SUBJECT: Administration of Veterans’ Preference in the Career Service

STATUTORY/RULE REFERENCE:  
Section 1.01(14), Definitions, Florida Statutes (F.S.)  
Chapter 295, Laws Relating to Veterans: General Provisions, Florida Statutes (F.S.)  
Rule 55A-7, Veterans’ Preference In Appointment And Retention In Employment, Florida Administrative Code (F.A.C.)

EFFECTIVE DATE:  
October 4, 2006  
Revised: August 23, 2007  
Revised: July 7, 2009  
Revised: April 5, 2010  
Revised: September 15, 2010

FORMS: N/A

ADDITIONAL REFERENCE MATERIAL: N/A

I. SCOPE AND PURPOSE

From time to time, agencies seek clarification regarding application of veterans’ preference. This document addresses frequently asked questions and may be used as a reference tool for state agencies, human resource staff, and hiring managers of the State Personnel System (SPS). It is intended to provide general guidance in administering the provisions governing veterans’ preference and was prepared based on discussions with the Total Quality Management Administrator/Veterans’ Preference, for the Florida Department of Veterans’ Affairs (FDVA). However, in the event of any discrepancy between this document and the laws and rules governing veterans’ preference, the final authority is the veterans’ preference statutes, rules, policies and requirements, as administered by the Florida Department of Veterans’ Affairs.

Throughout history, American society has strived for ways to acknowledge the contribution of military veterans. To this end, the Florida Legislature enacted legislation that governs how the hiring practices of the State and its political subdivisions will give preference and priority to military veterans, in recognition of their sacrifices, and as a form of compensation for having deferred their education and civilian careers (commonly referred to as “veterans’ preference”).

Florida laws related to veterans’ preference date back to the 1949 passage of Chapter 295, F.S., which followed the passage of similar federal legislation. As such, Section 295.07, F.S., addresses preference in appointment and retention, and Section 295.09, F.S., addresses reinstatement or reemployment, and promotion preference. Additional sections of the chapter define who receives preference and how this benefit is to be administered. This 1949 statute, together with numerous revisions, administrative rulings, and District Court of Appeal decisions, continues to be Florida’s basis for granting veterans’ preference with the state and its covered political subdivisions including counties, municipalities, special districts, public universities, community colleges, and public school districts.

Veterans’ preference applies only to positions under the Career Service System within the SPS.
II. DEFINITIONS

For purposes of this guideline, the following definitions apply:

**Appointment** – Pursuant to Rule 55A-7.003(1), F.A.C., this term means employment of a preference-eligible applicant into a vacant position with an agency within the SPS.

**Covered Position** - Pursuant to Rule 55A-7.005, F.A.C. and Section 295.07(4)(a) this term means all positions under the Career Service System within the SPS.

**Promotional Preference** – Pursuant to Section 295.09, F.S., when a career service employee has served in the Armed Forces of the United States and is discharged with an honorable discharge and the agency has reemployed or reinstated such person in accordance with state law and the provisions of the federal Uniformed Services Employment and Reemployment Rights Act (USERRA) such person shall also be awarded preference in promotion to a covered position and shall be promoted ahead of all others who are as well qualified or less qualified for the position.

**Retention Preference** – Pursuant to Section 295.07, F.S., veterans’ preference shall be given in retention of veterans and eligible spouses of veterans. Veterans’ preference ensures that veterans are given special consideration at each step of the retention process in a proposed layoff action; however, the statute does not require the preference to be absolute.

**Vacant Position** – Pursuant to Rule 55A-7.003(10), F.A.C., this term means a position which the covered employer has announced as being open for recruitment and available to all applicants. A position that is announced as being open to employees only, to be filled by the reassignment, promotion or demotion of an employee is not a vacant position for the purposes of veterans’ preference with the exception of a veterans’ preference eligible employee seeking promotion.

**Veteran** – Pursuant to Section 1.01(14), F.S., this term means a person who served in the active military, naval, or air service and who was discharged or released under honorable conditions only or who later received an upgraded discharge under honorable conditions, notwithstanding any action by the United States Department of Veterans’ Affairs on individuals discharged or released with other than honorable discharges. To be eligible for veterans’ preference as a wartime veteran, a veteran must have served in a campaign or expedition for which a campaign badge or expeditionary medal has been authorized or a veteran must have served at least one day during a wartime period as delineated in Section 1.01(14), F.S.

**Veterans’ Preference** – As it relates to appointment, retention, reinstatement and reemployment, veterans’ preference ensures that eligible veterans, and eligible spouses of veterans, are given special consideration at each step of the employment selection and retention process; however, the preference does not guarantee that a veteran will be the candidate selected to fill the position.

III. GUIDING PRINCIPLES

A. Eligibility for Veterans’ Preference

As it relates to appointment, retention, reinstatement and reemployment, veterans’ preference is applicable to covered positions within the SPS. The veterans’ preference seeking applicant must be a resident of the State of Florida, have received a discharge under honorable conditions and, in accordance with Section 295.07(3) F.S., meet one or more of the following criteria (categories):
Category #1 - A veteran with a service-connected disability who is eligible for or receiving compensation, disability retirement, or pension under public laws administered by the U.S. Department of Veterans’ Affairs and the Department of Defense, or

Category #2 - The spouse of a veteran who cannot qualify for employment because of a total and permanent service-connected disability, or the spouse of a veteran missing in action, captured, or forcibly detained or interned in line of duty by a foreign power, or

Category #3 - A veteran of any war who has served on active duty for one day or more during a wartime period, excluding active duty for training, and who was discharged under honorable conditions from the Armed Forces of the United States of America, or

Category #4 - The un-remarried widow or widower of a veteran who died of a service-connected disability, or

Category #5 - A veteran who has served in a qualifying campaign or expedition for which a campaign badge or expeditionary medal has been authorized.

B. Military Service Eligible for Veterans’ Preference

To receive preference as a wartime veteran pursuant to Rule 55A-7.003(1), F.A.C. and Section 295.07, F.S., a veteran must have served on active duty in a non-training status for one (1) day during one of the following periods of wartime service as defined in Section 1.01(14), F.S.:

1. Spanish-American War: April 21, 1898, to July 4, 1902, and including the Philippine Insurrection and the Boxer Rebellion.

2. Mexican Border Period: May 9, 1916, to April 5, 1917, in the case of a veteran who during such period served in Mexico, on the borders thereof, or in the waters adjacent thereto.

3. World War I: April 6, 1917, to November 11, 1918; extended to April 1, 1920, for those veterans who served in Russia; also extended through July 1, 1921, for those veterans who served after November 11, 1918, and before July 2, 1921, provided such veterans had at least 1 day of service between April 5, 1917, and November 12, 1918.

4. World War II: December 7, 1941, to December 31, 1946.


8. Operation Enduring Freedom: October 7, 2001, and ending on the date thereafter prescribed by presidential proclamation or by law.


Note that the receipt of a campaign or expeditionary medal is not required, only service during those wartime periods.
C. Character of Military Service Eligible for Preference

Since 1948, there have been six types of military discharges:

1. Honorable
2. General
   a. Under honorable
   b. Under less than honorable (OTH)
3. Uncharacterized (Trainee Discharge) considered honorable unless otherwise indicated
4. Undesirable
5. Bad Conduct (BCD)
6. Dishonorable

Only those discharged with their character of service noted on the DD Form 214 as one of the following are eligible for preference in employment:

1. Honorable
2. General – under honorable

As noted in Section III, B., an additional requirement for veterans’ preference is to have served on active duty in a non-training status for one (1) day in a wartime period. Based on this active duty requirement, those discharged with their character of service indicated as “uncharacterized”, even though honorable, will not qualify for preference as the person will not have had active duty in a non-training status. Preference also does not apply to any person who has been classified by any branch of the Armed Forces of the United States as a deserter.

D. Determining Veterans’ Preference

In order to be considered for preference in employment, a veterans’ preference claim must be indicated by the applicant on the employment application form. An eligible veteran, or eligible spouse of a veteran, who meets the minimum requirements of the position is entitled to preference at each step of the selection process, including being granted an interview. However, the preference does not guarantee that a veteran will be selected to fill the position.

Completion of the Veterans’ Preference section on the State of Florida employment application is made on a voluntary basis and kept confidential. A DD Form 214 or equivalent document, which serves as a certificate of release or discharge, must be furnished at the time of application or prior to the closing date of the requisition. In addition, applicants claiming Categories 1, 2, 4 or 5 (as listed in Section III, A.) must furnish supporting documentation in accordance with the provisions of Rule 55A-7.013, F.A.C. Wartime periods are defined in Section 1.01(14), F.S. and listed in Section III, B.

Pursuant to Section 295.085, F.S., preference in appointment shall be awarded to those persons in Categories 1 and 2 and then to those in Categories 3, 4 and 5. This means that in cases where two veterans’ preference candidates are otherwise equally qualified for the position, the candidate who selected Category 1 or 2 will have preference over a candidate who selected Category 3, 4 and 5 (as listed in Section III, A.).
Prior to July 1, 2007, veterans’ preference was a “single entitlement event,” meaning a veteran’s employment preference expired after a person eligible for appointment in employment preference applied and had been employed by the state or any agency of a political subdivision of the state.

However, Chapter 2007-51, Laws of Florida, repealed Section 295.101, F.S.; therefore, effective July 1, 2007, veterans’ preference in employment does not expire. Persons who were determined ineligible for preference because they were previously employed or are currently employed with the state or political subdivision of this state may now be eligible to claim preference when applying for covered positions.

Veterans’ preference applies to external applicants only (i.e. either non-state employees or current state employees applying to positions outside of their current employing agency). A position that is announced open to agency employees only, that is, to be filled by reassignment, transfer, promotion or demotion of an internal employee, is not a vacant position for the purposes of veterans’ preference. (However, when an internal applicant is a veteran and appointment to the internal vacancy would be a promotion, then *promotional preference* applies to such individual, as described in Section III.F.)

**E. Documentation and Eligibility Review**

Each employing agency is responsible for ensuring that preference is given to eligible veterans and spouses. Although the People First Service Center assists the agency hiring managers in determining eligibility based on the preference selection made by the applicant, the employing agency has oversight responsibility for the accuracy of eligibility assessments.

The People First Service Center considers a number of factors when determining eligibility, such as determining if the applicant is a resident of the State of Florida and verifying eligibility in the form of a DD Form 214, or equivalent certification, as required by Rule 55A-7, F.A.C. Once the eligibility determination has been made, it will be indicated on the applicant listing section of the requisition (i.e. job advertisement).

It is the sole responsibility of the applicant to provide the following information at the time of application or before the closing date of each requisition:

1. A DD Form 214 or comparable document which serves as a certificate of release or discharge. In addition, if other supporting documentation is appropriate (for example, if the applicant is applying under Category 1 due to service connected disability) such supporting documentation must be furnished at the time of application.

2. The appropriate documentation should be faxed to the People First Service Center at (888) 403-2110 and must be received prior to 11:59 P.M. (EST) on the closing date of the requisition or as an attachment to their application when applying electronically.

3. The veterans’ preference documentation is placed into the employee’s personnel file upon appointment in a covered position.

During the review process, People First Service Center may indicate an applicant is not eligible to be considered for veterans’ preference. There are a number of reasons why an applicant may not be eligible for veterans’ preference as indicated in Rule 55A-7, F.A.C. The reasons may include:

1. The applicant is not a Florida resident.
2. The applicant did not serve during an qualifying Campaign or Expedition, or during an established wartime period.

3. The applicant did not furnish the appropriate supporting documentation.

F. Promotional Preference – Reinstatement or Reemployment

When an employee in a covered position leaves employment\(^1\) of an SPS agency for the purpose of serving in the Armed Forces of the United States and is separated with an honorable discharge, the agency must reinstate or reemploy such persons under the following conditions:

1. Reinstatement or reemployment is made to the same or to an equivalent position and

2. Reinstatement or reemployment is made within one year of the date of separation from the federal military service or, in the case of extended active duty, within one year of the date of discharge or separation subsequent to the extension.

Persons reinstated or reemployed under this law shall be awarded preference in promotion within the employing agency, and shall be promoted ahead of all other employees who are as well or less qualified for the position. Eligibility for preference in promotion shall apply only to a veteran’s first promotion after reinstatement or reemployment, without exception (Section 295.09, F.S.).

Promotional preference is determined by the employing agency (i.e. the agency where the employee worked prior to active federal military service). The People First Service Center does not assist agencies with veterans’ preference eligibility for promotions.

As previously stated, employees are entitled to only one opportunity to receive promotional preference within the Career Service of the State Personnel System. Therefore, once the employee has been promoted, their promotional preference is exhausted.

G. Retention Preference

Veterans are to receive preference in every step of the retention process, similar to the preference afforded them during each step of the hiring process. This section has been developed as a means of providing guidance for agencies in administering their retention process for veterans.

1. Elimination of a position occupied by a veteran in conjunction with an agency layoff.

Pursuant to Rule 60L-33.004, F.A.C., agencies may effect a layoff of any position for a variety of reasons, including budget cuts, program reductions resulting from outsourcing or privatization efforts, or program phase-outs. According to Public Employees Relations Commission (PERC) case law, a public employer may determine, as an inherent right and without special consideration of veterans’ preference, which constituent government function it will maintain and which it will eliminate. See, \textit{Kiper v. Department of Environmental Protection}, 30 FPER ¶110 (2004) and \textit{Duley v. Department of Transportation}, PERC Case No.: VP-2007-001.

2. Applying veterans’ preference in a layoff situation.

\(^1\) It is the practice of the SPS to place employees who have been called to active duty on leave with or without pay as appropriate.
Program Guidelines

The process to determine positions that may be identified for layoff may differ depending on the mission and strategic needs of each agency. The following is offered as guidance based on different methodologies currently utilized by agencies within the SPS.

a. Agencies using a numeric based system for layoffs should provide additional points to veterans to reflect the preference, similar to the approach followed in their selection process. In *Yates v. Palmintiero*, 96 So.2d 148, the City of Miami used a point system which did not provide any additional points to veterans in order to determine which custodial workers to layoff. Even though the city later stated that veterans would receive consideration in cases of a numerical tie, the Supreme Court of Florida agreed with the circuit court judge who held that no preference was provided in the retention process under those circumstances and ordered the veteran to be reinstated with back pay.

b. For agencies using a non-numeric system for layoffs, the application of the preference must be both meaningful and provided only to the veteran, or if also provided to others is offered in a manner that gives preference to the veteran. In non-numeric systems the veteran must receive special consideration at every step of the retention process. In applying the preference, agencies could initiate a review of the veteran’s qualifications for other positions and offer employment to the veteran before considering non-veterans. As another example, agencies could offer a veteran the right to “first interview” for all vacancies for which the veteran is qualified and has applied. This right to “first interview” would be provided before any first interview is offered to a non-veteran. Therefore, the veteran can receive a “first interview” for each position for which he or she is qualified and has applied.

c. For agencies using a combination of both numeric and non-numeric steps in the system for layoffs, special consideration must be provided to the veteran at each step in the process. In such instances, agencies must clearly describe how the numeric and non-numeric steps will be applied in the retention process.

d. In considering length of service, when methodology is not specifically provided in a collective bargaining agreement, agencies may add the eligible veteran’s active military service to the veteran’s service in the State Personnel System (SPS). For example, an agency may increase the veteran’s SPS service by one (1) year for each year of active military service up to five years. For a disabled veteran, an agency may increase the veteran’s SPS service by two (2) years for each year of active military service up to ten (10) years. As an alternative, agencies may substitute points for years in the example cited.

Following the review of the veteran’s qualifications or completion of a “first interview,” agencies may offer employment to the veteran which could be a promotion, reassignment or demotion. A requirement to relocate associated with any employment offer is acceptable as long as it is reasonable and does not impose any undue hardship on the veteran. If the veteran declines an offer of employment, the obligation of the agency to apply the preference generally is satisfied.

In the event of a “tie” as to qualifications of a veteran and non-veterans, the veteran will be retained. After assessing all potential candidates for a position, a better qualified non-veteran can be placed in the position without negating the special consideration effort provided the veteran. Where two veterans are tied, the agency may apply its usual selection tie-breaking techniques.
Retention of the veteran is the best demonstration of the application of a meaningful veterans' preference. However, making a good faith effort to identify available positions or providing “first interviews,” and offering the veteran an employment opportunity demonstrates the provision of special consideration for a veteran in the agency's retention process.

**Case Note:** In Duley v. Department of Transportation, PERC Case No.: VP-2007-001, PERC held that the agency violated the veterans’ preference statute by failing to provide the veteran special consideration when assisting him to find alternative employment within the agency since he was treated exactly like non-veterans whose positions had been abolished.

3. Agencies should address veterans’ preference in layoffs in their workforce transition plan.

The workforce transition plan should be used by the agency to indicate how it will apply veterans’ preference in layoffs. Because this plan describes how agencies will manage layoffs for all employees, it provides the opportunity to identify the special consideration that will be provided veterans. The plan should clearly indicate how the veteran will receive preference at each step of the retention process. Additionally, pursuant to Rule 55A-7.015, F.A.C., agencies are to ensure records are maintained which document the manner of retention and propriety of the retention process and decision.

**H. Veterans’ Preference Complaint Process**

An applicant for veterans’ preference who believes he or she was not afforded employment preference may file a complaint with the Florida Department of Veterans’ Affairs, Division of Benefits and Assistance, Post Office Box 31003, St. Petersburg, FL, 33731.

The complaint must be filed within 21 calendar days of the applicant receiving notice of the hiring decision made by the employing agency or within three months of the date the application is filed with the employer if no notice is given. Because the employer is not required to provide notice of non-selection to the applicant, it is the responsibility of the preferred applicant to maintain contact with the employer to determine if the position has been filled. In a complaint action, if the preference eligible applicant is not satisfied with the department’s findings or the employer’s proposed action to resolve the complaint is unsatisfactory, the applicant has the right to petition PERC for a hearing. The FDVA does not provide legal assistance in the appeal process (Section 295.11, F.S.)

There is no specific form to file a complaint. The complaint should be typed or legibly written and provide sufficient details concerning the employer, position and veteran status so the department can initiate appropriate action.

**IV. FREQUENTLY ASKED VETERANS’ PREFERENCE QUESTIONS**

1. If employees in the National Guard are called to active guard duty by the Governor (to provide disaster assistance in the aftermath of a hurricane, for example) will they have any rights for veterans’ preference upon their return?

No. Veterans’ preference is available only to those employees who have been called to active federal military service as identified in Section 295.07, F.S., and will receive a DD Form 214 upon discharge. The Governor serves as the National Guard Commander in Chief for the State of Florida and may activate the National Guard in response to an emergency or
natural disaster. This is state military service and does not serve as eligibility for veterans' preference.

2. Must an applicant submit documentation to support veterans’ preference eligibility for each position for which he/she applies?

Yes, per Department of Veterans’ Affairs’ Rule 55A-7.013, F.A.C., the required documentation should be provided to the People First Service Center indicating the requisition number for which he/she wants to claim veterans’ preference. Documentation must be received by the People First Service Center no later than 11:59 p.m. on the closing date of the requisition. The People First Service Center fax number is (888) 403-2110.

3. What if an employee has used his/her promotional opportunity, but is then called back to active military service and receives another DD Form 214 upon discharge. Is this employee entitled to another opportunity for promotional preference?

No, the employee would not be entitled to another promotional preference opportunity. The employee is entitled to a total of one promotional veterans’ preference opportunity, regardless of whether or not the employee gets called back to active military duty. The law makes no distinction between wartime and peacetime service for eligibility for the promotional preference. However, where points are awarded, eligibility includes service during a wartime period or service in a qualifying campaign or expedition for which a campaign badge or expeditionary medal has been authorized, or for a compensable service connected disability.

4. How do employees know their rights as related to veterans’ preference, reemployment/reinstatement and veterans’ preference for a promotional opportunity?

Each agency has a responsibility to ensure that eligible employees are given veterans’ preference for promotional opportunities.

A printable notice entitled "Your Rights Under USERRA" can be obtained by visiting the US Department of Labor’s website at http://www.dol.gov/elaws/userra.htm. It is suggested that employees be provided with this information upon reemployment.

Employees may also contact the Florida Department of Veterans’ Affairs for further information at the number given at the end of this section.

Other questions or issues not addressed in this document may be directed to the Department of Veterans’ Affairs, Division of Benefits and Assistance, Post Office Box 31003, St. Petersburg, FL, 33731. Their telephone number is (727) 319-7462.

For additional information regarding veterans’ preference, please visit the website of the Department of Veterans’ Affairs:


http://www.floridavets.org/pdf/vetpref_bro.pdf for “Questions and Answers about Veterans’ Preference”