DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT

Compilation of Chapters 14-1, 14-2, 14-3.01, 14-3.02, 14-3.05 14-5, 14-8.1, and 14-13.01

August 8, 2003

SUMMARY

1. Chapter 14-1 is compiled.
2. Chapter 14-2 is compiled.
3. Chapter 14-3.01 is compiled.
4. Chapter 14-3.02 is compiled
5. Chapter 14-3.05 is compiled.
6. Chapter 14-5 is compiled.
7. Chapter 14-8.1 is compiled.
8. Chapter 14-13.01 is compiled.

HAWAII ADMINISTRATIVE RULES

TITLE 14

DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT

SUBTITLE 1

STATE OF HAWAII HUMAN RESOURCES RULES

CHAPTER 1

GENERAL CIVIL SERVICE PROVISIONS; DEFINITIONS

Subchapter 1 General Civil Service Provisions

§14-1-1 Purpose of chapter; statement of policy
§14-1-2 Applicability of rules
§14-1-3 General responsibilities of director
§14-1-4 General responsibilities of departments
§14-1-5 Reporting human resources information
§14-1-6 Authority to investigate
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§14-1-8 Equal employment opportunity
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Subchapter 2 Definitions

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SUBCHAPTER 1

GENERAL CIVIL SERVICE PROVISIONS

§14-1-1 Purpose of chapter; statement of policy. The purpose of this chapter is to set forth the fundamental character of the system of human resources administration governed by these rules consistent with

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merit principle. [Eff 6/22/81; comp 8/1/91; am and comp 6/11/92; am and comp 4/1/02; comp DEC 0 1 2003] (Auth: HRS §§26-5, 76-17) (Imp: HRS §§26-5, 76-17)

§14-1-2 Applicability of rules. (a) These rules shall apply to the state civil service system, including all positions and all incumbents of such positions. Unless a rule so specifies, it shall not apply to positions and employees in the exempt service.

(b) The state civil service system shall include all positions in the executive branch of the government except those specifically exempted therefrom by or pursuant to statute or by the director in accordance with section 76-16, Hawaii Revised Statutes, as amended. The director is authorized and directed to determine finally whether a position is in the merit system. [Eff 6/22/81; comp 8/1/91; am and comp 6/11/92; am and comp 4/1/02; comp DEC 0 1 2003] (Auth: HRS §§26-5, 76-17) (Imp: HRS §§26-5, 76-17)

§14-1-3 General responsibilities of director. The director shall:

(1) Be responsible to the governor for the proper application of the civil service law and all other applicable statutes.
(2) Exercise and provide leadership in human resources matters throughout the state service.
(3) Develop and promulgate policies, rules, standards, guidelines, and procedures applicable to the state service, designed to promote the efficiency of the state service governing such matters as the following:
    (A) Classification and related systems to support sound utilization of human resources, recruitment of qualified personnel, and appropriate pay and pay relationships amongst personnel;
    (B) A civil service merit-based recruitment system;

(C) A performance appraisal system for the purpose of evaluating the performance of employees in the civil service and improving employees' performance, consistent with chapter 76-41, Hawaii Revised Statutes;

(D) An incentive and service awards program for the purpose of recognizing employees who contribute to the efficiency, economy, or other improvement of government operations or who perform exceptionally meritorious special acts or services in the public interest in connection with or related to their official employment, consistent with the policies of the governor;

(E) Orderly, uniform, and fair procedures for the non-disciplinary separation of employees from the state service;

(F) Circumstances under which civil service positions may be excepted from the civil service classification system and/or civil service recruitment system;

(G) Pay administration system which provides for the proper compensation of employees and adjustments thereto as necessitated by personnel movements and employment actions;

(H) A leave program whereby employees may be reasonably excused from work for rest, recreation, health, and other purposes;

(I) Administration of a program for employee work hours and observance of holidays and a system under which the pay of employees may be adjusted for certain hours, days or conditions of work;

(J) A program to establish and maintain medical requirements and require medical examinations in order to:

(i) Ensure that persons seeking employment in the civil service system meet the physical and mental

requirements necessary for the safe and efficient performance of the duties of the position for which they are being hired and can be expected to continue to meet physical and mental requirements for continued employment.

(ii) Ensure that each employee is able to perform their duties satisfactorily and without undue hazard to the employee or others or without undue hardship on the operation of the program. Medical requirements and examinations shall include, but need not be limited to, pre-employment medical examinations, return to work examinations, medical re-evaluations, the method of administration of medical examinations, and the consequences of employees failing to meet physical and mental requirements in order to perform their duties.

(K) A program for placing employees who are medically unqualified to perform their usual and customary job because of a work related or non-work related injury;

(L) Establishing safety and health standards to ensure safe places of employment and compliance with all applicable safety, health and workers' compensation laws, executive orders, policies, procedures, standards and guidelines;

(M) A recruitment incentive program that offers travel and transportation expenses or monetary incentives to persons employed or appointed to critical-to-fill and labor shortage

positions. Permissible expenditures will be covered by guidelines issued by the director;

(N) Pay programs and/or alternate programs that will help to attract and retain efficient and effective employees in State government;

(O) A probation period that shall be used as a test to determine an employee's fitness and ability for employment in the civil service and the position;

(P) Conditions under which non-civil service appointments may be made.

(4) Maintain an adequate system of review to determine that equitable and sound application of statutes, executive orders, policies, rules, standards, guidelines and procedures relating to human resources management is being carried out by the department. Whenever the review reveals failure on the part of a department to comply with established principles and directives, the director shall take actions as may be appropriate to obtain compliance therewith. [Eff 6/22/81; comp 8/1/91; am and comp 6/11/92; am and comp 4/1/02; comp DEC 0 1 2003] (Auth: HRS §§26-5, 76-17, SLH 2000, Act 253) (Imp: HRS §76-12, SLH 2000, Act 253)

§14-1-4 General responsibilities of departments. (a) The head of each department shall be responsible for human resources management within each department and shall provide for the cooperation of the department with the department of human resources development in the administration of human resources matters.

(b) Authority for the administration of departmental human resources matters may be delegated to those officials responsible for planning, directing, and supervising the work of others to the extent compatible with economical and efficient administration. The

exercise of the authority shall be subject to policies, rules, guidelines, procedures, and standards established by the head of the department and the department of human resources development.

(c) Each employing department shall be responsible for establishing and maintaining written human resources policies which conform to the applicable laws, rules, policies, guidelines, procedures, and standards of the civil service system. [Eff 6/22/81; comp 8/1/91; am and comp 6/11/92; am and comp 4/1/02; comp DEC 0 1 2003] (Auth: HRS §§26-5, 76-17, SLH 2000, Act 253) (Imp: HRS §§26-5, 76-17, SLH 2000, Act 253)

§14-1-5 Reporting human resources information. Each department shall report human resources information to the director as the director deems necessary as to matters within the director's jurisdiction. The information shall be supplied at the time and manner as the director prescribes. [Eff 6/22/81; comp 8/1/91; am and comp 6/11/92; am and comp 4/1/02; comp DEC 0 1 2003] (Auth: HRS §§26-5, 76-17) (Imp: HRS §§26-5, 76-17)

§14-1-6 Authority to investigate. The director may conduct investigations to secure enforcement of chapter 76, Hawaii Revised Statutes, and other pertinent portions of law and the rules, policies, standards, guidelines and procedures governing civil service system employment. [Eff 6/22/81; comp 8/1/91; am and comp 6/11/92; am and comp 4/1/02; comp DEC 0 1 2003] (Auth: HRS §§26-5, 76-17, SLH 2000, Act 253) (Imp: HRS §§76-12, 76-13, SLH 2000, Act 253)

§14-1-7 Enforcement authority of director. Whenever the director finds:

(1) That any person has been appointed to, or is holding or performing the duties of a position in violation of any of the laws, policies, standards, guidelines and

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procedures administered by the director, the director is authorized, after giving due notice and opportunity for explanation, to certify the facts to the department with specific instructions for corrective action. Whenever the director issues specific instructions for corrective actions, the appointing authority concerned shall comply with the director's orders and make a report thereon to the director. If the appointing authority fails to do so, the director shall certify the facts to the comptroller, with a copy to the department concerned, and thereafter no payment shall be made of salary or wages accruing to the appointing authority.

(2) That any officer or employee has violated the laws, policies, standards, guidelines and procedures administered by the director, the director shall take action in accordance with law as may be appropriate to secure compliance. [Eff 6/22/81; comp 8/1/91; am and comp 6/11/92; am and comp 4/1/02; comp DEC 0 1 2003] (Auth: HRS §§26-5, 76-17, SLH 2000, Act 253) (Imp: HRS §§26-5, 76-12, 76-17, SLH 2000, Act 253)

§14-1-8 Equal employment opportunity. There shall be equal opportunity for all in compliance with all laws prohibiting discrimination. [Eff 6/22/81; comp 8/1/91; am and comp 6/11/92; am and comp 4/1/02; comp DEC 0 1 2003] (Auth: HRS §§26-5, 76-17, SLH 2000, Act 253) (Imp: HRS §§76-1, 76-44, 78-2, SLH 2000, Act 253)

§14-1-9 Delegation of authority. The director may delegate to departments authority to act in human resources matters in accordance with policies, rules, guidelines, procedures, and standards issued by the

director. [Eff 6/22/81; comp 8/1/91; am and comp 6/11/92; am and comp 4/1/02; comp DEC 0 1 2003] (Auth: HRS §§26-5, 76-17, SLH 2000, Act 253) (Imp: HRS §§26-5, 76-17, SLH 2000, Act 253)

SUBCHAPTER 2

DEFINITIONS

§14-1-15 Definitions. Unless otherwise indicated by the context, words used in these rules are understood to have the following special meanings:

"Administrative review" means a re-evaluation of an eligibility rating or determination, initial pricing, or classification action in accordance with the provisions set forth in these rules, and policies, standards, guidelines and procedures established by the director.

"Appointing Authority" means the department head or designee having the power to make appointments or changes in the status of employees.

"Assembled examination" means an examination for which applicants are required to assemble or be physically present at appointed times and places.

"Calendar day or day" means a period which begins at midnight and ends twenty-four hours later at midnight.

"Certificate of eligibles" means the official document through which eligibles are referred for employment consideration.

"Certification" means the process whereby the names of qualified persons on the eligible lists are referred to the appointing authority.

"Civil service appointment" means an appointment to a civil service position from an appropriate eligible list.

"Civil service employee" is an employee who has met all requirements for membership under section 76-27, Hawaii Revised Statutes.

"Civil service positions" are all positions within a jurisdiction that are not exempt from civil service

law and must be filled through civil service recruitment procedures based on merit.

"Civil service law" means chapter 76 of the Hawaii Revised Statutes, as amended. Unless the context of a specific rule clearly indicates otherwise, all terms used herein shall have the same meaning as in the civil service law.

"Civil service recruitment procedure" means the procedure for the competitive process by which an applicant is deemed qualified for a civil service appointment.

"Civil service system" means the merit system. See merit system.

"Class or class of work" means a group of positions that reflect sufficiently similar duties and responsibilities such that the same title and pay range may apply to each position allocated to the class.

"Classification" means the process of establishing an occupational framework and grouping positions on the basis of the kind and level of work and knowledge, skills, competencies and qualifications required.

"Compensatory time-off" means the number of hours which an employee is scheduled to be absent from work as mutually agreed to with the employee's appointing authority when such absence is credited as compensatory time-off and charged against the employee's compensatory time credit.

"Compensatory time credit" means the number of hours of credit which an employee earns for overtime work, determined on the basis of one and one-half hours for each hour of overtime work.

"Competitive examination" means an examination from which an eligible list is established. The competitive examination may be open to the public who qualify for admission.

"Continuous recruitment and examination announcement" means an announcement of competitive examination without a closing date for which applications are received and examinations conducted on a continual basis.

"Director" means the director of human resources development.

"Earned rating" means the rating attained as a result of a competitor's qualification or performance or both in examination without credit for the points added through veteran's preference.

"Eligible" means a person whose name is on an eligible list.

"Eligible list" means a list, also referred to as a register, of persons who have qualified for appointment to positions in a particular class through the civil service recruitment procedures.

"Employee" or "public employee" means any person holding a position in the service of a jurisdiction, irrespective of status or type of appointment.

"Examination" means any test or accepted personnel assessment technique used to measure the fitness and ability of applicants for employment which may include, but are not limited to: written tests, oral tests, interviews, essays, tests of physical fitness or ability, medical examinations, performance tests, training and experience evaluations, background and suitability determinations, probation period, in-basket assessment, biodata assessments personality measures, and assessment centers.

"Exempt employee" means a person who is appointed to and who occupies a position exempted pursuant to section 76-16, Hawaii Revised Statutes.

"Initial Pricing" means the determination of the appropriate pay range and pay relationships for a new class based on appropriate factors.

"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.

"Inter-departmental promotional examination announcement" means a recruiting notice announcing the receipt of applications for participation in an examination for positions in a particular class, admission to which is limited to employees who are members of the civil service.

"Inter-jurisdictional" means between the state executive branch and the judicial branch of the State,

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or the legislative branch of the State, or any county government, or incorporated State organization that is not part of the executive branch.

"Internal examination" means an examination which is administered without a competitive recruitment and examination announcement, generally to evaluate the qualifications of a member of the civil service for an in-service change.

"Intra-departmental promotional examination announcement" means a recruiting notice announcing the receipt of applications for participation in an examination for positions in a particular class, admission to which is limited to employees of a particular state agency in the executive branch who are members of the civil service.

"Membership in the civil service" means the status and rights enjoyed by an employee who successfully completes an initial probation period and demonstrates continued fitness and ability by meeting all performance requirements of the employee's position.

"Merit principle" means the selection of persons based on their fitness and ability for public employment and the retention of employees based on their demonstrated appropriate conduct and productive performance.

"Merit system" means the system based on merit principles within the meaning of section 76-1, Hawaii Revised Statutes, as amended, and Article XIV, Section 1, of the Hawaii State Constitution.

"Minimum qualification" means the minimum experience, education, licensing, and other special requirements essential for performance in a class of work or a position.

"New probation period" means a probation period required of a member of the civil service.

"Non-civil service appointment" means an appointment to a civil service position made without the use of an eligible list.

"Open-competitive examination announcement" means a recruiting notice announcing the receipt of applications from the general public for participation in an examination for positions in a particular class.

"Open-competitive list" means a list of persons who have been found qualified by an open-competitive examination for appointment in a particular class.

"Pay Range" means the group of salary rates from minimum to maximum authorized for a pay grade in a salary schedule.

"Permanent appointment" means an appointment without a limitation date to a permanent position that allows the employee to become a member of the civil service.

"Permanent position" means a position without time limitation and which is included in a department's position ceiling as authorized in the general appropriation act, administrative directives or by specific language in other legislative acts.

"Position" means a specific job, whether occupied or vacant, consisting of all the duties and responsibilities assigned or delegated by competent authority, requiring the full or part-time employment of one person.

"Position description" means an official written statement of the major duties and responsibilities assigned to the position by the appointing authority, the organizational relationships, the knowledge, skills and abilities required of the position and other pertinent information.

"Pricing" means determining the appropriate pay range and pay relationships for a class based on appropriate factors.

"Rating" means the score or measure of performance of an applicant in an examination.

"Reallocation" means the movement of a position from one class to another class based on a change in the duties, level of difficulty, authority, responsibilities, qualification requirements and other factors.

"Reallocation downward" means the reallocation of a position to a class assigned to a lower pay range in the same salary schedule.

"Reallocation upward" means the reallocation of a position to a class assigned to a higher pay range in the same salary schedule.

"Reclassification" means a change in the class to which a position is allocated based on a change in the classification system.

"Recruitment" means the process of locating applicants for employment.

"Related class" means a class which requires substantially similar knowledge, skills and abilities as another class.

"Related series" means a series of classes which requires substantially similar knowledge, skills and abilities as another series.

"Repricing" means changing an existing class from its present pay range to another pay range in the same salary schedule based on appropriate factors.

"Salary schedule" means a table of pay rates and ranges.

"Select priority list" means a list composed of a former employee of the executive branch who was released under the conditions covered by section 386-142, Hawaii Revised Statutes.

"Selective certification" means the process by which certification is limited to those persons possessing knowledge, skills, abilities and other characteristics deemed critical to the successful performance of the work of a specific position.

"Series of classes" means classes similar as to subject matter of work, but differing in level of difficulty, responsibility, and qualifications required.

"Students" means persons who are enrolled or who have been accepted for enrollment on a full-time basis as resident students (as distinguished from a correspondence school student) of a secondary school or educational institution of higher learning.

"Suitability" means fitness for employment after consideration of such factors as physical and mental ability, character, criminal history record, and employment record.

"Temporary assignment" means the assignment by a competent authority and the assumption, without a formal change in position, of all or a major portion of the significant duties and responsibilities of another position.

"Termination" means the severing of an employee's employment with an employer. It may be at the employee's initiative or that of the employer.

"Unassembled examination" means an examination in which applicants are not assembled or required to be physically present for a test. [Eff 6/22/81; am 11/9/81; am 9/25/82; am 5/19/89; comp 8/1/91; am and comp 6/11/92; am and comp 4/1/02; comp DEC 0 1 2003] (Auth: HRS §§26-5, 26-38, 76-17, 76-42, 76-43, 76-103) (Imp: HRS §§26-5, 26-38, 76-1, 76-12, 76-13, 76-15, 76-16, 76-17, 76-18, 76-19, 76-27, 76-29, 76-30, 76-41, 76-42, 76-43, 76-45, 76-46, 76-47, 76-101, 76-103, 78-1, 92-50, 92-57, 396-6, 831-2; Chapter 43, Title 38, U.S.C.)

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TITLE 14

DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT

SUBTITLE 1

STATE OF HAWAII HUMAN RESOURCES RULES

CHAPTER 2

PUBLIC INFORMATION; PETITION FOR REVISION OF RULES AND DECLARATORY RULINGS

§14-2-1 Public information
§14-2-2 Petition for adoption, amendment, or repeal of rules
§14-2-3 Declaratory ruling

§14-2-1 Public information. (a) The public may obtain information as to matters within the jurisdiction of the department of human resources development by inquiring in person at the department or by submitting a request in writing to the director of human resources development.

(b) All rules, orders, or opinions of the department of human resources development are on file and available for public inspection at the department.

(c) Rules of the department of human resources development are available to the public on the lieutenant governor's internet website.

(d) Printed copies of rules are available to the public at a price fixed by the department of human resources development in accordance with section 91-2.5, HRS, to cover mailing and publication costs. [Eff 6/22/81; am 5/19/89; comp 8/1/91; comp 6/11/92; am and comp 4/1/02; comp DEC 0 1 2003] (Auth: HRS §§76-17, 91-2, 91-2.5, 91-2.6) (Imp: HRS §§91-2, 91-2.5, 91-2.6)

§14-2-2 Petition for adoption, amendment or repeal of rules. (a) Any interested person may petition the department of human resources development, requesting the adoption, amendment or repeal of any rule of the department of human resources development.

(b) The petition shall be submitted in three copies to the department of human resources development. It shall include:

(1) A statement of the nature of the petitioner's interest;

(2) A draft or the substance of the proposed rule or amendment or a designation of the provisions sought to be repealed; and

(3) An explicit statement of the reasons in support of the proposed rule, amendment or repeal.

(c) The director, within thirty days after the submission of the petition shall either deny the petition in writing, stating the reasons for the denial, or initiate proceedings in accordance with section 91-3, HRS, for the adoption, amendment, or repeal of the rule, as the case may be. [Eff 6/22/81; am 5/19/89; comp 8/1/91; am and comp 6/11/92; am and comp 4/1/02; comp DEC 0 1 2003] (Auth: HRS §§76-17, 91-6) (Imp: HRS §91-6)

§14-2-3 Declaratory ruling. (a) Any interested person may petition the department of human resources development for a declaratory order as to the applicability of any statute which the department administers or of any rule or order of the department.

(b) The petition shall be submitted in duplicate to the department of human resources development. It shall contain:

(1) The name, address and telephone number of the petitioner;

(2) A statement of the nature of petitioner's interest, including reasons for the submission of the petition;

(3) A designation of the specific provision, rule, or order in question;

(4) A complete statement of the relevant facts;

(5) A statement of the position or contention of the petitioner; and

(6) A memorandum of authorities, containing a full discussion of the reasons, including any legal authorities, in support of such position or contention.

(c) Any petition which does not conform to the foregoing requirements may be rejected.

(d) The department of human resources development may, for good cause, refuse to issue a declaratory ruling. Without limiting the generality of the foregoing, the department of human resources development may so refuse where:

(1) The question is speculative or purely hypothetical and does not involve existing facts, or facts which can reasonably be expected to exist in the near future;

(2) The petitioner's interest is not of the type which would give the petitioner standing to maintain in action if the petitioner was to seek judicial relief;

(3) The issuance of the declaratory ruling may adversely affect the interests of the State, the department of human resources development or any of their officers or employees in any litigation which is pending or may reasonably be expected to arise; or

(4) The matter is not within the jurisdiction of the department of human resources development.

(e) Where any question of law is involved, the department of human resources development may refer the matter to the State attorney general. The department of human resources development may also obtain the assistance of other agencies, where necessary or desirable.

(f) Each petition shall be either rejected pursuant to subsection (c) or acted upon within a reasonable time. Upon the disposition of the petition, the petitioner shall be promptly informed thereof by the director of human resources development.

(g) Orders disposing of petitions shall have the same status as other agency orders. Orders shall be applicable only to the fact situation alleged in the petition or set forth in the order. They shall not be applicable to different fact situations or where additional facts not considered in the order exist. [Eff 6/22/81; am 5/19/89; comp 8/1/91; am and comp 6/11/92; am and comp 4/1/02; comp DEC 0 1 2003] (Auth: HRS §§76-17, 91-7, 91-8) (Imp: HRS §§91-7, 91-8)

HAWAII ADMINISTRATIVE RULES

TITLE 14

DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT

SUBTITLE 1

STATE OF HAWAII HUMAN RESOURCES RULES

CHAPTER 3.01

FILLING POSITIONS IN THE CIVIL SERVICE

Subchapter 1 General Provisions

§14-3.01-1 Purpose
§14-3.01-2 Appointment through the merit system
§14-3.01-3 Discretion of appointing authority in filling vacancies

Subchapter 2 Recruitment

§14-3.01-4 Citizenship and residence
§14-3.01-5 Announcement of recruitment and examination
§14-3.01-6 Repealed [4/1/02]
§14-3.01-7 Repealed [4/1/02]
§14-3.01-8 Acceptance of applications
§14-3.01-9 Cancellation of recruitment and examination announcements

Subchapter 3 Examination

§14-3.01-10 Scope and character of examinations
§14-3.01-11 Disqualification of applicants
§14-3.01-12 Conduct of examinations
§14-3.01-13 Rating of examinations
§14-3.01-14 Notification of results of examination

§14-3.01-15 Administrative review of examination rating
§14-3.01-16 Changes in rating
§14-3.01-17 Protection of confidentiality of materials
§14-3.01-18 Records and reports of examinations

SUBCHAPTER 1

GENERAL PROVISIONS

§14-3.01-1 Purpose. The purpose of this chapter is to implement a system of recruitment and selection of public officers and employees in accordance with merit-based civil service laws which will attract, select, and retain the best individuals to provide competent, efficient, loyal, and ethical service to the public in accordance with the needs of the service. The provisions of this chapter shall apply to competitive recruitments open to the general public. [Eff 6/11/92; am and comp 4/1/02; comp DEC 0 1 2003] (Auth: HRS §§26-5, 76-17, SLH 2000, Act 253) (Imp: HRS §§26-5, 76-1, 76-13, 76-17, SLH 2000, Act 253)

§14-3.01-2 Appointment through the merit system. (a) The director shall be responsible for locating the best qualified applicants available for open-competitive examination and for determining the relative capacity and fitness of applicants.

(b) The director may establish standards with respect to age, education, training, experience, suitability, physical and mental fitness, formal assembled testing, and other requirements which applicants must meet to be rated in examinations.

(c) Eligibles shall be placed on an appropriate list in the manner prescribed by these rules.

(d) A person selected through the civil service recruitment procedure for a permanent or temporary position shall be required to serve an initial probation

period provided that when a temporary appointment is made, the duration exceeds the probation period.

(e) The director may determine the types, duration, and conditions of other types of appointment in the civil service system and may prescribe the methods for removing persons holding these appointments.

(f) Membership in the civil service will be acquired by a probationary employee upon successful completion of an initial probation period.

(g) No person shall be appointed or employed in the civil service system or perform the duties of any position until the person passes the examination prescribed by the director or unless specifically exempted. [Eff 6/11/92; am and comp 4/1/02; comp DEC 0 1 2003] (Auth: HRS §§26-5, 76-17, SLH 2000, Act 253) (Imp: HRS §§26-5, 76-13, 76-17, SLH 2000, Act 253)

§14-3.01-3 Discretion of appointing authority in filling vacancies. (a) An appointing authority may fill any position in the civil service by appointment from a civil service list, including positions exempt from the classification system, through the civil service recruitment procedure or other means as provided for by statute, these rules, or guidelines.

(b) At the discretion of the appointing authority, a permanent position may be filled on a temporary basis for good reason. [Eff 6/11/92; am and comp 4/1/02; comp DEC 0 1 2003] (Auth: HRS §§26-5, 76-17, SLH 2000, Act 253) (Imp: HRS §§26-5, 76-13, 76-17, SLH 2000, Act 253)

SUBCHAPTER 2

RECRUITMENT

§14-3.01-4 Citizenship and residence. Applicants shall be residents or former residents of the State and citizens, nationals, permanent resident aliens of the

United States, or eligible under federal law for unrestricted employment in the United States at the time of application. [Eff 6/11/92; am and comp 4/1/02; comp DEC 0 1 2003] (Auth: HRS §§26-5, 76-17, SLH 2000, Act 253) (Imp: HRS §78-1, SLH 2000, Act 253)

§14-3.01-5 Announcement of recruitment and examination. Whenever there is need for eligibles, the director may conduct a recruitment and examination announcement in the manner and for the period deemed reasonable and appropriate. [Eff 6/11/92; am 11/12/92; am and comp 4/1/02; comp DEC 0 1 2003] (Auth: HRS §§26-5, 76-17) (Imp: HRS §§26-5, 76-13, 76-17)

§14-3.01-6 Repealed. [4/1/02]

§14-3.01-7 Repealed. [4/1/02]

§14-3.01-8 Acceptance of applications. (a) Application for examination and employment shall be made in such form and manner and with such supplemental information including the applicant's social security number as determined by the director.

(b) The director may determine the number of applications to accept and evaluate based on need.

(c) Applications for competitive examinations shall be accepted only during the period specified in the announcement. However, the director may accept late applications for good reason. [Eff 6/11/92; am and comp 4/1/02; comp DEC 0 1 2003] (Auth: HRS §§26-5, 76-17) (Imp: HRS §§26-5, 76-13, 76-17, 76-19, 76-20, 78-1)

§14-3.01-9 Cancellation of recruitment and examination announcements. If there is no need for eligibles after a recruitment and examination

announcement has been published or if other circumstances warrant it, the announcement may be canceled and all applicants shall be notified of the cancellation. [Eff 6/11/92; am and comp 4/1/02; comp DEC 0 1 2003] (Auth: HRS §§26-5, 76-17) (Imp: HRS §§26-5, 76-13, 76-17)

SUBCHAPTER 3

EXAMINATION

§14-3.01-10 Scope and character of examinations. (a) The director may consult with qualified persons in regard to the content of tests, the rating of applicants or related test matters.

(b) Each examination shall relate to those matters which will best test the relative capacity and fitness of applicants for the proper performance of the characteristic duties of the class for which the examination is held.

(c) Any accepted personnel examining technique may be used, including a verification and evaluation of education, training, and experience; tests of knowledge, skill, ability, intelligence, or aptitude; medical examinations including pre-employment drug tests, appraisals of personal suitability; inquiry into moral character of applicants and any other matter that the director deems appropriate. [Eff 6/11/92; am and comp 4/1/02; comp DEC 0 1 2003] (Auth: HRS §§26-5, 76-17, SLH 2000, Act 253) (Imp: HRS §§26-5, 76-13, 76-15, 76-17, 76-18, 76-24, 78.2-6, SLH 2000, Act 253)

§14-3.01-11 Disqualification of applicants. (a) The director may, for good cause, reject any application or deny any appointment. Without limitation to the foregoing, an applicant may be denied admittance to an examination and an eligible may be denied appointment for any of the following reasons:

(1) Failure to meet the minimum qualification requirements or other public employment requirements for admission to the examination;
(2) Physical or mental unfitness to perform the duties of the class or position for which the examination is to be conducted;
(3) Habitual or excessive use of drugs, narcotics, or intoxicating beverages;
(4) False statements or deception or fraud in the examination process or appointment;
(5) Submission of defective or incomplete application;
(6) Refusal or failure to furnish documents required to verify any statements made in the application;
(7) Conviction of a penal offense which affects the applicant's suitability;
(8) Any record of misconduct which is detrimental to the proper performance of the duties and responsibilities of the class or position; or
(9) Conviction of any act, attempt, or conspiracy to overthrow the State or the federal government by force or violence.

(b) The director shall notify any applicant whose application is rejected, specifying the cause or causes for the rejection.

(c) Applications submitted to the department of human resources development shall constitute official examination records of the department of human resources development. Accompanying documents may be returned to applicants at the discretion of the director.

(d) The director may conduct investigations to determine an applicant's or appointee's qualifications and suitability for employment in the civil service. If the investigation discloses that the applicant is ineligible for the position, the director shall take appropriate corrective action, which may include denying admittance to the examination, removing the applicant's name from the list of eligibles or terminating the appointee's appointment, or any combination thereof.

(e) An applicant may request an administrative review of an ineligible rating by presenting additional information to substantiate the request within ten calendar days following the date the ineligible notice was sent. Notwithstanding the foregoing, the certification of eligibles shall not be withheld or delayed.

(f) The director may bar an applicant found unsuitable for civil service employment for a specific period of time. [Eff 6/11/92; am and comp 4/1/02; comp DEC 0 1 2003] (Auth: HRS §§26-5, 76-17, SLH 2000, Act 253) (Imp: HRS §§26-5, 76-13, 76-17, 76-18, 76-29, 78-2.6, 831-2, SLH 2000, Act 253)

§14-3.01-12 Conduct of examinations. (a) Examinations shall be held at the time and place, which in the judgment of the director, is most practical and meets the need of the service.

(b) If an assembled examination is to be administered, qualified applicants shall be notified of the date, time, and place of the examination. The director shall not be responsible if a notice is lost in the mail or sent to an applicant's former address through failure of the applicant to inform the director of a change of address.

(c) No applicant shall be entitled to take an examination at a date, time, or place other than stated in the notification except as the director may authorize.

(d) All applicants for examinations involving physical ability or performance tests may be required to sign a waiver of liability.

(e) All reasonable precautions shall be taken to protect the confidentiality of information about applicants. [Eff 6/11/92; comp 4/1/02; comp DEC 0 1 2003] (Auth: HRS §§26-5, 76-17) (Imp: HRS §§26-5, 76-13, 76-17)

§14-3.01-13 Rating of examinations. (a) Appropriate techniques and procedures shall be used in

rating examinations and determining the relative ranking of applicants. The final rating required to pass an examination shall be set by the director. The director may set minimum ratings for each part of an examination and applicants may be required to obtain at least the minimum rating in each part of the examination to be rated on the remaining parts of the examination. The final earned rating of each applicant shall be determined by combining the earned ratings of each part of the examination in accordance with the weights established for each part.

(b) Eligibles shall be placed on open-competitive lists in order of their final earned ratings plus creditable veteran's preference points and on promotional lists in the order of final earned ratings. Veteran's preference points and qualification for such additional credit shall be determined by the director provided the applicant qualifies with at least the minimum rating for each part of the examination.

(c) The director may notify applicants only as to whether or not they qualified when the number of applicants is deemed by the director to be insufficient for an adequate certification. [Eff 6/11/92; am and comp 4/1/02; comp DEC 01 2003] (Auth: HRS §§26-5, 76-17, 76-23, 76-103) (Imp: HRS §§26-5, 76-13, 76-17, 76-23, 76-103)

§14-3.01-14 Notification of results of examination. Each applicant who participates in an examination shall be given written notice of the test performance results. [Eff 6/11/92; comp 4/1/02; comp DEC 01 2003] (Auth: HRS §§26-5, 76-17) (Imp: HRS §§26-5, 76-13, 76-17)

§14-3.01-15 Administrative review of examination rating. An applicant may request administrative review of rating assigned in examination by submitting to the department in writing information to substantiate the request within ten calendar days following the date the examination notice was sent. Notwithstanding the

foregoing, the certification of eligibles shall not be withheld or delayed. [Eff 6/11/92; comp 4/1/02; comp DEC 01 2003] (Auth: HRS §§26-5, 76-17) (Imp: HRS §§26-5, 76-13, 76-17)

§14-3.01-16 Changes in rating. (a) Changes in rating may be made as a result of the discovery of errors in the rating, or as a result of an administrative review.

(b) Rating errors may be corrected throughout the life of the eligible list.

(c) Any such changes shall be reported to the applicants.

(d) Changes in rating shall not affect a certificate already issued or invalidate an appointment already made from the eligible list where the error is the fault of the department of human resources development and not the appointee. [Eff 6/11/92; am and comp 4/1/02; comp DEC 01 2003] (Auth: HRS §§26-5, 76-17) (Imp: HRS §§26-5, 76-13, 76-17)

§14-3.01-17 Protection of confidentiality of materials. (a) In those circumstances in which examination materials are secured from other government jurisdictions or from private firms, or where because of continuing use of the examination materials prepared by the department of human resources development, exposure would jeopardize the confidentiality of the examination questions, review of these test materials shall not be permitted.

(b) Technical material and all examination booklets used in the preparation and ratings of examinations given jointly by the department and any other organization, and examinations prepared specifically for any organization shall remain the property of the department of human resources development and in the custody of the department of human resources development when not needed for test administration or appeal purposes by the organization.

(c) All examination material relating to a particular applicant or applicants including but not limited to reports of character and material regarding personal suitability of the applicant shall be considered confidential information.

(d) An appointing authority or its authorized representative may inspect the examination papers of eligibles whose names have been certified to them for appointment. However, to preserve the confidential character and sources of information furnished and to protect individuals against dissemination of unfounded or unproved allegations, reports of character, personal suitability of applicants and other confidential information shall be held in strict confidence and will not be made available for review by the appointing authorities unless specifically authorized by the director. An appointing authority and its representatives shall not disclose the examination materials or their contents to any person except where privileged at law or where ordered by a court of competent jurisdiction. Except as provided herein and except where privileged at law or where ordered by a court of competent jurisdiction, an appointing authority and its representatives, all employees, members and representatives of any agency, members and representatives of any advisory board or commission and members of the public are forbidden to disclose, whether intentionally or negligently, any examination materials pertaining to a particular applicant or applicants. Any disclosure shall be grounds for disciplinary action including dismissal or other appropriate action including recourse to all appropriate legal remedies against the informant personally. [Eff 6/11/92; am and comp 4/1/02; comp DEC 0 1 2003] (Auth: HRS §§26-5, 76-17, SLH 1980, Act 226) (Imp: HRS §§26-5, 76-13, 76-17, SLH 1980, Act 226)

§14-3.01-18 Records and reports of examination. An examination record shall be maintained for a period of one year from the date the eligible list expired, one

year after the eligibility of the eligible expired in the case of a continuous recruitment examination record, or two years from the date of the last personnel action involving the record, whichever of these is the latest. The record shall contain at least the following information:

(1) Title and level of the examination;
(2) Dates of opening and closing for receipt of applications;
(3) Experience and training requirements, if any;
(4) Tests, if any, held and the minimum passing scores used;
(5) Number of applicants received; and
(6) Number of eligibles and ineligibles. [Eff 6/11/92;comp 4/1/02; comp DEC 01 2003] (Auth: HRS §§26-5, 76-17) (Imp: HRS §§26-5, 76-13, 76-17)

HAWAII ADMINISTRATIVE RULES

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DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT

SUBTITLE 1

STATE OF HAWAII HUMAN RESOURCES RULES

CHAPTER 3.02

CERTIFICATION

§14-3.02-1	Duration of eligibility
§14-3.02-2	Certification of eligibles
§14-3.02-3	Selective certification
§14-3.02-4	Appointing authority to contact eligibles
§14-3.02-5	Suspension and termination of eligibility; restoration of eligibility
§14-3.02-6	Cancellation of competitive eligible lists
§14-3.02-7	Repealed [4/1/02]
§14-3.02-8	Repealed [4/1/02]

§14-3.02-1 Duration of eligibility. (a) An eligible on an open or promotional competitive eligible list shall have eligibility for employment consideration for no less than six months from the date the list is established or until the list is canceled or terminated. The eligibility period may be extended at the discretion of the director.

(b) An applicant who applies for classes or positions not specifically under recruitment may receive employment consideration for not less than two months from the date of application unless the period is extended by the director.

(c) A person on the select priority list shall be eligible for employment consideration until the person secures new employment, except that an employee with a temporary appointment who does not have return rights to a permanent position, shall be eligible only to the end date of the temporary appointment. [Eff 6/11/92; am and comp 4/1/02; comp DEC 01 2003] (Auth: HRS §§26-5, 76-17, SLH 2000, Act 253) (Imp: HRS §§26-5, 76-13, 76-17, 76-23, 386-14, SLH 2000, Act 253)

§14-3.02-2 Certification of eligibles. (a) Upon receipt of a request for a list of eligibles, the director shall certify names from available lists of eligibles for each vacancy in accordance with this section.

(b) The order of eligible lists to be used for certification shall be as follows:

(1) Select priority list;

(A) Eligibles on the select priority list consists of employees of the executive branch whose services are suspended or terminated because of a work injury;

(B) A select priority eligible with a temporary appointment who does not have return rights to a permanent position, shall be certified to temporary vacancies, the duration of which shall not exceed the end date of the eligible's previous temporary appointment; and

(C) When there is more than one eligible who is available and qualified for a vacancy, all eligibles shall be certified.

(2) Intra-departmental promotional list;

(3) Inter-departmental promotional list;

(4) Recall list; and

(5) Open competitive list. An eligible on an open competitive list shall be certified on the basis of the eligible's examination

ratings and availability for work location and duration of employment.

(c) Unless the select priority list is used, a certification of eligibles for each vacancy in a department shall consist of a number of eligibles as determined by the appointing authority who are available for the same or related class in the order specified in this section. Eligibles shall be certified in the order that they appear on the eligible list before applying veterans preference, provided that;

(1) Veterans whose examination scores, after addition of the applicable preference, are equal to or exceed the examination score of the last eligible certified shall also be certified;

(2) When the last eligible to be certified is one of two or more eligibles who have identical examination scores, those two or more eligibles shall also be certified; and

(3) A non-resident eligible shall be certified only when resident eligibles are not available; provided, however, if the position has been declared to be in shortage category, or has been approved for recruitment-at-above the minimum pay rate, or has been determined by the director as being difficult-to-fill and provided further that the conditions specified in section 78-1(d), HRS, were met, the director may authorize the certification of non-resident eligibles along with resident eligibles for employment consideration. [Eff 6/11/92, 4/3/00; am and comp 4/1/02; comp DEC 01 2003] (Auth: HRS §§ 26-5, 76-17, SLH 2000, Act 253) (Imp: HRS §§ 26-5, 76-13, 76-17, 78-1, 386-142, SLH 2000, Act 253)

§14-3.02-3 Selective certification. When there is no list of eligibles appropriate as a whole for certification for filling a particular position requiring distinctive or unique qualifications, the director may certify selectively the names of eligibles

who are qualified for the particular position. The certification may be in the order of the eligible's current ranking, or of a new ranking as determined by the director, based upon the particular requirements of the position. [Eff 6/11/92; am and comp 4/1/02; comp DEC 01 2003] (Auth: HRS §§26-5, 76-17, SLH 2000, Act 253) (Imp: HRS §§26-5, 76-13, 76-17, SLH 2000, Act 253)

§14-3.02-4 Appointing authority to contact eligibles. The appointing authority may contact as many eligibles or qualified applicants, or both, as deemed necessary to fill the vacant position based on job related factors and valid program needs. [Eff 6/11/92, 4/3/00; am and comp 4/1/02; comp DEC 01 2003] (Auth: HRS §§26-5, 76-17, SLH 2000, Act 253) (Imp: HRS §§26-5, 76-13, 76-17, SLH 2000, Act 253)

§14-3.02-5 Suspension and termination of eligibility; restoration of eligibility. (a) The director may suspend an eligible or an applicant from employment consideration for good reason, including but not limited to the following:

(1) The eligible or applicant fails to demonstrate interest or availability for employment;
(2) The eligible or applicant is unable or ineligible to perform the work; or
(3) Further investigation of the applicant or eligible's suitability needs to be conducted.

(b) Upon written request, the following eligibles may have their names restored to the eligible list if the list is still active:

(1) A probational employee who terminated without delinquency or misconduct;
(2) An eligible who is currently available for employment; or
(3) An eligible who had been suspended because of correctable physical reasons and who currently meets physical standards.

(c) The director may terminate the eligibility of an eligible or an applicant for good reason, including but not limited to:

(1) The person is found to be ineligible for appointment;

(2) The person withdraws from consideration; or

(3) The eligible demonstrates lack of interest in employment after restoration to the list.

[Eff 6/11/92; am and comp 4/1/02; comp DEC 01 2003] (Auth: HRS §§26-5, 76-17, SLH 2000, Act 253) (Imp: HRS §§26-5, 76-13, 76-17, 76-29, 831-2, SLH 2000, Act 253)

§14-3.02-6 Cancellation of competitive eligible lists. The director may cancel an eligible list for good reason and shall notify all affected applicants and eligibles of the cancellation. [Eff 6/11/92; am and comp 4/1/02; comp DEC 01 2003] (Auth: HRS §§26-5, 76-17, SLH 2000, Act 253) (Imp: HRS §§26-5, 76-13, 76-17, SLH 2000, Act 253)

§14-3.02-7 Repealed. [4/1/02]

§14-3.02-8 Repealed. [4/1/02]

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STATE OF HAWAII HUMAN RESOURCES RULES

CHAPTER 3.05

TYPES OF APPOINTMENTS
MEMBERSHIP IN THE CIVIL SERVICE

Subchapter 1 Types of Appointments

§14-3.05-1 Civil Service Appointment
§14-3.05-2 Non-Civil Service Appointment

Subchapter 2 Initial Probation Period

§14-3.05-3 Initial Probation Period

Subchapter 3 Membership in the Civil Service

§14-3.05-4 Membership in the civil service

Historical Note: Chapter 14-3.05, is based substantially on Chapter 14-3.04, Hawaii Administrative Rules. [Eff. 6/11/92; R 4/1/02]

SUBCHAPTER 1

TYPES OF APPOINTMENTS

§14-3.05-1 Civil service appointment. (a) An employee is granted a civil service appointment when the appointment is the result of civil service recruitment procedures.

(b) A civil service appointment may be made to a temporary or permanent position in the civil service or permanent civil service position being filled on a temporary basis, notwithstanding that the position may be temporarily or permanently exempt from the civil service classification system.

(c) The appointing authority shall inform all applicants referred under civil service recruitment procedures if the appointment has a limitation date or if the position is temporarily or permanently exempted from the civil service classification system.

[Eff. 4/1/02; comp DEC 01 2003] (Auth: HRS §§ 26-5, 76-16, SLH 2000, Act 253) (Imp: HRS §§ 26-5, 76-13, 76-16, 76-27, SLH 2000, Act 253)

§14-3.05-2 Non-civil service appointment. (a) The appointing authority may make a non-civil service appointment of not more than eighty-nine consecutive calendar days or of less than twenty hours a week for thirty-seven consecutive weeks in order to meet immediate operational needs, provided:

(1) The appointing authority certifies that the employee will perform duties characteristic of the class; and

(2) The employee has not received a non-civil service appointment in the same class of work and department within the last three months, unless this restriction is waived by the director or the director's authorized designee.

(b) A non-civil service appointment made under subsection (a) may be extended for a specific period without a break in service under the following conditions:

(1) The director or the director's authorized designee determines that the period of

extension makes it impracticable to fill the position by civil service recruitment procedures and allow for completion of an initial probation period; and

(2) There are no interested and available eligibles on an appropriate eligible list to fill the vacancy or the appointing authority is unable to make a selection from an appropriate eligible list.

(c) When the director or the director's authorized designee determines that a position can be filled by civil service recruitment procedures, an employee serving a non-civil service appointment in the position may be extended without a break in service until the void date of the first certificate of eligibles for the position, unless this period is extended by the director or the director's authorized designee.

(d) When there is an anticipated need for temporary services beyond eighty-nine calendar days or less than twenty hours a week for thirty seven weeks, the appointing authority may make a non-civil service appointment for the specific period necessary to complete the work under the following conditions:

(1) The director or the director's authorized designee determines that it is impracticable to fill the position by civil service recruitment procedures and allow for completion of an initial probation period;

(2) There are no interested and available eligibles on an appropriate eligible list to fill the vacancy or the appointing authority is unable to make a selection from an appropriate eligible list;

(3) The employee has not received a non-civil service appointment in the same class of work and department within the last three months, unless this restriction is waived by the director or the director's authorized designee; and

(4) The appointing authority certifies that the employee will perform duties characteristic of the class.

(e) A 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 section 78-1, HRS, and possess the necessary occupational license, certification, or registration required by statute or regulation.

(f) Service acquired in a non-civil service appointment shall not be credited towards meeting the requirements of an initial probation period.

[Eff. 4/1/02; comp DEC 01 2003] (Auth: HRS §§26-5, 76-17, SLH 2000, Act 253) (Imp: HRS §§ 26-5, 76-27, SLH 2000, Act 253)

SUBCHAPTER 2

INITIAL PROBATION PERIOD

§14-3.05-3 Initial probation period. (a) The initial probation period shall be utilized as part of the examination process to determine the employee's fitness and ability for employment in the position and the civil service.

(b) An employee who is granted a civil service appointment must serve an initial probation period when the period of employment exceeds the initial probation period for the position.

(c) An employee must meet the performance requirements of the position as measured by a formal performance appraisal in order to successfully complete the initial probation period.

(d) The initial probation period shall be for a period of six months provided the director or the director's authorized designee may establish a longer initial probation period for a class of work when a longer period is needed to adequately train and evaluate the employee.

(e) Upon written notification to the employee and before the expiration of the initial probation period, the appointing authority may extend the initial probation period for any of the following reasons:

(1) Further evaluation of the employee's ability to successfully perform the duties of the position is required, provided the extension shall not exceed six months;

(2) The employee's absence affect the appointing authority's ability to evaluate the employee's performance, provided the extension shall not exceed the period of absence or combined periods of absences; or

(3) A final determination of the employee's suitability for employment has not been made, provided the extension shall not exceed six months.

(f) The period of temporary service in a civil service appointment may be credited towards fulfilling the initial probation period for the same or related position in the class of work and department and the employee shall serve only the remainder of the probation period, if any, provided:

(1) The period of temporary service immediately preceded the new appointment to the same or related position; and

(2) The appointing authority certifies that the employee was performing satisfactorily and the employee's duties are essentially similar to the duties to be performed during the initial probation period for the same or related position. [Eff. 4/1/02; comp DEC 0 1 2003] (Auth: HRS §§ 26-5, 76-17, 76-27, SLH 2000, Act 253) (Imp: HRS §§ 26-5, 76-27, SLH 2000, Act 253)

SUBCHAPTER 3

MEMBERSHIP IN THE CIVIL SERVICE

§14-3.05-4 Membership in the civil service. (a) An employee serving a civil service appointment acquires membership in the civil service upon successful completion of the initial probation period or as provided by statute.

(b) An employee shall remain a member of the civil service for the duration of the member's appointment provided the employee demonstrates appropriate conduct and continued productive performance as measured by formal performance appraisals.

(c) A member whose appointment has a limitation date is not entitled to layoff rights and will be released at the end of the employee's appointment or earlier for good reason. [Eff. 4/1/02; comp DEC 01 2003] (Auth: HRS §§ 26-5, 76-17, 76-27, SLH 2000, Act 253) (Imp: HRS §§ 26-5, 76-27, SLH 2000, Act 253)

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CHAPTER 5

EXEMPT SERVICE

§14-5-1 General provisions
§14-5-2 Authority to exempt

§14-5-1 General provisions. (a) The exempt service consists of those positions, and persons in these positions, and persons providing personal services which are by statute excepted from all or part of the provisions of the civil service and compensation laws of the State.

(b) All positions and persons in the exempt service are excluded from the requirements of selection by merit competition and from civil service status.

(c) Except as provided by statute, the requirements of position classification and compensation may not be applicable.

(d) Employees shall be residents of the State and citizens, nationals or permanent resident aliens of the United States with the exceptions as provided by section 78-1, Hawaii Revised Statutes. [Eff 6/22/81; am and comp 6/11/92; comp 4/1/02; comp DEC 01 2003] (Auth: HRS §§26-5, 76-17) (Imp: HRS §§76-16, 78-1)

§14-5-2 Authority to exempt. (a) The director shall exempt positions or personal services in accordance with statute upon finding that the conditions and requirements of the statute are met.

(b) The director may establish standards and procedures for the exemption of positions.

(c) The director may revoke a previously authorized exemption when the particular position or services no longer meet the criteria or conditions for exemption. [Eff 6/22/81; am and comp 6/11/92; comp 4/1/02; comp DEC 01 2003] (Auth: HRS §§26-5, 76-17) (Imp: HRS §76-16)

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STATE OF HAWAII HUMAN RESOURCES RULES

CHAPTER 8.1

LEAVE SHARING PROGRAM REQUIREMENTS

§14-8.1-1	Purpose
§14-8.1-2	Applicability
§14-8.1-3	Administration of leave sharing program
§14-8.1-4	Leave sharing procedures; general administration
§14-8.1-5	Direct share option
§14-8.1-6	Leave bank option
§14-8.1-7	Leave sharing donations; donors
§14-8.1-8	Leave sharing recipients
§14-8.1-9	Termination of shared leave
§14-8.1-10	Prohibited acts
§14-8.1-11	Termination of leave sharing program

§14-8.1-1 Purpose. (a) The purpose of this chapter is to establish a leave sharing program that allows employees within a department of the executive branch, including the Hawaii state public library system, the office of the governor, and the office of the lieutenant governor, to ease the burdens of fellow employees who would otherwise need to take time off from work without pay to recover from a serious personal illness or injury or to care for a family member who has a serious personal illness or injury and is incapable of self care.

(b) As used in this chapter:

(1) "Family member" means an employee's:

(A) Spouse;

(B) Parent or unmarried child in a blood or legal relationship, or a "hanai" relationship through the Hawaiian custom, provided the employee is the primary caregiver.

(2) "Serious personal illness or injury" means an illness, injury, or impairment that meets the conditions below:

(A) Is life threatening or critical, severe, and debilitating which does not include minor surgeries, routine pregnancies, illnesses due to colds or flus, broken limbs, and other non-critical conditions;

(B) Is certified by a physician, as defined under section 386-1, HRS, as being totally incapacitating, and

(i) Where the condition involves the employee, is also certified as being the cause of the employee's inability to work; or

(ii) Where the condition involves the employee's family member, is also certified as serious and requiring the employee's full-time assistance to provide primary care to the family member. [Eff 12/30/93; am and comp 10/26/98; comp DEC 01 2003] (Auth: HRS §§26-5, 76-17, 79-12, 79-33) (Imp: HRS §79-33)

§14-8.1-2 Applicability. This chapter shall apply to:

(1) Employees who are entitled to earn and use vacation leave credits;

(2) Salaried certificated employees and ten-month employees employed by the department of education and the department of health who are not entitled to earn vacation leave, but who are entitled to earn and use sick leave credits; and

(3) Nine-month and eleven-month board of regents employees of the university of Hawaii who are not entitled to earn vacation leave, but who are entitled to earn and use sick leave credits in accordance with board of regents policy. [Eff 12/30/93; comp 10/26/98; comp DEC 01 2003] (Auth: HRS §§26-5, 76-17, 79-12, 79-33) (Imp: HRS §79-33)

§14-8.1-3 Administration of leave sharing program. (a) Each department shall administer the leave sharing program for their respective employees in accordance with this chapter.

(b) A department may limit leave sharing to employees within smaller organizational segments if it is more feasible administratively for the maintenance of sick, vacation, and shared leave records.

(c) Sharing of leaves between departments is prohibited. Sharing of leaves between smaller organizational segments within a department shall be at the discretion of the appointing authority. [Eff 12/30/93; comp 10/26/98; comp DEC 01 2003] (Auth: HRS §§26-5, 76-17, 79-12, 79-33) (Imp: HRS §79-33)

§14-8.1-4 Leave sharing procedures; general administration. (a) The appointing authority shall establish uniform procedures to administer the leave sharing program for employees within its department. The procedures shall be in compliance with this chapter and shall minimally provide for the following:

(1) A leave bank option and a direct share option to encourage maximum participation in the leave sharing program;
(2) Specification of any smaller organizational segments within which leave sharing may be limited;
(3) A method for ensuring that all employees are informed of the leave sharing program;
(4) The manner in which solicitation of donations is to be made;

(5) Standardized forms for use by employees to donate and apply for shared leaves;
(6) An approval process that ensures fair treatment and freedom from coercion and imposes no undue hardship on operations;
(7) Written notification to the applicant within thirty days of receipt of an application for shared leave on whether the leave is approved or denied, in whole or in part, and the reason for denying any of the requested leave;
(8) An internal process for the handling of employee complaints on the administration of the leave sharing program; and
(9) Recordkeeping requirements to ensure that official leave and attendance records are maintained for the leave sharing program. Approved shared leave credits shall be applied only to the absences following the thirty consecutive calendar day period referred to under section 14-8.1-8(a)(4).

(b) The procedures shall also conform to any other policies, standards, and guidelines as may be issued by the director.

(c) The leave sharing procedures for each department shall be submitted to the director for review.

(d) Each department shall submit reports on the administration of its leave sharing program in the manner and form as may be prescribed by the director. [Eff 12/30/93; am and comp 10/26/98; comp DEC 01 2003] (Auth: HRS §§26-5, 76-17, 79-12, 79-33) (Imp: HRS §79-33)

§14-8.1-5 Direct share option. (a) This option shall allow eligible employees to donate shared leaves to designated employees who are eligible recipients.

(b) The appointing authority shall authorize a representative or representatives to administer the direct share option among employees within specific organizational segments deemed administratively feasible for this option.

(c) Authorized representative(s) shall ensure that donations to designated recipients are in compliance with this chapter and procedures established by the appointing authority. [Eff 12/30/93; comp 10/26/98; comp DEC 01 2003] (Auth: HRS §§26-5, 76-17, 79-12, 79-33) (Imp: HRS §79-33)

§14-8.1-6 Leave bank option. (a) This option shall allow eligible employees to donate shared leaves anonymously and allow eligible recipients to utilize shared leave donations.

(b) The appointing authority shall appoint a review committee consisting of at least three members, one of whom represents the personnel office, to administer each of the leave banks authorized within its department.

(c) The review committee shall accept donations and approve recipient requests in compliance with this chapter and procedures established by the appointing authority. [Eff 12/30/93; comp 10/26/98; comp DEC 01 2003] (Auth: HRS §§26-5, 76-17, 79-12, 79-33) (Imp: HRS §79-33)

§14-8.1-7 Leave sharing donations; donors. (a) Employees shall be allowed to donate accumulated vacation leave credits and shall not be allowed to donate accumulated sick leave credits, except as provided in section 14-8.1-2(2) and (3).

(b) To be eligible to donate shared leave credits, an employee must meet the following conditions:

(1) Has not solicited nor accepted anything of value in exchange for the donation; and

(2) Will have a vacation leave balance, after the donation is made, of not less than ten days when donating vacation leave credits or will have a sick leave balance, after the donation is made, of not less than thirty days when donation of sick leave credits is allowable.

(c) All shared leave donation applications shall be deemed complete upon the proper submittal of all

appropriate forms, and shall be irrevocable upon transfer of leave credits to the leave bank or to the designated recipient, as applicable.

(d) Leave shall only be donated in increments of one-day equivalents as defined by the appointing authority. [Eff 12/30/93; am and comp 10/26/98; comp DEC 01 2003] (Auth: HRS §§26-5, 76-17, 79-12, 79-33) (Imp: HRS §79-33)

§14-8.1-8 Leave sharing recipients. (a) To be eligible to receive shared leave credits, an employee must meet the following conditions:

(1) Has at least six consecutive months of creditable service as defined under section 14-11-5(c)(1) and (4) prior to the submittal of the shared leave request in a position with at least fifty percent full-time equivalency;

(2) Where the leave share request is for a personal illness or injury, such illness or injury shall not be covered under chapter 386, HRS, or if covered, the employee shall have exhausted all eligible benefits. In addition, the employee shall have exhausted or is about to exhaust all paid leave and wage loss replacement benefits, which include, but are not limited to:
   (A) Vacation leave;
   (B) Sick leave;
   (C) Compensatory time credits; and
   (D) Temporary disability insurance benefits under chapter 392, HRS;

(3) Where the leave share request is to care for a family member suffering from a serious personal illness or injury, the employee shall have exhausted or is about to exhaust all other paid leave benefits, which include, but are not limited to:
   (A) Vacation leave;
   (B) Compensatory time credits; and
   (C) Sick leave for family leave purposes only pursuant to chapter 398, HRS;

(4) Is suffering from a serious personal illness or injury or caring for a family member suffering from a serious personal illness or injury which caused the recipient to be absent from work for at least thirty consecutive calendar days within the past twelve months;

(5) Has no disciplinary record of sick leave abuse within the past two years; and

(6) Has no unresolved outstanding salary overpayment obligations owed to the State.

(b) An employee who is otherwise qualified need not have donated leave to be eligible to receive shared leave.

(c) A request for shared leave credits shall be submitted within thirty calendar days prior to or after the beginning date of the leave without pay period to which it is intended to apply.

(d) If an eligible recipient is incapable of applying for shared leave credits, an authorized representative shall be permitted to apply on the recipient's behalf.

(e) While using shared leave credits, the recipient shall continue to earn sick and vacation leave credits consistent with applicable leave provisions. [Eff 12/30/93; am and comp 10/26/98; comp DEC 01 2003] (Auth: HRS §§26-5, 76-17, 79-12, 79-33) (Imp: HRS §79-33)

§14-8.1-9 Termination of shared leave. (a) Approval of shared leave shall be discontinued or rescinded under the following situations:

(1) The leave recipient separates or is separated from service;

(2) The recipient is found to be entitled to workers' compensation benefits under chapter 386, HRS, or temporary disability insurance benefits under chapter 392, HRS;

(3) The recipient did not meet all of the conditions for eligibility under section 14-8.1-8; or

(4) The reason for which the shared leave was approved no longer exists.

(b) The recipient shall be notified and furnished the reason, in writing, whenever approval of shared leave has been terminated. Adjustments shall be made administratively to the recipient's compensation and leave records, as appropriate, for any period during which the shared leave has been terminated.

(c) All unused or rescinded shared leave credits shall be returned to the appropriate leave bank. [Eff 12/30/93; am and comp 10/26/98; comp DEC 01 2003] (Auth: HRS §§26-5, 76-17, 79-12, 79-33) (Imp: HRS §79-33)

§14-8.1-10 Prohibited acts. An employee may not directly or indirectly intimidate, threaten, or coerce any other employee for the purpose of interfering with any right such employee may have with respect to donating, receiving, or using shared leave under this program. [Eff 12/30/93; comp 10/26/98; comp DEC 01 2003] (Auth: HRS §§26-5, 76-17, 79-12, 79-33) (Imp: HRS §79-33)

§14-8.1-11 Termination of leave sharing program. In the event the leave sharing program is terminated:

(1) Any shared leave transferred to a recipient before the program termination date, shall remain available for use by the recipient, except as provided in section 14-8.1-9.

(2) Any unused shared leave remaining in a leave bank and any shared leave credits returned to a leave bank after the program termination date shall be considered forfeited.

(3) Any leave bank shall be dissolved upon completion or termination of all shared leaves. [Eff 12/30/93; am and comp 10/26/98; comp DEC 01 2003] (Auth: HRS §§26-5, 76-17, 79-12, 79-33) (Imp: HRS §79-33)

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HAWAII ADMINISTRATIVE RULES

TITLE 14

DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT

SUBTITLE 1

STATE OF HAWAII HUMAN RESOURCES RULES

CHAPTER 13.01

INTERNAL COMPLAINT PROCEDURE

§14-13.01-1	Purpose
§14-13.01-2	Applicability
§14-13.01-3	General Provisions
§14-13.01-4	Establishment of the internal complaint procedures
§14-13.01-5	Appeals to the merit appeals board
§14-13.01-6	Other appeals processes

Historical Note: Chapter 13.01 is based substantially on Chapter 14-13, Hawaii Administrative Rules. [Eff 6/22/81; 9/25/92; comp 8/1/91; am and comp 6/11/92; R 4/1/02]

§14-13.01-1 Purpose. The purpose of this chapter is to establish a uniform internal complaint procedure that may be used to consolidate multiple existing complaint procedures within each department to minimize confusion and possible loss of rights in filing a complaint. [Eff 4/1/02; comp DEC 01 2003] (Auth: HRS §76-42, SLH 2000, Act 253) (Imp: HRS §76-42, SLH 2000, Act 253)

§14-13.01-2 Applicability. This chapter shall apply to all employees and members of the general public who wish to complain about any matter concerning State government [Eff 4/1/02; comp DEC 01 2003] (Auth: HRS §76-42, SLH 2000, Act 253) (Imp: HRS §76-42, SLH 2000, Act 253)

§14-13.01-3 General Provisions. (a) Nothing in these rules restricts the right of any employee or member of the general public to lodge a complaint concerning any matter relating to State government except those complaints by employees that are required to be disposed of in accordance with collective bargaining agreements. These rules set forth the procedures for those complaints that require action on the part of State officials.

(b) Specifically, these rules are intended to insure that any employee covered by chapter 76, HRS, or any member of the general public disqualified during the recruitment process by virtue of failure to meet minimum qualifications or unsuitability is provided the opportunity to lodge an internal complaint concerning a matter within the jurisdiction of the merit appeals board as set forth in section 76-14, HRS.

(c) Matters subject to collective bargaining grievance procedures shall not be considered a complaint under this chapter.

(d) The complainant shall be assured freedom from coercion, discrimination, or reprisal, and have the right to be represented by a person or persons of the complainant's own choosing at any stage in the presentation of the complaint

(e) All proceedings shall be conducted during the employee's work hours as practicable and, for a complainant who is not an employee, during office hours at times convenient to the complainant. [Eff 4/1/02; comp DEC 01 2003] (Auth: HRS §76-42, SLH 2000, Act 253) (Imp: HRS §76-42, SLH 2000, Act 253)

§14-13.01-4 Establishment of the internal complaint procedure. Each department head shall establish a uniform internal complaint procedure applicable to all employees concerning employees and members of the general public whose complaints are within the jurisdiction of the merit appeals board. Each department head may establish a uniform internal complaint procedure applicable to all employees and the general public for all other complaints which are not within the jurisdiction of the merit appeals board in accordance with the following guidelines:

(1) For complaints in general:

(A) The department shall prepare a standardized complaint form for use by employees and the general public in the submission of a complaint. To the maximum extent possible this form should replace existing complaint forms unless a specific form is required by law. Nothing in this section prevents any agency from modifying or supplementing any standardized complaint form to obtain additional information necessary to efficiently process complaints related to the requirements of specific programs;

(B) Complaint forms, instructions, and the complaint procedures shall be easily accessible to employees and the general public at each department's personnel office or those designated offices on each of the neighbor islands or off-site facilities. A listing of the offices where forms are available and can be filed shall be posted in each department personnel office and those designated offices on each of the neighbor islands or off-site facilities;

(C) Management need not consider any complaint not filed in accordance with the procedure contained herein; provided that the parties may mutually

agree to waive or extend any specific time limitation set forth in the procedure;

(D) To minimize confusion and possible loss of rights, the time and manner for filing a complaint shall be as uniform and easily understandable as possible to employees and the general public;

(E) The procedure shall provide for the referral of a complaint to the appropriate individual at the lowest level who has the authority to act on the complaint and who shall be responsible for contacting the complainant. If the complaint is not a matter within the authority of the department, the department shall notify the complainant in writing and the department shall refer the complaint to the appropriate agency, if known. This will be considered the informal step;

(F) Complaints concerning matters that are subject to collective bargaining grievance procedures shall be returned to the complainant. If the complainant disputes whether the complaint involves matters subject to collective bargaining grievance procedures, the complainant may submit the matter to the Hawaii Labor Relations Board pursuant to the board's rules of practice and procedure;

(G) A written decision for an informal resolution shall be issued to the complainant on the outcome of any efforts to resolve the complaint;

(H) If the complaint cannot be resolved at the informal step, the decision shall be accompanied by information on the filing of a formal complaint with the department or the merit appeals board, as applicable.

(2) For human resources complaints within the jurisdiction of the merit appeals board, the following procedures apply:

(A) Members of the general public may only file a complaint involving denial of opportunity to pursue a vacancy for reason of failure to meet the minimum qualifications for that vacant position for which the complainant had filed a formal application or for determinations of unsuitability;

(B) Only employees covered by chapter 76, HRS, may file a complaint concerning classification and reclassification of a particular position and initial pricing of classes;

(C) Only employees covered by chapter 76, HRS, who are excluded from collective bargaining may file a complaint concerning other employment actions under chapter 76 or chapter 89C, HRS, including disciplinary actions and adverse actions for failure to meet performance requirements;

(D) A complaint under subsection (b) must be filed within:

(i) Seven working days from the date of the alleged occurrence for all recruitment and examination complaints;

(ii) Twenty working days from the date of notice for all complaints on classification and initial pricing actions;

(iii) Ten working days for all other human resources complaints;

(E) For classification and initial pricing issues, the filing of the formal complaint is the request for administrative review. For recruitment and examination, the filing of the formal complaint is an appeal to the

merit appeals board. For all other human resource issues, the formal complaint procedure shall be established by the department.

(3) For complaints not within the jurisdiction of the merit appeals board:

(A) The filing of a written complaint shall be within twenty working days from the date that the alleged violation occurred unless the filing deadline is otherwise established by law in which case that deadline shall govern;

(B) If the complaint is not satisfactorily resolved at the informal step, the employee complainant shall file a formal complaint pursuant to procedures established by the department or otherwise established by law.

[Eff 4/1/02; comp DEC 01 2003] (Auth: HRS §76-42, SLH 2000, Act 253) (Imp: HRS 76-42) (Imp: HRS §76-42, SLH 2000, Act 253)

§14-13.01-5 Appeals to the merit appeals board. The internal complaint procedures shall be exhausted before an appeal is filed with the merit appeals board. Appeals to the merit appeals board shall be in accordance with section 76-14, HRS, and in accordance with such rules of practice and procedure as may be adopted by the board. [Eff 4/1/02; comp DEC 01 2003] (Auth: HRS §76-42, SLH 2000, Act 253) (Imp: HRS §76-42, SLH 2000, Act 253)

§14-13.01-6 Other appeals processes. When an appeal is not under the jurisdiction of the merit appeals board but some other administrative agency or appellate body, the complainant is responsible for the timely filing of an appeal with the appropriate agency regardless of whether the internal complaint procedure under this chapter was used. [Eff 4/1/02; comp

DEC 01 2003] (Auth: HRS §76-42, SLH 2000, Act 253)
(Imp: HRS §76-42, SLH 2000, Act 253)

DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT

Compilation of Chapters 14-1, 14-2, 14-3.01, 14-3.02, 14-3.05, 14-5, 14-8.1 and 14-13.01, Hawaii Administrative Rules, noted on the Summary Page dated August 8, 2003, are made pursuant to Chapter 91, Hawaii Revised Statutes.

These compilations shall take effect ten days after filing with the Office of the Lieutenant Governor.

KATHLEEN N.A. WATANABE, Director
Department of Human Resources
Development

APPROVED AS TO FORM:

Deputy Attorney General

LINDA LINGLE
Governor, State of Hawaii

Date: NOV 10 2003

Filed

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LIEUTENANT GOVERNOR
STATE OF HAWAII

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