



**Department of
Civil Service**

Veterans' Rights Manual For Municipalities

Disclaimer

“This Handbook has been prepared for the general information of State and local employees as a summary of the various laws, executive orders, and policies that provide protection from discrimination for State and local employees. The Handbook is not exhaustive and does not summarize all legal protections that may apply to State and local employees. Employees should also refer to the employee manual and antidiscrimination policies of their employing agency. This handbook does not grant any legal rights to any employee, nor is it intended to bind the State in any way. Where there is a conflict between any law, regulation, order, policy or collective bargaining agreement and the text of this Handbook, such law, regulation, order, policy or agreement shall be controlling. The State reserves the right to revise, add to, or delete any portion of this Handbook at any time, in its sole discretion, without prior notice to employees. Moreover, this Handbook is not intended to, and does not create any right, contractual or otherwise, for any employee, not otherwise contained in the particular law or executive order the Handbook summarizes.”

**Rights of Veterans and Active Duty Service Members
Manual for Municipalities**

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Introduction

The purpose of this manual is to provide municipal civil service agencies with an overview of veterans and military service members' employment and examination rights as provided under Civil Service and Military Law.

The topics covered in this manual are those that civil service agencies need to be aware of when carrying out their statutory duties and responsibilities involving veterans and military service members. The manual defines the terms "veteran" and "disabled veteran" provides a brief description of the legal provisions affecting veterans and military service members; and offers general information and guidance on frequently encountered military issues. The manual is a convenient reference tool, but inquiries concerning veterans and military service members' civil service rights can be complex and there are a number of factors to consider before responding. Specific questions on veterans rights should be reviewed with legal counsel when necessary.

Some of the rights discussed in this manual are granted to individuals who meet the applicable statutory definitions of a veteran or disabled veteran. Other benefits are provided to people while they are still in military service or otherwise may not qualify for veteran status.

Veterans derive their rights from various federal and New York State mandates, including municipal civil service rules. However, not all veterans, disabled veterans or military service members are entitled to the same rights or benefits.

A veteran or military service member may be:

- a current or former employee;
- an eligible;
- a candidate or potential candidate;
- any combination of the above.

Definitions

The term **veteran**, as used in this manual, is defined as a United States citizen or an alien lawfully admitted for permanent residence who served in the armed forces of the United States and was honorably discharged or released under honorable circumstances. It also includes veterans who received an other-than-honorable discharge or a general under honorable conditions discharge due to sexual orientation, gender identity, service-related post-traumatic stress disorder, traumatic brain injury, or mental health condition linked to military sexual trauma seeking benefits afforded through New York State law and are in possession of a letter from the Division of Veterans Services restoring access to such benefits. Also, for additional examination credit, a candidate must be a New York State resident at the time of application. A *Special Rights for Veterans Chart* is included at the end of this manual.

Armed forces, as used in this manual, are defined as the Army, Navy, Marine Corps,

Air Force, Coast Guard and the National Guard when in service for the United States. Such service must be or have been on a full-time active duty basis, other than for training purposes.

Time of war is no longer defined in Section 85 of the Civil Service Law, and therefore references to time of war service have been removed from this manual. Please refer to [Policy Advisory Report 06-22](#) for further details.

A **disabled veteran** is defined as someone who meets the service criteria in the definition of “veteran” and is certified by the United States Department of Veterans Affairs (DVA) as having a disability rated at 10 percent or more which was incurred while serving in the United States armed forces. The disability must be in effect at the time of application or retention. A sample Disability Record Authorization form is available on MSD online at the following link:
https://www.cs.ny.gov/msd/msdonline/forms_page.cfm.

See: New York State Constitution, Article V, Section 6, Civil Service Law, Section 85 Article 2, Section 13-a, General Construction Law

NOTE: Active military service performed in the service of New York State, including homeland security or disaster response duty under orders of the Governor, cannot be used to establish a claim for veterans or disabled veterans status.

Legal Framework

There are many federal and New York State laws that provide benefits to veterans and service members who are seeking employment, are employed or are seeking reemployment. Highlighted below are sections of law that are frequently used when answering questions concerning veterans. Many of these sections are referenced throughout the manual. Those involved in administering civil service should become familiar with the sections of law applicable to veterans and military service members, and each section should be reviewed in its entirety.

Federal Law

Title 38 of the United States Code mandates basic rights for military service members and benefits for all veterans, which may be expanded upon by individual states. Chapter 113 of Title 38 of the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) and its regulations in 20 CFR part 1002 provide significant employment and reemployment rights for all qualified military service members.

New York State Constitution

Article V, Section 6 provides a basic definition of veteran and a veteran who is disabled and allows additional credit for qualified veterans on an examination. This

credit must be granted only at the time an eligible list is established, and unless a candidate meets certain criteria (explained in the veterans credits section of this manual) it may be used for only one permanent appointment for New York State or local government.

New York State Civil Service Law

Section 55-c provides that the New York State Civil Service Commission may determine that up to 500 positions in the civil service of New York State with duties that can be performed by veterans with disabilities who are found otherwise qualified to perform satisfactorily the duties of any such position shall be classified in the non-competitive class. It is a goal of New York State to employ veterans with disabilities.

While Section 55-c only applies to positions in the civil service of New York State, municipal civil service agencies may use section 55-a to accomplish the same goal.

Section 85

- Expands the definition of veteran and a veteran who is disabled;
- Outlines the procedures for the use of additional credit and its withdrawal;
- Mandates a veterans credits roster be maintained by civil service; and
- Provides for preference in retention upon the abolition of positions.

Section 86 provides transfer rights for a veteran in a non-competitive or labor class title whose position is abolished.

Section 87 generally provides that a veteran cannot be disqualified from holding a position due to age or disability.

New York State Military Law

Section 242 (applies to the organized militia or reserves)

- Defines “public employee” and “ordered military duty”;
- Provides for leaves of absence from employment for military duty;
- Protects certain rights of employees during leave of absence for military service.

Section 243 (generally applies to regular armed forces filled by enlistment or selective service)

- Defines “public employee” and “military duty”;
- Provides for leave of absence and reemployment;
- Provides employment rights while on military duty;
- Provides opportunity for make-up examinations;
- Permits deduction of military service time from age where maximum age requirements are established;
- Provides for preferred list or reemployment list eligibility where a government position is abolished.

Section 243-b(1) provides for a special military make-up examination for a candidate who has filed an application for an examination and is deprived of the opportunity to

take such examination due to active military duty in the armed forces of the United States.

Section 243-b(2) and (3) provides all members of the armed forces who miss the application deadline for civil service examinations due to active military service with the ability to participate in either the scheduled examination holding or a make-up examination, subject to the policy of the civil service agency administering the examination.

Section 243-c provides a special filing period for a person serving on active duty in the armed forces during the filing period for a civil service examination or a person who has been discharged with other than a dishonorable discharge after the filing period has commenced.

The New York State Restoration of Honor Act

The Restoration of Honor Act authorizes the New York State Division of Veterans' Services (NYS DVS) to restore access to State Veterans Benefits to Veterans who have an Other-Than-Honorable Discharge (OTH) or a General Under Honorable Conditions Discharge due to any of the following:

- Post-Traumatic Stress Disorder (PTSD)
- Traumatic Brain Injury (TBI)
- Military Sexual Trauma (MST)
- Sexual Orientation
- Gender Identity

A determination to restore **does not change a Veteran's official character of discharge on their discharge paperwork**. This determination refers **solely** to a Veteran's character of discharge for the purposes of qualifying for specific New York State benefits for Veterans and their families.

SPECIAL NOTE: Section 243 and the ongoing War on Terror

Since September 11, 2001, many members of the National Guard and Reserves have been called to active federal military duty. Periods of duty may extend for a year or more and include service overseas. Provided such duty is not *temporary or gratuitous service in any reserve or auxiliary force*, the service member may be entitled to Section 243 merit system benefits.

Age

Municipalities do not typically establish age requirements for appointment to civil service positions. Pursuant to Section 54 of the Civil Service Law, municipalities may, with approval of the State Civil Service Commission set age limits for appointment. Age requirements for entry level competitive police officer positions are imposed by Civil Service Law, Section 58. When determining whether a candidate who has performed military duty meets an established age requirement, there are several issues that must

be considered. Those issues are outlined in the *Special Rights for Veterans Chart* found at the end of this manual.

Civil Service Law

Section 54 of the Civil Service Law permits municipal civil service agencies, subject to the approval of the State Civil Service Commission, to adopt reasonable maximum age requirements for designated positions. Pursuant to Section 243 (10-a) of Military Law, time spent on military duty may be subtracted from the age of applicants seeking to qualify for such positions.

See: Civil Service Law, Section 54 and Section 58; Military Law, Sections 243(1-b) and 243(10-a)

Military Law

Section 243(10-a) of the New York State Military Law provides age deductions for military service for applicants who seek positions for which maximum age requirements have been established. Generally, an individual may have the period of military duty, as defined in Section 243(1-b), deducted from his/her chronological age to meet such age requirements. The maximum amount of time which can be deducted is seven years. Please refer to [Policy Advisory Report \(PAR\) 11-19](#) for more information.

Specific questions relative to creditable time for deduction should be directed to your agency's legal counsel.

Examination Credits

Veterans Credits Generally

Certain veterans are entitled to receive additional credit in competitive civil service examinations. Article V, Section 6 of the State Constitution provides that in order to receive additional credit a veteran:

- must have received an honorable discharge or been released under honorable circumstances; or received an other-than-honorable discharge or a general under honorable conditions discharge due to sexual orientation, gender identity, service-related post-traumatic stress disorder, traumatic brain injury, or mental health condition linked to military sexual trauma seeking benefits afforded through New York State law and are in possession of a letter from the Division of Veterans Services restoring access to such benefits; and
- must be a resident of New York State at time of application for examination;

A candidate claiming veterans credits may make application for such credit at any time between the date of application for examination and the establishment of the resulting eligible list. However, candidates must be provided with a minimum of two months from the last application filing date to establish proof of eligibility for veterans credit.

Instructions for how to claim credits should be included on the exam announcement. For a candidate currently in the armed forces, such proof may include military identification, military orders, or other official military documentation that substantiates active military service at the time of examination. Two months from the last filing date should be allowed before establishing the eligible list.

A candidate who is currently in the armed forces may receive **conditional** veterans credit when the eligible list is established; however, the same criteria to be eligible for disabled and non-disabled credits must be met prior to certification with such conditional credit.

A candidate who is granted conditional credit while in the armed forces must be restricted from certification using such credit until acceptable documentation is provided of receipt of an honorable discharge or release under honorable circumstances.

A current member of the National Guard or Reserves may achieve civil service veteran status based upon a release under honorable circumstances following a qualifying period of federal active military duty, even though he or she has not had a final separation from the Guard or Reserve.

A candidate cannot be granted veterans credits after an eligible list has been established. This is why conditional credits should be claimed by individuals currently in the armed forces.

In order to be granted additional credit, a veteran must first obtain a minimum passing score on the examination.

A veteran is deemed to have used veteran credits when appointed if the addition of the credit changes the position of the veteran relative to any other candidate on the eligible list. If the position of the veteran relative to the other candidates on the eligible list does not change after addition of the veteran credits, the credits are not deemed to have been used because their "relative standing" on the eligible list has not changed.

A veteran may withdraw his/her veterans credit at any time up to appointment. An election to withdraw credits must be submitted in writing to the appropriate civil service agency. Such withdrawal may require revision of the eligible list to reflect the veteran's final examination rating after the credit has been deducted.

An election to withdraw credits may not be reversed during the life of the affected eligible list.

A veteran may apply for, be awarded and subsequently withdraw use of veterans credits on an unlimited number of examinations until the credit is used in gaining a permanent appointment. To ensure that a veteran has been given the opportunity to decide whether or not to use the credits, it is recommended that civil service agencies discuss the effects of use and non-use of credits at the time of appointment. It is also recommended that civil service agencies adopt a form after such discussion occurs to document the veteran's disposition regarding the use of such credit. A sample form is

available on MSD Online at the following link:
https://www.cs.ny.gov/msd/msdonline/forms_page.cfm.

It is the responsibility of the civil service office to maintain an accurate record of whether or not a veteran has used allowable credit. Section 85(6) of the Civil Service Law requires each municipal commission to maintain a roster of all veterans credit. This roster should be reviewed before establishing any eligible list which includes candidates claiming veterans credits. Additionally, if the veteran's application indicates prior public employment, a check should be made with the civil service agency that had jurisdiction to determine if veterans credits were used for a permanent appointment.

A veteran who receives a permanent appointment from an eligible list using veterans credits and subsequently either is terminated during or at the end of the probationary term or resigns during or at the end of the probationary period shall not be deemed to have used his/her veterans credits.

Calculating Veterans Credits

Non-disabled veterans are entitled to five points on an open-competitive examination or two and one-half points on a promotion examination.

Disabled veterans are entitled to receive an additional 10 points on an open-competitive examination or an additional five points on a promotion examination. In order to be eligible for credits as a disabled veteran, the candidate must be certified by the Department of Veterans Affairs as having a service connected disability rated at 10 percent or more, which was incurred during a time of war.

Use of Veterans Credits

Until November of 2013 veterans credits were allowed to be used only once and generally speaking this is still true. When a veteran receives a permanent appointment (either original appointment or promotion) from an eligible list using veterans credits, and that veteran's status as a non-disabled veteran remains unchanged, no additional veterans credits may be awarded on any subsequent examination. This would apply to any appointment in the civil service of New York State or any of its civil divisions.

In November of 2013, the New York State Constitution was amended. The amendment creates an exception to the one-time-only use of veteran credits. It permits veterans who are certified as disabled after having already received credits at either an original appointment or a promotion because of their status as non-disabled veterans to receive additional credits after the certification of their disability. After being certified disabled, such a veteran would be entitled to an additional grant of credits equal to the difference between 10 credits and the number of credits received at the initial appointment or promotion. This would bring the total additional points of Civil Service credits such a veteran can receive to 10 for either an appointment or a promotion. For example:

- If a veteran previously received five (non-disabled) points on an open-competitive examination and subsequently became certified as disabled, he or she would be entitled to receive another five (disabled) points on a subsequent examination whether an open-competitive or a promotion examination.
- If a veteran previously received two and one-half (non-disabled) points on a promotion examination and subsequently became certified as disabled, he or she would be entitled to receive another seven and one-half (disabled) points on a subsequent examination whether an open-competitive or a promotion examination.

There is no effect on a veteran who has already received non-disabled veteran credits and remains non-disabled. A disabled veteran who received disabled veteran credits without previously having received non-disabled veteran credits is not entitled to any additional credits.

See: New York State and Constitution, Article V, Section 6 and Civil Service Law, Section 85

Make-Up Examinations

Service in the military may at times conflict with scheduled civil service examinations. Sections of the New York State Military Law provide special rights for veterans and members of the armed forces who are government employees, candidates on lists or applicants awaiting examination. When providing make-up or comparable examinations, civil service administrators must ensure the rights of veterans and service members under the law while also ensuring examination security and protecting the examination process for other candidates. Below is a discussion of the various sections of Military Law and the special rights that must be given to a veteran or member of the armed forces.

NOTE: A military make-up examination is not limited to written tests. If an applicant was unable to appear for a medical, physical agility, performance, psychological or any other type of examination, then he/she would be entitled to a make-up examination.

Military Law

Section 243-b (1) provides that any member of the armed forces ***who properly filed, within the announced filing period***, an application for a competitive examination but was unable to participate in the examination due to active military service, must be provided with a special make-up examination. This applies to candidates covered by Section 242 or 243 of the Military Law, as well as any other applicant who, due to active military service, was prevented from participating in a competitive examination for which he/she timely filed an application.

Section 243-b (2) provides that any member of the armed forces, who, because of

active military duty other than for training purposes, ***missed the application filing period*** for an examination and as a result is deprived of the opportunity to compete in an examination, shall be given a special military make-up exam. The make-up examination is to be administered under the terms and conditions set by the State Department of Civil Service or municipal civil service agency.

Section 243-b (3) provides that any member of the armed forces who, because of active military duty other than for training purposes, ***missed the application deadline for a scheduled examination and who returns from such duty prior to the administration of such examination*** shall be granted a waiver of the application requirement and be allowed to compete in the examination. A candidate who failed to file a timely application due to military duty is not necessarily entitled to be tested on a walk-in basis. Even if the candidate is available on the scheduled test date, he or she may be required to compete according to alternate test date procedures.

A candidate who is entitled to take an examination under the provisions of 243-b (1), (2) or (3) may not necessarily be entitled to other benefits afforded to military service members or veterans and disabled veterans pursuant to the New York State Constitution or any other laws. The candidate's eligibility for other military system benefits must be evaluated on a case by case basis in accordance with the requirements established by the respective law.

Such make-up examinations are not limited to individuals employed in public service prior to entry into the military, but include all applicants, whether they are current employees or not. An applicant is not entitled to a make-up or comparable examination unless he or she would have met the announced qualifications for the missed examination.

In order for a military make-up examination to be administered under Section 243-b, the eligible list resulting from the original examination holding must still be in existence. A candidate eligible for a military make-up test does not have to wait until discharge from active duty to take the test. Completing the examination at the earliest possible opportunity is advisable, since candidates who pass a military make-up examination can only have their scores added to the existing eligible list for the examination in which the individual was originally unable to participate.

Section 243-b authorizes state and municipal civil service agencies to establish terms and conditions for the administration of the make-up tests. Each approved applicant for a military make-up examination should be sent a letter explaining the terms and conditions under which the test will be given.

The State Department of Civil Service has set the following conditions for make-up examinations where the examination is prepared and rated by New York State:

- The applicant must make full disclosure in writing of *all* New York State and Municipal Civil Service Examinations for which a military make-up test is being or will be requested. This information must be forwarded to the appropriate section of the New York State Department of Civil Service by the municipal civil service agency before

any written test will be provided. Please use the web application provided for this purpose available on MSD Online. To maintain examination security, all written tests in a series, to be taken by the same candidate, must be administered at the same time, so make-up examinations have to be coordinated.

- The applicant must sign the Alternate Test Date/Religious Observer Affirmation (T-70R). The actual signing should take place before any written test is administered.
- The applicant must submit a copy of a military order, DD-214, or other official military document to the appropriate municipal civil service agency that substantiates his/her active military service, at the time of the examination. This should be submitted before any test is administered.
- The eligible list resulting from the examination applied for must still be in existence. Indicate the expiration date of the eligible list for any test requested. Usually, it is not practicable to administer an exam requested if the list in question will expire soon.
- Applicants should be instructed to request a make-up examination as soon as possible after release from active duty.
- Written exam materials from the originally scheduled exam should not be retained for use in make-up examinations. Requests for military make-up and comparable exams should be sent to the New York State Department of Civil Service.
- Individuals are not entitled to veterans or disabled veterans credits on a make-up or comparable examination unless they qualified for such credit as of the last filing date for the original examination.

Agencies using examinations other than those prepared by New York State must develop procedures regarding military make-up examinations.

Once the need for a military make-up examination is anticipated, request a military make-up examination from New York State Department of Civil Service through our Examination Services Web Page as soon as possible. This will avoid unnecessary delays and afford the successful candidate the longest possible eligibility for appointment from the eligible list.

Section 243-c covers individuals serving on active duty in the armed forces during the filing period for a civil service examination, or individuals who have been discharged with other than a dishonorable discharge after the filing period has commenced. Such individuals must be permitted to file an application for examination no later than 10 business days before the scheduled examination date, or the last date to file, whichever is later. If qualified, the individual must be provided an opportunity to compete in the examination under terms and conditions deemed appropriate by the state or municipal civil service agency.

Section 243(5) provides that if a promotion examination is held while an employee who would be entitled to participate in the examination is on military duty, the employee may have a right to participate in a comparable examination when restored to his/her position. The employee must request a comparable examination within 60 days of being restored to his/her position. Under Section 243(5), the eligible list resulting from the original promotion examination holding need not be in existence. If the employee passes the examination, his/her name may be placed on a special eligible list, as discussed in the next section of this manual.

Note: Section 243(5) differs from Section 243-b in that it applies only to current public employees who return to a position after termination of military duty.

Section 243(7-b) differs from Section 243-b, as it **applies to any person who has passed one or more parts of an examination but has been prevented from completing the remaining parts of the examination because of military duty.** A request to complete the examination must be made within 90 days of the termination of military duty, and the candidate shall be given the opportunity to take a comparable examination. Under Section 243(7-b), the eligible list resulting from the original examination holding need not be in existence. If the candidate passes such examination, his/her name may be placed on a special eligible list, as discussed in the next section of this manual.

See: Military Law, Sections 243-b, 243-c, 243(5) and 243(7-b)

*Note: The military make-up examination benefits provided in Military Law refer to military duty which as defined in General Construction Law, Article 2, Section 13-a must have been “on a full-time active duty basis, other than active duty for training.” A member of the armed forces may be called to active duty for training purposes causing them to miss the scheduled date of an examination and they will have no military make-up examination benefit pursuant to section 243. **It is therefore recommended that civil service agencies review their alternate test date policy and revise it if necessary, to ensure that candidates who are ordered to active duty for training purposes may be considered for an alternate test date.***

Sample policy language:

“A candidate scheduled for short term military duty (which typically requires a weekend or two-week training commitment) must request an alternate test date prior to the scheduled test date.

Special Military Lists

While on military duty, veterans and military service members have certain rights relative to eligible list status. As discussed below, the rights may vary depending on whether the individual is a current public employee or is a candidate for employment.

Military Law

Section 243(5) refers to public employees who are on leave of absence from government service while on military duty. If a promotion examination in which a public employee was entitled to participate was held while the individual was on military duty, the employee must be given a comparable examination, provided a request is made within 60 days of the restoration to the original position. The eligible list resulting from the original promotion holding need not be in existence. If the employee passes

the examination his or her name must be placed on the original list if still in existence. If the candidate's score would have made him/her reachable for appointment any time between entry into military duty and the date of notification of score from the comparable examination, the employee shall have his/her name placed on a special eligible list. The employee's name will remain on the special eligible list for two years and the list must be certified before any other list, including a preferred list. Appointment from a special eligible list follows the "Rule of Three". Special Military Lists containing fewer than 3 names are not mandatory. If appointment is made from the special eligible list, the employee's seniority for purposes of promotion or retention begins on the earliest date of appointment of any eligible whose rank was lower on the regular promotion list.

Section 243(7) applies to any candidate for appointment; it is not restricted to current public employees. **While on military duty, any candidate whose name is on a list shall retain his/her rights and status on the list pursuant to Section 243(7) of the Military Law.** If reached for certification while on military duty, the candidate's name can be placed on a special eligible list. However, the candidate must make the request to be placed on a special eligible list following termination of military duty. Placement on a special eligible list is possible only if the list in question is still in existence. The veteran's name remains on the special eligible list for up to two years from the termination of military duty. If appointment is made from the special eligible list, the appointee's seniority for purposes of promotion or retention begins on the earliest date of appointment of any eligible whose rank was lower on the original eligible list.

Section 243(7-b) provides that a candidate who has already passed part of an examination but has been unable to complete the remaining parts of the examination due to military duty must be given the opportunity to complete the examination. The eligible list resulting from the original holding need not be in existence. If the candidate passes the remaining parts of the examination, his/her name must be placed on the original list if it is still in existence. If the candidate's name would have been reached for certification on the original list any time between entry into military duty and notification of passing the examination his/her name must also be placed on a special eligible list. The special eligible list shall remain in effect for two years from the date the service member's name is added to the list. The special eligible list must be certified before any open-competitive or promotion list. If an appointment is made from the special military list, the appointee's seniority (seniority for the purpose of promotion or retention) begins on the earliest date of appointment of any eligible lower on the original eligible list or who was lower in relative order of retention on such list.

Appointment from a special military list is not mandatory unless the list contains the names of three or more acceptors for a position filled from the list.

An appointment from a special military list also removes the appointee's name from the corresponding original eligible list for the same position, if the original list still exists.

An individual is not entitled to veterans or disabled veterans credits on a special military list unless he/she was awarded such credits on the original list (Section 243(5)), or was entitled to such credits prior to the holding date of the original examination (Sections

243(5) and 243(7-b), and applies for such credits on a comparable examination.

See: Military Law, Sections 243(5), 243(7) and 243(7-b)

NOTES: Section 243(6) permits an appointing authority to fill a vacancy with a person eligible for appointment notwithstanding that the person is in military service. Section 243(9) provides that, where a person enters military service prior to the completion of his/her probation or where a person is appointed pursuant to Section 243(6), the time spent in military service shall be credited as satisfactory service during the probationary period.

Certification of Lists

The Civil Service Law and Military Law provide that eligible lists normally be certified in the following order:

1. Special Eligible List (established pursuant to Section 243(5) or Section 243(7-b) of the Military Law if established prior to a preferred list)
2. Preferred List
3. Special Eligible List (established pursuant to Section 243(5) or Section 243(7-b) of the Military Law if established after a preferred list)
4. Special Eligible List (established pursuant to Section 243(7) of the Military Law)
5. Promotion List
6. Open-Competitive List

Specific information regarding certification of lists may be found in the Eligible List Manual.

See: Military Law, Sections 243(5), 243(7) and 243(7-b)

Leaves of Absence

When dealing with public employees who request a leave of absence for either military duty or to pursue veterans educational benefits under local civil service rules and federal law, it is important to remember that such leaves are a guaranteed right rather than a discretionary decision. This is significantly different than other situations where public employees request leaves of absence.

The right of a public employee to a leave of absence to perform military duties is guaranteed under Sections 242 and 243 of the New York State Military Law. Title 38 of the United States Code also provides certain reemployment rights for employees following military duty.

New York State Military Law Section 243 requires that a public employee must be reinstated to his/her position as soon as possible, provided application for such reinstatement is made within 90 days after the termination of Section 243 qualifying military duty. Municipal civil service rules concerning reinstatement may also provide that any time spent on active military service does not count towards the time period during which a permanent competitive employee who has resigned may be reinstated by local civil service action.

In addition, municipal rules may provide that a leave of absence without pay of up to four years be granted to a veteran for taking courses under the educational benefits provided for in Title 38, United States Code or New York State Education Law, Section 674. The veteran must be reinstated to his/her position provided such reinstatement is applied for within 60 days after termination of the course of study.

It is recommended that you consult with your legal counsel whenever a public employee requests leave for military duty so that both the civil service agency and the appointing authority understand the duration of the leave and the conditions for reemployment.

See: Military Law, Sections 242(2) and 243(2), Education Law, Section 674, Chapter 43 of Title 38 of the United States Code (Uniform Services Employment and Reemployment Rights Act)

Layoff Rights

Competitive Class

Retention Date

Whenever competitive class positions are abolished resulting in the suspension, demotion or displacement of permanent employees, veterans will have additional time added to their retention dates as follows:

- **Disabled veterans** will have their retention date deemed to be 60 months earlier than their date of original permanent appointment to the classified service.
- **Non-disabled veterans** will have their retention date deemed to be 30 months earlier than their date of original permanent appointment to the classified service.
- **The spouse of a veteran with a one-hundred percent service-connected disability** will have his or her retention date deemed to be 60 months earlier than the spouse's date of original appointment to the classified service. The spouse must be a head of household and domiciled with the veteran-spouse at the date of layoff.

A veteran automatically has his/her retention date adjusted; it does not need to be applied for, and does not depend on whether a veteran received, or even applied for, veterans credits at time of examination. However, a municipal civil service agency

should verify veterans and disabled veterans status for all employees potentially affected by layoff.

Preferred List Eligibility

Section 81 of the Civil Service Law has been amended such that members of the armed forces who are laid off from civil service positions while they are performing active federal military duty shall have their preferred list eligibility commence on the date of their termination from such military duty.

When administering a layoff of competitive class employees, local civil service agencies must determine whether any employees displaced from their positions are performing active federal military duty, and take steps to ensure that their preferred list eligibility commences at the time of their termination from active military duty and continues for four years from that date, rather than from the effective date of the layoff.

Non-Competitive or Labor Class

Right to Transfer Upon Abolition of Position

Section 86 of the Civil Service Law provides that whenever a non-competitive or labor class position occupied by a veteran is abolished, the veteran shall have a right to transfer to a similar position where a vacancy exists and shall receive the same compensation in the new position.

This right of transfer is mandated and continues for a period of up to one year after the abolition of the original position. Where more than one such abolition occurs, transfer is made in the order of original appointment in the classified service. This right does not apply to positions of private secretary, cashier or deputy of any official or department.

It is the responsibility of all persons with the power to appoint to make such transfers effective. When a vacancy exists in a similar position to which the veteran could be transferred, it is the responsibility of the appointing authority and the civil service administrators to affect utilize an appropriate transfer before any other appointment can be made to the position.

Re-Employment List Rights

Section 88 of the Civil Service Law provides, in essence, that no public employer shall deny a member of the military his or her re-employment rights or any benefit of employment under State law and the federal Uniformed Service Employment and Reemployment Rights Act (USERRA). This section reiterates existing State and federal protections for members of the armed forces and does not significantly alter the administration of civil service.

Section 243(12) of the Military Law provides military service members in non-competitive and labor class positions who are laid off while they are on active federal duty with the right to have their names placed on re-employment lists. **Section 243(13)**

extends these same rights to military service members serving in temporary positions under the same circumstances.

Placement on a re-employment list must be requested of the civil service agency by the affected veteran within 90 days of the individual's termination of military duty. Re-employment lists have a four-year duration and must be certified to fill appropriate vacancies. Appointing authorities may select any candidate on a re-employment list regardless of the individual's standing on the list. When a re-employment list is certified for a vacancy, an appointing authority may not appoint a candidate whose name is not on the re-employment list unless he or she can certify to the civil service agency that there are no candidates on the re-employment list who are qualified or willing to accept appointment for the position. Any candidates on a re-employment list who refuse re-employment lose their rights to future certifications from the re-employment list.

Military service members serving in unclassified service positions, exempt class positions, or temporary positions with durations that expire during the term of military duty are not entitled to re-employment list rights under section 243(12) or 243(13) of the State Military Law. These individuals may possess re-employment rights under USERRA.

If you encounter a situation in which military service members are laid off while performing military duty, we recommend you also consult with your agency's legal counsel.

It is recommended that you administer re-employment lists using the same basic process used to administer preferred lists.

See: Civil Service Law, Sections 85(7), 86 and 88, Military Law, Section 243(12)

Discipline

Employee discipline is an area of civil service administration which may be subject to collective bargaining negotiations. Therefore, when a municipality is contemplating disciplining an employee who is a veteran, it is important that relevant bargaining unit contract provisions be reviewed to determine whether Civil Service Law or the respective contract is applicable. Questions regarding whether a veteran is covered by Civil Service Law Section 75 or a negotiated agreement should be directed to your legal counsel.

Section 75(1)(b) of the Civil Service Law provides rights for certain veterans with regard to removal and other disciplinary action. Generally, a veteran holding a position by permanent appointment or employment in the classified (competitive, non-competitive, exempt and labor) service, who is an honorably discharged member of the armed forces of the United States, or who is in possession of a letter from the Division of Veterans Services restoring access to State benefits pursuant to the Restoration of Honor Act is protected by Section 75. However, a veteran holding the position of private secretary, cashier or deputy of any official or department is not protected.

Section 75(1)(c) of the Civil Service Law provides that where a position has been designated by municipal civil service rule as *confidential or requiring the performance of functions influencing policy*, the incumbent of that position does not have right to a Section 75 proceeding. However, a veteran who meets the criteria in sub-part (b) must be granted the protection of Section 75 even if he/she would be excluded as a result of his/her position being designated policy influencing or confidential under sub-part (c).

It is important to remember that if an employee who is a veteran will be subject to discipline, legal counsel should be consulted to determine if that employee has rights under Section 75 of the Civil Service Law.

See: Civil Service Law, Section 75

Attachment A

SPECIAL RIGHTS FOR VETERANS

	Additional Examination Credits	Preference in Retention and Transfer	Removal and Discipline	Age Requirements and Age Deduction
Applicable Laws	CSL 85	CSL 85, 86	CSL 75	CSL 54, ML 243.10(a), 243.1(b)
Residing in NYS at Time of Application	Required	Required at the time of layoff	Not Required	Not Required
Honorable Discharge or Released under Honorable Circumstances	**Required	**Required	**Required	**Required

(**) Honorable service is required unless the veteran is in possession of a Restoration of Honor Act Decision Letter restoring access to State benefits issued by the Division of Veterans' Services (see Restoration of Honor Act).



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