

A FIRE/EMS/SAFETY CENTER PUBLICATION



Minnesota
STATE COLLEGES
& UNIVERSITIES

**100 POINT EMPLOYMENT EXAMINATION
FOR FIREFIGHTER SELECTION
And
VETERANS PREFERENCE REQUIREMENTS**

March 1992
Rev. November 2003
Rev. November 14, 2004
Rev. November 20, 2007

Fire/EMS/Safety Center
Wells Fargo Place
30 7th Street East,
Suite 350
St. Paul, MN 55101-7804

651-649-5454 (Main Line)
1-800-311-3143
651-649-5409 (Fax)
www.firecenter.mnscu.edu

MINNESOTA STATE COLLEGES AND UNIVERSITIES

TABLE OF CONTENTS

100 POINT EMPLOYMENT EXAMINATION FOR FIREFIGHTER SELECTION 3
PART I - WRITTEN EXAMINATION - 30 POINTS 3
PART II - WORK PERFORMANCE TEST - MUST PASS 3
PART III - TRAINING/EDUCATION AND EXPERIENCE - 40 POINTS 3
PART IV - ORAL INTERVIEW - 30 POINTS 4
VETERANS PREFERENCE IN MINNESOTA PUBLIC EMPLOYMENT 5
MINNESOTA STATUTES 6
43A.11, MINNESOTA STATUTES 2007 6
197.455, MINNESOTA STATUTES 2007 6
197.48, MINNESOTA STATUTES 2007 7
197.481, MINNESOTA STATUTES 2007 7
QUESTIONS - VETERAN'S PREFERENCE IN STATE AND LOCAL GOVERNMENT EMPLOYMENT 8
WHAT IS "VETERAN'S PREFERENCE"? 8
TO WHICH POSITIONS DOES VETERAN'S PREFERENCE APPLY? 8
HOW DOES VETERAN'S PREFERENCE APPLY TO STATE CIVIL SERVICE? 8
HOW DOES VETERAN'S PREFERENCE APPLY TO POLITICAL SUBDIVISIONS? 8
HOW DOES VETERAN'S PREFERENCE WORK IN FIRING? 8
HOW ARE VETERAN'S PREFERENCE LAWS ENFORCED? 8
ARE RETIRED MILITARY PERSONNEL ELIGIBLE FOR VETERAN'S PREFERENCE? 8
VETERANS' PREFERENCE ACT OVERVIEW 10
INTRODUCTION 10
WHO IS A VETERAN? 10
APPLYING VETERANS' PREFERENCE 10
HIRING OR PROMOTING A VETERAN 10
TESTING 10
INTERVIEWING 11
PROMOTION 11
SENIORITY 11
DISCIPLINE AND DISCHARGE 11
SUSPENSION 11
TERMINATION OR DEMOTION 11
NON-DISCIPLINARY LAYOFF OR DEMOTION 12
VETERANS' PREFERENCE HEARING AND APPEALS PROCESS 12
HEARING 12
DUTY OF THE VETERANS' PREFERENCE HEARING BOARD 13
FINDINGS 13
JUDICIAL REVIEW OF THE PANEL DECISION 13
APPELLATE PROCEDURES 13
PENALTIES AND COSTS 13
CONCLUSION 13
SAMPLE NOTICE OF REJECTION OF VETERAN 14
SAMPLE LAYOFF NOTICE - HAND DELIVERED 14
SAMPLE TERMINATION NOTICE - HAND DELIVERED 15
SAMPLE JOB APPLICATION QUESTION 15
MINNESOTA DEPARTMENT OF VETERANS AFFAIRS CONTACT 16
MINNESOTA STATE COLLEGES AND UNIVERSITIES FIRE/EMS/SAFETY CENTER LIBRARY 16

100 POINT EMPLOYMENT EXAMINATION FOR FIREFIGHTER SELECTION

A 1990 Minnesota Supreme Court Case, Hall v. Champlain, No. C2-89-1355, resulted in the Court requiring all political subdivisions in the state to adapt their hiring systems to a 100 point rating system to enable the allocation of veteran's preference points.

This is an examination consisting of points awarded to candidates based on a score attained in a written examination, training and experience, and an oral interview. Departments may choose to use any of the components of this sample as long as the 100 point criteria is used and veteran's preference points are awarded appropriately.

This is an examination consisting of points awarded to candidates based on a score attained in a written examination, training and experience, and an oral interview.

This examination assumes that a fire department that responds to both fires and medical emergencies is seeking qualified candidates. Some candidates may have previous firefighting training and experience and others may not. The department desires to hire the best-qualified candidate(s). A detailed job description lists all of the duties the employee will be expected to perform.

In our examination, those persons who possess a valid Minnesota Driver's License (or are eligible to obtain a license) may take the written examination. Those receiving a score of 70% or better may take the Work Performance Test. The appointing authority may choose to interview any number of the top candidates including 3, 5, 7, 8, or 10 candidates, depending on the number of vacancies available.

PART I - WRITTEN EXAMINATION - 30 Points

A written examination evaluates reading comprehension at the ninth grade level, computation (addition, subtraction, multiplication and division), and communication proficiency in English (listening and speaking). An adult level reading test would determine if a candidate is able to read at the ninth grade level and therefore understand the "Essentials of Firefighting" text used in the Firefighter I course and texts used in other firefighter courses. The computation test will determine the candidate's ability to measure and apply the principles of friction loss, engine pressure, and nozzle pressure. The communication proficiency test will determine the candidate's ability to understand orders and instructions issued on the fireground and be able to communicate with other firefighters.

The appointing authority may determine the cut-off score for the written test. For example if the cut-off score is 70%, all those scoring 70% or higher are eligible to take the Work Performance Test, those scoring below 70% are not eligible to continue the testing procedure.

PART II - WORK PERFORMANCE TEST - MUST PASS

A Work Performance Test that evaluates the candidate's ability to do fireground tasks within a reasonable time limit.

PART III - TRAINING/EDUCATION AND EXPERIENCE - 40 Points

Points are awarded for education and experience relating to the job requirements as stated in the job description.

100 POINT EMPLOYMENT EXAMINATION FOR FIREFIGHTER SELECTION

- public fire education functions, and other fire department related requirements during a typical month? (or use another specific time period)
- 0-10 2. Is it clear to you the amount of your personal time that will be required in order to perform the above functions?
- 0-10 3. Would you have any difficulty responding to fire/EMS calls within ____minutes? (a certain time period, 5-10 minutes or whatever the department requires)

Keep in mind that you may select the specific criteria appropriate for your fire department and the above is only a sample.

VETERANS PREFERENCE IN MINNESOTA PUBLIC EMPLOYMENT

The Minnesota Veterans Preference Act (VPA) grants most veterans a limited preference over non-veterans in hiring and promotion for most Minnesota public employment positions, as granted in Minnesota Statutes 197.48, 43A.11, and 197.455. The Minnesota VPA Statutes apply to Minnesota public employment, "civil service laws, charter provisions, ordinances, rules or regulations of a county, city, town, school district, or other municipality or political subdivision of this state."

For Minnesota VPA purposes, Minnesota Statute 197.447 provides the definition/eligibility requirements of "veteran." Minnesota Statute 197.46 grants most veterans protection against unfair dismissals and demotions from most Minnesota public positions, without first providing the veteran a VPA hearing. However, there are various Minnesota public positions that are exempt from 197.46, and employers are NOT required to grant veterans a VPA employment termination hearing from those positions. Minnesota Statute 197.455 exempts Minnesota state civil service employment positions. Minnesota Statute 197.46 exempts the following public positions, "Nothing in section 197.455 or this section (197.46) shall be construed to apply to the position of private secretary, teacher, superintendent of schools, or one chief deputy of any elected official or head of a department, or to any person holding a strictly confidential relation to the appointing officer."

For copies of the most current published VPA Statutes, please visit www.revisor.leg.state.mn.us

The Minnesota VPA Statutes do **NOT** have authority regarding veterans' preference rights for U.S. Federal employment positions, including, but not limited to U.S. Postal positions. Questions regarding Veterans Preference rights relative to U.S. Federal positions should be directed to Mr. Kevin Nagel, the local U.S. Department of Labor's Veterans' Representative at (651) 296-3665 or e-mail Nagel.kevin@dol.gov.

Minnesota Statutes

43A.11, Minnesota Statutes 2007

43A.11 VETERAN'S PREFERENCE.

Subdivision 1. **Creation.** Recognizing that training and experience in the military services of the government and loyalty and sacrifice for the government are qualifications of merit which cannot be readily assessed by examination, a veteran's preference shall be available pursuant to this section to a veteran as defined in section [197.447](#).

Subd. 2.[Repealed, 2005 c 95 s 1; 2005 c 156 art 4 s 12]

Subd. 3.[Repealed, 2004 c 207 s 31]

Subd. 4.[Repealed, 2004 c 207 s 31]

Subd. 5. **Disabled veteran; definitions.** For the purpose of the preference to be used in securing appointment from an applicant pool, "disabled veteran" means a person who has a compensable service connected disability as adjudicated by the United States Veterans Administration, or by the retirement board of one of the several branches of the armed forces, which disability is existing at the time preference is claimed.

Subd. 6. **Preference for spouses.** A preference available pursuant to this section may be used by the surviving spouse of a deceased veteran and by the spouse of a disabled veteran who because of the disability is unable to qualify.

Subd. 7. **Ranking of veterans.** Applicants who meet the minimum qualifications for a vacant position and claim disabled veteran's preference shall be listed in the applicant pool ahead of all other applicants. Applicants who meet the minimum qualifications for a vacant position and claim nondisabled veteran's preference shall be listed in the applicant pool after those claiming disabled veteran's preference and ahead of nonveterans.

Subd. 8. **Notification.** The commissioner or an appointing authority, when notifying applicants that they have been accepted into the state's selection process, shall notify applicants that they may elect to use veteran's preference.

Subd. 9. **Rejection; explanation.** If the appointing authority rejects a member of the finalist pool who has claimed veteran's preference, the appointing authority shall notify the finalist in writing of the reasons for the rejection.

History: 1981 c 210 s 11; 1982 c 560 s 17-20; 1984 c 468 s 1; 1984 c 609 s 1; 1985 c 248 s 85; 1Sp1985 c 16 art 2 s 8; 1986 c 444; 2004 c 207 s 13-16

197.455, Minnesota Statutes 2007

197.455 VETERAN'S PREFERENCE APPLIED.

Subdivision 1. **Application.** This section shall govern preference of a veteran under the civil service laws, charter provisions, ordinances, rules or regulations of a county, city, town, school district, or other municipality or political subdivision of this state. Any provision in a law, charter, ordinance, rule or regulation contrary to the applicable provisions of this section is void to the extent of such inconsistency. Sections [197.46](#) to [197.48](#) shall not apply to state civil service.

Subd. 2. **Creation.** Recognizing that training and experience in the military services of the government and loyalty and sacrifice for the government are qualifications of merit which cannot be readily assessed by examination, a veteran's preference shall be available to a veteran as defined in section [197.447](#).

Subd. 3.[Repealed, 2005 c 95 s 1; 2005 c 156 art 4 s 12]

Subd. 4. **Nondisabled veteran's credit.** There shall be added to the competitive open examination rating of a nondisabled veteran, who so elects, a credit of five points provided that the veteran obtained a passing rating on the examination without the addition of the credit points.

Subd. 5. **Disabled veteran's credit.** There shall be added to the competitive open examination rating of a disabled veteran, who so elects, a credit of ten points provided that the veteran obtained a passing rating on the examination without the addition of the credit points. There shall be added to the competitive promotional examination rating of a disabled veteran, who so elects, a credit of five points provided that (1) the veteran obtained a passing rating on the examination without the addition of the credit points; and (2) the veteran is applying for a first promotion after securing public employment.

Subd. 6. **Disabled veteran; definitions.** For the purpose of the preference to be used in securing appointment from a competitive open examination, "disabled veteran" means a person who has a compensable service-connected disability as adjudicated by the United States Veterans Administration, or by the retirement board of one of the several branches of the armed forces, which disability is existing at the time preference is claimed. For purposes of the preference to be used in securing appointment from a competitive promotional examination, "disabled veteran" means a person who, at the time of election to use a promotional preference, is entitled to disability compensation under laws administered by the Veterans Administration for a permanent service-connected disability rated at 50 percent or more.

Subd. 7. **Preference for spouses.** A preference available pursuant to this section may be used by the surviving spouse of a deceased veteran and by the spouse of a disabled veteran who because of the disability is unable to qualify.

100 POINT EMPLOYMENT EXAMINATION FOR FIREFIGHTER SELECTION

Subd. 8. **Ranking of veterans.** An eligible with a rating augmented by veteran's preference shall be entered on an eligible list ahead of a nonveteran with the same rating.

Subd. 9. **Notification.** A governmental agency, when notifying eligibles that they have passed examinations, shall show the final examination ratings and preference credits and shall notify eligibles that they may elect to use veteran's preference to augment passing ratings.

Subd. 10. **Rejection; explanation.** If the appointing authority rejects a certified eligible who has received veteran's preference, the appointing authority shall notify the eligible in writing of the reasons for the rejection and file the notice with the appropriate local personnel officer.

History: 1975 c 45 s 4; 1981 c 210 s 54; 2004 c 207 s 29

197.48, Minnesota Statutes 2007

197.48 APPLICATION.

No provision of any subsequent act relating to any such appointment, employment, promotion, or removal shall be construed as inconsistent herewith or with any provision of sections [197.455](#) and [197.46](#) unless and except only so far as expressly provided in such subsequent act that the provisions of these sections shall not be applicable or shall be superseded, modified, amended, or repealed. Every city charter provision hereafter adopted which is inconsistent herewith or with any provision of these sections shall be void to the extent of such inconsistency.

History: (4369-2) 1931 c 347 s 2; 1Sp1981 c 4 art 1 s 19

197.481, Minnesota Statutes 2007

197.481 ENFORCEMENT.

Subdivision 1. **Petition.** A veteran who has been denied rights by the state or any political subdivision, municipality, or other public agency of the state under section [43A.11](#), [197.46](#), [197.48](#), or [197.455](#) may petition the commissioner of veterans affairs for an order directing the agency to grant the veteran such relief the commissioner finds justified by said statutes.

The petition shall contain:

- (1) the name, address, and acknowledged signature of the veteran;
- (2) the names and addresses of all agencies and persons that will be directly affected if the petition is granted;
- (3) a concise statement of the facts giving rise to the veteran's rights and a concise statement showing the manner in which rights were denied;
- (4) a statement of the relief requested.

Subd. 2. **Service.** Upon receipt of a petition herein, the commissioner shall serve a copy of same, by certified mail, on all agencies and persons named therein and on such other agencies or persons as in the judgment of the commissioner should in justice be parties to the proceeding. The veteran and all agencies and persons served shall be parties to the proceeding.

Subd. 3. **Subpoenas.** The commissioner shall have free access to relevant records of all parties and may issue subpoenas for and compel the attendance of witnesses and the giving of testimony and the production of books, records, accounts, documents and papers; and may administer oaths to witnesses. If any person shall fail or refuse to appear or testify regarding that upon which the person may be lawfully interrogated, or produce any books, records, accounts, documents or papers relevant in the matter under consideration, after having been lawfully required by subpoena, any judge of the district court in any county of the state where the subpoena was made returnable, on application of the commissioner, shall compel obedience or punish disobedience as for contempt as in the case of disobedience of a similar subpoena issued by such court.

Subd. 4. **Hearing.** The commissioner shall hold a hearing on the petition of any party within 20 days of serving, or being served with the petition. The veteran may demand an opportunity to be heard at a time set by the commissioner. A party who fails to demand such hearing within 20 days shall be heard only by permission of the commissioner, except that if any party demands to be heard all parties shall have the right to be heard. A hearing hereunder shall be conducted and orders issued in accord with sections [14.57](#) to [14.60](#) and [14.62](#), at the office of the commissioner or at a place the commissioner designates. The commissioner shall notify all parties, by mail, of the time and place of the hearing.

Subd. 5. **Personnel.** The commissioner may appoint a hearing officer to act in the commissioner's place and to employ such other personnel as are necessary to investigate facts in cases brought under this section. The affected political subdivision must bear all costs incurred by the commissioner under this section.

Subd. 6. **Appeals.** Appeals of orders issued under this section shall be in accordance with chapter 14.

Subd. 7. **Representation.** If a veteran receives a favorable decision hereunder and (a) a party to the proceeding appeals such decision to the district court or (b) if an action attacking the decision is begun, the commissioner shall become a party in such appeal or action and with the aid of the attorney general represent the veteran therein.

Subd. 8. **Enforcement.** When a party fails or refuses to comply with a final decision of the commissioner, the commissioner

100 POINT EMPLOYMENT EXAMINATION FOR FIREFIGHTER SELECTION

may commence an action in Ramsey County District Court requesting the court to order the party to comply with the order of the commissioner. If the commissioner has ordered an award of damages and if the court sustains or modifies the award, it shall enter judgment on the order or modified order in the same manner as in the case of an order of the district court, as provided in section [546.27](#).

History: 1973 c 570 s 1 subds 1-7; 1975 c 45 s 6; 1978 c 674 s 60; 1978 c 682 s 1,2; 1981 c 210 s 54; 1982 c 424 s 130; 1983 c 247 s 82; 1986 c 444; 1987 c 404 s 154

Questions - Veteran's Preference in State and Local Government Employment

What is "veteran's preference"?

To which positions does veteran's preference apply?

How does veteran's preference apply to state civil service?

How does veteran's preference apply to political subdivisions?

How does veteran's preference work in firing?

How are veteran's preference laws enforced?

Are retired military personnel eligible for veteran's preference?

What is "veteran's preference"?

The Minnesota Veteran's Preference Act (VPA) grants veterans a limited preference over nonveterans in hiring and promotion for most state and local governmental employment. It also provides local government employees who are veterans some protection against unfair demotions and dismissal.

These preferences and protections are commonly referred to as "veteran's preference" and are codified in Minnesota Statutes sections [43A.11](#), [197.455](#), [197.48](#), and [197.481](#).

To which positions does veteran's preference apply?

Minnesota veteran's preference applies to most positions of employment in state civil service, as well as to most positions within political subdivisions. VPA *does not apply* to employment in the private sector or federal government.

How does veteran's preference apply to state civil service?

In state civil service, people who claim veteran's preference and who meet the minimum qualifications for a vacant position are listed before qualified nonveteran applicants in the applicant pool for the position. Disabled veterans must be listed ahead of nondisabled veterans.

The appointing authority can hire anyone in the pool, but if it rejects a person in the finalist pool who has claimed veteran's preference, it must notify the person of the reasons for the rejection. ([Minn. Stat. § 43A.11](#))

How does veteran's preference apply to political subdivisions?

For political subdivisions (including counties, cities, towns, school districts, and any other political subdivisions), nondisabled veterans who have a passing score or rating on an exam can elect to receive a credit of five points (on a 100-point scale). Disabled veterans can elect to receive a credit of ten points. A disabled veteran can also use a credit of five points on a promotional exam. ([Minn. Stat. § 197.455](#))

How does veteran's preference work in firing?

A veteran holding a position of appointment or employment in any political subdivision can be removed from that position only for incompetence or misconduct established in a hearing, with due notice and stated charges in writing.

Exempted from such protection are veterans working as a secretary, teacher, superintendent of schools, chief deputy of any elected official or head of a department, or any person holding a strictly confidential relation to an appointing officer. ([Minn. Stat. § 197.46](#))

How are veteran's preference laws enforced?

A veteran who has been denied veteran's preference rights by the state or any political subdivision of the state may petition the commissioner of veterans affairs for an order directing the agency to grant the relief that the commissioner finds justified. The commissioner is given broad powers of subpoena, as well as access to records, witnesses, and documents. The affected political subdivision must bear all costs incurred by the commissioner for this purpose.

100 POINT EMPLOYMENT EXAMINATION FOR FIREFIGHTER SELECTION

In accordance with various provisions of the Administrative Procedure Act ([Minn. Stat. ch. 14](#)), either party may appeal the commissioner's orders to the district court. The commissioner and attorney general may represent the veteran in any appeal following a favorable decision for the veteran. When a party refuses or fails to comply with a final decision of the commissioner, the commissioner may ask the Ramsey County District Court to order the party to comply and award damages. ([Minn. Stat. § 197.481](#))

Are retired military personnel eligible for veteran's preference?

Since the post-Vietnam War era, persons who were eligible for a military pension based entirely on years of military service were not eligible for veteran's preference in Minnesota. However, that statutory provision was repealed in 2005. Retired military veterans now have the same preference as other veterans in state and local government hiring.

For more information: Contact the Minnesota Department of Veterans Affairs at 651-296-2345. For federal veteran's preference laws, contact the local veterans' representative for the U.S. Department of Labor at 651-297-1186.

VETERANS' PREFERENCE ACT OVERVIEW

****Please be advised that this entire document is intended for general information purposes only and does not constitute legal, coverage or risk management advice relative to a specific situation***

INTRODUCTION

Minnesota's Veterans' Preference Act (Minn. Stat. 197.46 *et seq.*) was enacted to provide public employment benefits and protections to veterans of military service. The Legislature established these statutes recognizing that the "training and experience in the military services and loyalty and sacrifice for the government are qualifications of merit which can not be readily assessed by examination." The Veterans' Preference Act provides veterans with security in public employment and also protection from the "ravages and insecurity of a political spoils system." This *Resource Briefing* examines the applicability of veterans' preference laws when hiring, promoting, terminating, demoting or suspending a veteran. It also provides a review to the veterans' hearing and appeals processes that may be available.

WHO IS A VETERAN?

The term "veteran" means a citizen or resident alien of the United States who has separated under honorable conditions from any branch of the armed forces of the United States if:

- he or she has either served on active duty for 181 consecutive days,
- has been disabled while serving on active duty
- has active service as a reservist.

In all cases, the United States Secretary of Defense must certify the active service and the honorable discharge of the veteran.

APPLYING VETERANS' PREFERENCE

An applicant for hiring or promotion may invoke special points for consideration during the hiring or promotion process. Veterans' Preference also provides protection from removal or wrongful termination by a public employer. Veterans' Preference applies to all public employers, including counties, cities, towns, school districts, or other municipalities or political subdivisions of the State of Minnesota, that recruit or employ veterans. Veterans' Preference applies to positions in government **except** the positions of private secretary, teacher, superintendent of schools, or one chief deputy of any elected official or head of a department, elected officials, temporary employees or any person holding a strictly confidential relation to the appointing officer.

HIRING OR PROMOTING A VETERAN

TESTING

The public employer must apply the Veterans' Preference laws during the hiring process. **Regardless of the system selected to identify qualified applicants for an interview, preference points must be assigned.** When the employer administers a written, formal test as part of the hiring process the law requires the test be rated on an 100 point scale. A veteran who achieves a passing score on the test is given an additional 5 points added to the passing score. A disabled veteran is entitled to have 10 additional points added to the passing score. (A disabled veteran is defined as a person who has a compensable service connected disability as adjudicated by the United States Veterans Administration, or by the retirement board of one of the several branches of the armed forces.) Preference points are added **only** when the applicant receives a passing grade. The applicants **must** request the preference. Finally, a determination as to the veteran's disability status **must** be made and verified before awarding additional disability points.

The veteran must request that Veterans' Preference points be applied to the passing score. The public employer should have a place on the application for the veteran to request Veterans' Preference. It should also indicate that proof of veteran or disabled veteran status may be required before preference will be granted.

An employer may request a copy of the applicants DD214 form before granting veterans preference rights to them. Employers should reference this requirement on the job application.

The additional points for Veterans' Preference cannot be used to alter a failing score to a passing score. If the test requires a score of 70 points to pass and the veteran scores a 68 no preference points are added. If the veteran scores a 70 then the score is increased to 75 (or 80 in the case of a disabled veteran).

100 POINT EMPLOYMENT EXAMINATION FOR FIREFIGHTER SELECTION

It is important to note that the public employer is not limited to the administration of a formal, written, 100-point test. The appointing authority has broad discretion to determine what criteria will be considered in awarding the 100 points. It may be based entirely on the job application, a written test, an oral examination, skills test or a combination of factors. The public employer may administer any type of evaluation so long as it is based on criteria capable of being reduced to a 100 point rating scale.

Regardless of the evaluation system adopted the public employer should articulate objective criteria on which the initial evaluation is based prior to accepting applications. The criteria must be based upon the actual job duties. An up-to-date job description is critical in determining the criteria that are utilized. The maximum number of points out of a total of 100 for each category must be determined in advance of the testing and must be awarded in a uniform manner. (These requirements are critical in many areas of employment law beyond the application of Veterans' Preference).

Veterans' Preference may be used by the surviving spouse of a deceased veteran and by the spouse of a disabled veteran who because of the disability is unable to qualify when making an application for employment.

INTERVIEWING

Veterans' Preference points are awarded when it is determined the applicant meets the minimum qualifications for the job. This increases the likelihood that the veteran will be interviewed. The Veterans' Preference Act does not provide absolute preference for veterans. Veterans' preference credit may increase the chance that a veteran will receive an interview however, there may be instances that even with the preference points the applicant falls short of points determined necessary for an interview. When this occurs the public employer is not obligated to interview the veteran. If there are 40 applicants who achieve a score of 95 a veteran with a score of 75 will not likely receive an interview for the position. The additional points will move the veteran up on the scale, but do not guarantee that the veteran will be at or near the top score. Whenever a public employer fails to hire a veteran who has received veteran's preference, the employer is required to notify the veteran in writing of the reasons for rejection.

PROMOTION

Veterans' Preference laws provide that 5 points are added to the competitive promotional examination rating of a disabled veteran. This veterans' preference **only** applies to disabled veterans who, at the time elect to utilize the preference is entitled to disability compensation for a permanent service related disability rated at 50% or more. **A disabled veteran can use the promotional preference only one time and only in the securing of the first promotional position after securing public employment.**

SENIORITY

The law requires that a promotional candidate with a rating augmented by veterans' preference be entered on an eligibility list ahead of a non-veteran with the same rating. Once the eligibility list is compiled, Veterans' Preference contains no guarantees as to seniority. The law addresses only the issue of veteran's ranking on an eligibility list. That is, a veteran hired at the same time as a nonveteran will be entitled to greater seniority by virtue of Veterans' Preference. Additionally, an employer which defines seniority by training date, rather than date of hire, is not in violation of the act as long as the veteran received preference points and was correctly ranked on the list of eligible candidates.

DISCIPLINE AND DISCHARGE

SUSPENSION

A veteran cannot be suspended without pay pending a determination of the charges under which they were proposed for termination. However, the public employer may suspend a veteran with pay pending a determination of the charges under which they were proposed for termination. A suspension of more than 30 days is considered to be a discharge for purposes of the Veterans' Preference laws. **A disciplinary suspension without pay which is unconnected to a discharge proceeding does not constitute a "removal" under the act, and is therefore permissible and no veterans' preference act hearing rights exist.**

TERMINATION OR DEMOTION

No veteran employed by a political subdivision "shall be removed from such position or employment except for incompetence or misconduct shown after a hearing, upon due notice, upon stated charges, in writing." Removal from a position or employment has been interpreted to mean discharge, suspension or demotion. In scrutinizing this

100 POINT EMPLOYMENT EXAMINATION FOR FIREFIGHTER SELECTION

standard, the Minnesota Supreme Court has held there is no significant difference between the “incompetence or misconduct” standard required by the act and the “just cause” standard identified in other public employment statutes and incorporated in most collective bargaining agreements.

The courts have held that the employer is required to establish that the veteran’s actions alleged to constitute misconduct or incompetence:

- relate to and affects the administration of the position,
- are of a substantial nature directly affecting the rights and interests of the public.
- touch the qualifications of the position and the performance of the veteran’s duties.
- establish the veteran is not fit and proper.
- do not fit the position.

NON-DISCIPLINARY LAYOFF OR DEMOTION

A public employer may layoff or demote a veteran, without a showing of incompetence or misconduct, where the veteran is the least senior employee and the position is abolished. The employer, however, cannot abolish the position and assign duties to other less senior positions as subterfuge to avoid a veteran’s right to a hearing. A layoff notice should state that the employee has 60 days to petition the district court for a writ of mandamus compelling reinstatement and back pay if they believe that the layoff is being used to avoid rights under the Veterans Preference Act. The notice should also state that the veteran has the alternative right to petition the Commissioner of Veterans Affairs for a hearing on the matter. When a position is abolished in good faith, an employer’s failure to give notice of a veteran’s right to challenge the layoff tolls the 60 day period for the veteran to petition for a hearing. It does not entitle the veteran to back pay from the date of abolition to the date the veteran receives notice of the veterans preference rights. A hearing on the issue of abolition of position may lead to an order to reinstate the veteran employee. Reinstatement is appropriate only when it is established that the abolition of the veteran’s position was not in good faith.

VETERANS’ PREFERENCE HEARING AND APPEALS PROCESS

According to the Veterans’ Preference Act, a public employer that wishes to remove a veteran from employment must notify the veteran of the intent to dismiss. Elements of the notice must include:

- statutory grounds for the proposed termination/demotion;
- factual basis for the proposed termination/demotion;
- state that, pursuant to the Veterans’ Preference laws, the employee may have the right to request a hearing within sixty (60) days of receipt of the notice.
- state that if the employee fails to request a hearing within the sixty (60) day period, the employee’s right to a hearing and other legal remedies for reinstatement will be waived.
- state that the hearing will be before a neutral panel.

Failure of the public employer to provide a discharge veteran of this notice indefinitely extends the 60-day limitation period for requesting the hearing. **During this 60-day period the public employer is obligated to compensate the veteran.** If the veteran chooses to appeal, compensation continues until final disposition is made. If the veteran fails to request a hearing within sixty (60) days of receiving the notice, the veteran’s right to a hearing is waived, as are all other remedies for reinstatement under the Veterans Preference Act.

The notice of a possible right to a veteran’s hearing should be included with every discharge. If the employee is not a veteran they cannot invoke the statutory rights, but failure to provide the notice may expose the employer to unlimited liability if the employee is a veteran.

HEARING

The law provides that the veteran has the right to a hearing before a neutral body prior to discharge from employment. The hearing panel may consist of a civil service commission, the Merit System, the Personal Board of Appeals appointed pursuant to the County Personnel Act, a grievance arbitration panel (if the employee agrees to have the decision of the arbitrator apply as the veteran’s hearing) or some other panel authorized by statute. If no such panel is in place then the appeal is heard by an ad hoc panel. Selection of the ad hoc panel provides that:

- each party appoints a person to the panel. The two panel members then jointly choose a third member. If they are unable to decide upon the third member, the parties may have the district court judge appoint the third panel member.
- failure or refusal by the veteran to choose a panel member, resulting in the delay of the hearing, may preclude the veteran from receiving an award of back pay.

100 POINT EMPLOYMENT EXAMINATION FOR FIREFIGHTER SELECTION

When public employers have failed to limit remedies available to veterans, veterans who are covered by a collective bargaining agreement may have a right to a Veterans' Preference Hearing **AND** to arbitration under terms of the agreement. If the veteran is a member of a bargaining unit, the employer and the veteran may agree to have an arbitrator serve as the veterans' preference hearing officer. The collective bargaining agreement may also limit the employee's access to the grievance procedure if the veteran elects to proceed under the statute. The agreement cannot limit the veteran's access to the statutory process.

Each side may conduct discovery in preparation for the process. Within 10 days of the demand from the other side, a party is obligated to disclose:

- Names and addresses of all witnesses with a brief summary of testimony.
- Any statements of the parties or witnesses.
- All other discovery material available through the rules of civil procedure.

DUTY OF THE VETERANS' PREFERENCE HEARING BOARD

After hearing testimony and examining evidence the hearing panel may fashion a remedy other than the action proposed by the employer. If the hearing panel finds incompetence or misconduct and that the employer acted reasonably, it may only modify the proposed penalty upon substantial evidence of extenuating circumstances that justify a lesser penalty.

Minnesota courts have found, in interpreting the Act, the board is implicitly authorized to fashion a remedy other than that of the employer, if the evidence presents extenuating circumstances. Extenuating circumstances could be such things as family problems, illness or disability.

FINDINGS

The decision of the hearing panel must be made in writing. The decision must include findings of fact, conclusions of law and a detailed listing of extenuating circumstances relied upon in modifying the disciplinary sanction if the panel concluded that modification was proper. This determination must be made upon substantial evidence in the record.

The veteran may appeal the findings of the hearing panel to the district court. The appeal must be in writing and state the grounds of the appeal. The employer must be served with notice to appeal within 15 days of the decision and it must be filed with the court administrator within 10 days after service upon the employer. (The employer may appeal the decision, but only on the very limited basis that the panel exceeded its authority granted by statute or engaged in misconduct that significantly impacted its decision.)

JUDICIAL REVIEW OF THE PANEL DECISION

The question before the reviewing court is whether the hearing panel abused its discretion. On appeal, the factual findings must be upheld if they are supported by substantial evidence on the record however, the district court is free to exercise its independent judgment.

APPELLATE PROCEDURES

The right of appeal from a district court mandamus order pursuant to Minn. Stat. 197.46, or from an order of the Commissioner pursuant to Minn. Stat. 197.481, is to the Court of Appeals. A petition for writ of certiorari by an aggrieved party for judicial review must be filed with the court of appeals and served on the agency not more than thirty (30) days after receipt of the agency's final decision and order. If a request for reconsideration is made within ten days after the Department of Veterans' Affairs decision and order, the 30-day period will not begin to run until disposition of the application for reconsideration.

PENALTIES AND COSTS

The willful disregard of veterans' preference laws may constitute a misdemeanor by the public employer. An aggrieved veteran can also petition the Commissioner of Veterans' Affairs for relief. Under the Act, a wrongfully discharge veteran is entitled to compensation. Even if the discharge is upheld the veteran is entitled to compensation through the hearing decision of the hearing panel. If reinstated the veteran is entitled to back-pay and benefits. The employer is responsible for all costs of the hearing process regardless of whether or not it prevails.

CONCLUSION

The Veterans' Preference Act provides preference for veterans applying for public employment. It also extends protections when the employer's actions may affect a veteran's employment status. This publication has attempted to provide advice on complying with the Veterans' Preference Act. The Veterans' Preference Act represents an

100 POINT EMPLOYMENT EXAMINATION FOR FIREFIGHTER SELECTION

important part of personnel law in Minnesota. If you have questions related to this topic contact your agency attorney.

Please be advised that this entire document is intended for general information purposes only and does not constitute legal, coverage, or risk management advice relative to a specific situation.

SAMPLE NOTICE OF REJECTION OF VETERAN

Dear Candidate:

This letter is to inform you that you have not been selected for the position of _____, for which you applied. The reason you were not selected for the position was that:

(another finalist was chosen based upon the final interview)

(another finalist was chosen on the basis of the score received on the competitive examination)

(another finalist was chosen based upon the score received on the evaluation of the applicant's experience and training)

You were awarded _____ points based upon your status as a (veteran)(disabled veteran)(eligible spouse of a veteran).

Thank you for your interest in employment with _____.

Best wishes,

Personnel Director

Cc: Applicant file for position of _____

SAMPLE LAYOFF NOTICE - *Hand Delivered*

RE: Notice of Layoff

Dear Employee:

You are hereby notified that employer intends to place you on layoff from your position as position, effective date.

If you are an honorably discharged veteran, you may have certain rights relating to your layoff under the Minnesota Veterans Preference Act. Pursuant to the Act, you have the right to either petition the District Court for a writ of mandamus, Minn. Stat. 197.46, or petition the Commissioner of Veterans Affairs pursuant to Minn. Stat. 197.481 for a hearing, to determine whether your layoff was in good faith. If you choose to take either of these actions, you must do so within sixty (60) days of receipt of this notice. Your failure to do so within sixty (60) days shall constitute a waiver of your rights to contest your layoff under the Veterans Preference Act.

If you have any questions, please contact me.

Best wishes,

Personnel Director

Cc: Employees Personnel File

SAMPLE TERMINATION NOTICE - *Hand Delivered*

RE: Notice of Intent to Discharge

Dear Employee:

You are hereby notified that Employer intends to remove you from your position as position. The statutory ground(s) for your proposed discharge is/are:

(incompetence) (and) (misconduct)

The specific factual grounds for your proposed discharge, based on the information currently available, include but are not limited to:

(set forth specific facts)

Pursuant to the Veterans Preference Act, Minn. Stat. 197.46, if you are an honorably discharged veteran you have the right to request a hearing on your removal within sixth (60) days of receipt of this notice. Your request for a hearing must be made in writing to employment office. Failure to timely request a hearing within this sixty (60) day period shall constitute a waiver of the right to a hearing. Such failure shall also waive all other available remedies for reinstatement to your position.

(You are hereby suspended with pay pending the outcome of the discharge proceedings)
(You must provide employer with a copy of your DD214 form establishing that you are an eligible, honorably discharged veteran. Please forward the necessary proof to my attention within five (5) days of receipt of this notice.)

If you have any questions, please contact me.

Best wishes,

Personnel Director
Cc: Employee's Personnel File

SAMPLE JOB APPLICATION QUESTION

Are you an honorably discharged veteran of the armed forces of the United States or are you otherwise eligible to claim Veteran's Preference Points? Yes___ No___

Do you wish to claim Veterans' Preference Points? Yes___ No___

If you checked yes you must provide the employer with a copy of your DD214 form before the preference points will be granted.

If you are a disabled veteran or otherwise entitled to claim disabled veterans preference points and wish to claim such additional points, please check here. _____

Minnesota Department of Veterans Affairs Contact

**Clark Dyrud, Commissioner
State Veterans Service Building
20 West 12th Street, Room 206C
St. Paul, Minnesota 55155-2006**

www.mdva.state.mn.us

www.minnesotaveteran.org

Main Phone Number / Reception (651) 296-2562

LinkVet (888) 546-5838

DD 214 Requests (651) 296-2562

FAX (651) 296-3954

Questions/comments concerning this publication should be directed to

Minnesota State Colleges and Universities Fire/EMS/Safety Center Library

**Wells Fargo Place
30 7th Street East, Suite 350
St. Paul, MN 55101-7804**

Main Number: (651)-649-5454

Toll Free Number: (800) 311-3143

FAX Number: (651) 649-5409

<http://www.firecenter.mnscu.edu/>