September 26, 2005

TO: All Department Heads

FROM: Marie C. Laderta, Director

SUBJECT: Executive Order No. 05-10 Regarding Compensation and Benefits for Employees Hired for Eighty-Nine (89) Days or Less

Enclosed is a copy of Executive Order No. 05-10 specifying the benefits that employees appointed for eighty-nine (89) days or less are entitled to. The proposed executive order also limits the extent of retroactive pay increases for such employees.

Executive Order 03-02, which was approved in January 2003, lists the benefits that individuals who are appointed to civil service positions for eight-nine (89) days or less are entitled to. Although it is not a recognized type of appointment, some departments are also appointing individuals to exempt positions for eighty-nine (89) days or less. In light of the comparable duration of the appointments, these employees should be limited to the same benefits enjoyed by employees appointed to civil service positions. This executive order supersedes Executive Order 03-02 and specifies that all employees hired for eighty-nine (89) days or less, irrespective of whether the appointment is to an exempt or civil service position, are to receive the benefits that were listed in Executive Order 03-02.

The executive order also limits the extent of retroactive pay increases that the aforementioned employees are entitled to. Some employees receive a series of eighty-nine (89) day appointments, for a variety of reasons, and when there are retroactive pay increases, the existing practice has been to grant all of the retroactive pay increases that occur during their employment. As an example, the Bargaining Unit (BU) 1 negotiations were concluded after the end of the 2004 Legislative session. The agreement provided for pay increases on July 1, 2004, September 3, 2004, January 1, 2005, and May 16, 2005. Payments for those pay increases could not be processed until the pay increases were funded by the State Legislature during the first half of May 2005. Under existing practices, employees employed on or after July 1, 2004, were entitled to receive the retroactive pay increases, whether they continue to be employed or not. However, in light of the nature and duration of their employment,
such employees should not have any expectation of receiving retroactive pay increases unless the retroactivity is due to processing delays after funding has been approved by the applicable legislative bodies.

The provisions of Executive Order 05-10 reduce benefits for employees who are appointed to exempt positions for eighty-nine (89) days or less. It would be inappropriate to retroactively take benefits away from employees so I am exercising the authority granted to me by the executive order "to make any interpretations concerning these adjustments" to specify that the benefits being eliminated shall be effective as of October 16, 2005. Please insure that all employees affected by Executive Order 05-10 are made aware of the executive order prior to that date.

Questions regarding this matter should be directed to Carleton Taketa at 587-1020.

Enclosure

c: All Departmental Personnel Officers
HRD Divisions
EXECUTIVE ORDER NO. 05-10

WHEREAS, under chapter 89C of the Hawaii Revised Statutes (HRS), the Governor has been granted the authority to make adjustments to the wages, hours, benefits, and other terms and conditions of employment for excluded public officers and employees in the state executive branch; and

WHEREAS, employees who are appointed for eighty-nine (89) days or less are, by law, excluded from collective bargaining; and

WHEREAS, Executive Order 03-02, which was signed on January 13, 2003, granted certain benefits (e.g., overtime, standby pay, split shift pay, night shift differential, working condition differential, temporary hazard pay, mileage, and per diem) to excluded employees who are appointed for eighty-nine (89) days or less into a civil service position; and

WHEREAS, it is equitable that employees who are appointed for eighty-nine (89) days or less into an exempt position be limited to the same benefits; and

WHEREAS, employees who are appointed for eighty-nine (89) days or less, whether into a civil service or an exempt position, should have no expectation of receiving retroactive pay increases; 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, do hereby grant the following compensation and benefits to excluded employees in the state executive branch who are appointed for eighty-nine (89) days or less. These compensation and benefits shall be effective as of September 1, 2005. (NOTE: To the extent they are contrary, this executive order supercedes Executive Order 03-02, which specified the benefits for excluded employees who are appointed for eighty-nine (89) days or less into a civil service position.)

Compensation – No Retroactive Application

When the effective date of applicable pay increases is prior to the date that funding was approved by the legislature, the employees shall receive the most recent pay increase effective from the first pay period after funding is approved by the legislature. Pay increase(s) shall not be applied retroactively from the date that funding was approved by the legislature.

Benefits

The benefits granted to excluded employees in the state executive branch who are given an eighty-nine (89) day appointment, shall be identical to those granted to included employees, if applicable, for the following: overtime, standby pay, split shift pay, night shift differential, working condition differential, temporary hazard pay, mileage, and per diem.

In addition to the foregoing, the excluded employees shall receive the following, if applicable:

1. Payments for meals due to pre-shift and post-shift overtime on the same basis as meal payments provided to included employees.
2. Show up time pay for regular work days on a straight time basis for time actually worked, subject to a minimum of three hours of pay;
3. Show up time pay if scheduled to work on a normal day off. The employee shall receive straight time or overtime pay as applicable, subject to a minimum of three hours of straight time pay or two hours of overtime pay; and
4. Call back or call out pay from the time the employee leaves the employee’s home until the employee returns home from work. The employee shall receive straight time or overtime pay as applicable.
Appointing authorities shall also have the discretion to determine whether employees who are appointed to shortage category or related shortage category positions, are to receive shortage category or related shortage category pay.

Employees shall continue to receive benefits based upon other official authorization (e.g., administrative directive) or as required by law.

The Director of Human Resources Development shall be responsible for the uniform administration of these adjustments and is authorized to make any interpretations concerning the applicability of these adjustments to state officers and employees of the executive branch.

DONE at the State Capitol, Honolulu, State of Hawaii, this __________ day of __________, 2005.

LINDA LINGLE
Governor of Hawaii

APPROVED AS TO FORM:

MARK J. BENNETT
Attorney General