

## The “New Jersey First Act” Residency Requirements for Public Employees

Earlier this year Governor Christie signed into law the “New Jersey First Act” (P.L. 2011, c. 70). The law, which took effect on September 1, 2011, amended an existing law (R.S. 52:14-7) that regulated certain state government residency requirements. The new law establishes **new residency requirements for all public employees** and officers at all levels and types of New Jersey government agencies.

This notice summarizes the key elements of the law and provides interpretative guidance on its application. While focused on local government units, the guidance is generally applicable to all New Jersey government agencies.

The law requires that “every person holding an office, employment or position” in the State of New Jersey shall have their “principal residence” in the State of New Jersey. There are several limited exemptions to the law:

- 1) Employees hired on or after September 1, 2011 who are not a resident when hired receive a one year exemption. If they fail to establish residency within that year, they shall be deemed unqualified for holding the office, employment, or position.
- 2) Employees, officers, and appointees who did not meet the residency requirement on the effective date (i.e., residency was out-of-state on 9/1/2011), are exempted unless they break public service for a period of time greater than seven days.
- 3) Exemptions granted on the basis of critical need or hardship. The law established a committee to grant such exemptions. At the time of this Notice procedures for filing have yet to be developed. Once established, information will be available through the Civil Service Commission, Division of Local Government Services, and Department of Education websites.

The Frequently Asked Questions below elaborates on various circumstances surrounding these exemptions.

The law defines “principal residence” to mean:

- (1) where the person spends the majority of his or her non-working 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 residence for voting.

Simply having a home in New Jersey is not significant enough to meet the residency requirement; all the above requirements must be met.

The law specifically covers “every person holding an office, employment, or position:

- (1) in the Executive, Legislative, or Judicial Branch of this State, or
- (2) with an authority, board, body, agency, commission, or instrumentality of the State, including any State college, university, or other higher educational institution, and, to the extent consistent with law, any interstate agency to which New Jersey is a party, or
- (3) with a county, municipality, or other political subdivision of the State or an authority, board, body, agency, district, commission, or instrumentality of the county, municipality, or subdivision, or
- (4) with a **school district** or an authority, board, body, agency, commission, or instrumentality of the district.”

The use of the phrase “office, employment, or position” is interpreted to include individuals serving on boards or commissions as volunteers. Notwithstanding that, such individuals may fall under another exemption to the law.

## C. 70 Frequently Asked Questions

### 1. What is the effective date of P.L., c.70?

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. **\*\*Could a current employee have moved out of state prior to the effective date (September 1, 2011) of the law?**

Yes. As long as the change in residency took place before the effective date of the law, September 1, 2011, a current employee could have moved out of the state and stayed eligible for the "grandfather" provision as set forth in question 1 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. An employee considering moving should apply for exemption before a move, if possible. If the employee moves without getting an exemption, an employer may want to give the employee notice to move back to New Jersey before initiating disciplinary action to remove him/her.

**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 desires 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 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." This definition can reasonably be applied to all local units.

**8. If a person is given a letter prior to September 1, 2011 offering him an office, position or employment and that he is being hired pending a background, physical or psychological investigation, and did not start working until after September 1, what date is considered the start date for purposes of the residency law? If the person 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. \*\*Does the residency law apply to temporary or seasonal employees? Does it apply to part-time employees? Does it apply to employees of temporary agencies or other service providers who are assigned to work at government locations? Does it apply to unclassified employees?**

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 a government agency payroll or holding an office with a government agency. However, in the case of employees who work less than a year (Civil Service appointing authorities have specific rules to follow concerning temporary employees) 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 or other service providers 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 organization 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.