Reserve Organization of America

Law Review 26135

# TEXAS: VETERANS' PREFERENCE

*By Deng Majok*

RESERVE SERVICE LAW CENTER


## EXECUTIVE SUMMARY

Texas agencies must give veterans' preference until veterans make up 20% of their workforce: 10 points on competitive exams, plus 5 for disabled veterans. Without an exam, preferred applicants go ahead of equally qualified others; surviving spouses and orphans also qualify.


**Veterans' Preference:**
*Texas*

**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).

**Texas State Employment Veteran's Hiring Preference[1]:**

**§657.001. DEFENITIONS.**
In this chapter:
(1) "State agency" means a board, commission, council, committee, department, office, agency, or other governmental entity in

[1] Government Code Title 6 Subtitle B Chapter 657 §657.001, Definitions. Government Code Title 6 Subtitle B Chapter 657 §657.002, Individuals Qualified for Military Employment Preference. Government Code Title 6 Subtitle B Chapter 657 §657.003, Military Employment Preference. Texas Labor Code Title 2 Subtitle A Chapter 23 §23.002, Voluntary Preference Policy


1 Constitution Avenue N.E., Washington, D.C. 20002
(202) 479-2200 • roainfo@roa.org • roa.org

the executive, legislative, or judicial branch of state government, including an institution of higher education as defined by Section 61.003, Education Code.

(2) "Veteran" has the meaning assigned by Section 2308.251.

(3) "Veteran with a disability" means a veteran who is classified as disabled by the United States Department of Veterans Affairs or its successor or the branch of the service in which the veteran served and whose disability is service-connected.

**§657.002. INDIVIDUALS QUALIFIED FOR MILITARY EMPLOYMENT PREFERENCE.**
The following individuals qualify for a military employment preference:

(1) a veteran, including a veteran with a disability;

(2) a veteran's surviving spouse who has not remarried;

(3) an orphan of a veteran if the veteran was killed while on active duty;

(4) the spouse of a member of the United States armed forces or Texas National Guard serving on active duty; and

(5) the spouse of a veteran if the spouse is the primary source of income for the household and the veteran has a total disability rating based either on having a service-connected disability with a disability rating of at least 70 percent or on individual unemployability.

**§657.003. MILITARY EMPLOYMENT PREFERENCE.**

(a) An individual who qualifies for a military employment preference is entitled to a preference in employment with or appointment to a state agency over other applicants for the same position who do not have a greater qualification.

(b) A state agency shall provide to an individual entitled to a military employment preference for employment or appointment over other applicants for the same position who do not have a greater qualification a military employment preference, in the following order of priority:

(1) a veteran with a disability;

(2) a veteran;

(3) a spouse described by Section 657.002(4) or (5);

(4) a veteran's surviving spouse who has not remarried; and

(5) an orphan of a veteran if the veteran was killed while on active duty.

(c) If a state agency requires a competitive examination under a merit system or civil service plan for selecting or promoting employees, an individual entitled to a military employment preference who otherwise is qualified for that position and who has received at least the minimum required score for the test is entitled to have a service credit of 10 points added to the test score. A veteran with a disability is entitled to have a service credit of five additional points added to the individual's test score.

(d) An individual entitled to a military employment preference is not disqualified from holding a position with a state agency because of age or an established service-connected disability if the age or disability does not make the individual incompetent to perform the duties of the position.

**§23.002. Voluntary Preference Policy**
(a) As used in this section, "veteran" shall have the meaning ascribed to it in K.S.A. 73-201, and amendments thereto.

**(a)** A private employer may adopt a policy under which the employer may give a preference in employment decisions regarding hiring, promotion, or retention to a veteran over another qualified applicant or employee.
**(b)** A policy adopted under this section must be in writing.**(c)** A private employer may provide notice to the Texas Workforce Commission or the Texas Veterans Commission that the employer has adopted a policy under this section.

*Tex. Lab. Code § 23.002*

Texas state agencies must provide a Veteran's hiring preference until they reach 20% Veteran employment. This preference allows individuals who qualify for it to be considered for state employment over equally qualified applicants.

If a state employer requires a competitive examination for selecting or promoting employees, eligible Veteran applicants who meet the position requirements and pass the exam will receive an additional 10 points. Veterans with service-connected disabilities will receive an additional 5 points.

In cases where a competitive examination is not used, Veterans with service-connected disabilities who are eligible for Veteran's hiring preference will have preference over all other equally qualified applicants.

The following individuals are eligible for Veteran's hiring preference:

- Honorably discharged Veterans who served on active duty in the U.S. Armed Forces for at least 90 consecutive days during a declared national emergency or were discharged before 90 days due to a service-connected disability.

- Honorably discharged Veterans who have a service-connected disability, as determined by the VA or their branch of service.

- Unremarried Surviving Spouse of a Veteran.

- Orphan of a Veteran who was killed while serving on active duty.

Veteran's preference will be applied in the following order:

- Veteran with a disability.

- Veteran.

- Veteran's unremarried Surviving Spouse.

- Orphan of a Veteran who was killed while serving on active duty.

Additionally, those eligible for Veteran's hiring preference are also eligible for preference in retaining employment during a workforce reduction over equally qualified employees.

**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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[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.
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Reserve Organization of America
1 Constitution Ave. NE
Washington, DC 20002[6]

### 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.

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