



Department of Management Services
Division of Human Resource Management

PROGRAM GUIDELINES

SUBJECT: <i>Interim Administration of Veterans' Preference in the Career Service</i>	
STATUTORY/RULE REFERENCE: <i>Section 1.01(14), Florida Statutes (F.S.), Definitions, Chapter 295, F.S., Laws Relating to Veterans: General Provisions Rule 55A-7, Florida Administrative Code (F.A.C.), Veterans' Preference In Appointment And Retention In Employment,</i>	EFFECTIVE DATE: <i>October 4, 2006 Revised: August 23, 2007 Revised: July 7, 2009 Revised: April 5, 2010 Revised: September 15, 2010 Revised: November 23, 2011 Revised: January 21, 2014 Revised: July 1, 2014 Revised: October 15, 2014</i>
FORMS: N/A	ADDITIONAL REFERENCE MATERIAL: N/A

I. SCOPE AND PURPOSE

From time to time, agencies seek clarification regarding application of veterans' preference. Chapter 2014-1, Laws of Florida, contains new and updated provisions for military and veteran support effective July 1, 2014. The Florida Department of Veterans' Affairs (FDVA) is promulgating new rules to implement these changes. Until the new rules are issued, this interim 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 administrator for Veterans' Preference, in the 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 FDVA.

Throughout history, American society has strived for ways to acknowledge the contribution of military veterans. To this end, the Florida Legislature enacted legislation to govern how the hiring practices of the state and its political subdivisions will give preference and priority to military veterans and to other veterans' preference eligible persons, in recognition of their sacrifices, and as a form of compensation to veterans for having deferred their education and civilian careers (collectively 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 Preference – Pursuant to section 295.07, F.S., this term means employment of a preference-eligible applicant into a covered position with an agency within the SPS.

Covered Position - Pursuant to Rule 55A-7, F.A.C. and section 295.07(4)(a), F.S., 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 leaves employment for the purpose of serving in the Armed Forces of the United States and is separated 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 other veterans' preference eligible persons. Veterans' preference ensures that veterans and other veterans' preference eligible persons 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 – 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, lateral, promotion or demotion appointment of an internal 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 with their character of service noted as "Honorable" only or who later received an upgraded discharge to honorable, 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., (excluding active duty for training).

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

Veterans' Preference Eligible Person – Pursuant to section 295.07, F.S., this means any person who is the mother, father, legal guardian, or unremarried widow or widower of a member of the US Armed Forces who died in the line of duty under combat conditions, the unremarried widow or widower of a veteran who died of a service-connected disability, or 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 who is missing in action, captured, or forcibly detained or interned in the line of duty by a foreign government or power.

III. GUIDING PRINCIPLES

A. Eligibility for Veterans' Preference

As it relates to appointment, retention, reinstatement, reemployment and promotion, veterans' preference is applicable to covered positions within the SPS. The veterans' preference seeking applicant must have received an honorable discharge or must present documentation stating current service is honorable and, in accordance with section 295.07 F.S., meet one or more of the categories listed below.

Additionally, if the applicant is not the veteran and is claiming veterans' preference under one of the other criteria listed below, additional documentation may be required pursuant to Rule 55A-7, F.A.C.

- Category a. 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. [section 295.07(1)(a), F.S.]
- Category b. 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 government or power. [section 295.07(1)(b), F.S.]
- Category c. A wartime veteran as defined in section 1.01(14) F.S., who has served on active duty for one day or more during a wartime period or who has served in a qualifying campaign or expedition. Active duty for training shall not qualify for eligibility under this paragraph. [section 295.07(1)(c), F.S.]
- Category d. The unremarried widow or widower of a veteran who died of a service-connected disability. [section 295.07(1)(d), F.S.]
- Category e. The mother, father, legal guardian, or unremarried widow or widower of a member of the United States Armed Forces who died in the line of duty under combat-related conditions, as verified by the United States Department of Defense. [section 295.07(1)(e), F.S.]
- Category f. A veteran as defined in section 1.01(14), F.S., excluding active duty for training. [section 295.07(1)(f), F.S.]
- Category g. Current member of any reserve component of the United States Armed Forces or the Florida National Guard. [section 295.07(1)(g), F.S.]

B. Military Service Eligible for Veterans' Preference

Military service which is eligible for veterans' preference has been expanded by section 295.07, F.S., effective July 1, 2014. Therefore, pursuant to the new statute, all military service members who received an honorable discharge are eligible for preference. However, the weight of the preference is determined by the category of veterans' preference chosen.

1. To receive preference as a **wartime veteran** pursuant to section 295.07, F.S., a veteran must have served in a campaign or expedition for which a campaign badge or expeditionary medal has been authorized or a veteran who has served on active duty in a

Program Guidelines

non-training status for at least one (1) day during one of the periods of wartime service listed below*:

- World War II: December 7, 1941, to December 31, 1946.
- Korean Conflict: June 27, 1950, to January 31, 1955.
- Vietnam Era: February 28, 1961, to May 7, 1975.
- Persian Gulf War: August 2, 1990, to January 2, 1992.
- Operation Enduring Freedom: October 7, 2001, and ending on the date thereafter prescribed by presidential proclamation or by law.
- Operation Iraqi Freedom: March 19, 2003, and ending on the date thereafter prescribed by presidential proclamation or by law. Operation Iraqi Freedom has been renamed Operation New Dawn effective September 1, 2010.

**The above is only a partial list, please see [section 1.01\(14\) F.S.](#), for a complete list of wars applicable for veterans' preference.*

The VetGuide, Appendix A, provides a list of Wars, Campaigns and Expeditions for the Armed Forces since WWII which qualify for veterans' preference and is available at <http://www.opm.gov/policy-data-oversight/veterans-services/vet-guide/#9>.

Note: The receipt of a campaign or expeditionary medal is not required, only service during those wartime periods. A veteran who served honorably but who has not met the criteria for the award of a campaign or expeditionary medal for service in Operation Enduring Freedom or Operation Iraqi Freedom qualifies for preference in appointment effective July 1, 2007.

2. To receive preference as a veteran during a **non-wartime era**, the applicant must provide discharge documentation such as the DD Form 214 (member copy #4) or comparable documentation and served on active duty in a non-training status for at least one (1) day.
3. To receive preference as a reservist or as a member of the Florida National Guard, the applicant must provide documentation of their current military status.
4. To receive preference under any of the other categories listed in Section III, A., the applicant must provide documentation pursuant to Rule 55A-7, F.A.C.

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 (member copy #4) or equivalent document as 'Honorable' are eligible for appointment, promotion or retention preference in employment. Notwithstanding the fact that some discharges are characterized as "General Discharge – ***under honorable conditions***" (emphasis added), pursuant to the provisions of sections 1.01(14), F.S., and Rule 55A-7, F.A.C., this is considered a discharge "under less than honorable conditions". Consequently, in order to qualify for Veterans' Preference, the employee must have received an "Honorable" discharge. This is pursuant to direction provided by the Florida Department of Veterans' Affairs.

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 or more and a wartime veteran must have served on active duty in a non-training status for one (1) day or more during 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 other veterans' preference eligible person, who meets the minimum requirements of the position is entitled to preference at each step of the selection process. Granting of an interview is one example of the type of special consideration which may be given to a veterans' preference eligible applicant. However, the preference does not guarantee that a veteran or other veterans' preference eligible person 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 (member copy #4) or equivalent document, which serves as a certificate of release or discharge, or current reserve documentation, must be furnished at the time of application or prior to the closing date of the requisition. In addition, applicants claiming categories a, b, d or e (as listed in Section III, A.) must furnish supporting documentation in accordance with the provisions of Rule 55A-7, F.A.C. Wartime periods are defined in section 1.01(14), F.S.

Pursuant to Chapter 2007-51, Laws of Florida, and 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.

Pursuant to Chapter 2014-1, Laws of Florida, and effective July 1, 2014, Florida residency is no longer required for veterans' preference.

Veterans' preference in appointment 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, lateral, promotion or demotion appointment 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.)

Program Guidelines

Pursuant to section 295.08, F.S., positions for which a numerically based selection process is used, preference points will be administered according to the following:

There are now three levels under which points will be given to the veterans' preference eligible person. In accordance with the categories listed in section 295.07, F.S., preference points will be given as follows:

- 15 points for a person under categories a or b
- 10 points for a person under categories c, d or e
- 5 points for a person under categories f or g

The points added are based on a 100 points rating system. If a rating system of other than 100 points is utilized, then 15%, 10% or 5% will be added based on the applicable total score. Additionally, in accordance with section 295.08, F.S., if a numerically based selection process is used, the names of all persons qualified to receive a 15-point preference whose service-connected disabilities have been rated by the United States Department of Veterans Affairs or its predecessor or the Department of Defense to be 30 percent or more shall be placed at the top of the appropriate register or employment list, in accordance with their respective augmented ratings.

Pursuant to section 295.085, F.S., preference in appointment for which a numerically based selection process is NOT used, first preference in appointment, employment, and retention shall be given to a person included under s. 295.07(1)(a) or (b) and second preference shall be given to a person included under s 295.07(1)(c), (d), (e), (f), or (g). This means that in cases where two veterans' preference applicants are otherwise equally qualified for the position, the applicant who selected category a or b will have preference over an applicant who selected category c, d, e, f, or g (as listed in Section III, A.).

Preference must be provided to the veteran or veterans' preference eligible person at each stage of the selection process. An example of veterans' preference for a position that does not utilize a numerically based selection process would be to offer the veterans' preference eligible applicant an interview. This would be consistent with PERC decision VP-2014-001. However, the FDVA rules provide that if, at any step in the selection process, a determination is made that the veteran is not qualified to advance to a subsequent step in the selection process, such determination will receive a review at a higher level of management having authority to overturn the initial determination, to ensure whether the determination was correct. Additionally, the employer is required to document and justify the decision to hire a nonpreferred applicant over the preferred applicant, subject to the review of that decision by the FDVA and ultimately by the Public Employees Relations Commission.

E. Documentation and Eligibility Review

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 (member copy #4), or an equivalent document which serves as a certificate of release or discharge. Such documentation must contain the veteran's character of service. In addition, other supporting documentation may be required depending upon the category under which the applicant is claiming preference (for example, if the applicant is applying under category "a" due to a service connected disability).

Program Guidelines

2. The appropriate documentation should be submitted during the “Upload Files” portion (next step) of the electronic application submission process. However, if the applicant is unable to upload the document files, the documentation may 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.
3. The veterans’ preference documentation is placed into the employee’s personnel file upon appointment to a covered position.

The applicant screen in the People First system contains four columns related to the review process for veterans’ preference eligibility (applicant grid). The first column is titled “People First Initial VP Eligibility Review”, the second column is “People First Eligible VP Category (if different)”, the third column is “Agency Final VP Eligibility Review” and the fourth column is “Agency Final VP Category Determination.” Below is an example of the veterans’ preference section of the applicant grid:

VP Category Claimed	People First Initial VP Review	People First Eligible VP Category (if different)	Agency Final VP Eligibility Review	Agency Final VP Category Determination	Current Employee of Agency	Previous Promotional Appointment
a. Veteran with a service-connected disability	Yes	c. Wartime veteran who has served on active duty	Yes	f. Veteran, excluding active duty for training	Yes	Yes

During the initial review, the People First Service Center will inspect the DD Form 214 (member copy #4), or equivalent documentation, as required by Rule 55A-7, F.A.C or other documentation as required to determine eligibility for veterans’ preference. Once this initial eligibility determination has been made, it will be indicated on the applicant grid.

- If the applicant is determined eligible for veterans’ preference and the documentation submitted supports the category claimed, no additional review by the agency is required. In this case, the two “Agency Final” columns will remain blank.
- If the People First Service Center determines the applicant “ineligible for preference, then the agency must review the documentation provided (if any), conduct a second review, and complete the “Agency Final” columns on the applicant grid.

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 veteran or other veterans’ preference eligible person.
2. The applicant did not furnish the appropriate supporting documentation.

However, each employing agency is ultimately responsible for ensuring that preference is given to eligible veterans and other veterans’ preference eligible persons. 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 is accountable for the accuracy of these eligibility assessments. Therefore, per Rule 55A-7,

Program Guidelines

F.A.C., which requires review at a higher level of management, the agency must perform a second review of any applicant seeking veterans' preference who is initially determined ineligible by People First.

- If the documentation submitted supports veterans' preference, but does not support the preference category selected by the applicant, the People First Service Center will indicate the preference category supported by the documentation submitted under the column titled "People First Eligible VP Category (if different)." Consequently, to ensure appropriate application of veterans' preference, the agency must review the documentation provided, conduct a second review, and complete the "Agency Final" columns on the applicant grid. For example: applicant selects "category a" and submits a DD Form 214 but does not submit the required documentation to support the disability claim. In this case, the People First Service Center will evaluate the DD Form 214 and determine the appropriate category of preference based on the information on the DD Form 214. The new category will be noted under the column titled "People First Eligible VP Category (if different)" as noted in the sample applicant grid above and the notes section will contain the reason for the evaluation of veterans' preference category differing from the category selected by the applicant.

To notify the agency of any required management review, the hiring manager indicated on the requisition will receive an email message from the People First Service Center indicating if there are applicants in that requisition who have been determined ineligible for veterans' preference or have been determined eligible for a preference category other than that selected by the applicant.

Agencies are urged to assign management reviews to a designated veterans' preference subject matter expert(s) rather than delegating to each hiring manager. This is because the documentation submitted by applicants to support their veterans' preference claim contains confidential information and a proper review to assess eligibility requires special handling by someone trained on the rule and statutory requirements. Therefore, once the hiring manager receives notification from People First of an applicant who has been determined ineligible for preference or eligible for a preference other than that selected by the applicant, the recommendation is for the hiring manager to notify the agency headquarters Human Resource Officer (HRO). The email message sent to the hiring manager is only to assist in assuring implementation of the management review. The HRO may then expedite the management review process by forwarding the request to the appropriate individual on their human resources or management team. Additional guidance from the Division of Human Resource Management or from the Florida Department of Veterans Affairs may be sought if the agency is unsure of the eligibility.

To review Veterans' Preference documentation submitted by the applicant, follow these steps:

- Click on the Applicants tab
- Click on the Applicant's last name
- Click on the Applicant Profile tab
- View the Veterans' Preference Documentation under the heading "Submitted Attachments and/or Additional Attachments"

Once the agency has completed a review, the appropriate agency staff will open the EEO/Veteran section on the applicant's profile and notate the management review decision on the applicant grid by selecting either a "Yes" or "No" response from the drop down menu in the third column titled "Agency Final VP Eligibility Review." The agency will also indicate the

category the applicant is eligible for in the “Agency Final VP Category Determination” column if applicable. Comments regarding the agency management review determination may be added in the notes section for each applicant. **The requisition will not be ready for application review by the hiring manager until this step has been completed so that all eligible veterans’ preference applicants will be given appropriate consideration.**

F. Promotional Preference – Reinstatement or Reemployment

When an employee in a covered position leaves employment¹ 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.). Additionally, an employee may have more than one promotional preference because a new promotional preference is earned by the employee with each discharge from the military (confirmed as an “honorable” discharge by DD Form 214, member copy #4 or equivalent document) and subsequent reemployment by the agency. However, the employee does not earn multiple promotional preferences due to “extensions” to current active duty assignments. 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.**

G. Retention Preference

Veterans and other veterans’ preference eligible persons are to receive special consideration in every step of the retention process, similar to the preference afforded them during each step of the selection process. This section has been developed as a means of providing guidance for agencies in administering their retention process for veterans or other veterans’ preference eligible persons.

1. Elimination of a position occupied by a veteran or other veterans’ preference eligible person 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, *Kiper v. Department of Environmental*

¹ In accordance with Chapter 115, F.S., 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.

Protection, PERC Case No: VP03007 and Duley v. Department of Transportation, PERC Case No.: VP07001.

2. Applying veterans' preference in a layoff situation.

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 and other veterans' preference eligible persons 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 other veterans' preference eligible person and is offered in a manner that gives preference to the veteran or other veterans' preference eligible person. In non-numeric systems the veteran or other veterans' preference eligible person must receive special consideration at every step of the retention process. In applying the preference, agencies could initiate a review of the veteran's or other veterans' preference eligible person's qualifications for other positions and offer employment to the veteran or other veterans' preference eligible person before considering non-veterans. As another example, agencies could offer a veteran or other veterans' preference eligible person the right to "first interview" for all vacancies for which the veteran or other veterans' preference eligible person 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 or other veterans' preference eligible person 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 and other veterans' preference eligible persons 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 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 or other veterans' preference eligible person's qualifications or completion of a "first interview," agencies may offer employment to the veteran or other veterans' preference eligible person 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 or other veterans' preference eligible person. If the veteran or other veterans'

preference eligible person 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 or other veterans’ preference eligible person and non-veterans, the veteran or other veterans’ preference eligible person 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 or other veterans’ preference eligible person. Where two veterans or other veterans’ preference eligible persons are tied, the agency may apply its usual selection tie-breaking techniques.

Retention of the veteran or other veterans’ preference eligible person 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 or other veterans’ preference eligible person an employment opportunity demonstrates the provision of special consideration for a veteran or other veterans’ preference eligible person in the agency’s retention process.

Case Note: *In Duley v. Department of Transportation, PERC Case No.: VP07001, 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 or other veterans’ preference eligible persons. The plan should clearly indicate how the veteran or other veterans’ preference eligible person will receive special consideration 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. 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, 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. Ideally, applicants should upload the documents when submitting their application via the People First system, but they may be faxed when necessary. The People First Service Center fax number is (888) 403-2110.

NOTE: If the documentation submitted does not support the category of veterans' preference claimed by the applicant, the agency will provide the proper category of veterans' preference based on a review of the documentation that was submitted by the applicant.

2. 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?

Yes, the employee would be entitled to another promotional preference opportunity. The employee is entitled to a promotional veterans' preference opportunity each time the employee gets called back to active military duty and is subsequently discharged (confirmed as an "honorable" discharge by DD Form 214, member copy #4 or equivalent document) and reemployed. 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.

3. If the employee is reinstated and is subsequently promoted without requesting the use of their veterans' preference, do they still maintain or "bank" a preference for future use?

No. A promotion *applied for and received* after one's return would in fact be a first promotion and would exhaust the promotional benefit. This is supported in a similar case that was appealed to Public Employees Relations Commission (PERC). In Keller vs. PERC, 1997 the 5th District Court Appeals (DCA) of Florida upheld a PERC decision in which a veteran had applied and been promoted to Sergeant after his deployment and reemployment. He had not requested the use of Veterans' Preference (VP) and was in fact promoted without it. He subsequently (two years later) applied for a promotion to Lieutenant and asked for VP and was denied. He appealed to PERC. The decision made by PERC and upheld by the DCA was that the preference applies to the first promotion only after reinstatement or reemployment. Had he applied for preference at the Sergeant stage and been denied he would have had standing in an appeal, but in this instance he applied for a promotion and got it even though he did not request use of VP. The intent was never to save or "bank" the preference for future consideration.

Program Guidelines

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 reinstatement, reemployment or promotional opportunities in accordance with section 295.09, F.S.

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

Additionally, 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.

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://floridavets.org/benefits-services/employment/> for "Veterans' Preference - Employment"

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