Reserve Organization of America

Law Review 26097

DELAWARE: VETERANS' PREFERENCE

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RESERVE SERVICE LAW CENTER

Veterans' Preference:
Delaware

EXECUTIVE SUMMARY

Delaware adds preference points to passing state entrance exam scores for veterans, disabled veterans, long-serving Guard and Reserve members, and certain spouses. State employees who leave to serve receive seniority credit for military time, up to three years.

The Federal Veterans' Preference Act (VPA)

The Federal Veterans' Preference Act (VPA), as explained in Law Review 0721 (May 2007), gives certain veterans an advantage in securing federal civil service jobs. The VPA does not apply to state and local government employment, but most states have their own veterans' preference laws that apply to the state and its political subdivisions (counties, cities, school districts, and other units of local government).

Federally, Veterans who are disabled or served on active duty in the U.S. Armed Forces during specific time periods or in military campaigns are entitled to preference over non-Veterans in hiring into the Federal civil service and during reductions in force. By Federal law, Veterans may be granted 5 or 10 points in any scoring process for examinations or interviews.

5-Point Hiring Preference:

- Five points are added to the examination score or rating of a Veteran who served during a war.

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- Five points are added to the examination score or rating of a Veteran who served between April 28, 1952, and July 1, 1955.
- Five points are added to the examination score or rating of a Veteran who served for more than 180 consecutive days, excluding training, after January 31, 1955, and before October 15, 1976.
- Five points are added to the examination score or rating of a Veteran who served during the Gulf War from August 2, 1990, to January 2, 1992.
- Five points are added to the examination score or rating of a Veteran who served for more than 180 consecutive days, excluding training, after September 11, 2001, and before August 31, 2010, the last day of Operation Iraqi Freedom.
- Five points are added to the examination score or rating of a Veteran who served in a campaign or expedition for which a campaign medal has been authorized. Any Armed Forces Expeditionary medal or campaign badge, including El Salvador, Lebanon, Grenada, Panama, Southwest Asia, Somalia, and Haiti, qualifies for preference.

10-Point Compensable Disability (CP) Preference:

- Ten points are added to the examination score or rating of a Veteran who served at any time and has a compensable service-connected disability rating of at least 10% but less than 30%.
- 10-Point Compensable Disability Preference (CPS): Ten points are added to the passing examination score or rating of a Veteran who served at any time and has a compensable service-connected disability rating of 30% or more.
- 10-Point Disability Preference (XP): Ten points are added to the passing examination score or rating of a Veteran who served at any time and has a present service-connected disability, is receiving compensation, disability retirement benefits, or pension from the military or the VA, but does not qualify as a CP or CPS. Alternatively, it is for a Veteran who received a Purple Heart.
- 10-Point Derived Preference (XP): Ten points are added to the passing examination score or rating of spouses, surviving spouses, or mothers of Veterans. Both a mother and a spouse (including a surviving spouse) may be entitled to preference based on the same Veteran's service if they both meet the requirements. However, neither may receive preference if the Veteran is living and is qualified for Federal employment.

Ten points are added to the passing examination score or rating of the spouse of a disabled Veteran who is disqualified for a federal position due to a service-connected disability that significantly impacts their usual occupation. This disqualification may be presumed when the Veteran is unemployed and meets one of the following criteria: (1) Is rated by appropriate military or VA authorities as 100% disabled and/or unemployable, or (2) Has retired, been separated, or resigned from a civil service position due to a service-connected disability, or (3) Has attempted to obtain a civil service position or a position similar to their usual occupation but failed to qualify due to a service-connected disability.

Preference may be granted in other circumstances, but any situation that falls short of these criteria warrants a more thorough analysis.

A campaign medal holder or Gulf War Veteran who initially enlisted after September 7, 1980, or began active duty on or after October 14, 1982, and has not completed 24 consecutive months of active duty, must serve for a minimum of 24 months or the entire duration of their active duty call or order. However, this requirement does not apply to 10-point preference eligible Veterans who were separated due to disability resulting from or aggravated in the line of duty, or to Veterans who were separated due to hardship or other reasons under Title 10 U.S.C. 1171 or 1173.

Delaware State Employment Veterans' Hiring Preference[1]:

§5935 – Veterans' and Members' Preference
(a) The rules shall provide for preference to be given to veterans of the armed forces of the United States (Army, Navy, Air Force, Marine Corps, and Coast Guard) who served as an active member of the armed forces of the United States and were terminated honorably. The rules shall also provide for preference to be given to active and honorably discharged members with at least 20 years of service in either the Delaware National Guard or a reserve unit located within Delaware.

(b) Such rules shall provide that:
(1) Preference shall be confined to original entrance and shall not be applied to promotion within the classified service or to retention in case of reduction in force;
(2) Preference shall be granted only in the form of credits to be added to earned ratings in examinations, with disabled veterans receiving no more than 10 points and other veterans or members who qualify under subsection (a) of this section no more than 5 points;
(3) A definition of a disabled veteran shall be set forth in the rules;
(4) All veterans or members who qualify under subsection (a) of this section shall be required to meet job requirements before receiving preference credits;
(5) Employees in the classified service who, while in good standing, leave or have left the state service to engage in military service shall be given credit for seniority purposes for the time served in the armed forces not to exceed 3 years; and
(6) Five preference points may be claimed by the spouse of any of the following, so long as the spouse achieves a passing examination grade:

a. Any veteran or member who qualifies under subsection (a) of this section who has died, so long as the widow or widower has not remarried;

[1] 2022 Delaware Code Title 29 Chapter 59 Subchapter III §5935, Veterans' and Members' Preference.

b. Any member of the armed forces serving on active duty who, at the time of application for the priority, is listed in 1 or more of the following categories and has been so listed for a total of more than 90 days:

1. Missing in action;
2. Captured in line of duty by a hostile force; or
3. Forcibly detained or interned in line of duty by a foreign government or power; or

c. Any veteran or member who qualifies under subsection (a) of this section who has a disability resulting from a service connected disability.

Delaware offers Veterans' hiring preference to Veterans, disabled Veterans, and certain spouses for state employment. This preference is granted by awarding points that can be added to applicants' passing entrance exam scores. However, applicants must meet all the eligibility requirements for the specific position.

To be eligible for Delaware State Employment Veterans' Hiring Preference, applicants must meet the following criteria:

- Veterans who served in an active or reserve component of the U.S. Armed Forces and received a discharge other than dishonorable.
- Service members serving in the Delaware National Guard or the U.S. Armed Forces Reserves who have at least 20 years of service and are currently serving.
- Unremarried surviving spouses of eligible deceased Veterans or Service members.
- Spouses of Service members who have been declared missing in action, prisoner of war, or forcibly detained or interned in line of duty by a foreign government or power for at least 90 days.
- Spouses of Veterans or Service members who have a service-connected disability.

Additionally, honorably discharged Veterans or reserve component Service members who have at least 20 years of service and a service-connected disability are eligible for 10 points.

Furthermore, state employees who leave their state employment to serve in the U.S. Armed Forces will be credited with seniority for the time served, up to three years.

Q: The great majority of veterans are men. Does a veterans' preference law discriminate against women and violate the Equal Protection Clause of the Constitution's Fourteenth Amendment?

A: In 1979, the Supreme Court considered and rejected that argument, by a 7-2 vote. Even if the effect of a veterans' preference law is to benefit many more men than women, the purpose of the law is to benefit veterans, not to discriminate against women.[2]

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ROA is more than a century old—on 10/2/1922 a group of veterans of "The Great War," as World War I was then known, founded our organization at a meeting in Washington's historic Willard Hotel. The meeting was called by General of the Armies John J. Pershing, who had commanded American troops in the recently concluded "Great War." One of those veterans was Captain Harry S. Truman. As President, in 1950, he signed our congressional charter. Under that charter, our mission is to advocate for the implementation of policies that provide for adequate national security. For more than a century, we have argued that the Reserve Components, including the National Guard, are a cost-effective way to meet our nation's defense needs.

Through these articles, and by other means, including amicus curiae ("friend of the court") briefs that we file in the Supreme Court and other courts, we advocate for the rights and interests of service members and educate service members, military spouses, attorneys, judges, employers, Department of Labor (DOL) investigators, Employer Support of the Guard and Reserve (ESGR) volunteers, federal and state legislators and staffers, and others about the legal rights of service members and about how to exercise and enforce those rights. We provide information to service members, without regard to whether they are members of ROA, but please understand that ROA members, through their dues and contributions, pay the costs of providing this service and all the other great services that ROA provides.

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[2] *See Personnel Administrator of Massachusetts v. Feeney*, 442 U.S. 256, 276 (1979). *See generally* Law Review 24055 (December 2024).
[3] *See* https://crsreports.congress.gov/product/pdf/IF/IF10540/. These are the authorized figures as of 9/30/2022.
[4] Congress recently established the United States Space Force as the eighth uniformed service.
[5] Spouses, widows, and widowers of past or present members of the uniformed services are also eligible to join.

eligibility applies to those who are serving or have served in the Active Component, the National Guard, or the Reserve. If you are eligible for ROA membership, please join. You can join on-line at Reserve Organization of America - ROA or call ROA at 800-809-9448.

If you are not eligible to join, please contribute financially, to help us keep up and expand this effort on behalf of those who serve. Please mail us a contribution to:

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About the Author

Deng received his Juris Doctor from Baylor University School of Law and received his Bachelor of Science in Sociology, his Bachelor of Science in Criminal Justice, and his minor in Political Science, from Abilene Christian University. As a division-1 student-athlete, Deng played cornerback for the Abilene Christian University Football Team from 2015-19, and Pole Vaulted with the Abilene Christian University Track and Field Team in 2015.

[6] You can also contribute on-line at www.roa.org.