

Veterans' Employment Preference Policy

Resource: Administrative Rules of the State of Montana (ARM)

State Human Resources Division

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2.21.3601 SHORT TITLE

(1) This policy may be cited as the veterans' employment preference policy.

History: [39-29-112](#), MCA; [IMP](#), [39-29-101](#), et seq. , MCA; [NEW](#), 1990 MAR p. 478, Eff. 3/16/90.

2.21.3602 POLICY AND OBJECTIVES

(1) It is the policy of the state of Montana, executive, legislative, and judicial branches, the Montana university system, and covered local governments to provide preference in employment to veterans, disabled veterans, and eligible relatives, as required in [39-29-101](#) et seq., MCA.

(2) It is the objective of this policy to establish uniform practices and procedures for the administration of the veterans' public employment preference by all public employers covered by [39-29-101](#) et seq., MCA.

(3) It is not the intention of this policy to dictate selection procedures to be used but rather to explain how the preference should be applied.

History: [39-29-112](#), MCA; [IMP](#), [39-29-101](#), et seq. , MCA; [NEW](#), 1990 MAR p. 478, Eff. 3/16/90; [AMD](#), 2000 MAR p. 450, Eff. 2/11/00.

2.21.3603 DEFINITIONS

For purposes of the sub-chapter, the following definitions apply:

(1) "Armed forces" means, as provided in [39-29-101](#), MCA, "the

(a) United States army, navy, air force, marine corps, and coast guard;

(b) merchant marine for service recognized by the United States department of defense as active military service for the purpose of laws administered by the department of veterans affairs; and

(c) Montana army and air national guard."

(2) (a) "Initial hiring" means, as provided in [39-30-103](#), MCA, "a personnel action for which applications are solicited from outside the ranks of the current employees of:

(i) a department, as defined in [2-15-102](#), MCA, for a position within the executive branch;

(ii) a legislative agency for a position within the legislative branch;

(iii) a judicial agency, such as the office of supreme court administrator, office of supreme court clerk, state law library, or similar office in a state district court for a position within the judicial branch;

(iv) a city or town for a municipal position, including a city or municipal court position; and

(v) a county for a county position, including a justice's court position."

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(b) A personnel action limited to current employees of a specific public entity identified in [39-30-103](#), MCA, current employees in a reduction-in-force pool who have been identified in [39-30-103](#), MCA, or current participants in a federally authorized employment program is not an initial hiring.

(3) "Military duty" means, as provided in [39-29-101](#), MCA, "duty with military pay and allowances in the armed forces."

(4) "Minimum qualifications" means the basic competencies (knowledge, skills, and behaviors) needed to adequately perform the duties of the position from the first day of employment. The applicant must possess the education and experience that leads to the required competencies.

(5) "Non-numerical scoring" means assessing the applicant's degree of success or failure on a selection device or combination of devices without employing a numerical score, for example, a plus (+) for superior, a check (ü) for satisfactory and a minus (-) for unsatisfactory.

(6) "Position" means, as provided in [39-29-101](#), MCA, "a position occupied by a permanent, temporary, or seasonal employee as defined in [2-18-101](#), MCA, for the state or a similar permanent, temporary, or seasonal employee with a public employer other than the state. The term does not include:

(a) a state or local elected office;

(b) appointment by an elected official to a body such as a board, commission, committee, or council;

(c) appointment by an elected official to a public office if the appointment is provided for by law;

(d) a department head appointment by the governor or an executive department head appointment by a mayor, city manager, county commissioner, other chief administrative or executive officer of a local government; or

(e) engagement as an independent contractor or employment as an independent contractor."

(7) "Public employer" means, as provided in [39-29-101](#), MCA:

(a) "a department, office, board, bureau, commission, agency, or other instrumentality of the executive, legislative, or judicial branches of the government of this state;

(b) a unit of the Montana university system;

(c) a school district or community college; and

(d) a county, city, or town."

(8) "Reduction-in-work force" (RIF) means, "a management action taken for non-disciplinary reasons in which an employee is laid off from employment. The RIF may take place for reasons including, but not limited to: elimination of programs; reduction in FTEs; lack of work; lack of funds; expiration of grants; reorganization of a state agency;

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or privatization of a service normally or traditionally provided by an employee of a department."

(9) "Scored procedure" means, as provided in [39-29-101](#), MCA, "a written test, structured oral interview, performance test, or other selection procedure or a combination of these procedures that results in a numerical score to which percentage points may be added."

(10) "Substantially equal qualifications" means, as provided in [39-30-103](#), MCA, "the qualifications of two or more persons among whom the public employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons."

(11) "Under honorable conditions" means, as provided in [39-29-101](#), MCA:

(a) "a discharge or separation from military duty characterized by the armed forces as under honorable conditions.

(i) The term includes honorable discharges and general discharges.

(ii) The term does not include dishonorable discharges or other administrative discharges characterized as other than honorable."

History: [39-29-112](#), MCA; [IMP](#), [39-29-101](#), [39-29-102](#), [39-29-103](#), [39-29-104](#), [39-29-105](#), [39-29-111](#) and [39-29-112](#), MCA; [NEW](#), 1990 MAR p. 478, Eff. 3/16/90; [AMD](#), 1997 MAR p. 1445, Eff. 8/19/97; [AMD](#), 2000 MAR p. 450, Eff. 2/11/00; [AMD](#), 2003 MAR p. 2077, Eff. 10/1/03.

2.21.3607 ELIGIBILITY

(1) To be eligible to receive veterans' employment preference, a veteran, disabled veteran, or eligible relative, as defined in [39-29-101](#), MCA, must:

(a) be, as provided in [39-29-102](#), MCA, a "United States citizen"; and

(b) meet "the minimum qualifications required for the position. If no applicant meets the minimum qualifications and the public employer fills a training position, veterans' preference must be applied."

(2) As provided in [39-29-101](#), MCA, a veteran must be a person who:

(a) "was separated under honorable conditions from active federal military duty in the armed forces after having served more than 180 consecutive days, other than for training; or

(b) as a member of a reserve component under an order of active federal duty pursuant to 10 U.S.C. 12301(a), (d), or (g), 10 U.S.C. 12302, or 10 U.S.C. 12304, served on active duty during a period of war or in a campaign or expedition for which a campaign badge is authorized and was discharged or released from duty under honorable conditions; or

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(c) is or has been a member of the Montana army or air national guard and who has satisfactorily completed a minimum of six years service in the armed forces, the last three years of which have been served in the Montana army or air national guard."

(3) A disabled veteran must have, as provided in [39-29-101](#), MCA:

(a) been "separated under honorable conditions from military duty in the armed forces; and

(b) established the present existence of a service-connected disability or [be] receiving compensation, disability retirement benefits or pension because of a law administered by the department of veterans affairs or a military department; or

(c) received a purple heart medal."

(4) An eligible relative must be, as provided in [39-29-101](#), MCA:

(a) the unremarried surviving spouse of a veteran or disabled veteran; or

(b) the spouse of a disabled veteran who is unable to qualify for appointment to a position due to the disability and who is incapable of using the employment preference because the disability prevents the veteran from working; or

(c) the mother of a veteran who died under honorable conditions while serving in the armed forces or the mother of a service-connected permanently and totally disabled veteran if:

(i) the mother's spouse is totally and permanently disabled; or

(ii) the mother is the unremarried widow of the veteran's father.

History: [39-29-112](#), MCA; [IMP](#), [39-29-101](#) and [39-29-102](#), MCA; [NEW](#), 1990 MAR p. 478, Eff. 3/16/90; [AMD](#), 1994 MAR p. 23, Eff. 1/14/94; [AMD](#), 1997 MAR p. 1445, Eff. 8/19/97; [AMD](#), 2000 MAR p. 450, Eff. 2/11/00; [AMD](#), 2003 MAR p. 2077, Eff. 10/1/03.

2.21.3615 APPLYING PREFERENCE

(1) As provided in [39-29-102](#), MCA, "Whenever a public employer uses a scored procedure, an applicant for an initial hiring, as defined in [39-30-103](#), MCA, must have added to the applicant's score the following percentage points of the total possible points that may be granted in the scored procedure:

(a) 5 percentage points if the applicant is a veteran," as defined in [39-29-101](#), MCA; and

(b) "10 percentage points if the applicant is a disabled veteran or an eligible relative," as defined in [39-29-101](#), MCA.

(2) As provided in [39-29-102](#), MCA, "a disabled veteran who receives 10 percentage points under [[39-29-102](#), MCA], may not receive an additional 5 percentage points under [[39-29-102](#), MCA]."

(3) As provided in [39-29-102](#), MCA, "Whenever a public employer uses a selection procedure other than a scored procedure, the public employer shall give preference to a

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disabled veteran, eligible relative, or veteran, in that order, over any nonpreferred applicant holding substantially equal qualifications as defined in [39-30-103](#), MCA." Substantially equal qualifications does not mean a situation in which two or more applicants are exactly equally qualified. It means a range in which two applicants must be considered to be substantially equal in view of the qualifications set for the job. Qualifications shall include job-related competencies (knowledge, skills, and behaviors)

(4) A current employee of an agency who meets eligibility requirements may claim and receive veterans' employment preference when an applicant for an initial hiring as defined in ARM [2.21.3603](#).

(5) An agency may use a combination of numerically scored procedures and non-numerically scored procedures to make a hiring decision.

(6) When individual scored procedures are used, percentage points must be added to each scored procedure if the individual score is used to advance or eliminate applicants. When scored selection procedures are used in combination to reach a total score, percentage points must be added to the total score. An applicant must meet the minimum qualifications of the position to be eligible for preference.

(7) An applicant has 90 calendar days from receipt of notice of a hiring decision to file a petition in district court. To comply with this policy, the public employer shall retain a record of the hiring decision for at least 90 calendar days after the notice of the hiring decision and records may be kept longer at the agency's discretion. Other federal and state laws and regulations may require the retention of selection records for longer time periods. Depending on the selection procedures used, the record may include, but is not limited to the following:

- (a) a copy of the vacancy announcement or external recruitment announcement;
- (b) a record of the selection procedure used to screen job applicants;
- (c) a record of written and oral evaluations of applicants;
- (d) a copy of applications that were considered for the specific vacancy; and
- (e) a record of the notice of the hiring decision, the written request for an employer's explanation of the hiring decision by an applicant, and the employer's written explanation.

History: [39-29-112](#), MCA; [IMP](#), [39-29-102](#), MCA; [NEW](#), 1990 MAR p. 478, Eff. 3/16/90; [AMD](#), 1997 MAR p. 1445, Eff. 8/19/97; [AMD](#), 2000 MAR p. 450, Eff. 2/11/00.

2.21.3616 CLAIMING PREFERENCE - DOCUMENTATION AND VERIFICATION

(1) As provided in [39-29-103](#), MCA, "a public employer shall, by posting or on the application form, give notice of the preference."

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(2) As provided in [39-29-103](#), MCA, "a job applicant who believes that the applicant is eligible to receive a preference shall claim the preference in writing before the time for filing applications for the position involved has passed." A public employer may provide a standard form for claiming employment preference. Failure to complete such a form does not negate an applicant's claim for preference, as long as a reasonable and timely claim is made. As provided in [39-29-103](#), MCA, "Failure to make a timely preference claim for a position is a complete defense to an action instituted by an applicant under [39-29-104](#), MCA, with regard to that position."

(3) At the place where applications are received, the hiring authority or other agency receiving applications shall inform applicants of requirements for documentation of eligibility for preference which the applicant may be required to provide to the hiring authority.

(4) The person claiming eligibility for veterans' employment preference is responsible for providing all information necessary to document the claim.

(5) The hiring authority must obtain documentation of eligibility for employment preference from an applicant who claims preference and who is selected for the vacancy and may require documentation from others claiming employment preference.

(6) The hiring authority shall determine when in the selection process submission of documentation of eligibility for the preference shall be provided by the applicant. This may be at the time an offer of employment is made or at an earlier time specified by the hiring authority.

(7) When appropriate, documentation will include the following or a substitute acceptable to the hiring authority:

(a) from a veteran, disabled veteran, or eligible relative:

(i) a document issued by the department of defense or equivalent certification from the U.S. department of veterans affairs listing military status, and discharge type, commonly form DD-214 or military discharge papers; or

(ii) a document issued by the office of the adjutant general of the Montana national guard which certifies the veteran is or has been a member of the Montana army or air national guard and has satisfactorily completed a minimum of six years service in the armed forces, the last three years of which have been served in the Montana army or air national guard;

(b) from a disabled veteran, a document from the U.S. department of veterans affairs certifying that the applicant has a service-connected disability or a document from the department of defense or the department of veterans affairs indicating the person has received the purple heart medal;

(c) from the unremarried surviving spouse of a deceased veteran, as veteran is defined in [39-29-101](#), MCA, the documentation required in this rule and a copy of the death certificate or from the unremarried surviving spouse of a deceased disabled

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veteran, as disabled veteran is defined in [39-29-101](#), MCA, the documentation required in this rule and a copy of the death certificate;

(d) from the eligible spouse of a disabled veteran, a document from the U.S. department of veterans affairs certifying the veteran is disabled, is unable to use the preference because of the disability, and is married to the disabled veteran in accordance with Montana law. When the department of veterans affairs does not certify that the disabled veteran is unable to use the preference because of the disability, the hiring authority shall obtain a signed statement from the disabled veteran that the veteran is incapable of using the employment preference because the veteran is unable to qualify for appointment to a position because of the disability and the disability prevents the veteran from working;

(e) from an eligible mother of a deceased veteran or disabled veteran, a document from the U.S. department of veterans affairs certifying that the veteran, as provided in [39-29-101](#), MCA, "died under honorable conditions while serving in the armed forces" or a document certifying, as required in [39-29-101](#), MCA, that the veteran has a service-connected permanent and total disability. The veteran's mother must also certify in writing that the mother's spouse is permanently and totally disabled or that the mother is the unremarried widow of the veteran's father;

(f) a signed statement by the applicant attesting to U.S. citizenship. If the hiring authority has reason to question the validity of the statement, further documentation may be required. For U.S. citizenship, such evidence may include, but is not limited to, a birth certificate, voter registration card, U.S. passport or naturalization papers.

(8) All documentation submitted to a public employer, or to an entity designated to receive applications for a public employer, in support of the claim of preference shall be considered confidential.

(9) A public employer may release general information relating to a successful applicant's eligibility for preference upon request.

(10) Applicants shall be notified that intentional misrepresentation of the claim for preference is cause for immediate discharge.

History: [39-29-112](#), MCA; [IMP](#), [39-29-103](#), MCA; [NEW](#), 1990 MAR p. 478, Eff. 3/16/90; [AMD](#), 1994 MAR p. 23, Eff. 1/14/94; [AMD](#), 1997 MAR p. 1445, Eff. 8/19/97; [AMD](#), 2000 MAR p. 450, Eff. 2/11/00; [AMD](#), 2003 MAR p. 2077, Eff. 10/1/03.

2.21.3617 HIRING DECISION

(1) In making a hiring decision, an agency must be prepared to show:

(a) that the appropriate percentage points were added if numerically scored procedures were used;

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(b) that the preference was given to an applicant with substantially equal qualifications who claimed veterans' preference if non-numerical scored procedures were used; and

(c) the agency made a reasonable hiring decision, in accordance with [39-29-104](#) , MCA.

(2) Written notice must be given to each applicant claiming preference who is actually considered by the public employer as an applicant for a specific vacancy.

(3) As provided in [39-29-103](#) , MCA, "If an applicant for a position makes a timely written preference claim, the public employer shall give written notice of its hiring decision to the applicant claiming preference."

(4) Public employers who maintain active application files or conduct continuous recruitment must give written notice to each person claiming preference and whose application is active in accordance with the employer's selection procedures and who is actually considered for a specific vacancy. Notice must be given at the time a vacancy is filled or by the end of each month in which a vacancy is filled.

(5) The public employer must maintain a record of which applicants were notified and the date the notification was sent for at least 90 calendar days after notification of the hiring decision.

History: [39-29-112](#), MCA; [IMP](#), [39-29-103](#), MCA; [NEW](#), 1990 MAR p. 478, Eff. 3/16/90; [AMD](#), 1997 MAR p. 1445, Eff. 8/19/97; [AMD](#), 2000 MAR p. 450, Eff. 2/11/00.

2.21.3618 INTERNAL PROCEDURES - ENFORCEMENT OF PREFERENCE

(1) As provided in [39-29-104](#), MCA, "An applicant who believes that the applicant is entitled to, but has not been given the preference provided in [39-29-102](#), MCA, may, within 30 days of receipt of the notice of the hiring decision provided for in [39-29-103](#), MCA, submit to the public employer a written request for an explanation of the public employer's hiring decision."

(2) The written request for an explanation shall contain, but is not limited to, such information as is necessary to determine:

(a) the applicant's name and address;

(b) the applicant is requesting an explanation from the hiring authority regarding the hiring decision; and

(c) the position for which the person applied.

(3) As provided in [39-9-104](#), MCA, "Within 15 days of receipt of the request, the public employer shall give the applicant a written explanation." The written explanation shall contain specific, job-related reasons why the person claiming preference was not hired. The explanation should be dated and identify the specific vacancy in question.

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The employer should safeguard the confidentiality of information considered in accordance with state and federal law and as provided in ARM [2.21.3616](#).

(4) All days are calendar days.

History: [39-29-112](#), MCA; [IMP](#), [39-29-104](#), MCA; [NEW](#), 1990 MAR p. 478, Eff. 3/16/90; [AMD](#), 1997 MAR p. 1445, Eff. 8/19/97; [AMD](#), 2000 MAR p. 450, Eff. 2/11/00.

2.21.3619 EXTERNAL PROCEDURES - ENFORCEMENT OF PREFERENCE

(1) As provided in [39-29-104](#), MCA, "The applicant may, within 90 days after receipt of notice of the hiring decision, file a petition in the district court in the county in which the application was received by the public employer. The petition must state facts that on their face entitle the applicant to a preference."

(2) External enforcement of the veterans' employment preference in district court is provided for in [39-29-104](#), MCA.

(3) All days are calendar days.

History: [39-29-112](#), MCA; [IMP](#), [39-29-104](#), MCA; [NEW](#), 1990 MAR p. 478, Eff. 3/16/90; [AMD](#), 2000 MAR p. 450, Eff. 2/11/00.

2.21.3623 RETENTION DURING REDUCTION IN FORCE

(1) As provided in [39-29-111](#), MCA, "during a reduction in [work] force, a public employer shall retain" over all others a veteran, a disabled veteran or an eligible relative who:

(a) has similar job duties and qualifications;

(b) has not been rated unacceptable under a performance appraisal system; and

(c) has the same or greater length of service. Length of service means continuous employment by an individual public employer as defined in [39-29-101](#), MCA.

(2) As provided in [39-29-111](#), MCA, "a disabled veteran with a service-connected disability of 30% or more" shall be retained over other veterans, disabled veterans and eligible relatives.

(3) It will be the responsibility of the employee to claim preference in retention. An employee who claims preference in retention as a veteran, a disabled veteran, a 30% disabled veteran or an eligible relative shall document eligibility in the same manner required in ARM [2.21.3616](#) for the claim of preference for initial hiring.

(4) As provided in [39-29-111](#), MCA, "The preference in retention...does not apply to a position covered by a collective bargaining agreement."

History: [39-29-112](#), MCA; [IMP](#), [39-29-111](#), MCA; [NEW](#), 1990 p. 478, Eff. 3/16/90; [AMD](#), 1997 MAR p. 1445, Eff. 8/19/97; [AMD](#), 2003 MAR p. 2077, Eff. 10/1/03.

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