

**"CHAPTER 78
PUBLIC SERVICE**

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Chapter title amended by L 1989, c 63, §3.

"PART I. GENERAL PROVISIONS--REPEALED

Note

Part I heading was added by L 1989, c 63, §4 and repealed by L 2000, c 253, §79.

§78-1 Citizenship and residence; exceptions. (a) All elective officers in the service of the government of the State or any county shall be citizens of the United States and residents of the State for at least three years immediately preceding assumption of office.

(b) All appointive officers in the service of the government of the State or any county who are employed as department heads and deputies or assistants to a department head shall be citizens of the United States and residents of the State for at least one year immediately preceding their appointment; provided that the foregoing one year residency requirement may be waived by the appointing authority when the appointive officer is required to have highly specialized or scientific knowledge and training and a qualified applicant who is a resident for at least one year is not available to fill the position. All others appointed in the service of the government of the State or in the service of any county or municipal subdivision of the State shall be citizens, nationals, or permanent resident aliens of the United States and residents of the State at the time of their appointment. A national or permanent resident alien appointee shall not be eligible for continued employment unless such person diligently seeks citizenship upon becoming eligible to apply for United States citizenship.

(c) All persons seeking employment with the government of the State or in the service of any county shall be citizens, nationals, or permanent resident aliens of the United States, or eligible under federal law for unrestricted employment in the United States, and shall become residents of the State within thirty days after beginning their employment and as a condition of eligibility for continued employment.

"Resident" means a person who is physically present in the State at the time the person claims to have established the person's domicile in the State and shows the person's intent is to make Hawaii the person's primary residence.

(d) The appointing authority may approve the appointment of persons without consideration of the requirements under subsection (c) when services essential to the public interest require highly specialized technical and scientific skills or knowledge for critical-to-fill and labor shortage positions.

(e) For the positions involved in the performance of services in planning and executing measures for the security of Hawaii and the United States, the employees shall be citizens of the United States in addition to meeting the requirement of residency in subsection (c).

(f) This section shall not apply to persons recruited by the University of Hawaii under the authority of section [304A-1001]. [L 1909, c 32, §1; am L 1923, c 19, §1; RL 1935, §86; am L 1935, c 211, §1; am L 1939, c 216, §§1, 2; RL 1945, §451; am L 1949, c 190, §§1, 2; am L 1951, c 319, §3; RL 1955, §5-1; am L 1961, c 82, §1; am L 1965, c 170, §1 and c 175, §1; am L 1967, c 5, §1 and c 220, §1; HRS §78-1; am L 1969, c 206, §1; am L 1970, c 36, §1; am L 1976, c 162, §1; am L 1977, c 211, §1; am L 1978, c 101, §1; am L 1980, c 250, §1; gen ch 1985; am L 1987, c 295, §2; am L 1994, c 56, §21; am L 1998, c 2, §25 and c 115, §11; am L 2000, c 253, §75; am L 2002, c 90, §2; am L 2006, c 75, §5; am L 2007, c 52, §1; am L 2012, c 115, §1]

Cross References

Constitutional provisions on residency, see Const. Art. V, §6.

Attorney General Opinions

Residency of president of University of Hawaii. Att. Gen. Op. 61-84.

A noncitizen may be given a probationary appointment to a state civil service position provided that all prescribed conditions are met. Att. Gen. Op. 66-21.

Promotion of a nonresident appointee following completion of probationary period. Att. Gen. Op. 66-22.

The superintendent of education's position is exempt from the three-year residency law. Att. Gen. Op. 66-27.

Law Journals and Reviews

The New Resident: Hawaii's Second-Class Citizen. 5 HBJ 77.

Case Notes

Durational residency requirement for public employment violated equal protection clause of 14th Amendment. 443 F. Supp. 228.

Where plaintiffs challenged the constitutionality of the pre-employment residency requirement for public employment set forth in subsection (c), plaintiffs had standing to challenge the constitutionality of this section, and the court granted plaintiffs' motion for preliminary injunction to bar defendants from enforcing the pre-employment residency requirement of subsection (c). 423 F. Supp. 2d 1094.

Plaintiffs had standing to challenge the constitutionality of this section; subsection (c) violated plaintiffs' fundamental constitutional right to interstate migration. 460 F. Supp. 2d 1207.

As to alien employment under former laws. See 5 H. 167.

Durational residence requirement, set forth in prior law, did not have a rational relation to public employment and violated the equal protection clause of the U.S. Constitution. 53 H. 557, 498 P.2d 644.

" **[\$78-1.5] Definitions.** As used herein, unless the context clearly requires otherwise, the terms "appointing authority", "chief executive", "director", "employee", "employer", and "jurisdiction" shall have the same meaning as those terms are defined in section 76-11. [L 2000, c 253, pt of §74]

" **[\$78-1.6] Office hours.** Offices of the State and counties shall be open for the transaction of public business as determined by the chief executive. Offices need not be open for the transaction of public business on the state holidays designated under section 8-1 and as observed under section 8-2. [L 2000, c 253, pt of §74]

" **§§78-2, 2.5 REPEALED.** L 2000, c 253, §§80, 81.

" **§78-2.6 Prospective employees; suitability for public employment.** All prospective employees, regardless of the positions they will assume, shall demonstrate their suitability for public employment by:

- (1) Passing a pre-employment controlled substance drug test if required by the employing jurisdiction; and
- (2) Attesting that during the three-year period immediately preceding the date of application for employment, the person was not convicted of any controlled-substance-related offense.

If an applicant fails to meet the suitability requirements of the employing jurisdiction, the applicant shall be disqualified from further employment consideration or deemed ineligible for appointment under section 76-29 on the basis of unsuitability for public employment.

Notwithstanding paragraph (2), for positions described in section 76-16(b)(13)(C), an applicant shall not be automatically disqualified from employment based on a controlled-substance-related offense, provided that reasonable safeguards are in place to protect employees and the public. [L 2000, c 253, pt of §74; am L 2013, c 30, §2]]

Revision Note

Subsection designation deleted pursuant to §23G-15(1).

" **[§78-2.7] Criminal history record checks.** (a) The State or any of its branches, political subdivisions, or agencies shall develop standards and procedures to ensure the reputable and responsible character of applicants and employees, which shall include criminal history record checks in accordance with section 846-2.7.

(b) The State or any of its branches, political subdivisions, or agencies shall obtain criminal history information through the Hawaii criminal justice data center on an applicant for a position that has the same type of contact with children, dependent adults, or persons committed to a correctional facility as other public employees who hold positions that are authorized by law to require criminal history record checks as a condition of employment; provided that:

- (1) The information obtained shall be used exclusively for the purpose of determining whether a person is suitable for working in close proximity with children, dependent adults, or persons committed to a correctional facility;
- (2) The use of the information shall be subject to those federal laws and regulations as may be now or hereafter adopted; and
- (3) The Hawaii criminal justice data center may assess applicants a reasonable fee for each criminal history record check conducted.

(c) The State or any of its branches, political subdivisions, or agencies may deny employment on the basis of criminal conviction in accordance with applicable laws and regulations as follows:

- (1) For positions with contact with children or dependent adults, if it finds that the applicant has been convicted of a crime and that by reason of the nature and circumstances of the crime, the applicant poses a risk to the health, safety, or well-being of children or dependent adults; and
- (2) For positions with contact with persons committed to a correctional facility, if it finds that the applicant has been convicted of a crime other than a minor traffic violation involving a fine of \$50 or less and because of the nature of the conviction, the applicant poses a risk to the health, safety, security, or well-being of persons committed to a correctional facility, the correctional facility's staff, or the public at large.

Nothing in this subsection prohibits the State or any of its branches, political subdivisions, or agencies from denying employment for other reasons as permitted by applicable laws and regulations.

(d) For purposes of implementing this section:

- (1) For employees holding positions with contact with children or dependent adults on May 28, 2003, no employee who has been continuously employed on a salaried basis prior to July 1, 1990, shall be subject to a criminal history record check for the position held on May 28, 2003;
- (2) For employees holding positions with contact with persons committed to a correctional facility on May 28, 2003, no employee shall be terminated based on convictions in the criminal history record check except those convictions occurring after July 1, 1990, or under circumstances in which the employee is a fugitive from justice; and
- (3) Nothing in this section shall abrogate an employee's rights under collective bargaining to appeal a termination of employment.

(e) As used in this section:

"Applicant" means a person who is applying for a position whose duties, location, work site, or assignments place that person in the same type of contact with children, dependent adults, or persons committed to a correctional facility as other public employees who hold positions that are authorized by law to require a criminal history record check as a condition of employment.

"Employee" means a person holding a position whose duties, location, work site, or assignments place that person in the same type of contact with children, dependent adults, or persons

committed to a correctional facility as other public employees who hold positions that are authorized by law to require a criminal history record check as a condition of employment.

"Public employees who hold positions that are authorized by law" means a public employee whose position requires a criminal history record check as a condition of employment and the authorization for the criminal history record check is not provided by this section. [L 2003, c 95, §2]

Revision Note

"May 28, 2003" substituted for "the effective date of this Act".

" **[§78-2.8] Public employees; termination.** (a) If a public employee is convicted of a felony for conduct related to the public employee's duties, the public employee shall be terminated from the public employee's position.

(b) If the felony conviction that results in the termination of a public employee pursuant to subsection (a) is overturned on appeal, the public employee shall receive back pay and be returned to the position the public employee held prior to conviction, or an equivalent position if the public employee's position was filled; provided that the employee is not terminated from the employee's position in accordance with any other provision of law.

(c) For purposes of this section:

- (1) "Public employee" means any public employee of the State or any county, and the political subdivisions and agencies thereof, any employees under contract with the State or county, any civil service employees, and any probationary or provisional employees of the State or county;
- (2) Employees covered by chapter 89 shall be entitled to a grievance procedure culminating in a final and binding decision; and
- (3) A rebuttable presumption shall arise that the criminal conviction is just and proper cause for the employee's termination. [L 2003, c 150, §2]

" **§78-3 REPEALED.** L 1984, c 85, §1.

" **[§78-3.1] Whistleblowers; notice.** (a) Upon receipt of any complaint made pursuant to section 378-70, the department of

labor and industrial relations shall inform the complainant of the complainant's rights under the law.

(b) The department of labor and industrial relations shall prescribe the content and the posting of notices pertaining to the application of sections 378-70 and 396-8(e). [L 2011, c 166, §2]

" **[\$78-3.5] Experimental modernization projects.** (a) It is the intent of this section to encourage and facilitate improvements in the human resource programs of the several jurisdictions. With the approval of the chief executive, the director may conduct experimental modernization projects to determine whether specific changes in its human resource program would result in a more desirable program for the jurisdiction.

(b) Prior to the implementation of any experimental modernization project, the director shall:

- (1) Develop a plan identifying the purposes of the project, the methodology to be used, the duration of the project, the criteria for evaluation of the project, and the cost of the project, if any;
- (2) Consult with the employees who would be involved in the conduct of the project; and
- (3) Negotiate with the exclusive representative if a modification or waiver of any provision in a collective bargaining agreement is necessary to conduct the project.

(c) While the project is in progress, it shall not be limited by state or local personnel laws and rules, but shall be in compliance with all equal employment opportunity laws and laws prohibiting discrimination. [L 2000, c 253, pt of §74]

" **[\$78-3.6 Experimental modernization projects; county boards of water supply.]** It is the intent of this section to encourage and facilitate improvements in the human resource programs of qualifying boards of water supply. With or without the approval from the chief executive, the director of any qualifying board of water supply may conduct experimental modernization projects to determine whether specific changes in its human resource program would result in a more desirable program for the jurisdiction.

Prior to the implementation of any experimental modernization project, the director of any qualifying board of water supply shall:

- (1) Develop a plan identifying:
 - (A) The purpose of the project;
 - (B) The methodology to be used;

- (C) The duration of the project;
 - (D) The criteria for evaluation of the project; and
 - (E) The cost of the project, if any; and
- (2) Consult and negotiate with the exclusive representative if a modification or waiver of any provision in a collective bargaining agreement, including any new provision, is necessary to conduct the project.

The representative of the qualifying board of water supply and the exclusive representative shall mutually agree in writing to any modification, waiver, or new provision before the project is implemented.

While the board of water supply project is in progress, it shall not be limited by state or local personnel laws and rules, but shall be in compliance with all equal employment opportunity laws, laws prohibiting discrimination, and chapter 89.

For purposes of this section, "qualifying board of water supply" means any county board of water supply serving a population of 500,000 or more persons. [L 2003, c 40, §1]

" **§78-4 Boards and commissions; service limited.** (a) Any other provision of law to the contrary notwithstanding, no person shall be allowed to serve on more than one state board or commission expressly created by a state statute or the state constitution.

(b) Any prohibition in any law against the holding of outside employment or dual public office, employment, or position by an employee shall not bar the appointment of an employee to membership on a board or commission unless service on the board or commission would be inconsistent or incompatible with or would tend to interfere with the duties and responsibilities of the other office, employment, or position held by the employee.

(c) When any employee must be away from the employee's regular work because of service as a member on a board or commission, the employee shall not, as a result of the absence, suffer any loss of the employee's regular salary or wages. The time spent in service as a board or commission member outside of the employee's regular work hours shall not be considered as time worked. [L 1957, c 114, §§1 to 3; Supp, §7-25.5; HRS §78-4; am L 1982, c 24, §1; am L 1984, c 227, §1; am L 1994, c 200, §§5, 17; am L 1998, c 11, §33; am L 2000, c 253, §76]

Cross References

Selection and term of members, generally, see Const. Art. V, §6 and §26-34.

Attorney General Opinions

Local school advisory council is board of a public character. Att. Gen. Op. 62-50.

A board member is not eligible for appointment to a charter commission. Att. Gen. Op. 63-29.

" **§§78-5, 6 REPEALED.** L 2000, c 253, §§82, 83.

" **§78-7 Certain public officers prohibited from receiving certain masterships and master's fees; forfeiture.** No person holding any salaried office or employment in the executive or judicial branches of the government of the State or any county thereof, or holding any executive or judicial office or employment any part of the compensation for which is paid by the State or any county, shall be appointed to serve as master to examine, pass, or report upon any account filed in any court of the State by any guardian, trustee, or personal representative except where the estate concerned is insolvent or there are insufficient funds therein to pay a reasonable master's fee. In that event, the master shall not receive, directly or indirectly, any fee or other remuneration for services rendered as master to examine, pass, or report upon any account filed in any court of the State by any guardian, trustee, or personal representative. The person receiving or accepting the fee or remuneration shall by virtue of the acceptance be deemed to have released and forfeited all claim and right thereafter to any compensation payable by the State or county by virtue of the office or employment, and in addition, if the person is holding an office or employment, subject to the power of the legislature of the State to provide for forfeiture thereof as herein provided, shall be deemed to have forfeited and been ipso facto discharged from the person's office or employment. In any event, upon acceptance of the fee or remuneration, the comptroller of the State or director of finance of any county is prohibited from issuing any warrant to the person except for services rendered prior to the forfeiture. This section shall not apply to officers whose only compensation from the government is paid pursuant to any state statute upon a per diem basis or upon a fee basis, or to officers or employees appointed or employed by contract to render a temporary professional service. Traveling or other expenses paid or payable by the State or any county to any officer or employee shall not be deemed to be compensation. [L 1939, c 13, §1; am L 1941, c 23, §1; RL 1945, §457; am L 1945, c 95, §1; RL 1955, §5-13; am L

1957, c 152, §1 and c 180, §1; HRS §78-7; am L 1976, c 200, pt of §1; gen ch 1985]

Revision Note

"Director of finance" substituted for "auditor" to conform to terminology of county charters.

" **§78-8 Persons subject to sections 78-8 to 78-11.** The persons subject to sections 78-8 to 78-11 are those elected to or appointed or employed in the government of the State or any county, or in any political subdivision thereof, or appointed to or employed in any office or employment any part of the compensation of which is paid out of public funds. [L 1951, c 177, §1; RL 1955, §5-3; HRS §78-8; am L 2001, c 83, §2]

" **§78-9 Failure to appear or testify, termination of employment.** If any person subject to sections 78-8 to 78-11, after lawful notice or process, wilfully refuses or fails to appear before any court or judge, any legislative committee, or any officer, board, or commission, or having appeared refuses to testify or to answer any question regarding (1) the government, property or affairs of the State or of any political subdivision thereof, or (2) the person's qualifications for public office or employment, or (3) the qualifications of any officer or employee of the State or any political subdivision thereof, on the ground that the person's answer would tend to incriminate the person, or refuses to testify or to answer any such question without right, the person's term or tenure of office or employment shall terminate and the office or employment shall be vacant, and the person shall not be eligible to election or appointment to any office or employment under the State or any political subdivision thereof. To the extent that the State is without authority to require, under the constitution or laws of the United States, compliance by any public officer or public employee herewith, sections 78-8 to 78-11 shall not apply to the officer or employee, but the sections shall apply to the extent that they or any part thereof can lawfully be made applicable. [L 1951, c 177, §2; RL 1955, §5-4; HRS §78-9; gen ch 1985; am L 2001, c 83, §3]

" **§78-10 Procedure upon default.** If any person subject to sections 78-8 to 78-11 refuses to appear or refuses to testify under any of the circumstances contemplated in section 78-9, the

presiding judge or officer of the court or body before which the default or refusal occurs shall certify the fact thereof to the appointing or employing authority having cognizance of the person as a public officer or public employee and to the comptroller or other disbursing officer who issues warrants or checks to pay the person for the person's services as a public officer or public employee. If the default or refusal occurs before any court or body whose presiding judge or officer may not be required by the legislature to make and file such a certificate, then (1) the presiding judge or officer may make and file the certificate, and (2) the attorney general of the State, upon learning of the default or refusal, shall make and file the certificate if the presiding judge or officer of the court or body has not filed the same. Upon receiving a certificate, (A) the appointing or employing authority shall remove or discharge the person from office or employment, and (B) the comptroller or other disbursing officer shall make no further payments of public funds to the person, except to pay the person the salary, wages, bonus, or other compensation to which the person otherwise would be entitled if the person were voluntarily terminating the person's office or employment on the day the order is served on the comptroller or other disbursing officer. [L 1951, c 177, pt of §3; RL 1955, §5-5; am L 1957, c 152, §1; HRS §78-10; gen ch 1985]

" **§78-11 Review of discharge.** The removal or discharge of any person from office or employment under sections 78-8 to 78-11 shall not be reviewable by any court, officer, or agency of the State or county, or any political subdivision thereof, but nothing herein shall preclude any court of competent jurisdiction from reviewing the question whether the removal or discharge is in accordance with the sections. In the case of any officer who may only be removed from office by the governor by and with the advice and consent of the senate of the State, the removal of the officer shall not be effected until the advice and consent of the senate thereto is given, but the duties of the comptroller or other appropriate disbursing officer hereinbefore specified shall remain the same. [L 1951, c 177, pt of §3; RL 1955, §5-6; am L 1957, c 152, §1; HRS §78-11]

" **§78-12 Salary withheld for indebtedness to the government.**
(a) In case any officer, agent, employee, or other person in the service of a jurisdiction is indebted to a jurisdiction and the indebtedness has been determined by a hearing pursuant to chapter 91, upon demand of the officer charged with the duty of

collecting the indebtedness, the disbursing officer charged with the duty of paying the indebted officer, agent, employee, or other person, after notice to the indebted person, shall withhold one-quarter of the salary, wages, or compensation due the indebted person and pay the same, from time to time as the same shall become due, to the officer charged with the duty of collecting the indebtedness, until the full amount of the indebtedness, together with penalties and interest thereon, is paid.

(b) If the indebtedness has arisen or been incurred by reason of the indebted officer, agent, employee, or other person having embezzled, stolen, or otherwise unlawfully acquired any moneys or other property of a jurisdiction, the whole amount of the salary, wages, or compensation, or so much thereof as may be required to pay the indebtedness in full, shall be withheld and paid over to the officer charged with the duty of collecting the indebtedness.

(c) The officer, agent, employee, or other person in the service of the jurisdiction, alleged to be indebted to a jurisdiction, may waive the right to a hearing to determine the indebtedness and instead assign by contract to the officer charged with the duty of collecting debts:

- (1) The priority right to payment of the total amount of the alleged indebtedness; and
- (2) The right of the officer to deduct from each and every periodic payment normally due the assignor an amount equal to the maximum legally permissible amount deductible under garnishment law until the total amount owing is paid in full.

For purposes of this section, a person shall be deemed to waive the hearing if the person fails to request a hearing within fifteen days from the date the person was notified of the indebtedness and the opportunity to request a hearing.

(d) The operation of all garnishment process served upon the disbursing officer shall be stayed until the indebtedness has been fully paid.

(e) If the indebtedness has occurred as a result of salary or wage overpayment, the disbursing officer shall determine the amount of indebtedness and notify the employee in writing of the indebtedness; provided that, to be an actionable cause of action, the determination and notice to the employee shall be made within two years from the date of the salary or wage overpayment, and not after. If the employee contests the disbursing officer's determination of indebtedness, the employee may request a hearing pursuant to chapter 91.

(f) Regardless of whether a contested determination of indebtedness is pending, the disbursing officer shall commence

immediate recovery of the indebtedness as provided in this subsection. If the indebtedness is equal to or less than \$1,000, the disbursing officer shall immediately deduct from any subsequent periodic payment normally due the employee any amount up to the total amount of indebtedness and for indebtedness greater than \$1,000, the disbursing officer shall deduct:

- (1) An amount agreed to by the employee and the appointing authority, but not less than \$100 per pay period; or
- (2) One-quarter of the salary, wages, or compensation due the employee until the indebtedness is repaid in full.

In addition to paragraph (1), an employee and the appointing authority may agree to offset any remaining amount of indebtedness by applying the current value of appropriate leave or compensatory time credits posted in the employee's respective accounts as balances that would otherwise be payable in cash upon separation from service; provided that credits shall not be applied to any extent that would require a refund of any moneys already deducted or repaid or that would require the payment of any moneys to the employee equivalent to a cashing out of leave or compensatory time credits.

(g) If the determination of indebtedness was contested and is subsequently found to be incorrect:

- (1) Any moneys repaid or deducted under subsection (e) for any indebtedness in excess of the correct amount shall be promptly refunded with interest as specified by section 103-10; or
- (2) All leave or compensatory time credits applied to offset any indebtedness in excess of the correct amount shall be re-credited to the employee's respective leave or compensatory time accounts and shall not result in a cash payment.

(h) If an employee is entitled to contest the determination of indebtedness under a collective bargaining grievance procedure, that procedure shall be used in lieu of a hearing under subsection (e). A collective bargaining agreement may include overpayment recovery procedures; provided that the parties do not agree on any provision that would be inconsistent with subsections (f) and (g).

(i) Where an officer, agent, employee, or other person in the service of a jurisdiction is compensated in an amount greater than or less than that to which the person is entitled, the determination of the officer's, agent's, employee's, or other person's average final compensation for the period of indebtedness shall be calculated in accordance with section 88-81; provided that the compensation used to calculate the average final compensation shall be the compensation the officer, agent, employee, or other person should have been paid during that

period. [L 1911, c 120, §1; RL 1925, §163; am L 1933, c 191, §1; RL 1935, §100; am L 1937, c 14, §2; RL 1945, §453; RL 1955, §5-14; am L 1957, c 152, §1; HRS §78-12; am L 1975, c 25, §1; am L 1996, c 231, §4; am L 2000, c 253, §77; am L 2001, c 55, §35 and c 123, §§12, 13; am L 2009, c 190, §1]

Attorney General Opinions

Withholding of salary for indebtedness to federal government not authorized. Att. Gen. Op. 71-11.

Case Notes

This scheme of collecting indebtedness, as applied to one determined after hearing to be liable on parking violations at the University of Hawaii, is not unconstitutional. 379 F. Supp. 65.

As a rule, salary follows title, irrespective of amount of service performed. 8 H. 19.

" **§78-13 Salary periods.** (a) Unless otherwise provided by law, all officers and employees shall be paid at least semimonthly except that substitute teachers, part-time hourly rated teachers of adult and evening classes, and other part-time, intermittent, or casual employees may be paid once a month and that the governor, upon reasonable notice and upon determination that the payroll payment basis should be converted from predicted payroll to after-the-fact payroll, may allow a one-time once a month payroll payment to all public officers and employees to effect a conversion to after-the-fact payroll as follows:

- (1) The implementation of the after-the-fact payroll will commence with the June 30, 1998, pay day, which will be delayed to July 1, 1998;
- (2) The July 15, 1998, pay day will be delayed to July 17, 1998;
- (3) The July 31, 1998, pay day will be delayed to August 3, 1998;
- (4) The August 14, 1998, pay day will be delayed to August 19, 1998;
- (5) The August 31, 1998, pay day will be delayed to September 4, 1998;
- (6) The September 15, 1998, pay day will be delayed to September 18, 1998; and
- (7) Thereafter, pay days will be on the fifth and the twentieth of every month. If the fifth and the twentieth fall on a state holiday, Saturday, or

Sunday, the pay day will be the immediately preceding weekday.

The implementation of the after-the-fact payroll shall not be subject to negotiation under chapter 89.

(b) If an employee has been working for the State for at least six months, has no paid leave accumulated, and has an existing salary overpayment balance:

(1) The employee may be paid the employee's salary on the same pay dates and for the same pay periods as non-salaried employees.

(2) Upon accumulation of eighty hours of paid leave, the employee shall be paid the employee's salary on the same pay dates and for the same pay periods as salaried employees.

(c) If an employee has been working for the State for at least six months and has had at least two incidents of leave which results in salary overpayment within the past six months:

(1) The employee may be paid the employee's salary on the same pay dates and for the same pay period as non-salaried employees.

(2) If there are no incidents of leave which result in salary overpayment for a subsequent four-month period, the employee shall be paid the employee's salary on the same pay dates and for the same pay periods as salaried employees.

(d) The implementation of subsections (b) and (c) shall not be subject to negotiation under chapter 89.

(e) All employees, except those belonging to bargaining units 5 and 7, hired on or after July 1, 1998, shall be paid on the same pay dates and for the same pay periods as non-salaried employees. [L 1961, c 130, §1; am L 1963, c 60, §1; Supp, §5-14.5; HRS §78-13; am L 1974, c 129, §1; am L 1996, c 80, §1; am L 1997, c 355, §1; am L 1998, c 109, §1 and c 110, §3]

Revision Note

Subsection (e) redesignated pursuant to §23G-15(1).

Attorney General Opinions

Payments on biweekly rather than on semimonthly basis held valid. Att. Gen. Op. 64-11.

Case Notes

District court did not abuse its discretion in granting plaintiffs' motion for a preliminary injunction, where court

granted a preliminary injunction against operation of Act 355, L 1997 (which amended this section), State's "pay lag" law, on the ground that it impaired the obligations of the employees' collective bargaining agreement in violation of the contract clause of the U.S. Constitution. 183 F.3d 1096.

Plaintiffs' motion for a preliminary injunction granted, where plaintiffs filed motion seeking to enjoin defendants from delaying payroll under Act 355, L 1997 (which amended this section), with respect to University of Hawaii faculty members, arguing that Act 355 violated the contract clause of the U.S. Constitution because a five-day delay in pay violated the collective bargaining agreement between the State and the faculty members at the University. 16 F. Supp. 2d 1242.

Where there was no existing contract that Act 355, L 1997 (amending this section), impaired, no contracts clause violation possible and injunction no longer needed; the case was moot. 125 F. Supp. 2d 1237.

Based upon the legislative history of this section, and where it could not be said that the objective of Act 355, L 1997, which was to balance the state budget by amending this section, was not achieved, the specific implementation dates set forth in this section were mandatory. 111 H. 168, 140 P.3d 401.

The Act 355, L 1997 amendment to this section, which essentially altered the dates when public employees are to be paid, did not violate article XIII, §2 of the Hawaii constitution nor chapter 89 inasmuch as they did not prohibit a state employer from changing the pay dates of its employees; thus, the Act 355 amendment was not unconstitutional. 111 H. 168, 140 P.3d 401.

Where plaintiffs failed to demonstrate that bargaining over pay dates was one of the core subjects of collective bargaining that triggers a violation of article XIII, §2 of the Hawaii constitution, and failed to provide the supreme court with their collective bargaining agreement to support their contention that pay dates are bargainable, and these pay dates were not specifically incorporated into their contract, the Act 355, L 1997 amendment to this section to unilaterally alter the "traditional practice" of being paid on the fifteenth day and last day of the month did not violate their right to collectively bargain pay periods. 111 H. 168, 140 P.3d 401.

" **§§78-14 to 16 REPEALED.** L 2000, c 253, §§84 to 86.

" **§78-16.5 Pay of officers and employees on active military service and other periods.** (a) All officers and employees of the State and the several counties who are appointed for at

least six months of service shall be entitled, while on active duty, inactive-duty training, or during periods of camps of instruction or field maneuvers as members of the national guard or reserve of the armed forces under call of the President of the United States or the governor of the State, to receive pay as provided by law. During the absence of the officer or employee, while in the performance of ordered military or naval duty, including inactive-duty training, as a member of the national guard or reserve of the armed forces, the officer or employee shall receive the officer's or employee's salary or compensation as an officer or employee, but only for a period not exceeding fifteen working days in any calendar year.

(b) Notwithstanding subsection (a), if the officer or employee is called to active duty or otherwise required to report for camp training or field maneuvers by official military orders a second time within a calendar year, the officer or employee may elect to use the fifteen working days of the succeeding calendar year to which the officer or employee is entitled for such purposes within the current calendar year; provided that the officer's or employee's entitlement to fifteen working days under this section for the succeeding calendar year shall be canceled and the officer or employee shall so agree in writing. [L 2003, c 109, pt of §5; am L 2016, c 201, §2]

" **[\$78-16.6] Nonforfeiture for absence.** Every officer and employee of the State and the several counties who is a member of the Hawaii national guard or organized reserves, including the officers' reserve corps and the enlisted reserve corps, shall be entitled to be absent from the officer's or employee's duties or service while engaged in the performance of ordered military or naval duty and while going to and returning from such duty.

No officer or employee shall be subjected, directly or indirectly, by reason of the absence to any loss or diminution of vacation or holiday privileges or be prejudiced by reason of the absence with reference to promotion or continuance in office, employment, reappointment to office, or reemployment. [L 2003, c 109, pt of §5]

" **§78-17 Payment of salaries or wages upon discharge from service.** Whenever in any case, and for whatever cause, the employment of any officer, agent, employee, or other person in the public service is discharged, the discharged person shall be paid immediately upon the approval of the head of the department in which the person was engaged whatever salary or wages that

are due the person. [L 1941, c 285, §1; RL 1945, §456; RL 1955, §5-18; HRS §78-17; am L 2000, c 253, §78]

" **§78-18 REPEALED.** L 1982, c 152, §3.

" **[§78-18.3] Prohibition on certain increases in salaries for certain state and county officers or employees.** Any law to the contrary notwithstanding, neither the State nor any of the counties shall provide or pay to the following state or county officers or employees any adjustment or increase in the officer's or employee's respective salary or compensation where such adjustment or increase constitutes a mandatory adjustment or increase which is, directly or indirectly, dependent upon and related to negotiated salary adjustments or increases received under collective bargaining agreements by civil service or other public employees covered by collective bargaining: any elected or appointed officer or employee in the executive and judicial branches of state government and the executive branch of any county government (1) whose salary or compensation is fixed, limited, or otherwise specified by statute, ordinance, or other legislative enactment whether or not in express dollar amounts or express dollar amount ceilings; (2) who is not subject to chapter 76; and (3) who is excluded from collective bargaining and not subject to chapter 89C. [L 1982, c 129, pt of §34A; gen ch 1985; am L 2000, c 253, §150]

Case Notes

Constitutional. 67 H. 412, 689 P.2d 757.

Power of legislature to enact laws of statewide concern not limited by article VIII, §2 of state constitution; §46-21.5 and this section not unconstitutional under article VIII, §2 of state constitution as provisions intended to allow for integrated, equitable, and reasonable salaries among top-level officers of all jurisdictions was a matter of statewide concern and thus was a matter within the powers of the legislature. 67 H. 412, 689 P.2d 757.

" **§78-18.5 REPEALED.** L 1978, c 197, §3.

" **§78-19 REPEALED.** L 2000, c 253, §87.

" **§78-20 Sureties.** Whenever by any law, regulation, ordinance, rule or order of court, or any rule of any department of the state government or of any subdivision thereof, any person shall be required to give any written bond or undertaking for the performance of any contract or the provisions of any license, or for the indemnity or security of any person, party or any officer, there shall be attached to the bond or undertaking an affidavit of each of the sureties thereon, duly verified by oath, from which it shall appear that the sureties have property situate within the State subject to execution and that the sureties taken together are worth in the property the amount of the penalty specified in the bond or undertaking, over and above all of their debts and liabilities. In default of the justification no bond or undertaking shall be accepted. Notwithstanding any provision requiring two or more sureties, if any such bond or undertaking is executed by the principal and by any corporation, organized for the purpose of becoming surety on such bonds, authorized under the laws of the United States or of the State to act as surety, and doing business in the State under the provisions of the laws of the United States or of the State, if a foreign corporation, and under the laws of the State, if a Hawaiian corporation, the corporation may be accepted as sole surety on the bond, whenever, in the opinion of the officer or officers whose duty it is to approve the bond, the rights of all parties in interest will be fully protected. When the surety on any such bond is a corporation authorized to do a surety company business, no justification shall be required.

Nothing herein shall be deemed to prevent the deposit of cash or other security in lieu of any surety or sureties, when permitted by the law, regulation, ordinance, rule or order concerned. [L 1915, c 197, §1; am L 1917, c 78, §1; RL 1925, §161; am L 1931, c 163, §1; RL 1935, §160; RL 1945, §497; RL 1955, §7-21; HRS §78-20; am L 1973, c 32, §1]

Case Notes

This section controls all surety affidavits. 30 H. 658.
Guarantee of corporation not ultra vires, when. 32 H. 667.
One surety sufficient. 33 H. 265.
Justification requirements. 33 H. 311.
Rights. 33 H. 545.
Subrogation. 33 H. 607.
Liability. 33 H. 632.

" **§78-21 Limitation of liability.** Except in cases of gross negligence, no public officer or employee shall be liable for damages to government property if such damages to government property were caused by the public officer or employee while performing work within the scope of the officer's or employee's employment. [L 1971, c 145, §1; gen ch 1985]

" **§78-22 REPEALED.** L 2000, c 253, §88.

" **§78-23 Leaves of absence.** (a) Employees shall be eligible for vacation leave, sick leave, and other leaves of absence, with or without pay, as negotiated under chapter 89 or adjusted under chapter 89C, as applicable.

(b) When an employee is transferred from one department to another within the same jurisdiction or to another jurisdiction within the State, the employee shall be given credit for the vacation earned or accumulated in the department from which the employee transferred, and the director of finance of the State or the equivalent officers of the several jurisdictions shall make the appropriate transfer of funds to implement the employee transfer. Moneys received from any such transfer of funds by a state agency financed by the general fund of the State shall be deposited with the director of finance of the State to the credit of the general fund of the State; provided that, when an employee is transferred from one department to another within the same jurisdiction, the transfer of funds shall not be made if the employee's salary is paid from the same fund. Compensation for any period of vacation allowance shall be paid at the rate to which the employee is entitled at the time the allowance is granted.

(c) Upon discharge, an employee shall be entitled to all of the employee's accumulated vacation allowance plus the employee's current accrued vacation allowance to and including the date of discharge, notwithstanding that the current accrued vacation allowance may not have been recorded at the time. If any employee dies with accumulated or current accrued vacation earned but not taken, an amount equal to the value of the employee's pay over the period of such earned vacation, and any earned and unpaid wages, shall be paid to the person or persons who may have been designated as the beneficiary or beneficiaries by the employee during the employee's lifetime in a verified written statement filed with the comptroller or other disbursing officer who issues warrants or checks to pay the employee for the employee's services as a public employee, or, failing the designation, to the employee's estate.

(d) Whenever an employee is to be discharged, voluntarily or involuntarily, the employee, at the option of the appointing authority, may be discharged and paid forthwith, in lieu of the employee's vacation allowance, the amount of compensation to which the employee would be entitled or which the employee would be allowed during the vacation period if the employee were permitted to take the employee's vacation in the normal manner, and in such case the employee's position may be declared vacant and may be permanently filled by a new appointee before the expiration of any vacation period following the date of the discharge. For an employee hired after June 30, 1997, who is to be discharged, voluntarily or involuntarily, the amount of compensation to be paid in lieu of vacation allowance under this section shall be computed using the rate of pay and amount of accumulated and accrued vacation on the date the employee is discharged. Prompt notice upon such forms and in such manner as may be required shall be given by the department head of any action taken under this provision.

(e) Payments of vacation allowance paid pursuant to subsections (c) or (d) shall be subject to the provisions of chapter 88D. [L 2000, c 253, pt of §74; am L 2003, c 109, §3]

Cross References

Leaves of absence to accept appointed positions exempt from the civil service; prohibited, see §76-30.5.

" [§78-23.5] Paid leave for state and county employees providing disaster relief services for the American Red Cross.

(a) The governor or mayor or their respective designees may grant a state or county employee who is a certified American Red Cross disaster volunteer up to thirty days paid leave of absence to perform disaster relief services for the American Red Cross, a federally chartered nongovernmental disaster relief organization, when a disaster has been:

- (1) Designated as level III or higher by American Red Cross regulations;
- (2) Officially declared by the President of the United States; or
- (3) Declared a state of emergency by the governor;

provided that the employee has prior authorization from the governor or mayor, or their respective designee, as applicable, and the leave of absence imposes no undue hardship on state or county operations.

(b) Employees granted leaves of absence pursuant to this section shall be paid at their regular rates of pay for those

regular hours during which the employees are absent from work, without loss of seniority, pay, vacation, sick leave, or earned overtime accumulations. [L 2003, c 24, §2]

" **[§78-23.6] Leave of absence to serve as bone marrow donor or organ donor.** Any officer or employee in the service of the State or any of the several counties shall be entitled to:

- (1) Seven days of paid leave each calendar year to serve as a bone marrow donor; and
- (2) Thirty days of paid leave each calendar year to serve as an organ donor. [L 2005, c 176, §1]

" **[§78-24] Injured employee; liability of third persons.**

(a) 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, to be a class exposed to unusually hazardous conditions, receives personal injury arising out of and in the performance of duty and without negligence on the employee's part, the employee shall be placed on accidental injury leave unless suspended or discharged for cause. The employee shall be continued on the department's payroll, as though the employee did not sustain an industrial injury, as follows:

- (1) During the first four months of the disability, at the employee's full regular monthly salary; and
- (2) Thereafter, during the period of total disability from work at sixty per cent of the employee's regular monthly salary.

The employee shall be entitled to all rights and remedies allowed under chapter 386; provided that any salary paid under this section shall be applied on account of any compensation allowed under chapter 386 or any benefits awarded under part III of chapter 88 to the employee.

(b) When the employer pays benefits to or incurs medical expenses on behalf of any of its employees under this section for any injury sustained under circumstances creating in some person or entity other than the employer a legal liability to pay damages in respect thereto, the employer or the employee may proceed against such third persons and recover all payments made, paid, or due under this section. The employer or employee shall have all of the rights and remedies contained in or provided for under section 386-8. [L 2000, c 253, pt of §74]

" **§78-25 Credits for employees receiving workers' compensation benefits; wage supplement.** (a) Where an employee is absent from work because of injuries incurred within the

scope of the employee's employment and the employee is receiving workers' compensation benefits, the employee shall continue to earn vacation, sick leave, and retirement credits as though the employee were not absent but performing duties of the employee's regular employment. Section 386-57 or any other law to the contrary notwithstanding, the employee shall have deducted from the employee's workers' compensation benefit checks an amount calculated in the same manner as if the employee were not absent but performing duties of the employee's regular employment to be used as the employee's contribution to the retirement system.

(b) An employee who is receiving workers' compensation wage loss replacement benefits may use the employee's accumulated sick leave or vacation credits to supplement the workers' compensation wage loss replacement benefits to a sum not to exceed the employee's regular salary. [L 2000, c 253, pt of §74; am L 2015, c 86, §3]

" **§78-26 Leave sharing program.** (a) The legislature, with regard to its employees, or the chief executive of a jurisdiction may establish a leave sharing program to allow employees to donate accumulated vacation leave credits to another employee within the same jurisdiction who has a serious personal illness or injury or who has a family member who has a serious personal illness or injury. The program shall allow employees who are not entitled to vacation leave to donate accumulated sick leave credits.

(b) The legislature, with regard to its employees, or the director of a jurisdiction desiring to establish a leave sharing program shall develop rules governing donors, recipients, and an approval process that ensures fair treatment and freedom from coercion of employees and imposes no undue hardship on the employer's operations. If it is administratively infeasible to allow leave sharing between different departments or different bargaining units, the rules may limit leave sharing to employees within the same department or same bargaining unit, as necessary. At a minimum, the rules shall require that an eligible recipient must have:

- (1) No less than six months of service within the respective jurisdiction;
- (2) Exhausted or is about to exhaust all vacation leave, sick leave, and compensatory time credits; provided that sick leave need not be exhausted when the illness or injury involves a family member;
- (3) A personal illness or injury or a family member's illness or injury certified by a competent medical examiner as being serious and the cause of the

recipient's inability to work; provided that the illness or injury is not covered under chapter 386 or, if covered, all benefits under chapter 386 have been exhausted; and

- (4) No disciplinary record of sick leave abuse within the past two years.

Notwithstanding the requirements of chapter 91, the legislature may establish a leave sharing program for legislative employees, in accordance with this section, under policies adopted separately by each house of the legislature and each legislative service agency, or jointly by any combination of entities thereof. [L 2000, c 253, pt of §74; am L 2001, c 37, §2]

" **[§78-27] Temporary inter- and intra-governmental assignments and exchanges.** (a) With the approval of the respective employer, a governmental unit of this State may participate in any program of temporary inter- or intra-governmental assignments or exchanges of employees as a sending or receiving agency. "Agency" means any local, national, or foreign governmental agency or private agency with government sponsored programs or projects.

(b) As a sending agency, a governmental unit of this State may consider its employee on a temporary assignment or exchange as being on detail to a regular work assignment or on leave of absence without pay from the employee's position. The employee on temporary assignment or exchange shall be entitled to the same rights and benefits as any other employee of the sending agency.

(c) As a receiving agency, a governmental unit of this State shall not consider the employee on a temporary assignment or exchange who is detailed from the sending agency as its employee, except for the purpose of disability or death resulting from personal injury arising out of and in the course of the temporary assignment or exchange. The employee on detail may not receive a salary from the receiving agency, but the receiving agency may pay for or reimburse the sending agency for the costs, or any portion of the costs, of salaries, benefits, and travel and transportation expenses if it will benefit from the assignment or exchange.

(d) An agreement consistent with this section and policies of the employer shall be made between the sending and receiving agencies on matters relating to the assignment or exchange, including but not limited to supervision of duties, costs of salary and benefits, and travel and transportation expenses; provided that the agreement shall not diminish any rights or

benefits to which an employee of a governmental unit of this State is entitled under this section.

(e) As a receiving agency, a governmental unit of this State may give the employee of the sending agency on a temporary assignment or exchange an exempt appointment and grant the employee rights and benefits as other exempt appointees of the receiving agency if it will benefit from the assignment or exchange. [L 2000, c 253, pt of §74]

" **[§78-28] In-service training programs.** Each director shall monitor, make recommendations, and develop policies and guidelines for suitable in-service training programs and activities so that the quality of service rendered by government employees may be continually improved. Participating agencies may be charged fees for training programs. [L 2000, c 253, pt of §74]

" **§78-29 Incentive and service awards.** (a) Each chief executive may establish incentive and service awards programs to recognize 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. The programs may allow appointing authorities to establish their own programs consistent with the policies of the chief executive.

(b) The programs may provide for cash awards to recognize suggestions, inventions, superior accomplishments, length of service, and other personal or group efforts. A cash award shall be in addition to the employee's regular compensation. The acceptance of a cash award shall constitute an agreement that use by the government of any idea, method, or device for which the award is made shall not form the basis of a further claim upon the government by the employees or the employees' heirs and assigns.

(c) Awards and expenses for programs may be paid from funds available to the departments and agencies benefiting from or responsible for recognizing the employee's or group of employees' contribution, as determined by the chief executive or appointing authority, as applicable. All administrative decisions made on the issuance of awards under this section shall be final and deemed a performance of a discretionary function of the chief executive or appointing authority. [L 2000, c 253, pt of §74; am L 2001, c 55, §36]

" **[\$78-30] Cafeteria plans.** (a) Each chief executive may establish a wage and salary reduction benefit program which qualifies as a cafeteria plan within the meaning of section 125 of the Internal Revenue Code of 1986, as amended. The cafeteria plan shall allow eligible employees to elect to reduce their pretax compensation in return for payment by the jurisdiction of the expenses of eligible benefits.

(b) In addition to any other powers and duties authorized by law, each chief executive may enter into all contracts necessary to establish, administer, or maintain the cafeteria plans.

(c) The contributions, interest earned, and forfeited participant balances may be held in trust outside of the jurisdiction's treasury for the benefit of the participants and the plan. The funds in trust shall not be subject to the jurisdiction's general creditors. Interest earned or forfeited participant balances may be used to defray participant fees and other administrative costs. [L 2000, c 253, pt of §74]

" **§78-31 Paid leave; education of children.** Employees shall be eligible for up to two hours of paid leave during normal business hours to attend either:

- (1) A mutually-scheduled parent-teacher conference for the employee's child attending a public or private school in grades kindergarten through twelve; or
- (2) A mutually-scheduled parent-caregiver conference for a preschool-aged child attending a licensed group child care center, as defined under section 346-151;

provided that the time-off shall not be credited against vacation or sick leave benefits, if any; and provided further that the provision of paid leave shall not adversely interfere with the operations of the work unit nor require the applicable agency to incur additional human resources or overtime costs.

The employee shall take no more than two mutually-scheduled conferences, per child, in a single calendar year. Travel time shall be included as part of the two hours permitted for each conference. [L 2003, c 108, §1; am L 2004, c 194, §1]

" **[\$78-32] Payment of approved travel costs for public officers and employees.** (a) This section shall apply to all approved travel costs incurred by an officer or employee of the State or a county in connection with the official business of the respective jurisdiction.

(b) Subject to subsection (d), the State and the counties may pay approved travel costs directly to:

- (1) The vendor providing the goods or services involved;
or

(2) The officer or employee for whom the approved travel costs are to be paid, by way of a cash advance prior to the date of purchase, unless the officer or employee affirmatively agrees to loan the State or a county the money for the travel costs and be reimbursed after the officer or employee pays for the travel costs.

(c) This section shall not be construed as precluding the reimbursement of approved travel costs to an officer or employee upon completion of travel for any costs that for any reason were not paid by the State or the county, as applicable, in accordance with subsection (b).

(d) As pertains to the officer or employee incurring approved travel costs, whenever there is a conflict between a collective bargaining agreement and this section, the terms of the collective bargaining agreement shall prevail.

(e) For the purposes of this section, "approved travel costs" means any determinable costs of travel for official state or county business approved by the respective jurisdiction and supported by a written invoice. The term includes the costs of transportation to and from a destination point, between destination points, or within a destination point; event registration fees; per diem allowances; and any other necessary costs related to the travel.

(f) An employer shall not take adverse employment actions against an officer or employee who does not affirmatively agree to loan the State or a county the money for the travel costs and be reimbursed after the officer or employee pays for the travel costs. [L 2016, c 158, §1]

" **§78-51 REPEALED.** L 2000, c 253, §89.

" **[\$78-52] Peer support counseling; sessions.** (a) Unless the context otherwise requires, for the purposes of this section:

"Emergency services personnel" means any employee of an emergency services provider who is engaged in providing firefighting, water safety, and emergency medical services.

"Emergency services provider" means any public employer that employs persons to provide firefighting, water safety, and emergency medical services.

"Employee assistance program" means a program established by a law enforcement agency or emergency services provider to provide counseling or support services to employees of the law enforcement agency or emergency services provider.

"Law enforcement agency" means any county police department, the department of public safety, and any state or county public body that employs law enforcement officers.

"Law enforcement officer" means a sheriff, deputy sheriff, police officer, parole officer, or probation officer.

"Peer support counseling sessions" includes critical incident stress management sessions.

(b) Any communication made by a participant or counselor in a peer support counseling session conducted by a law enforcement agency or by an emergency services provider for law enforcement officers or emergency services personnel, and any oral or written information conveyed in the peer support counseling session, is privileged and may not be disclosed by any person participating in the peer support counseling session.

(c) Any communication relating to a peer support counseling session made privileged under subsection (b), that is made between counselors, between counselors and the supervisors or staff of an employee assistance program, or between the supervisors or staff of an employee assistance program, is privileged and may not be disclosed.

(d) The provisions of this section apply only to peer support counseling sessions conducted by an employee or other person who:

- (1) Has been designated by a law enforcement agency or emergency services provider, or by an employee assistance program, to act as a counselor; and
- (2) Has received training in counseling and in providing emotional and moral support to law enforcement officers or emergency services personnel who have been involved in emotionally traumatic incidents by reason of their employment.

(e) This section applies to all oral communications, notes, records, and reports arising out of a peer support counseling session. Any notes, records, or reports arising out of a peer support counseling session are not public records for the purposes of chapter 92F.

(f) Any communication made by a participant or counselor in a peer support counseling session subject to this section, and any oral or written information conveyed in a peer support counseling session subject to this section, is not admissible in any judicial proceeding, administrative proceeding, arbitration proceeding, or other adjudicatory proceeding. Communications and information made privileged under this section may not be disclosed by the participants in any judicial proceeding, administrative proceeding, arbitration proceeding, or other adjudicatory proceeding. The limitations on disclosure imposed

by this subsection include disclosure during any discovery conducted as part of an adjudicatory proceeding.

(g) Nothing in this section limits the discovery or introduction in evidence of: knowledge acquired by any law enforcement officer or emergency services personnel from observation made during the course of employment; or material or information acquired during the course of employment that is otherwise subject to discovery or introduction into evidence.

(h) This section does not apply to:

- (1) Any threat of suicide or homicide made by a participant in a peer support counseling session or any information conveyed in a peer support counseling session relating to a threat of suicide or homicide;
- (2) Any information relating to abuse of spouses, children, or the elderly, or other information that is required to be reported by law; or
- (3) Any admission of criminal conduct.

(i) This section does not prohibit any communication between counselors who conduct peer support counseling sessions or any communications between counselors and the supervisors or staff of an employee assistance program. [L 2003, c 25, §1]

" **[\$78-53] Pretax transportation benefit program.** (a) Each chief executive may establish a wage and salary reduction benefit program which qualifies as a pretax transportation benefit program within the meaning of section 132 of the Internal Revenue Code of 1986, as amended. The pretax transportation benefit program shall allow eligible employees to elect to reduce their pretax compensation in return for payment by the jurisdiction of the expenses of eligible benefits.

(b) In addition to any other powers and duties authorized by law, each chief executive may enter into all contracts necessary to establish, administer, or maintain the pretax transportation benefit programs. [L 2012, c 45, §2]

"PART II. CAFETERIA PLANS--REPEALED

§§78-61 to 63 REPEALED. L 2000, c 253, §90.

Cross References

For present provision, see §78-30.