

Hillsborough County Civil Service Board

Florida Veterans' Preference Law & Rules

Change Advisory

(October 4, 2016)

Introduction

Recent changes, effective June 27, 2016, were made to the Florida Administrative Code [FAC 55A-7](#) concerning several procedural aspects of veterans' preference in employment, reinstatement, and retention. Those changes impact all Florida state and local government employers.

The Civil Service Board has reviewed the changes and made necessary updates to our employment application, associated instructions, and to our application review and candidate communication processes. While we encourage you to read the updated Administrative Code in its entirety, reviewing this document will provide you and your staff with a great deal of information about the new requirements.

The focus of this communication is on hiring or appointment preference. Please see the updated FAC 55A-7 for information about similar changes in the requirements for preference in reinstatement and retention. Contact [Kurt Wilkening](#) of the Civil Service Board office for additional information.

The most **significant new requirements** are:

- 1) When you use a candidate assessment method that results in the candidates being sorted into categories, such as "contact for interview" vs. "do not contact," rather than being assigned numeric scores, the only acceptable method of complying with the preference requirement is to offer an interview to all preference-eligible veterans.
- 2) Recent case law (Michael Curphey v. Brevard County BOCC VP-2015-006) created a new interpretation of the Veterans' Preference law and rules that compels employers to provide preference in appointment for every job that a preference-eligible veteran applies for – even after you hire the veteran. This applies only to job openings that are open to the public and not to jobs that are limited to internal candidates.
- 3) Within 14 business days of the job offer being accepted, employers must now notify all preference-eligible candidates that the job they applied for is filled. If such notice is not received by a preference-eligible candidate within 45 days of the end of the application period or the date of the candidate's interview (whichever is later), the candidate is directed to contact the employer for an update, "prior to filing a complaint." When the employer notifies preference-eligible candidates that the job was filled, then preference-eligible candidates have 60 days from receipt of the notice to file a complaint.
- 4) There is new emphasis on creating and retaining thorough documentation of each selection process. See documentation section.

- 5) It is a new requirement that, when a job candidate claims preference, but does not submit appropriate documentation, the recruiter must so notify the job candidate and provide a reasonable opportunity for the candidate to cure the deficiency. The Civil Service Office has implemented this new requirement.
- 6) New forms are now required to be completed as part of the employment application process to document the preference eligibility of candidates claiming preference. The Civil Service Office has implemented this new requirement.

What is Florida Veterans' Preference in Employment?

For many years, the State of Florida has mandated, through Section 295.07, F.S., that state and local government agencies provide special consideration or preference in hiring or appointment of qualified veterans throughout each step of the selection process. The specific preference that is required varies by category of veteran, by the type of selection process (i.e., numeric vs. non-numeric), and by the type of job opening (i.e., internal-only vs. open to all and some jobs are exempt from the preference requirement). The Florida Department of Veterans' Affairs (FDVA) is the organization responsible for implementing the veterans' preference law through rule-making and enforcement.

Are all Veterans Eligible for Preference in Appointment?

The short answer is "no." In general, a preference-eligible veteran is a person who meets all of the following criteria:

1. Served in the active military, naval, or air service and was discharged or released under honorable conditions (or who later received an upgraded discharge under honorable conditions) or is a current member of any reserve component of the United States Armed Forces or the Florida National Guard.
2. Claims veteran's preference on the employment application.
3. Timely produces required documentation that supports the claim.
4. Meets or exceeds the advertised minimum education, experience, and other job requirements (e.g., license, certification, etc.).

Individuals currently serving on active duty and individuals who separated from the military under conditions other than "honorable" are not eligible for preference.

Are All Eligible Veterans Given Equal Preference?

Again, the short answer is "no." As stated previously, the details of the required preference vary by the category of veteran and other factors. Refer to the [Veterans' Preference page on the Civil Service Board web site](#) for a complete description of the multiple veteran categories. The "What Actions Qualify as Preference?" section of this document briefly describes the categories and the associated preference requirements.

How Can I Tell Which Candidates on a Referral List are Eligible for Veterans' Preference?

The Civil Service Board staff works with each candidate who claims veterans' preference eligibility to collect and verify the required documentation. Once preference eligibility is verified by Civil Service Board staff, the candidate's record is updated accordingly. The end

result that you will see on referral lists and other reports are numbers (0, 5, 10, 15, 99) that appear on the preference-eligible veteran's record.

A value of "0" (zero) indicates that, while preference was claimed, the candidate is not eligible for preference. This could be due to the candidate not following through in a timely fashion on providing the required documentation, or providing documentation indicating the claimant is not eligible for preference. Further, a value of 99 indicates a disabled veteran who is at least 30% disabled (see the top of next page for points information).

What Actions Qualify as Preference?

Eligible veterans must be given preference at each step that they reach in the selection process.

How preference must be expressed depends on whether **numeric** scores (e.g., 32 out of 50 interview score, or 77 on a 100 question test, or 109 combined interview and test score) or **categories** (e.g., sorting applications of qualified candidates into "no interview" and "contact for interview" stacks) were used by the employer to reflect the results of a step in the selection process.

Required Preference When Using a Non-Numeric Selection Processes

This is the area where one of the most significant changes appears in the new FDVA Veterans' Preference rules. *It is now a requirement that, when using a non-numeric process to determine which candidates are interviewed, ALL preference-eligible candidates be offered an interview – IN ALL CASES, WITHOUT EXCEPTION.*

After the initial interview, if staff determines that the preference-eligible candidate is not sufficiently qualified to advance to the next step in the selection process (or to be offered a job), a higher level of management must review and, in writing, either uphold or overturn that determination. See documentation section also.

Required Preference When Using a Numeric Selection Processes

The below table identifies the appropriate percentage that must be used to increase the scores of preference eligible candidates – before you set the "cut score" that will determine which candidates will move to the next step in the selection process (e.g., are invited to an interview). Candidates on the list will be rank ordered by their new augmented score.

Percent Increase in Points	Qualifying criteria category
15% & Move to Top of List	<ul style="list-style-type: none"> • \geq 30% Disabled Veteran
15%	<ul style="list-style-type: none"> • $<$30% Disabled Veteran • Spouse of disabled Veteran or a spouse of a person missing in action
10%	<ul style="list-style-type: none"> • Wartime Veteran and/or recipient of Expeditionary Medal • Un-remarried widow/er of veteran who died as a result of military service combat • Parent, legal guardian, or un-remarried widow/er of veteran who died as a result of military service under combat-related conditions
5%	<ul style="list-style-type: none"> • A veteran who served in the active military, naval or air service • Current member of any reserve component of the United States Armed Forces or The Florida National Guard

In addition to validity, it is important to consider the veterans' preference implications of choosing a numeric versus non-numeric approach when designing a candidate assessment process. Some employers use a numeric process for some jobs and a non-numeric process for others, while others consistently use one or the other. In fact, one could conceivably use a mix of numeric and non-numeric processes to assess candidates for a given job. If you do such, keep in mind to follow Veterans' Preference rules that correlate with the numeric or non-numeric step.

What if two or more veterans are tied?

Offer the job to the candidate in the higher preference category (see prior section).

What is my responsibility when a hiring decision is made?

You must notify all non-selected preference-eligible candidates of the decision within 14 business days. We recommend you notify all non-selected candidates as soon as a hiring decision is made and the job offer is accepted. The 14 business day timeclock begins when the employer receives an affirmative response to a job offer.

The preference-eligible candidates then have a 60 day limit on the time to file a complaint about the hiring process with the FDVA.

If you fail to notify candidates as described above, the preference-eligible candidates may have an unlimited time to file a complaint with FDVA.

What Documentation am I Required to Create and Retain?

You are required to create a file that includes all applications/resumes received, names of candidates interviewed, evaluation criteria and methods used such as numerical scoring or other means of evaluating candidates, details of how preference was provided to eligible candidates, documentation of the candidate assessment process (to include interview notes, if any), employment offer and acceptance/rejection letters, employment pre-screening results (e.g., background check), and any other relevant information. Florida public records law (Chapter 119, F.S.) currently requires that such records be retained for 4 years after the job is filled.