

## INFORMATION MEMO

# Veterans Preference in Hiring

*Learn about the state law requiring cities to award preference to veterans for most open, competitive employment positions. Understand the preference system and how to apply it in your city's hiring process.*

### RELEVANT LINKS:

[Minn. Stat. § 197.455.](#)

[Winberg v. University of Minnesota, 499 NW 2d 799 – \(Minn. 1993\).](#)

[Minn. Stat. § 197.447.](#)

[38 C.F.R. § 3.12a.](#)

[38 U.S.C. § 106.](#)

## I. Minnesota Veterans Preference Act

State law requires political subdivisions of the state to award preference points to veterans for most open, competitive positions and establishes the requirements persons must meet in order to qualify for Veterans Preference. For reference, Minnesota Statutes § 43A.11 applies to Veterans Preference as it relates to the State of Minnesota personnel management, whereas Minnesota Statutes § 197.455 governs “preference of a veteran under the civil service laws, charter provisions, ordinances, rules or regulations of a county, home rule charter or statutory city, town, school district, or other municipality or political subdivision of this state.”

Cities are political subdivisions of the state, but it is less clear if other city-created entities, like Housing and Redevelopment Authorities or Economic Development Authorities, are also subject to the Veterans Preference Act. The main factor a Minnesota court considered when ruling on this issue was whether the entity has taxing authority. For questions on this, it is a best practice to work with your city attorney since the case law is limited and city-created entities are often established differently.

### A. Veterans

For purposes of offering a preference, a veteran is defined under the Veterans Preference Act as a citizen of the United States or a resident alien separated from active duty under honorable conditions from any branch of the U.S. armed forces:

- After having served on active duty (not active duty for training) for 181 consecutive days; OR
- By reason of disability incurred while serving on active duty; OR
- Who has met the minimum active duty required as defined by CFR, Title 38, Section 3.12a (to qualify, the individual must have completed the full period for which a person was federally called to active duty.); OR
- Who has active military service certified under federal law (world war service by particular groups, such as: women air force service pilots, merchant marine, etc.).

This material is provided as general information and is not a substitute for legal advice. Consult your attorney for advice concerning specific situations.

## RELEVANT LINKS:

[Minn. Stat. 197.455.](#)

[Employment Application, LMC Model Form.](#)

See Appendix A, Examples of appropriate documentation of veterans preference eligibility for open, competitive exams and See Appendix B, Examples of appropriate documentation of veterans preference eligibility for promotional exams.

[Minn. Stat. § 197.455.](#)  
See Appendix A, Examples of appropriate documentation of veterans' preference eligibility for open, competitive exams.

[Minn. Stat. § 197.455, subd. 5.](#)

## B. Preference

Preference is a credit of points available to qualified veteran applicants to recognize the training and experience they received as a result of serving in the military. The points associated with this preference are required for open, competitive positions only.

Since April 19, 2012, municipalities have been required to increase Veterans Preference points as follows when rating city employment applications:

- 10 points for nondisabled veterans (for reference, previously this was five points).
- 15 points for disabled veterans (for reference, previously this was 10 points).

Changes in the law and related rules that occurred in 2004 and 2005 called into question whether the Veterans Preference rating scale maximum must be based on a 100-point rating scale or a different total, such as a 105 or 115-point scale. Cities may find it helpful to follow a conservative approach and continue to use a 100-point rating scale, with a subtotal maximum of 85 points before Veterans Preference points are awarded, unless civil service rules require otherwise. The employer is responsible for determining the passing score (i.e. minimum qualifications for the position).

The spouse of a deceased veteran, or of a disabled veteran who because of the disability is unable to use the preference, is entitled to the same preference. However, eligible spouses of a disabled or deceased veteran must also meet the minimum qualifications in order to receive preference points.

### 1. Open, competitive exams

Veterans Preference only applies to open, competitive positions. It does not apply to processes that are only open to internal applicants (see promotional exams below). Veterans can use preference points for each position for which they apply. If an internal candidate applies for a position open to the public, internal candidates are entitled to the same Veterans Preference as external candidates (10 or 15 points).

### 2. Promotional exams

Veterans do not typically receive preference for internal-only processes.

## RELEVANT LINKS:

See Appendix B, Examples of appropriate documentation of veterans' preference eligibility for promotional exams.

[Minn. Stat. § 197.455.](#)

[N.W. vs. City of St. Paul Respondent](#), 2016 OAH Docket No. 65-3100-33225.

[State ex rel. McGinnis v. Police Civil Service Commission of Golden Valley](#), 253 Minn. 62, 75, 91 N.W.2d 154, 163 (1958).

However, veterans with a disability rating of 50% or greater from injuries that occurred on or as a result of active duty, AND received a passing score on the promotional exam, are entitled to five veterans preference points when applying for their first promotion after entering public employment. To be clear, in accordance with the Statute, the disabled veteran (rated 50% or greater) can only use the five points once, and that would be only for their first promotional (internal only) process. In the event the disabled veteran would be unsuccessful in securing that first promotional opportunity (i.e., not hired for the position), the veteran would not be eligible for the five points again in subsequent promotional opportunities.

This applies to INTERNAL ONLY promotional processes. One decision by an administrative law judge (ALJ), adopted by the commissioner of veteran's affairs, finds a disabled vet may not use the five preference points when applying for a subsequent promotion, even when the disabled vet did not claim the points when applying for the first promotion.

Note the ALJ decisions are given weight by the courts but do not set a standard. Again, if a process is open to the public, internal candidates are entitled to the same preference (10 or 15 points) they would receive as if they were an external candidate.

### 3. Exception for department head positions

The law does not require cities to give preference points to Department Heads. An individual is considered a department head when the:

- Individual is in charge of the work done by the department.
- Work requires technical professional training.
- Individual is the highest authority at that level of government as to his or her official duties.
- Employee supervises all the work in the department.
- Success of the department depends upon his or her technique.
- Employees of the department are under his or her direction.
- Employee's duties are more than merely different from other employees.
- Employee has the power to hire and fire subordinates.

Cities should use caution in applying this exemption and consult an attorney before assuming an employee will be considered a department head. In general, the definition of department head will be narrowly construed by the courts and any doubt will be resolved in favor of the veteran's entitlement to rights under the statute. Many cities will find that their definition of department head does not necessarily meet the definition for purposes of veterans' preference.

## RELEVANT LINKS:

[Veterans Affairs OAH Docket No. 12-3100—14431-2.](#)  
[Crnkovich v. Independent School District No. 701](#), 273 Minn. 518, 142 N.W.2d 284 (1966).  
[Lund v. Bemidji](#), 209 Minn. 91, 295 N.W. 514 (1940).

[Castel v. Village of Chisolm](#), 173 Minn. 485, 217 N.W. 681 (1928).

[Minn. Stat. 197.455, subd. 9.](#)  
[Employee Application, LMC Model Form.](#)

See Appendix A, Examples of appropriate documentation of veterans' preference eligibility for open, competitive exams.

See Appendix A, Examples of appropriate documentation of veterans' preference eligibility.

## 4. Exception for temporary positions

Pursuant to a 2001 Veterans Affairs Office of Administrative Hearing and a 1966 court case, cities are not required to provide preference points to temporary employment positions. However, cities must use caution when defining temporary appointments, especially for “temporary” employees the city rehires annually. In one case the court treated a sewer worker who had been continuously employed for five years as a regular status employee even though he reapplied and was reappointed annually for a position classified as a one year only job. In another case, a firefighter was entitled to veterans protections even though his one-year fixed term position expired, since the veteran firefighter had been continuously reappointed to the position on an annual basis for five years.

## II. Procedural requirements

### A. Notification and documentation

The city must notify veterans of the availability of preference points. This is most often achieved by including a Veterans Preference form in the application materials. To claim preference, a veteran must complete and submit the form, and supply a copy of his/her DDForm214 (Certificate of Release from Active Duty) or other documentation verifying service to substantiate the services information as well as the character of the discharge. Employers often find it helpful to request applicants provide member copy four of the DD214, or other documentation verifying service to substantiate the services information requested on the form.

Applicants claiming disabled Veterans Preference must also supply documentation of a compensable service connected disability rating. Usually this is accomplished with a letter from the U.S. Department of Veterans Affairs (USDVA) Rating Board's decision stating that the injury occurred on, or as a result of, active duty and the amount of compensation. Additional documentation may be needed to verify points for spouses of deceased or disabled veterans.

A city can probably impose a deadline for the veteran to supply the required documentation, as long as it is reasonable, such as seven days after the application deadline. Any timeframe established must be applied consistently to all applicants.

Remember, it is the candidate's responsibility to supply appropriate documentation. A city is not required to award preference if the veteran does not supply the required documentation within a reasonable timeframe.

## RELEVANT LINKS:

[HR Reference Manual, chapter 2 – Section IV, Veterans preference. Training and Experience Rating Sheets, LMC Model Forms. Contains 8 self-calculating Xcel worksheets. And Supplemental Applications, LMC Model Forms. Contains 7 models.](#)

[Stever, v. City of St. Paul, 2015 OAH 20-3100-32630, 2015 WL 7621423. Balfanz v. City of St. Paul, 2014 OAH 68-3100-31036, 2014 WL 2895352; Utsch v. Big Stone Cty., No. C4-96-2428, 1997 WL 527234 \(Minn. Ct. App. Aug. 26, 1997\).](#)

Failing to collect information about veterans preference from applicants during the application process probably does not require the city to have to redo the entire hiring process. The next best thing to collecting it during the application process is to send a letter to everyone who applied for the position who meets the minimum qualifications and ask them to return the Veterans Preference form within a reasonable timeframe.

## B. Training and Experience Rating

Again, changes in the law in 2004 and some related rules in 2005 called into question whether the Veterans Preference rating scale maximum is based on a 100-point rating scale or a different total, such as a 115-point scale. Cities may find it helpful to follow a conservative approach and continue to use a 100-point rating scale (called a Training and Experience, or T&E, Rating), with a subtotal maximum of 85 points before Veterans Preference points are awarded, unless otherwise clarified, such as in a city's civil service rules.

The Training and Experience Ratings should be developed before the city advertises a position, or at least before the completed applications are reviewed. This ensures objective criteria are in place and applied without influence from applications received.

Using the job description, the city must create a list of the qualifications necessary to do the job. Each qualification is assigned a point value. Typically, a training and experience rating has three sections: minimum qualifications based on the essential functions of the job; desirable qualifications (additional training, education, occupational licensures, or experience); and veterans preference.

## C. Rating applications

The importance of rating employment applications for applicable positions, and avoiding a blanket interviewing approach whereby all veterans meeting the minimum requirements are interviewed, has been affirmed through recent administrative case law and a 2016 discussion with the Department of Veterans Affairs. Thus, it is clear cities must use a Veterans Preference rating scale (conservatively based on a 100-point rating scale -called a Training and Experience, or T&E, Rating, with a subtotal maximum of 85 points before Veterans Preference points are awarded, unless otherwise clarified, such as in a city's civil service rules) . on all positions subject to veterans preference, and allocate the veterans preference points to qualifying veterans.

Using the Training and Experience Rating, applications should be scored as follows:

## RELEVANT LINKS:

[Utsch v. Big Stone Cty.](#), No. C4-96-2428, 1997 WL 527234 (Minn. Ct. App. Aug. 26, 1997).

[Veterans' Affairs OAH Docket No. 20-3100-32630. Minn. Stat. § 197.455, subd. 10. Job Applicant "No Hire / No Interview" Letter, LMC Model Form.](#)

- Score applicants using the documentation requested of all candidates by
- Determining if applicants meet the minimum qualifications;
- For candidates with a passing score (met all of the minimum qualifications), award points for any desirable qualifications that are met;
- Award preference points to qualified veterans who meet the minimum requirements; and
- Select the top candidates for interviews, including any veterans who tie with the lowest score of any applicant chosen for an interview.

Avoid two common misconceptions in scoring: veterans automatically receive preference points and that preference points require cities to hire veterans. Both of these statements are false.

Veterans do not automatically receive preference points. To receive preference points, a veteran must meet the definition of "veteran" provided in state guidelines and provide appropriate documentation. The veteran must also receive a passing score (i.e. meet the minimum qualifications) established for the position.

Veterans preference points do not require cities to hire veterans. Rather, preference points are generally awarded at the time of application review, so the city is not required to guarantee an interview, nor must the city hire a veteran from the interview pool.

## D. Rejection notices

In the administrative law decision linked to the left it was found cities must provide veterans who meet the minimum qualifications -- meaning they score high enough to be eligible for the job before the preference points are awarded -- with their final examination ratings. Additionally, to complete the city's obligation in the hiring process a written notice must be sent to veterans who are rejected. The written notice must state the reason for the rejection.

For example, a city could indicate "You were not chosen for an interview at this time because you did not meet minimum requirements for the position." If the candidate did meet the qualifications the city might indicate, "The city has chosen to interview candidates who more closely fit our needed qualifications." A model rejection letter for various veteran applicant scenarios is linked to the left.

## III. Failure to apply preference

There may be many adverse consequences if a city fails to apply veterans preference points:

## RELEVANT LINKS:

[Minn. Stat. § 197.455.](#)  
[Minn. Stat. § 43a.16.](#)  
LMC information memo,  
*Veterans Preference in  
Discipline, Discharge, or Job  
Elimination.*

800.925.1122  
651.281.1200  
[HRbenefits@lmc.org](mailto:HRbenefits@lmc.org)  
League HR Reference  
Manual.  
MN Dep't of Veterans'  
Affairs.  
651.296.2562

- The city may be liable for all costs associated with a lawsuit and/or civil penalties.
- There may be bad publicity for the city as an employer.
- The city may be ordered to redo the hiring process.
- The court may require the city to revise and/or establish new recruitment procedures.
- The employees may lose confidence in the city's hiring practices.

## IV. Probationary Periods

Effective July 1, 2016, a city may require employees, including veterans, to complete an initial probationary period as defined under Minn. Stat. § 43A.16 (defined to be no less than 30 days but not exceed two years of full-time equivalent service). However, after serving an initial probationary period for a city, a veteran would not be subject to additional probationary periods such as for a promotion or new assignment. Thus, once the initial probationary period expires, a veteran may not be removed unless incompetency or misconduct is shown through a removal hearing.

Given this change in law, some cities who had previously not required probationary periods for employees have considered doing so now.

In those situations, it is important to work with your city attorney to include strong disclaimer language stating no contractual relationship is created by the probationary period to avoid weakening the at will status of many city employees.

## V. Further assistance

If you have any additional questions, please contact the League's Human Resources and Benefits Department, refer to the League's Human Resources Reference Manual, or contact the Minnesota Department of Veterans Affairs.

## Appendix A:

### Examples of appropriate documentation of Veterans Preference eligibility for open, competitive exams

| Type of Preference           | Explanation  | Recommended Documentation   | Points |
|------------------------------|--|---|--------|
| Veteran                      | As defined in Minn. Stat. §197.447.  | “Member Copy 4” of the DD214 (separation from active duty)  | 10     |
| Disabled Veteran             | Must have a compensable service-connected disability rating. (See Note 1)  | <ol style="list-style-type: none"> <li>1) “Member Copy 4” of the DD214</li> <li>2) Summary of Benefits Letter from the United States Department of Veterans Affairs (USDVA) or an Armed Forces Retirement Board showing a service-connected disability and a compensation amount.</li> </ol>  | 15     |
| Spouse of a Disabled Veteran | <p>The veteran must be unable to qualify for the specific position the spouse is applying for due to the nature of the veteran’s service connected disability.</p> <p>The spouse of a disabled veteran must first obtain a passing rating on the examination. In order to determine if his/her disabled spouse is unable to qualify because of the disability, there is no clear test to point to but some analysis by the city is required. To help with this analysis, a city will want to request documentation from the disabled veteran, such as an Award letter from the USDVA, to verify what the disability is in order to determine how it relates to the position requirements. (See Note 2)</p> <p>In the event the disabled veteran has, for</p> | <ol style="list-style-type: none"> <li>1) Copy of the Marriage Certificate</li> <li>2) “Member Copy 4” of the veteran’s DD214</li> <li>3) Summary of Benefits Letter from USDVA or an Armed Forces Retirement Board showing a service-connected disability and a compensation amount</li> <li>4) Award Letter or Statement of the Case from USDVA verifying a service-connected disability related to the position requirements.</li> </ol> | 15     |

| Type of Preference  | Explanation   | Recommended Documentation   | Points |
|---|---|---|--------|
|   | example, a 100% disability rating, that typically denotes an individual who is not employable. Then the spouse who obtained a passing rating on the examination would be entitled to the 15 points.   |   |        |
| Surviving spouse of a deceased veteran  | Spouse of a veteran who died. Spouse cannot have re-married.<br><br>Surviving spouse must obtain a passing rating on the examination.   | 1) Copy of the Marriage Certificate<br>2) "Member Copy 4" of the veteran's DD214<br>3) Death Certificate or other proof of death.   | 10     |
| Surviving spouse of a deceased veteran who had a service-connected disability | Surviving spouse of a veteran who had a service-connected disability at time of death. Spouse cannot have re-married.<br><br>The surviving spouse of a disabled veteran must first obtain a passing rating on the examination. In order to determine if his/her disabled spouse would have been unable to qualify because of the disability, there is no clear test to point to but some analysis by the city is required. To help with this analysis, a city will want to request documentation about the disabled veteran, such as an Award letter from the USDVA, to verify what the disability was in order to determine how it would have related to the position requirements. (See Note 2)<br><br>In the event the disabled veteran had, for example, a 100% disability rating, that typically denotes an individual who is not employable. Then the surviving spouse who obtained a passing rating on the examination would be entitled to the 15 points. | 1) Copy of the Marriage Certificate<br>2) "Member Copy 4" of the veteran's DD214<br>3) Summary of Benefits Letter from USDVA or an Armed Forces Retirement Board showing a service-connected disability and a compensation amount<br>4) Award Letter or Statement of the Case from USDVA verifying a service-connected disability related to the position requirements<br>5) Death Certificate or other proof of death. | 15     |

*Note 1:*

Minn. Stat. §197.455, subd. 6, references a compensable service-connected disability. Per the Minnesota Department of Veterans Affairs, in order to have a compensable service-connected disability, in most cases, a disability rating must be 10% or more. However, a veteran with a 0% disability rating may receive Special Monthly Compensation (SMC). The USDVA Summary of Benefits Letter will list the amount of compensation received, if any.

*Note 2:*

Veterans Preference eligibility is essentially a legal question based on Minnesota Statute and Case Law. In complicated cases your City Attorney should be consulted.

## Appendix B:

### Examples of appropriate documentation of Veterans Preference eligibility for promotional exams

| Type of Preference   | Explanation   | Recommended Documentation   | Points |
|--|---|---|--------|
| Disabled Veteran   | <p>The disabled veteran, who so elects, is eligible for five points provided that: (1) the veteran obtains a passing rating on the examination without the five additional points and (2) the veteran is applying for a first promotion after securing public employment.</p> <p>The veteran must have a permanent compensable service-connected disability rating of 50% or more.</p>  | <ol style="list-style-type: none"> <li>1) "Member Copy 4" of the DD214</li> <li>2) Summary of Benefits letter from the United States Department of Veterans Affairs (USDVA) verifying a service-connected disability of at least 50% and a compensation amount.</li> </ol>  | 5      |
| Spouse of a Disabled Veteran who has a service-connected disability rated at least 50% | <p>The veteran must be unable to qualify for the specific position the spouse is applying for due to the nature of the veteran's service connected disability.</p> <p>The spouse of a disabled veteran must be applying for a first promotion after securing public employment and obtain a passing rating on the examination. In order to determine if his/her disabled spouse is unable to qualify because of the disability, there is no clear test to point to but some analysis by the city is required. To help with this analysis, a city will want to request documentation from the disabled veteran, such as an Award letter from the USDVA, to verify what the disability is in order to determine how it relates to the position requirements.</p> <p>In the event the disabled veteran has, for example, a 100% disability rating, that typically denotes an individual who is not employable. Then the spouse who obtained a passing rating on the examination would be entitled to the 5 promotional points.</p> | <ol style="list-style-type: none"> <li>1) Copy of the Marriage Certificate</li> <li>2) "Member Copy 4" of the veteran's DD214</li> <li>3) Summary of Benefits Letter from USDVA verifying a service-connected disability of at least 50% and a compensation amount</li> <li>4) Award Letter or Statement of the Case from USDVA verifying a service-connected disability related to the position requirements.</li> </ol> | 5      |

| Type of Preference   | Explanation   | Recommended Documentation   | Points   |
|--|---|---|----------|
| <p>Surviving spouse of a deceased veteran who had a service-connected disability rated at least 50% at time of death</p> | <p>Surviving spouse of a veteran who had a service-connected disability at time of death. Spouse cannot have re-married.</p> <p>The surviving spouse of a disabled veteran must be applying for a first promotion after securing public employment and obtain a passing rating on the examination. In order to determine if his/her disabled spouse would have been unable to qualify because of the disability, there is no clear test to point to but some analysis by the city is required. To help with this analysis, a city will want to request documentation about the disabled veteran, such as an Award letter from the USDVA, to verify what the disability was in order to determine how it would have related to the position requirements.</p> <p>In the event the disabled veteran had, for example, a 100% disability rating, that typically denotes an individual who is not employable. Then the surviving spouse who obtained a passing rating on the examination would be entitled to the 5 promotional points.</p> | <ol style="list-style-type: none"> <li>1) Copy of the Marriage Certificate</li> <li>2) "Member Copy 4" of the veteran's DD214</li> <li>3) Summary of Benefits Letter from USDVA verifying a service-connected disability of at least 50% and a compensation amount</li> <li>4) Award Letter or Statement of the Case from USDVA verifying a service-connected disability related to the position requirements</li> <li>5) Death Certificate or other proof of death.</li> </ol> | <p>5</p> |

*Note:*

Veterans Preference eligibility is essentially a legal question based on Minnesota Statute and Case Law. In complicated cases your City Attorney should be consulted.