

HIRING PREFERENCES FOR VETERANS AND SPOUSES OF SERVICEMEMBERS

Since the Civil War, veterans have received some form of preference when applying for government jobs. This preference recognizes “that sacrifices are made by those serving in the Armed Forces” and prevents people from being penalized for that service.ⁱ Essentially, when “external competitive hiring procedures” are used, certain veterans and their spouses who apply for vacancies will receive additional points on their scores to move higher in the rank for employment. This document provides an overview of some of the current preferences available.

I. Preferences for Veterans applying for Public Sector Jobs

Both the federal and state government provide preferences to veterans applying for certain jobs. For example, preferences are available when “External Competitive Hiring Procedures” are being used to fill a position with the federal government. The agency or department uses specific proceduresⁱⁱ to rank all candidates based upon minimum qualifications and other applicable factors and then gives each applicant a “numerical score/rating.”ⁱⁱⁱ Additional points are added to the score of eligible veterans, and then the applicants are ranked “in the order of their augmented rating.”^{iv} Hiring decisions are then based upon this rating.

The **federal government** has specific qualifications that must be met before a veteran will receive preference points.^v Veterans are separated into various preference categories, and these categories determine whether eligible veteran candidates will receive either 5 points or 10 points.^{vi}

The **State of Arizona** has a similar hiring preference law that applies to the merit system of employment with the state.^{vii} Similar to the federal laws, veterans, who meet certain requirements, have 5 points added to their examination scores and those with a service-connected disability have 10 points added to their scores.^{viii} Unlike the federal law, the state does not have an age limit for applicants to receive a preference.^{ix}

II. Preferences for Spouses and Select Family Members

Several initiatives have been implemented “to help retain military members and enhance the well-being of military families.”^x For example, the Military Spouse Preference program and the Family Member Preference Program of Executive Order 13473 provide hiring preferences for jobs with the **federal government**.^{xi}

The *Military Spouse Preference* (“MSP”) creates hiring preferences for military spouses of “active duty military members of the U.S. Armed Forces (including Coast Guard), who relocate to accompany their spouse on a permanent change of station (PCS) move.”^{xii} The MSP was created by Ronald Regan and applies to vacancies for civil employment

at the Department of Defense.^{xiii} If the eligibility requirements are met,^{xiv} an eligible spouse receives MSP hiring preference consideration for vacant positions once they arrive at the permanent station of their servicemember spouse.^{xv}

The *Family Member Preference* Program adds 10 points to the numerical score of spouses, widows, widowers, or mothers of certain veterans.^{xvi} This type of preference is usually referred to a “derived preference” because it is based on the service of a veteran who is not able to use the preference.^{xvii}

Arizona state and local governments also grant certain spouses a 5-point preference when applying for civil positions.^{xviii}

III. Veterans Preferences with Federal Contractors

Congress has enacted laws to support the reintroduction of Veterans since 1933.^{xix} Since 1974, laws have required federal contractors to implement programs that extend hiring preferences to veterans.^{xx} Essentially, these employers have an affirmative duty to ensure equal employment opportunities to employees and applicants afforded veteran status.

The federal government requires federal contractors and subcontractors to take affirmative steps “to hire and promote qualified, targeted veterans, which includes special disabled veterans, Vietnam veterans, any other veterans who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized, and any veteran during the one-year period beginning on the date of such veteran’s discharge or release from active duty.”^{xxi} Currently, a federal (sub)contractor is covered by these requirements if it entered into a contract of \$100,000 or more on or after December 1, 2003.^{xxii}

Since 2003, some government (sub)contractors are required to make a good faith effort “to prepare and maintain an affirmative action program at each establishment”^{xxiii} for the following categories of veterans:

1. Disabled veterans,
2. Veterans of various wars and campaigns,
3. Recipients of the Armed Forces Service Medal, and
4. Veterans who have separated from service in the last three years.^{xxiv}

Some (sub)contractors also must comply with extensive mandatory job listing requirements.^{xxv}

Indeed, there are extensive regulations governing the requirements for affirmative action programs for veterans. The U.S. Department of Labor’s Veterans’ Employment and Training Service (“VETS”)^{xxvi} and the Office of Federal Contract Compliance Programs (“OFCCP”)^{xxvii} administer these regulations and have the authority to promulgate revisions to them. In July 2008, VETS created additional regulations to

implement the Jobs for Veterans Act.^{xxviii} These regulations require government contractors to use a specific form to track and annually report the number of veterans that are employed in their workforce.^{xxix} These forms are called the VETS-100 and VETS-100A Reports.^{xxx}

Any covered veteran may file a complaint with the OFCCP if he or she believes a federal contractor has violated a provision of these affirmative action requirements.^{xxxi}

Where can I find out more?

For additional information about the Federal Laws and Hiring System:

- ODEP: <http://www.dol.gov/odep/audiences/veterans.htm>
- OPM's job openings: <http://www.usajobs.gov>
- OFCCP: <http://www.dol.gov/ofccp/index.htm>
- Veterans preference: <http://www.opm.gov/veterans/html/vetguide.asp>
- VETS: <http://www.dol.gov/vets/welcome.html>

For additional information about the State of Arizona System:

- Arizona Department of Administration: <http://www.hr.state.az.us/>
- Arizona Department of Veterans Services, Veterans Guide Pamphlet:
<http://www.azdvs.gov/Departments/VSD/Veterans%20Guide.pdf>

Other sources of information:

- Spouse employment page of the National Military Family Association:
<http://www.militaryfamily.org/get-info/support-family/spouse-employment/>
- Military OneSource: <http://www.militaryonesource.com/>

ⁱ <http://www.dol.gov/elaws/vets/vetpref/vetspref.htm>.

ⁱⁱ http://www.opm.gov/deu/Handbook_2007/DEO_Handbook.pdf.

ⁱⁱⁱ *Id.* at 91.

^{iv} *Id.*

^v See, e.g., 5 U.S.C. § 2101(1) (separation with an honorable or general discharge); 5 U.S.C. § 2101(2) (active duty in “Armed Forces” limited to certain branches); *Hesse v. Department of the Army*, 104 M.S.P.R. 647 (2007) (if disabled, “active duty” interpreted more broadly); 5 U.S.C. § 2108(4); 38 U.S.C. § 5303A (certain exceptions to eligibility).

^{vi} 5 U.S.C. §§ 2108, 3309. Veterans are **5 point preference eligible** if their active duty service meets any of the following: 180 or more consecutive days, any part of which occurred during the period beginning September 11, 2001 and ending on a future date prescribed by Presidential proclamation or law as the last date of Operation Iraqi Freedom; or between August 2, 1990 and January 2, 1992; or 180 or more consecutive days, any part of which occurred after January 31, 1955 and before October 15, 1976; or in a war, campaign or expedition for which a campaign badge has been authorized or between April 28, 1952 and July 1, 1955. *Id.* Veterans are **10 point preference eligible** if they served at any time, and have a service connected disability, or received a Purple Heart.) *Id.*

^{vii} A.R.S. § 38–492; A.R.S. § 38-491.

^{viii} A.R.S. § 38–492. Veterans in Arizona are eligible if they were separated honorably from more than six months within the United States Armed Forces.

^{ix} A.R.S. § 38-491. Some federal positions have maximum entry ages. 5 U.S.C. § 3307. However, preference eligible veterans may apply and be considered for vacancies regardless of age requirements if the agency waives the maximum age in circumstances provided by the Merit Systems Protection Board in *Robert P. Isabella v. Department of State & Office of Personnel Management*. 2008 M.S.P.B. 146 (2008).

^x 10 U.S.C. § 1784. (1985) (The MSP program applies only if: 1) The spouse was married to the military spouse prior to the reporting date to the new assignment; and 2) The relocation was based on PCS move and not for separation or retirement; and 3) The vacancy is within the commuting area of the spouse permanent new duty station; and 4) The spouse is among the best qualified group and is within reach for selection. (*quote from* www.mcbbutler.usmc.mil/chro/documents/MSP%20Handout.pdf).

^{xi} See also Executive Order 13474, 73 F.R. 57229 (Oct. 1, 2008).

^{xii} 10 U.S.C. § 1784; see also www.cpms.osd.mil/fas/staffing/pdf/st006.pdf.

^{xiii} Executive Order 12568, 51 F.R. 35497 (Oct. 2, 1986).

^{xiv} 10 U.S.C. § 1784(b).

^{xv} <http://www.mcbbutler.usmc.mil/chro/documents/MSP%20Handout.pdf>.

^{xvi} 5 U.S.C. §§ 2108, 3309.

^{xvii} http://jobs.faa.gov/p_Vet_Pref_Info.htm.

^{xviii} A.R.S. § 38-492. Spouses are eligible if they are the spouse or surviving spouse of the following servicemembers: “1. Any veteran who died of a service-connected disability. 2. Any member of the armed forces who is serving on active duty and who, at the time of application, is listed by the secretary of defense of the United States in any of the following categories for not less than ninety days: (a) Missing in action. (b) Captured in the line of duty by a hostile force. (c) Forcibly detained or interned in the line of duty by a foreign government or power.” *Id.*

^{xix} The Wagner-Peyser Act, 29 U.S.C. § 49 et seq.

^{xx} 38 U.S.C. § 4212 et seq. (2002) (originally passed in 1974).

^{xxi} Department of Labor OSAVET Fact Sheet 97-5 (<http://www.dol.gov/vets/programs/fact/vet97-5.htm>).

^{xxii} See the Jobs for Veterans Act^{xxii} amendments to VEVRAA at 38 U.S.C. § 4212(a) (2002). The amount of the contract that triggered this requirements was \$25,000 or more if the contract was entered into prior to December 1, 2003.

^{xxiii} See 41 C.F.R. § 60-250.40(a)-(b).

^{xxiv} 38 U.S.C. § 4212 (3)(A).

^{xxv} Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Disabled Veterans, Recently Separated Veterans, Other Protected Veterans, and Armed Forces Service Medal Veterans, 72 Fed. Reg. 44,393 (Aug. 8, 2007) (codified at 41 C.F.R. pt. 60-300).

^{xxvi} VETS Home Page, <http://www.dol.gov/vets/>. VETS mission is to “Provide Resources and Expertise to Assist and Prepare [veterans] to Obtain Meaningful Careers, Maximize their Employment Opportunities, and Protect their Employment Rights.” *Id.* (emphasis omitted).

^{xxvii} http://www.dol.gov/ofccp/regs/compliance/ca_vevraa.htm.

^{xxviii} 41 C.F.R. Part 61–300 et al.

^{xxix} 41 C.F.R. § 61-300.11.

^{xxx} http://www.dol.gov/vets/programs/fcp/2009_federal_contractor_program_fs.htm.

^{xxxi} <http://www.dol.gov/ofccp/regs/compliance/pdf/pdfstart.htm>.