

PUBLIC EMPLOYER QUESTIONS ABOUT VETERANS' PREFERENCE IN HIRING OR PROMOTION

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In our last column, we looked at the basics of Oregon's requirements for public employers to apply the veterans' preference in hiring and promoting employees in civil service positions. This week we will address a few common questions from public employers in this area that explore some of the finer points of the law.

Q: If a veteran who is eligible for the preference completes the initial screening examination but does not have a passing score, am I required to apply her preference points to that score? The additional five points would give her a passing score.

A: No. At each stage of the application process a public employer will grant the preference to a veteran or disabled veteran who successfully completes an initial application screening or examination or a civil service test. OAR 839-006-0450(1). The veteran must first successfully complete the initial screening examination with a passing score before the preference is applied.

Q: If a qualified veteran meets the screening criteria, are we required to hire the veteran?

A: Not necessarily. The public employer is required to hire the qualified veteran or disabled veteran to a vacant civil service position if the results of his or her application examination, when combined with the five point preference for the veteran or the ten point preference for the disabled veteran, are equal to or greater than the results of an application examination for an applicant who is not a qualified veteran or disabled veteran. ORS 408.230(3).

Q: Our screening process grades on a scale of 1-100. A non-veteran scored a perfect 100, but a qualified veteran scored a 98 before application of the preference points. Do we cap the veteran's score at 100 or do we credit him with a score of 103?

A: Probably the latter. The statute and rules do not specifically address this scenario, but simply state that you are to add 5 points to the qualified veteran's score. This would result in a score of 103. As a practical matter, however, it is of no consequence in your situation, since you are still required to offer the position to the veteran, even if the results are tied after adding the veterans' preference points.

Q: We have an employee who did not qualify for the preference upon hiring, but he later took a year of military leave to serve in the armed forces and was honorably discharged. After his deployment, he returned to his civil service job, met the qualification criteria for the preference and applied for a promotion. He met the minimum standards on his test for the promotion and is qualified for the position. Is he entitled to the preference in the process of evaluating him for the promotion?

A: Yes. A public employer must grant the preference to a person seeking a promotion if the person is employed in a permanent civil service position if the person meets the following criteria: he was granted military leave by the employer to serve in the U.S. armed forces; he returned from military leave to the civil service position; he meets the qualification standards of a veteran or disabled veteran set forth in OAR 839-006-0440(5) or (9) (he served more than 178 consecutive days and was honorably discharged); he successfully completed the test for the promotional position; **and** he meets the minimum qualifications and any special qualifications for the position. OAR 839-006-0455.

Q: We just asked the veteran seeking the promotion for certification from the Department of Defense that he meets the eligibility requirements for the preference. He sheepishly informed us that he got into a little trouble off base one night and received a general discharge rather than an honorable discharge. Is he still entitled to the preference?

A: Probably not. The public employer may require an applicant to provide certification of his or her eligibility for the preference, and pending receipt of the certification may provisionally designate the applicant as eligible. OAR 839-006-0465. However, a veteran receiving less than an honorable discharge or release does not meet the eligibility criteria unless he or she received a combat or campaign ribbon for service in the U.S. armed forces. Alternatively, a veteran may meet the eligibility requirements as a disabled veteran if the veteran has a disability rating from the Department of Veterans Affairs, if the discharge or release was for a disability incurred or aggravated in the line of duty, or if the veteran received the Purple Heart for wounds received in combat. OAR 839-006-0440.

For more information about this subject, please consider attending our upcoming seminar for state agency employees on veterans' preference, currently scheduled for December 8 in Salem. The seminar is free of charge, but registration is required and space is limited. For additional information and a full schedule of seminars and other services provided by the Technical Assistance to Employers program, visit the website at www.oregon.gov/BOLI/TA or call 971-673-0824.