applicable federal and State employment laws, including laws prohibiting employment discrimination;
4. Provide guidance and technical advice to departments on establishing and filling exempt positions, terms and conditions of employment, etc.; and
5. Oversee the administration of the exempt service and require departments to take corrective action when necessary.

B. APPOINTING AUTHORITIES

Appointing authorities shall be responsible to:

1. Minimize the use of exempt positions;
2. When employing persons in the exempt service, provide equal opportunity in public employment, select employees based on merit, and comply with all applicable federal and State employment laws, including laws prohibiting employment discrimination; and
3. Comply with this policy and all applicable procedures and directives.

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VI. GENERAL PROVISIONS

- A. All positions in State government shall be civil service unless the position is approved for exemption pursuant to § 76-16, HRS.
- B. Individuals hired to fill exempt positions shall be capable of performing the duties and responsibilities of the exempt position effectively.
- C. Unless the compensation is set by statute, the compensation of exempt employees shall be set in a reasonable manner and in proper relation to the compensation of other employees.
- D. Exempt employees are considered “at will” employees, except as noted below under *Job Tenure*.
- E. When new positions are established, departments must consider establishing and filling the positions as civil service if the positions can readily be established and filled within the civil service, unless precluded by statute.
- F. When exempt positions become vacant, departments must consider converting the positions to civil service if such action is practical and consistent with the stated policy of maximum coverage by the civil service, unless precluded by statute.

VII. PROCEDURE

A. RECRUITMENT

- 1. General qualification requirements shall be identified and applied. The qualification requirements shall be job-related and non-discriminatory.
- 2. In advertisements are utilized, public notice requirements (e.g., must advertise in the specified local newspapers, in accordance with State purchasing requirements) must be observed. Advertisements shall indicate that the State and/or department is an “Equal Employment Opportunity Employer” or include a similar statement.
- 3. Unless otherwise specified by law, exempt employees shall be subject to the public employment requirements of chapter 78, HRS (e.g., citizenship and residence).
- 4. Standard employment suitability considerations (e.g., medical, criminal conviction, dismissal from employment, etc.) shall be

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applicable to exempt employees as they are to civil service employees.

5. The *State of Hawai'i Application for Non-Civil Service Appointment* (Attachment A) shall be used for exempt employees to ensure that they meet public employment requirements.

B. SELECTION

1. Selection shall be conducted in an appropriate manner based upon objective, job-related factors. Appointing authorities shall utilize selection method(s) that maximize the selection of a suitable, high performing appointee while minimizing possible charges of discrimination.
2. Any appropriate selection method or combination of selection methods (e.g., assessment of education and/or experience, oral interview, written test, performance test, etc.) may be used. The coverage and methods chosen shall be based upon:
 - a. Identification of the knowledge, skills, abilities, and competencies that should be brought to the job and/or are desirable to be brought to the job;
 - b. Assessment of the relative importance of each; and
 - c. Determination of the best means for eliciting and assessing each of the candidates.
3. Reference checks done prior to offering the job to a candidate are recommended.
4. The *State of Hawai'i Application for Non-Civil Service Appointment* (Attachment A) should be utilized to ensure that candidates are suited for employment in the positions for which they are being considered. The department shall decide whether all candidates or only the candidate who is tentatively selected shall be required to complete the questionnaire and the decision must be enforced consistently. Responses on the questionnaire shall be reviewed only by staff of the departmental personnel office who will determine the candidate's suitability.

C. COMPENSATION

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1. The compensation for new exempt employees shall be reasonable and comparable to that of other employees in the workforce in order to avoid morale problems with existing civil service employees, minimize compensation issues in the event of conversion to civil service in the future, and exercise prudence in the expenditure of public funds.
2. In determining pay rates for new hires, departments shall consider the pricing of a similarly situated civil service position, if any exist, to determine an appropriate, consistent compensation rate, unless wages in the relevant labor market would make such a rate ineffective.
3. When the duties and responsibilities of an exempt position change to the extent that a reallocation to a higher level is appropriate, departments shall again review and compare the pay range of similarly situated civil service positions, if any exist, to determine the probable pricing for the exempt position and appropriate compensation adjustments.

D. DURATION OF APPOINTMENT

1. New appointments to temporary positions shall not exceed the not-to-exceed (NTE) date of the position. Such appointments may have an earlier NTE date, for business reasons or to comply with current policies regarding NTE dates.
2. All new exempt appointments should have a NTE date, including appointments to positions of an indefinite duration.
3. Appointments to exempt positions shall not exceed the duration of the period for which funds have been appropriated and released by the Governor, or other authorized ending date, e.g., appointments to positions in the Governor's office should not exceed the term of office of the Governor.

E. JOB TENURE

1. Exempt employees do not have, and cannot gain, tenure in their positions. They are considered to be "at will" employees and may be terminated at any time, subject to all applicable contractual provisions and federal and State employment laws.
2. Upon hiring and at each appointment extension, unless subject to an applicable contractual provision to the contrary, exempt

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employees shall be clearly informed of their status as “at will” employees. Departments should provide such notice in writing (Attachment B). This information should also be routinely included within the employee’s employment transaction form (“EPAR”).

3. Terminations prior to a NTE date are permissible but should follow sound human resource management principles; comply with provisions of collective bargaining agreements, if applicable; and comply with federal and State employment laws.
4. If an exempt employee has received advance notice of discharge and, during the period immediately after the employee has received said notice, the appointing authority believes that the retention of the employee at the work site is detrimental to the State, other employees, or the general public, the appointing authority may remove the employee from service with full pay. The employee will then continue to earn full pay until the date of the discharge.

F. OTHER TERMS AND CONDITIONS OF EMPLOYMENT

1. Exempt employees who are included in a bargaining unit are subject to the applicable provisions of their collective bargaining agreements, personnel rules, and applicable policies and procedures.
2. Exempt employees who are excluded from collective bargaining are subject to the applicable provisions of executive orders covering excluded employees, personnel rules, and applicable policies and procedures.

VIII. AUTHORITIES AND REFERENCES

§ 26-38, Hawai‘ i Revised Statutes, *Powers and duties of heads of departments*

§ 26-39, Hawai‘ i Revised Statutes, *Department staffs*

§ 76-13, Hawai‘ i Revised Statutes, *Specific duties of the director*

§ 76-16, Hawai‘ i Revised Statutes, *Civil service and exemptions*

§ 76-17(b), Hawai‘ i Revised Statutes, *Rules; standards and procedures*

§ 78-1, Hawai‘ i Revised Statutes, *Citizenship and residence; exceptions*

§ 14-5-1, Hawai‘ i Administrative Rules, *General provisions*

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§ 14-5-2, Hawai'i Administrative Rules, *Authority to exempt*

IX. ATTACHMENTS

Attachment A: State of Hawai'i Application for Non-Civil Service Appointment

Attachment B: Sample Written Notice of "At Will" Status