EXECUTIVE ORDER NO. 03-01

WHEREAS, chapter 89C of the Hawaii Revised Statutes (HRS), authorizes the Governor to make adjustments to the wages, hours, benefits, and terms and conditions of employment for public officers and employees within the state government executive branch who are excluded from bargaining units (BUs) 01, 02, 03, 04, 09, 10, 11, and 13, as well as for elected and appointed officials who are not covered by collective bargaining;

WHEREAS, section 149 of Act 253, Session Laws of Hawaii (SLH) 2000, specifies that the rights, benefits, and privileges enjoyed by excluded civil servants under chapters 77, 79, 80, 81, 82, and 83, HRS, shall not be diminished or impaired;

WHEREAS, effective July 1, 2002, chapter 89C requires that adjustments for non-managerial civil service employees under the same classification systems as employees within the collective bargaining units shall be not less than those provided under the collective bargaining agreements for employees hired on a comparable basis;

WHEREAS, it is the intention of the Governor to preserve the wages, hours, benefits, and conditions of employment that excluded employees enjoyed prior to the repeal of public employment laws by Act 253, SLH 2000, and the repeal of administrative rules of the Department of Human Resources Development in conjunction with the provisions of Act 253, SLH 2000, as long as they are not contrary to law;

WHEREAS, effective July 1, 2002 chapter 89C requires that the Director of Human Resources Development confer with the personnel directors of other local jurisdictions to ensure that the adjustments recommended to the Governor are consistent with chapter 76, HRS;
WHEREAS, the Director of Human Resources Development has conferred with the personnel directors of other local jurisdictions to ensure that the adjustments specified in this executive order are consistent with chapter 76, HRS; and

WHEREAS, the Director of Human Resources Development has recommended to the Governor the adjustments specified in this executive order;

NOW, THEREFORE, I, Linda Lingle, Governor of Hawaii, pursuant to the provisions of chapter 89C, HRS, do hereby grant to officers and employees in the state government executive branch who are excluded from BUs 01, 02, 03, 04, 09, 10, 11, and 13 the following adjustments effective January 1, 2003:

NOTE 1: Previously, this subject matter was covered by a combination of executive order provisions and personnel rules, with variations in combinations among the different excluded employee counterpart groups (e.g. 61, 63, 79, 70, 71, 73, 31, 35, etc.). The applicable personnel rules have been repealed. Some of the personnel rule provisions are being placed into an executive order at this time in order to maintain the status quo. Therefore, the provisions in this executive order may not be applicable, in whole or in part, if there is an existing executive order provision for the applicable excluded employee group.

NOTE 2: Provisions are applicable to specific EMCP employees based upon the bargaining unit from which the employee's position is excluded. (e.g. provisions applicable to employees excluded from BU 11 are applicable to EMCP employees excluded from BU 11).

A. HOURS OF WORK, OVERTIME, AND PREMIUM PAY

Overtime

An authorized leave with pay or compensatory time-off taken by mutual consent shall be included in computing whether an employee has worked in excess of eight hours per day or forty straight time hours in a week. [Employees excluded from BUs 01, 02, 03, 04, 09, 10, 11, & 13.]

Overtime work occurs when an employee renders service at the direction of proper authority if the performance of such service occurs under any of the following conditions:

(1) The employee renders service in excess of eight hours per workday.
The employee renders service in excess of eight hours whenever an employee, after completing the employee's scheduled eight-hour shift, is directed to continue working without stopping and works into the next calendar day.

The employee renders service in excess of forty straight time hours per workweek.

The employee renders service on any day which is observed as a legal holiday. Whenever the major portion of a shift falls on a day observed as a legal holiday, work performed during the entire eight-hour shift shall constitute overtime work provided that no further credit because of the overtime work shall be granted.

The employee renders service on the employee's scheduled day off and there has been no change, by mutual consent or by due prior notice, in the work schedule.

Whenever the employee is subject to shift work in operating units rendering public service twenty-four hours per day and seven days per week is scheduled and renders full time service for more than six consecutive days, the employee shall be entitled to overtime for each hour of work performed on the seventh day and each succeeding day until the employee until the employee is granted a rest of at least twenty-four hours.

Overtime shall occur on all days that an employee is recalled to duty before the expiration of any granted vacation period.

An employee who works a split-shift earns overtime for each hour worked after the tenth hour, calculated from the time the employee starts and ends the employee's workday, exclusive of time for meals. The employee's basic compensation plus split-shift differential will be used in determining the cash payment for overtime work.

An employee on off duty or stand-by duty status who is called back to duty because of an emergency will be credited with whichever of the following is greater in value:

(A) A minimum of two hours regular pay.

(B) Overtime work calculated from the time the employee leaves home and until the employee returns home; provided that whenever an employee on off duty or stand-by status is called back to duty and continues to work into the employee's scheduled work day, the employee will be credited with overtime work from the time the
employee leaves home and until the employee begins the scheduled work day.

(10) An employee who receives perquisites or accommodations for the convenience of the government will earn overtime for emergency duty only when performed on the employee's scheduled day off.

(11) Whenever an employee is required, with less than forty-eight hours advance notice, to report for work on a shift other than the shift for which the employee was officially scheduled, the employee shall be credited for overtime work for each hour of work performed on the first work day of the new shift.

[Employees excluded from BUs 01, 02, 03, 04, 09, 10, & 13. Note 1 is applicable to this provision.]

Compensatory Time Off

Compensatory time off for overtime work shall be provided as follows:

(1) When an employee elects to take compensatory time off in lieu of cash, the election shall be in writing and the dates the compensatory time off is to be taken shall be decided by mutual agreement with the appointing authority within thirty days after the overtime work.

(2) The number of hours of overtime work shall be converted to compensatory time credit at the rate of one and one-half hours of compensatory time credit for each hour of overtime work.

(3) An employee on compensatory time off shall be deemed to be on official leave with pay status.

(4) When sickness lasting one or more days occurs during the employee's scheduled compensatory time off, and the employee substantiates this to the satisfaction of the appointing authority, the employee shall be charged for sick leave and permitted to reschedule the compensatory time off. Application for the substitution of sick leave for compensatory time off shall be made within three working days upon return to duty.

(5) At the time of separation from the state service, the employee shall be paid in cash for all compensatory time credit earned but not taken as compensatory time off.

[Employees excluded from BUs 01, 02, 03, 04, 09, 10, 11, & 13.]
Overtime--Meals

When an employee is required to work overtime under one of the following emergency situations and is unable to go home for a meal the employee usually consumes at home, the appointing authority shall furnish the employee with a meal or reimburse the employee for the reasonable cost of the meal at established rates.

(1) When an employee is required to work overtime with less than twenty-four hours prior notice, the employee shall be furnished or reimbursed for a meal upon completion of two hours of overtime work and at intervals of five hours of overtime work performed.

(2) When an employee is required to work at least two hours of overtime with less than twenty-four hours prior notice and is required to work continuously into the employee's normal workday, the employee shall be entitled to meals for the period of overtime work as well as the employee's normal workday. The employee shall be furnished or reimbursed for a meal upon completion of two hours of overtime work and at intervals of five hours of continuous work performed following the first overtime meal.

For purposes of meal reimbursement, the following shall apply:

(1) Breakfast means any meal allowed an employee from 3:00 a.m. to 9:00 a.m.

(2) Lunch means any meal allowed an employee after 9:00 a.m. to 3:00 p.m.

(3) Dinner means any meal allowed an employee after 3:00 p.m. but before 3:00 a.m.

[Employees excluded from BUs 01, 02, 03, 04, 09, 10, & 13. Note 1 is applicable to this provision.]

Mutual Agreements

A mutual agreement in writing for overtime work may be entered into between the appointing authority and a majority of a group of employees in a work unit as follows:

(1) Through this agreement, the limitations of an eight-hour day and forty-hour workweek with respect to overtime work may be modified for the convenience of employees. Any modification shall provide for an average workweek of at least forty hours to occur within a reasonable period.

NOTE: Fair Labor Standards Act (FLSA) provisions must be observed for employees subject to FLSA.
(2) An agreement may be canceled or amended by management or by a majority of the employees concerned provided written notice is given to the employees or to the appointing authority, respectively, at least thirty days in advance of the date of cancellation or amendment. The thirty-day notice may be waived by mutual consent.

An appointing authority may enter into an agreement with an employee to furnish perquisites or accommodations for the convenience of the government in exchange for the performance of stand-by duty and emergency service after the employee’s scheduled or normal hours of work.

Other agreements that the appointing authority and employees may enter into are as follows:

(1) For employees who are participating on a voluntary basis in a flexible or variable work hours program, an agreement may be entered into with the appointing authority to permit waiver of the premium or differential pay that would otherwise accrue to the resultant work schedule.

(2) Subject to operational requirements, employees may enter into an agreement with the appointing authority to modify the duration of meal periods.

Mutual agreements shall be submitted to the Director of Human Resources Development to assure compliance with the provisions of law. [Employees excluded from BUs 01, 02, 03, 04, 09, 10, & 13.]

Recesses

The head of any department, board, commission, or agency shall allow employees under the department head’s supervision to take a recess each morning and afternoon not exceeding ten minutes in duration, if their doing so does not impair the functions of the department, board, commission, or agency. [Employees excluded from BUs 01, 02, 03, 04, 09, 10, 11, & 13.]

Meal Period

Full-time employees shall be allowed a meal period of at least forty-five minutes, subject to modification by mutual agreement. [Employees excluded from BUs 01, 02, 03, 04, 09, 10, & 13.]

Schedule--Shift Workers

The schedule of workweek for shift workers shall be prepared and prominently posted at least two weeks in advance so that the employees affected will be informed. The schedules shall be for no less than two-week periods and shall not be changed except
for good cause and provided affected employees are given at least forty-eight hours prior notice. Whenever possible, work schedules shall permit an employee to enjoy a holiday on the day it is observed. [Employees excluded from BUs 01, 02, 03, 04, 09, 10, & 13. Note 1 is applicable to this provision.]

Part-Time Employee

A part-time employee who works, in accordance with the employee's work schedule, on certain days or at certain times of the day may have the number of workdays or the number of hours in a day increased. In these cases, the employee shall be compensated at the employee's normal pay rate. If the employee works more than eight hours a day or more than forty straight time hours in a workweek, overtime provisions shall apply. [Employees excluded from BUs 01, 02, 03, 04, 09, 10, & 13.]

Dual Employment

In the case of an employee who holds more than one position with a local public employer, each position held shall be considered and treated as separate employment.

1. The hours worked shall be computed separately for each position, and not the aggregate of the two or more positions held, to determine whether overtime work occurred.
2. The basic rate of pay for computing overtime shall be the rate of pay applicable for the position for which overtime work occurred.
3. Compensatory time off for overtime work shall be from the position for which overtime work occurred.

[Employees excluded from BUs 01, 02, 03, 04, 09, 10, 11, & 13.]

NOTE: If any provisions regarding dual employment conflict with applicable FLSA provisions, the provisions that are most favorable to the employee shall be applied to employees covered by FLSA.

Stand-by Duty

For each day or portion of a day of stand-by duty, the employee shall be paid an additional amount equal to 25 per cent of the employee's daily pay rate. [Employees excluded from BUs 01, 02, 03, 04, 10, 11, & 13.]

Hazard Pay

Upon the recommendation of a department head, the Director of Human Resources Development may grant hazard pay differentials to employees who are temporarily
exposed to unusually hazardous working conditions and where the following conditions are met:

The exposure of unusually hazardous working conditions is temporary;

1. The degree of hazard is severe or most severe; and

3. The unusually hazardous working conditions have not been considered in the assignment of the class to a pay range.

The hazard categories are:

1. Severe - Examples of this type of hazard are: exposure leads to possible eye injuries, loss of fingers, serious burns; and moderate periods of man days lost.

2. Most severe - Examples of this type of hazard are: exposure is likely to result in long periods of man days lost, or possible loss of life; exposure to a hazard where failure to exercise extreme care and judgment might cause an accident that would result in total disability or fatality.

The basic unit for computing hazard pay shall be the hour for work performed, provided that:

1. A fraction of an hour shall be considered an hour;

2. A half day's pay at hazard rates shall be allowed for one or more but less than four hours of hazard work performed per day; and

3. A full day of hazard pay shall be allowed for four or more hours of hazardous work performed per day.

Each hazard pay grant shall not exceed six months but the award may be renewed by the director of human resources development upon verification by the appointing authority that the temporary hazardous working conditions and duties remain the same.

[Employees excluded from BUs 01, 02, 03, 04, 09, 10, & 13.]

**Legal Holiday**

Legal holidays shall be observed as provided in section 8-1, Hawaii Revised Statutes.

For overtime purposes, holidays shall be observed as provided below:
(1) For employees with workdays of Monday through Friday:

<table>
<thead>
<tr>
<th>Day Holiday Falls</th>
<th>Day Holiday Observed</th>
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<tbody>
<tr>
<td>Saturday</td>
<td>Friday preceding</td>
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<td></td>
<td>holiday</td>
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<td>Sunday</td>
<td>Monday following</td>
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<td></td>
<td>holiday</td>
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<td>Workday</td>
<td>Workday</td>
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</tbody>
</table>

(2) For employees with workdays other than Monday through Friday:

<table>
<thead>
<tr>
<th>Day Holiday Falls</th>
<th>Day Holiday Observed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Day off</td>
<td>First workday after</td>
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<td></td>
<td>the day off</td>
</tr>
<tr>
<td>Workday</td>
<td>Workday</td>
</tr>
</tbody>
</table>

[Employees excluded from BUs 01, 02, 03, 04, 09, 10, 11, & 13 and elected and appointed officials.]

Travel for Employees at Kalaupapa

The provisions for employees at Kalaupapa that have been granted to employees excluded from BU 04 are extended to employees excluded from BU 01, 02, 03, 10, & 13.  [Employees excluded from BUs 01, 02, 03, 10, & 13.]

Travel Time

The following provisions apply to off-island travel initiated and completed on the same day for employees who are entitled to earn overtime. To the extent possible, official business and related travel shall be conducted within the employee's scheduled workday, provided that the employee and the employee's supervisor may mutually agree to change the employee's schedule so the official business and travel occur within the employee's workday. Travel time shall not count toward the forty-hour workweek and employees shall not be entitled to overtime as a result of the adjusted work schedule.

In situations where the employee must remain off island for work-related purposes, waiting time within the workday shall be considered to be work time. If the employee performs work-related functions after the end of the workday, the time spent in performing the work functions is compensable work time.

For departure from the employee's home island, travel time begins thirty minutes prior to the scheduled departure time of the common carrier. For return to the employee's home island, travel time begins when the workday ends on the employee's non-home island and ends at the scheduled or actual arrival time, whichever is later. If the employee must retrieve work-related luggage upon return to the employee's home
island, travel time ends thirty minutes after the scheduled or actual arrival time, whichever is later. If the employee delays return to the employee's home island for non-work-related reasons, travel time ends at the scheduled arrival time of the earliest flight that the employee could have returned on. Travel time shall be rounded to the closest fifteen minutes.

The employee shall be allowed time off, calculated at the rate of one-and-one-half hours for each hour of travel time, within two pay periods after the pay period in which the travel occurred. If the time off is not taken within two pay periods after the pay period in which the travel occurred, or if the employee vacates the position that the employee occupied when the travel time was earned prior to taking the time off, the travel time shall be forfeited. Supervisors and employees are to cooperate with each other in scheduling the time off. If the time off cannot be scheduled within the two pay period limitation, or if the appointing authority elects to do so, the employee shall be paid for the travel time at time-and-a-half.

If any provisions regarding travel time conflict with applicable FLSA provisions, the provisions that are most favorable to the employee shall be applied to employees covered by FLSA. [Employees excluded from BUs 02, 03, 04, 09, & 13.]

B. LEAVES OF ABSENCE

Vacation Leave

Existing executive order provisions are rescinded and replaced by vacation leave provisions in the applicable BU Agreement, in addition to other vacation leave provisions contained in this executive order. [Employees excluded from BUs 01, 02, 03, 04, 09, 10, & 13 and elected and appointed officials. BU 13 provisions are applicable to elected and appointed officials]

Sick Leave

Existing executive order provisions are rescinded and replaced by sick leave provisions in the applicable BU Agreement, plus other sick leave provisions contained in this executive order. [Employees excluded from BUs 01, 02, 03, 04, 09, 10, & 13 and elected and appointed officials. BU 13 provisions are applicable to elected and appointed officials.]

Sick and Vacation Leave Supplement for Workers Compensation

An employee who is receiving workers' compensation temporary disability benefits shall continue to earn vacation and sick leave credits as though the employee was not absent from work. Such employees may use their accumulated sick leave or vacation leave credits to supplement the workers' compensation temporary disability benefits to a sum which is not to exceed the employees' regular salary. [Employees excluded from BUs 01, 02, 03, 04, 09, 10, 11, & 13 and elected and appointed officials.]
Leave Without Pay to Work In Certain Appointive Positions

An appointing authority may grant a permanent member of the civil service a leave without pay for employment in an exempt position in the state government as provided below:

(1) Upon the request of the Governor, to render service as a department head.

(2) Upon the request of a department head and approval of the Governor, to serve as a deputy department head, as an exempt assistant to the department head, or as a secretary to a department head, a deputy department head, or an exempt assistant to the department head.

The leave of absence shall be for no more than the period indicated below:

(1) Four years or for the Governor's term of office, whichever is less, for services as a department head.

(2) Four years or for the department head's term of office, whichever is less, for services as a deputy department head, as an exempt assistant to the department head, or as a secretary to a department head, a deputy department head, or an exempt assistant to the department head.

A leave of absence may be extended for an additional period not to exceed four years.

The rights of the employee who is released from the exempt position are as follows:

(1) Upon completion of no more than four years of the leave without pay, reinstatement in the position in which the employee last held a permanent appointment. In the event the employee is retained beyond these four years for the transition to a new gubernatorial term, but for not more than three months, the employee shall retain the reinstatement right to the employee's former civil service position.

(2) Following more than four years of leave without pay, reinstatement to the employee's former position if vacant or placement in a comparable vacant position.

(3) Upon reinstatement in the former position or placement in another comparable position, the receipt of compensation as though the employee had remained continuously in the position in which the employee last held a permanent appointment.

[Employees who are permanent members of the civil service and are excluded from BUs 01, 02, 03, 04, 09, 10, & 13.]
Sabbatical Leave

An employee who has been employed by the State for seven consecutive years may, upon application to and with the approval of the employee's department head, be granted a sabbatical leave of absence by the appointing authority for no more than one year, provided that the two years of employment next preceding the application has been with the same department.

The appointing authority may grant a permanent member of the civil service a sabbatical leave of absence upon the review and consideration of at least the following:

1. The purpose of the leave is mutually beneficial to the employee and to the employer.

2. The nature, length and pertinence of educational coursework, research or other professional/educational activity, which the employee plans to undertake during the sabbatical leave, are consistent with the needs of the service.

3. The employee's absence will not adversely affect the operation of the department.

4. The employee's work performance record and seniority (continuous length of service in the civil service).

Before being granted a sabbatical leave, an employee shall enter into a contract with the department that shall provide conditions for the sabbatical leave. The employee shall agree to return to work upon termination of the sabbatical leave or any other leave that may be granted immediately following the sabbatical leave. If the employee fails to report for work upon termination of sabbatical and any other leave granted, the employee shall be considered to have resigned and shall refund all moneys received while on sabbatical leave. Upon return from sabbatical and any other leave, the employee shall agree to work in the appropriate department for a period of two continuous years. If the employee fails to do so, the employee shall refund all moneys received while on sabbatical leave. An employee on sabbatical leave shall not engage in any form of employment that interferes with the purpose of the sabbatical leave.

The employee shall have the right to return to the employee's position at the expiration of the sabbatical leave of absence.

An employee granted sabbatical leave shall not by reason thereof be deprived of any accumulated vacation allowance or sick leave but shall accrue no additional vacation allowance or sick leave during the period of the leave.

Upon the employee's return from sabbatical leave the employee shall have the same salary rating that the employee had at the time of taking the leave. [Employees who
are permanent members of the civil service and are excluded from BUs 01, 02, 03, 04, 09, 10, & 13. Note 1 is applicable to this provision.]

Accidental Injury Leave

Whenever any police officer, firefighter, or any other officer or employee who is temporarily exposed to unusually hazardous conditions, or who is a member of a class, recognized by the action of pricing or repricing, to be a class exposed to unusually hazardous conditions, receives personal injury arising out of and in the performance of the employee's duties and without negligence on the employee's part, the employee shall be placed on accidental injury leave unless suspended or discharged for good cause, and continued on the payroll of the employee's respective department at full regular monthly salary during the first four months of the disability and thereafter during the period of the employee's total disability from work at sixty per cent of the employee's regular monthly salary, as though the employee did not sustain an industrial injury. The employee shall be entitled to all rights and remedies allowed under chapter 386, provided that any salary paid under this provision shall be applied on account of any compensation allowed the employee under chapter 386. [Employees excluded from BUs 01, 02, 03, 04, 09, 10, 11, & 13.]

Funeral Leave

Three days leave with pay, on such days as may be requested by the officer or employee, shall be granted any officer or employee in the service of the State upon the death of any member of the officer's or employee's immediate family as defined in the counterpart collective bargaining agreement. [Employees excluded from BUs 01, 02, 03, 04, 09, 10, & 13 and elected and appointed officials. Note 1 is applicable to this provision. BU 13 provisions are applicable to elected and appointed officials.]

Leave for Employees Summoned as a Witness or Juror

An employee shall be granted leave of absence with pay when the employee is summoned to serve as witness or juror in any judicial proceedings, except those which may involve or arise out of the employee's outside employment or personal business, or private affairs, provided that the employee shall return to work forthwith when excused by the court.

An employee, upon the employee's request, shall be granted either a leave of absence without pay or a vacation leave or compensatory time off when the employee is called to serve as a witness in a case that may involve or arise out of the employee's outside employment or personal business or private affairs. [Employees excluded from BUs 01, 02, 03, 04, 09, 10, 11, & 13 and elected and appointed officials. Note 1 is applicable to this provision. BU 13 provisions are applicable to elected and appointed officials.]
Employee Rights Upon Return From Authorized Leave

An employee, upon return from an authorized leave and upon showing to the satisfaction of the appointing authority that the employee has fulfilled the purpose of the leave, shall be reinstated in the employee's former or comparable position. If the employee's former position has been abolished and a comparable position cannot be found, a permanent member of the civil service shall be considered for placement in other positions in accordance with executive order provisions on layoff.

A permanent member of the civil service on an approved leave of absence shall be eligible during the period of the leave for promotional examinations and status on promotional eligible lists under the same conditions as though in active service. [Employees excluded from BUs 01, 02, 03, 04, 09, 10, 11, & 13.]

C. REIMBURSEMENTS, ALLOWANCES, AND LIABILITY PAYMENTS

Uniforms

A uniform shall include those items of distinctive clothing which are required by the appointing authority and which meet the following conditions:

(1) Used to identify a specific group of employees.

(2) The skirt, trousers, blouse, skirt, dress, or other clothing must be of the same design, color, cut, and style, and made of similar material for a specific group of employees.

The accessories for the uniform that are required by the appointing authority shall be furnished by and shall remain the property of the department.

Apparel which is not considered to be a part of the uniform includes:

(1) Work clothing;

(2) Shoes; and

(3) Garments normally worn under a uniform coat or blouse.

The necessary policies and practices shall be adopted by each appointing authority. [Employees excluded from BUs 01, 02, 03, 04, 09, 10, 11, & 13.]
D. MISCELLANEOUS RIGHTS AND BENEFITS

Performance Evaluations

Departments are required to conduct performance evaluations for employees who are members of the civil service. A copy of the final performance evaluation shall be given to the employee and the original shall be filed in the employee's official personnel file.

The department head shall inform employees who are members of the civil service in writing whenever the employee's performance is substandard. Such notice shall specify what aspect of the employee's performance is substandard and indicate the length of time in which the employee is to bring the employee's performance up to standard.

To retain membership in the civil service, employees must continue to meet the performance requirements of the positions that they occupy, including licensure. The performance evaluation shall be the basis for such determination. An appointing authority may release an employee from the employee's position or discharge the employee if the employee fails to meet the performance requirements of the employee's position subject to the following conditions:

1. The evaluation process and its consequences were discussed with the employee.
2. The employee was made aware of the employee's current job description and job-related performance requirements.
3. The evaluation procedures were observed, including providing the employee the opportunity to meet, discuss, and rebut the performance evaluation and apprising the employee of the consequences of failure to meet the performance requirements.
4. The evaluation was fair and objective.
5. The employee was provided performance feedback during the evaluation period and, as appropriate, the employee was offered in-service remedial training in order for the employee to improve and meet performance requirements.
6. The evaluation was applied without discrimination.
7. Prior to the end of the evaluation period that the employee is being considered for discharge due to failure to meet performance requirements, the feasibility of transferring or demoting the employee to another position for which the employee qualifies was considered.
Any employee who is a member of the civil service who fails to meet the performance requirements of the position that the employee occupies shall have the right to grieve any resulting adverse action taken against the employee through the department's internal complaint procedure that culminates in a final and binding decision by the merit appeals board. The board shall use the seven above-mentioned conditions to determine whether the appointing authority's actions were with or without merit. [Employees who are permanent or temporary members of the civil service and are excluded from BUs 01, 02, 03, 04, 09, 10, 11, & 13.]

Unauthorized Absence

The appointing authority shall, within fifteen days following the last day the employee reported for work, file a statement with the Director of Human Resources Development showing either resignation or termination, as appropriate, if:

1. An employee resigns without submitting a written resignation;
2. An employee does not report to work for fifteen days without notifying the appointing authority of the employee's employment intentions;
3. An employee submits a resignation is submitted while an investigation is pending against the employee; or
4. An employee's resignation is not accepted for reasons allowed by rules.

If an employee does not report for work without authorization, but, within fifteen days following the last day the employee reported for work, expresses a desire to continue employment, the employee shall not be deemed to have resigned. However, the appointing authority may take appropriate action, including discharge, in consideration of the reasons for the employee's absence.

Actions taken by an appointing authority under the above-mentioned provisions can be grieved through the departmental internal complaint procedure and then appealed to the merit appeal board. [Employees who are permanent or temporary members of the civil service and are excluded from BUs 01, 02, 03, 04, 09, 10, 11, & 13.]

Reduction-In-Force/Layoff

The procedures and benefits pertaining to reduction-in-force and layoff for excluded civil service employees with respect to notice of impending layoff and calculation of retention points shall be not less than those provided for included counterparts and shall be confined to positions within groupings of excluded employees as determined by the Director of Human Resources Development. [Employees who are permanent members of the civil service and are excluded from BUs 01, 02, 03, 04, 09, 10, 11, & 13.]
Discipline

An appointing authority may discipline an employee for just cause.

Whenever an employee is orally reprimanded, it shall be done in private.

Whenever an employee is to receive a letter of reprimand, the reprimand shall set forth the specific reasons for its issuance and shall contain a statement of the employee's appeal rights. The reprimand shall be given to the employee within seven working days after the incident giving rise to the reprimand. The seven working day requirement shall not apply in certain mitigating situations, such as, but not limited to:

(1) The affected employee was unavailable during the seven working day period to present evidence and arguments on the employee's own behalf.

(2) A complete investigation cannot be concluded within seven working days due to witnesses or information not being readily available.

Whenever an employee is disciplined with a suspension of four or less working days, the employee shall be given written notice of the suspension within forty-eight hours after the commencement of the suspension. The notice shall contain the following:

(1) Effective day or days of suspension;

(2) The specific reasons for the suspension; and

(3) Statement of the employee's appeal rights.

Whenever an employee is disciplined with a suspension of five or more working days, the employee shall be given written notice prior to the suspension. The notice shall contain the following:

(1) Effective days of suspension;

(2) The specific reasons for the suspension; and

(3) Statement of the employee's appeal rights.

Whenever an appointing authority is unable to serve a letter of reprimand or the required written notice for suspensions, the letter or the notice shall be mailed to the employee's last known address within the time limitations prescribed.

No employee shall be suspended for more than thirty days at a time or for more than sixty days in any calendar year. [Employees who are permanent members of the civil service and are excluded from BUs 01, 02, 03, 04, 09, 10, 11, & 13.]
Leave Without Pay Pending Investigation

An employee may be placed on leave without pay pending an investigation for up to thirty days if the appointing authority believes that the retention of the employee at the work site is detrimental to the interests of the State, other employees, or the general public, provided:

(1) The appointing authority is unable to place the employee at another work site or assign the employee other duties and responsibilities that the employee is capable of performing without detriment to the interest of the State, other employees, or the general public.

(2) Prior to the leave without pay pending investigation, the employee is given written notice containing the specific reasons for which the employee is being subjected to an investigation.

(3) If the charges against the employee are dropped or not substantiated, the employee shall be reinstated without loss of rights, privileges, and pay.

A leave without pay pending an investigation may be extended for an additional thirty-day period provided:

(1) The appointing authority submits a request for the extension to the Director of Human Resources Development with an account of the status of the investigation; and

(2) The Director of Human Resources Development approves the extension.

A leave without pay pending investigation may be converted, partially or totally, to a disciplinary suspension should the investigation reveal good cause for disciplinary action. Written notice of the conversion, along with the specific reasons for the disciplinary suspension and a statement of the employee's appeal rights shall be provided to the employee. [Employees who are permanent members of the civil service and are excluded from BUs 01, 02, 03, 04, 09, 10, 11, & 13.]

Discharge

An appointing authority may discharge an employee when the appointing authority considers that the good of the service will be served thereby.

Whenever an employee is to be discharged, the employee shall be given a written notice at least ten days in advance of the effective date of the discharge. The notice shall contain the following:

(1) The specific reasons for the discharge;
(2) The date of the discharge;

(3) An opportunity to respond to the specific reasons for the discharge prior to the date of the discharge; and

(4) A statement of the employee's appeal rights.

If, during the period immediately after the employee has received written notice of the discharge, 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. [Employees who are permanent members of the civil service and are excluded from BUS 01, 02, 03, 04, 09, 10, 11, & 13.]

Demotion

An appointing authority may demote an employee for any of the following reasons:

(1) The employee is no longer capable of performing the duties and responsibilities of the employee's position in a satisfactory manner;

(2) To avoid a layoff;

(3) To fit the employee into a new structure provided for in a reorganization affecting an employee's department;

(4) The employee submits a request for a voluntary demotion; or

(5) For disciplinary reasons when the appointing authority deems that the good of the service will be served thereby. A demotion for disciplinary reasons shall be for a specified period of time, not to exceed a period of six months.

Except for a demotion requested by an employee, no demotion shall become effective until the employee receives written notice of the demotion at least ten days in advance. The written notice shall contain the specific reasons for the demotion, involuntary or disciplinary, or disability demotion, a statement of the employee's appeal rights shall also be included in the written notice. [Employees who are permanent members of the civil service and are excluded from BUS 01, 02, 03, 04, 09, 10, 11, & 13.]

Experimental Modernization Projects

In the event that an experimental modernization project is to be conducted pursuant to section 78-3.5, HRS, the Director of Human Resources Development shall consult with
employees who will be involved in the conduct of the project. [Employees excluded from BUs 01, 02, 03, 04, 09, 10, 11, & 13.]

Safety Equipment

Each department or agency shall furnish its employees with safety equipment when such equipment is required in connection with the employees' official duties by the codes and rules and regulations of the Department of Labor and Industrial Relations. Except in the case of gross negligence on the part of the employee losing or damaging such equipment, lost or damaged safety equipment and equipment worn out through wear and tear shall be replaced by the department or agency. [Employees excluded from BU 01.]

Unsafe Motor Vehicle

No employee shall be required to operate a motor vehicle that is deemed unsafe. If an employee demonstrates that a motor vehicle that the employee has been directed to operate is unsafe, the employee or the employees representatives and the employee's department head shall mutually agree upon the appointment of a third party qualified to evaluate the safety of said motor vehicle to determine the safety of the vehicle. The decision of the third party shall be final and binding upon the parties. If the third party decides that the motor vehicle is unsafe, the employee shall not be required to operate such motor vehicle. On the other hand, if the motor vehicle is deemed safe by the third party, the employee may be required to operate the vehicle. [Employees excluded from BUs 01, 02, 03, 04, 09, 10, 11, & 13.]

Personnel File

All materials contained in an employee's personnel file shall be considered to be confidential. The materials may be released only as follows:

1. Upon written permission of the employee;
2. Upon receipt of a court order or subpoena for their release, and upon consultation with the Attorney General;
3. To comply with applicable federal and state laws and regulations; or
4. When used for internal management purposes.

An employee, upon the employee's request and by appointment, shall be permitted to examine the employee's personnel file. The employee shall be given a copy of any material in the file if it is to be used in connection with an internal complaint or a personnel hearing.
No derogatory material shall be placed in an employee's personnel file unless a copy of the same is first provided to the employee. An employee shall be given an opportunity to submit explanatory remarks that shall be placed in the employee's file.

An employee may request that any derogatory material be reviewed and destroyed after two years. The employee's department head will determine whether the material is relevant and will decide whether or not the material will be retained; provided that the employee's employment record including personal history record shall not be altered and shall be retained. If the employee disagrees with the department head as to the relevancy of the material, the employee may request that the Director of Human Resources Development render a decision and that decision is binding.

Derogatory material more than five years old shall be destroyed. [Employees excluded from BUs 01, 02, 03, 04, 09, 10, 11, & 13.]

**Employee Management Cooperation**

Orderly and constructive relationships shall be encouraged between government management officials and employees. Employee management cooperation must provide employees with an opportunity for meaningful participation in the formulation and implementation of policies and procedures affecting the conditions of their employment.

Employees shall have the right to join or not join any public employees' association, organization, or union not asserting the right to strike or proposing to assist in any strike against the government.

The right of any individual officer or employee in the civil service, or any group of officers or employees, to present grievances or to petition for redress of grievances to the legislature, or any other public officer or body, shall not be denied or interfered with.

Each department shall consult its employees or employee organizations when formulating and implementing personnel policies and practices, and matters affecting working conditions that are of concern to its employees.

Before changing major policies or methods of operation, each department shall notify its employees of the proposed changes. When requested by its employees, each department shall meet to discuss the proposed changes.

Employees may request meetings with the departments to discuss subjects or disputes for which adjustments are not provided in established rules, regulations, procedures, or directives.

Meetings between employees and officials of the department shall be held during working hours. A reasonable amount of full-time representatives of public employees' organizations may attend these meetings with the approval of the department.
Written records may be kept of these meetings and written statements of understanding may be prepared for mutual consent of the department and its employees.

Full-time representatives of public employees' organizations may visit members of their organization at work during regular working hours to investigate grievances and to observe whether civil service rules and safety regulations are being observed, provided that they do not interfere with the normal operations of the department.

The above-mentioned rights and privileges shall be extended to all employees, irrespective of whether they are members of any public employees' organization or not.

Elected officers of duly recognized employee organizations and employee representatives or shop stewards designated by an employee organization shall have reasonable time off during working hours to carry out the duties of their office, as determined by the employer, without loss of pay or benefits. [Employees excluded from BUs 01, 02, 03, 04, 09, 10, 11, & 13.]

Educational and Informational Meetings

Each department shall permit its employees to attend informational and educational meetings conducted during working hours by duly recognized governmental employee organizations, provided that these meetings shall permit the attendance of members and nonmembers and shall be scheduled for periods of not more than two hours once every three months at times that do not interfere with the operations of the respective departments. [Employees excluded from BUs 01, 02, 03, 04, 09, 10, 11, & 13.]

Medical Requirements

The appointing authority or the Director of Human Resources Development may require a medical re-evaluation whenever it is necessary to determine the health and physical capacities of persons in state employment.

The head of each department is responsible for:

(1) Developing written departmental occupational safety and health policies and procedures;

(2) Establishing and operating approved safety and health programs in accordance with policies, procedures, and standards established by the Director of Human Resources Development; and

(3) Reporting on safety and health activities of the department as may be requested by the Director of Human Resources Development.

[Employees excluded from BUs 01, 02, 03, 04, 09, 10, 11, & 13.]
**Excluded Employee Adjustments**

The Governor may make adjustments for excluded employees within the executive branch subject to the following guidelines and limitations:

1. The compensation of excluded employees whose pay is presently limited or fixed by legislative action shall not be adjusted and shall continue to be limited or fixed by the state legislature;

2. The compensation of excluded employees exempt from civil service coverage whose pay is set at the discretion of the appointing authority shall continue to be adjusted at the discretion of the appointing authority from funds allowed for this purpose;

3. Any adjustment for excluded civil service employees shall be consistent with the merit principles and shall not diminish any rights provided under chapter 76, HRS;

4. For excluded employees under the same classification systems as employees within collective bargaining units, adjustments shall be not less than those provided under collective bargaining agreements for employees hired on a comparable basis;

5. For excluded employees other than those under paragraph (4), adjustments shall, to the extent practicable, uniformly apply to every excluded employee within a homogenous grouping, such as cabinet members or managerial employees, to ensure fairness. This does not preclude variable adjustments based on performance or other job criteria and specific adjustments warranted based upon the nature of the work performed or working conditions; and

6. No adjustment shall be made to benefits provided under chapter 88, HRS, unless specifically authorized under that chapter, or with respect to any other matter that the legislature may specifically prohibit or limit by law.

[Employees excluded from BUs 01, 02, 03, 04, 09, 10, 11, & 13.]

**Civil Service Excluded Employee Adjustments**

In formulating recommendations to the Governor for adjustments for excluded civil service employees, the Director of Human Resources Development shall:

1. Establish procedures that allow excluded civil service employees and employee organizations representing them the opportunity to provide input on the kinds of adjustments that are relevant and important to them;
(2) Ensure that adjustments for excluded civil service employees result in compensation and benefit packages that are appropriate for what they do and the contribution they make in consideration of the compensation and benefit packages provided under collective bargaining agreements for counterparts and subordinates within the jurisdiction; and

(3) Confer with the personnel directors of the other local jurisdictions on proposed adjustments to ensure that they are consistent with chapter 76, HRS.

[Employees with civil service appointments who are excluded from BUs 01, 02, 03, 04, 09, 10, 11, & 13.]

D. COMPENSATION

Bargained Repricing of Classes

If an exclusive representative negotiates the repricing of classes of work that fall within the bargaining unit that the union represents, the Director of Human Resources Development shall determine whether the negotiated repricing resulted in a reduced pay increase for that bargaining unit in comparison to other bargaining units. If the pay increase was reduced due to the negotiated repricing, the Director of Human Resources Development shall recommend to the Department of Budget and Finance that the appropriation request for pay increases for employees excluded from that bargaining unit be increased by an amount comparable to the difference between the pay increase that was negotiated and the pay increase that would have been negotiated if not for the negotiated repricing. [Employees with civil service appointments who are excluded from BUs 01, 02, 03, 04, 09, 10, 11, & 13.]

Effective Date of Pay Increases for Non-EMCP Civil Service Excluded Employees

Adjustments made for non-managerial civil service employees excluded from collective bargaining that do not exceed the adjustments made for the bargaining unit from which the employees are excluded shall take effect on the same dates as the adjustments for employees within the bargaining unit. [Non-EMCP employees with civil service appointments who are excluded from BUs 01, 02, 03, 04, 09, 10, 11, & 13.]

Other Compensation Adjustments

Compensation adjustments not expressly authorized but necessitated by authorized personnel movements or situations relating to the administration of the state civil service shall be made by the Director of Human Resources Development; provided that the adjustments are not inconsistent with the general intent and provisions of the civil service. [Employees with civil service appointments who are excluded from BUs 01, 02, 03, 04, 09, 10, 11, & 13.]
The Director of Human Resources Development shall be responsible for uniform administration of these adjustments and any interpretations concerning the applicability of these adjustments to state officers and employees of the executive branch who are excluded from collective bargaining and to elected and appointed officials.

DONE at the State Capitol, Honolulu, State of Hawaii, this 9th day of December, 2007.

LINDA LINGLE
Governor of Hawaii

APPROVED AS TO FORM:

THOMAS R. KELLER
Acting Attorney General