

MEMORANDUM

TO: All State HR Directors

FROM: Robert M. Czech, Chair/Chief Executive Officer 

DATE: October 7, 2011

RE: P.L. 2011, c. 70 (N.J.S.A. 52:14-7) – "New Jersey First Act"

A number of questions have been raised by various State and local entities with regard to interpretation and implementation of the new residency law, N.J.S.A. 52:14-7 (the "New Jersey First Act"). The following is a compilation of questions brought to our attention thus far and their answers for your information.

1. When does the "New Jersey First Act" become effective?

September 1, 2011.

2. Is there a "grandfather" provision in the law that allows employees who are already working for the State or local government to continue living out of state?

Yes. The statute provides that any "person, regardless of the office, employment, or position, who holds an office, employment, or position in this State on the effective date [Sept. 1, 2011] of P.L.2011, c.70 but does not have his or her principal residence in this State on that effective date shall not be subject to the residency requirement of this subsection while the person continues to hold office, employment, or position without a break in public service of greater than seven days." Thus, if a person is already an employee on September 1, 2011, and lives out of state, he is not required to move into New Jersey.

3. Can a current employee move out of state prior to the effective date (September 1, 2011) of the law?

Yes. As long as the change in residency takes place before the effective date of the law, September 1, 2011, a current employee may move out of the state and be eligible for the "grandfather" provision as set forth in question 2 above, which says that a person who holds employment but does not have residency in New Jersey **on the effective date** of the law shall not be subject to the residency requirement.

4. Can a current employee who lives in New Jersey move out of state after the effective date of the law?

No. The language cited above, that a person who holds employment but does not have residency in New Jersey on the effective date of the act shall not be subject to the residency requirement, requires that all others **are** subject to the requirement. This includes any person who was a New Jersey resident on the effective date of the act but then later moved out of state.

5. If an employee who lives in New Jersey and is employed on September 1, 2011 moves out of state after September 1, 2011, is that employee immediately subject to removal or does that employee have a window of time to move back in? If so, how long is that window? Is it one year, the same as new employees?

A current employee who moves out of state after September 1, 2011 does not get a window of time to move back in. The statute states that the one-year grace period is from the time the employee takes his office, position or employment, not one year from the time he moves out of state. The employee has to get an exemption before he moves, if possible. If he cannot get the exemption, he should not move. An employer, however, may want to give the employee notice to move back to New Jersey before initiating disciplinary action to remove him.

6. Will a current employee be able to apply for an "exemption" to move out of state after the effective date of the new law?

Yes. The employee will be able to request an exemption from the applicability of the law on the basis of "critical need or hardship" from the committee. The law does not limit the ability to apply to the committee for an exemption to only non-residents or new hires. However, if a current employee wishes to move out of state, he should apply in advance for an exemption, rather than move and then ask for the exemption, since once the current employee moves out of state, the law applies to him.

7. What constitutes a "break in public service" under the new statute which triggers the residency requirement for current employees?

The statute does not define "break in public service." The Civil Service Commission has proposed regulations, which will be published for comment in the November 7, 2011 *New Jersey Register* as well as the CSC website, which include a definition of a break in public service for purposes of the new law as "an actual separation from employment for more than seven calendar days due to such causes as resignation, retirement, layoff, or disciplinary removal. A leave of absence or a resignation/new appointment pursuant to N.J.A.C. 4A:4-7.9 shall not be considered a break in public service."

8. **If a person is given a letter prior to September 1, 2011 offering him an office, position or employment and informing him that he is being hired pending a background, physical or psychological investigation, and he does not start working until after September 1, what date is considered his start date for purposes of the residency law? If he lives outside New Jersey, is he subject to the residency requirement if his offer of employment was made prior to September 1?**

The date which triggers the application of the "grandfather" provision is the date he actually starts work, not the date he received the offer of employment. If he does not begin actually working until after September 1, the "grandfather" provision does not apply to him.

9. **Will the Civil Service Commission be promulgating rules to assist State and local employees and employers in interpreting the statutory requirements?**

Yes. The Civil Service Commission has proposed regulations, which will be published for comment in the November 7, 2011 *New Jersey Register* as well as the CSC website, which will assist State and local employees and appointing authorities in interpreting the statute.

10. **What employees are covered by the residency law? Does the residency law apply to temporary employees (TES)? Does it apply to part-time employees? Does it apply to employees of temporary agencies who are assigned to work at State locations? Does it apply to unclassified employees?**

The statute applies to all State and local government employees holding an office, position or employment, with two very narrow exceptions: a) certain faculty members of the State colleges and universities as specified in the law; and b) a State employee whose position requires the person to spend the majority of his or her working hours in a location outside of New Jersey.

No distinction is made between types of appointments, that is, temporary appointments, part-time appointments, or unclassified appointments. All appointments are treated similarly under the law - that is, New Jersey residency is required of all individuals on State or local payroll or holding an office with a State or local government. However, it should be noted that N.J.A.C. 4A:4-1.7 provides that temporary appointments are to positions "in which the job assignment is for an aggregate period of not more than six months in a 12-month period." Since, by definition, the appointment is for a shorter period than one year, the requirement that the employee attain New Jersey residency within one year may ultimately be moot since the appointment will have expired by that time.

By contrast, those individuals who are employees of temporary agencies under contract with State and local governmental entities are not subject to the law. No contractual or other type of relationship exists between those individuals and the public entity, other than the fact that they are assigned to work at that location. The individuals' salaries are paid by the private temporary agency and the terms

of employment are governed by that relationship. Therefore, those individuals who are stationed to work at public offices are not required to live in New Jersey.

- 11. If unclassified employees are covered under the residency law, how are they removed from employment? The proposed Civil Service regulations describe how to remove classified employees from employment for failure to satisfy the residency requirement, but how are unclassified employees' removals to be handled?**

As stated above, all employees are covered by the law. However, unclassified employees are not covered by the proposed Civil Service regulations since that agency may only regulate employees pursuant to specific statutory authority. Unclassified employees are "at will" employees, which means that they serve at the pleasure of the employer, and they may be removed for any reason whatsoever, so long as that reason is not discriminatory or illegal in some other way. Appointing authorities may nonetheless, if they so choose, develop an internal process which gives notice and opportunity to be heard to unclassified employees when they are removed for failure to satisfy the residency requirement, however such a process is not required under the law. If such a process is developed, it must be followed consistently in all residency removal cases of unclassified employees. In the event the appointing authority does not act to remove an unclassified employee who is not a New Jersey resident, the statute provides that any officer or citizen may bring an action in Superior Court for a judgment to oust the unclassified employee from his position.

- 12. How is residency defined? What process should be used to initially declare residency? If an issue arises as to an employee's residency, does the employer have a duty to investigate the employee's residency status?**

Residency is defined in the statute as meaning "the state (1) where the person spends the majority of his or her nonworking time, and (2) which is most clearly the center of his or her domestic life, and (3) which is designated as his or her legal address and legal residence for voting." This definition is also reflected in regulations being proposed by the Civil Service Commission. Upon the appointment of a new employee, the appointing authority should request documentation of the person's residence, or we believe it may accept a certification of State residency signed by the employee which includes the above statutory language. If the employer is aware that an employee may not reside in New Jersey despite certifying or documenting that he or she is in compliance with the law, then it should investigate the issue to determine whether or not the employee is actually a resident of New Jersey.

13. What is the role of the employer in applying for an exemption from the residency requirement on behalf of an employee?

The statute allows an employee to request an exemption from the provisions of the residency law "on the basis of critical need or hardship." It provides that "any person" may request the exemption. If the employer wishes to assist in the exemption application process on behalf of the employee, it may do that, but the law does not require its involvement. The employee can apply on his own behalf and present his case regarding critical need or hardship to the committee.

14. Is there a recommended statement that employers should use to inform new or prospective employees of the new residency requirement?

Appointing authorities may advise prospective and new hires of the following: "Effective September 1, 2011, all employees of State and local government must reside in the State of New Jersey, unless exempted under law. If you already work for State or local government as of September 1, 2011, and you do not live in New Jersey, you are not required to move to New Jersey. However, if you begin your office, position or employment on September 1, 2011 or later, you must reside in New Jersey. If you do not reside in New Jersey, you have one year after the date you take your office, position or employment to relocate your residence to New Jersey. If you do not do so, you are subject to removal from your office, position or employment."

We hope this information will be helpful in addressing any concerns your agency may have. If you have any questions regarding the contents of this memorandum, please contact the **Division of Merit System Practices and Labor Relations** at **(609) 984-7140**.