Reserve Organization of America

Law Review 26123

NORTH CAROLINA: VETERANS' PREFERENCE

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RESERVE SERVICE LAW CENTER

EXECUTIVE SUMMARY

North Carolina gives 10 preference points, or comparable preference without scoring, to eligible veterans, current and former NC National Guard members, and certain spouses for state hiring, promotions, and other moves. Private employers may also prefer veterans.

Veterans' Preference:
North Carolina

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).

North Carolina State Employment Veteran and National Guard Preference[1]:

[1] General Statutes of North Carolina Chapter 126 Article 13 §126-80, Declaration of policy. General Statutes of North Carolina Chapter 126 Article 13 §126-80.5, National Guard preference. General Statutes of North Carolina Chapter 126 Article 13 §126-81, Definitions. General Statutes of North Carolina Chapter 126 Article 13 §126-82, State Human Resource Commission to provide for preference. General Statutes of North Carolina Chapter 126 Article 13 §126-83, Exceptions. 2023 North Carolina General Statutes Chapter 95 Article 3 §95-28.4, Veterans preference.

§126-80. Declaration of policy
It shall be the policy of the State of North Carolina that, in appreciation for their service to this State and this country during a period of war, and in recognition of the time and advantage lost toward the pursuit of a civilian career, veterans shall be granted preference in employment for positions subject to the provisions of this Chapter with every State department, agency, and institution.

§126-80.5. National Guard preference
(a) It shall be the policy of the State of North Carolina that, in recognition and appreciation for service to the State and this country, and in recognition of the time and advantage lost toward the pursuit of a civilian career, an eligible member of the National Guard as defined in G.S. 126-81(4) shall be granted preference in employment for positions subject to the provisions of this Chapter with every State department, agency, and institution. **(b)** In all evaluations of applicants for positions with this State or any of its departments, agencies, or institutions, a preference shall be awarded to all eligible members of the National Guard who are citizens of the State. This preference applies to initial employment and extends to other employment events, including a subsequent hiring, promotion, reassignment, or horizontal transfer. **(c)** The ~~provisions of this section shall be subject to the provi~~sions of Article 9 of Chapter 143B of the General Statutes.

§126-81. Definitions
The following definitions apply in this Article:

(1) Period of war. - World War I (April 16, 1917, through November 11, 1918), World War II (December 7, 1941, through December 31, 1946), the Korean Conflict (June 27, 1950, through January 31, 1955), the period of time between January 31, 1955, and the end of the hostilities in Vietnam (May 7, 1975), or any other campaign, expedition, or engagement for which a campaign badge or medal is authorized by the United States Department of Defense.

(2) Veteran. - A person who served in the Armed Forces of the United States on active duty, for reasons other than training, and has been discharged under other than dishonorable conditions.

(3) Eligible veteran. - Any of the following:

a. A veteran who served during a period of war.

b. The spouse of a disabled veteran.

c. The surviving spouse or dependent of a veteran who dies on active duty during a period of war either directly or indirectly as a result of such service.

d. A veteran who suffered a service-connected disability during peacetime.

e. The spouse of a veteran described in sub-subdivision d. of this subdivision.

f. The surviving spouse or dependent of a person who served in the Armed Forces of the United States on active duty, for reasons other than training, who died for service-related reasons during peacetime.

(4) Eligible member of the National Guard. - Any of the following:

a. A resident of North Carolina who is a current member in good standing of either the North Carolina Army National Guard or the North Carolina Air National Guard.

b. A resident of North Carolina who is a former member of either the North Carolina Army National Guard or the North Carolina Air National Guard, whose discharge is under honorable conditions with a minimum of six years of creditable service.

c. The surviving spouse and dependent of a member of the North Carolina Army National Guard or the North Carolina Air National Guard who dies on State active duty either directly or indirectly as a result of that service.

d. The surviving spouse or dependent of a member of the North Carolina National Guard who died for service-related reasons during peacetime.

§126-82. State Human Resource Commission to provide for preference

(a) The State Human Resources Commission shall provide that in evaluating the qualifications of an eligible veteran against the minimum requirements for obtaining a position, credit shall be given for all military service training or schooling and experience that bears a reasonable and functional relationship to the knowledge, skills, and abilities required for the position. This preference applies to initial employment with the State and extends to other employment events including subsequent hirings, promotions, reassignments, and horizontal transfers.**(b)** The State Human Resources Commission shall provide that if an eligible veteran has met the minimum requirements for the position, after receiving experience credit under subsection (a) of this section, he shall receive experience credit as determined by the Commission for additional related and unrelated military service. This preference applies to initial employment with the State and extends to other employment events including subsequent hirings, promotions, reassignments, and horizontal transfers.**(c)** The State Human Resources Commission may provide that in reduction in force situations where seniority or years of service is one of the considerations for retention, an eligible veteran shall be accorded credit for military service. **(d)** Any eligible veteran who has reason to believe that he or she did not receive a veteran's preference in accordance with the provisions of this Article or rules adopted under it may appeal that denial as provided by G.S. 126-34.01 and G.S. 126-34.02.**(e)** The willful failure of any employee subject to the provisions of Article 8 of this Chapter to comply with the provisions of this Article or rules adopted under it constitutes personal misconduct in accordance with the provisions and promulgated rules of this Chapter, including those for suspension, demotion, or dismissal.

§126-83. Exceptions

Notwithstanding G.S. 126-5, and notwithstanding provisions in that section that only certain Articles of this Chapter apply to some employees, this Article applies to all persons covered by this Chapter except those exempted by G.S. 126-5(c)(2), G.S. 126-5(c)(3), G.S. 126-5(c)(4), G.S. 126-5(c1), G.S. 126-5(c2), or G.S. 126-5(c3), but this Article does not apply to those persons covered by G.S. 126-5(a)(2). G.S. 128-15 shall apply to those persons exempted from coverage of this Article, but shall not apply to any person covered by this Article.

§95-28.4. Veterans preference

A private, nonpublic employer in the State may provide a preference to a veteran for employment. Spouses of honorably discharged veterans who have a service-connected permanent and total disability also may be preferred for employment. Granting of this preference is not a violation of any State or local equal employment opportunity law.

North Carolina offers employment preference to eligible Veterans, current and former North Carolina National Guard Service members, and their spouses for various state positions,

including initial employment, subsequent employment, promotions, reassignments, horizontal transfers, and reduction-in-force situations.

To claim Veterans' preference, applicants must meet the minimum training and experience requirements for the position and demonstrate the ability to perform the duties effectively.

Veteran Preference:

- Veterans who served on active duty in the U.S. Armed Forces (excluding training) during a period of war and received an honorable discharge.
- Veterans with service-connected disabilities acquired during peacetime.
- Spouses of disabled Veterans.
- Surviving spouses or dependents of Veterans who died while serving on active duty during a period of war, either directly or indirectly, as a result of that service.
- Spouses of Veterans with service-connected disabilities acquired during peacetime.
- Surviving spouses or dependents of Veterans who died in the line of duty during peacetime.

National Guard Preference:

- North Carolina residents who are current members in good standing in the North Carolina National Guard.
- North Carolina residents who are former members of the North Carolina National Guard who were discharged under honorable conditions after serving for a minimum of six years.

Surviving spouses or dependents of North Carolina National Guard Service members who died while serving on state active duty or as a result of that service.

Surviving spouses or dependents of North Carolina National Guard Service members who died in the line of duty during peacetime.

For positions without a numerical scoring system, preference is given by crediting a year for every year of military service training and experience that is similar to the knowledge, skills, and abilities required for the position.

For positions with a numerical scoring system, eligible applicants receive 10 preference points.

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]

[2] *See Personnel Administrator of Massachusetts v. Feeney*, 442 U.S. 256, 276 (1979). *See generally* Law Review 24055 (December 2024).

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Reserve Organization of America

[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.

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About the Author

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