

**NEW YORK STATE DEPARTMENT OF CIVIL SERVICE
STATE PERSONNEL MANAGEMENT MANUAL
2300 Reductions in Force**

Table of Contents

NOTE: Blanks in the "PAGES" and "ISSUED" columns indicate that no "white pages" have been issued. These sections *may* contain Policy Bulletins or Advisory Memoranda.

<u>CODE</u>	<u>TOPIC</u>	<u>PAGES</u>	<u>ISSUED</u>
2350	Layoffs in the Competitive Class	1-10	02/21
2360	Layoffs in the Non-competitive Class	1-2	11/87
2370	Layoffs in the Labor Class	1	11/87

NOTE: See the separate manual "*Guidelines for the Administration of Reductions in Force,*" published by this department.

NEW YORK STATE DEPARTMENT OF CIVIL SERVICE
STATE PERSONNEL MANAGEMENT MANUAL
Advisory Memorandum #21-01

1200 Examinations/2300 Reductions in Force
2800 Automated Position-Personnel System

February 2021

**THIS ADVISORY MEMORANDUM (21-01) REPLACES THE FOLLOWING
ADVISORY MEMORANDA:**

- **#04-03 (ISSUED IN JUNE 2004)**
- **#04-04 (ISSUED IN DECEMBER 2004)**
- **#06-03 (ISSUED IN SEPTEMBER 2006)**

**PLEASE REMOVE ADVISORY MEMORANDA 04-03, 04-04 AND 06-03
FROM YOUR SPMM AND DESTROY.**

**MILITARY SERVICE BENEFITS AND
VETERANS' STATUS AND DEFINITIONS**

New York State provides a variety of merit system rights and other benefits for people who are performing or have performed military service in the armed forces or reserve forces of the United States. The military benefits outlined below do not apply to military duty in the service of New York State or *any temporary or intermittent gratuitous service* in any federal reserve or auxiliary force (Military Law, §243.1(b)).

Eligibility for benefits as a veteran or disabled veteran under the Civil Service Law should not be used in determining eligibility as a veteran or disabled veteran under other New York State or federal statutes or programs. Similarly, entitlement to benefits as a veteran or disabled veteran under other state or federal statutes or programs is not controlling for determining entitlement to benefits under the Civil Service Law.

MILITARY BENEFITS

Age Deductions for Positions Specifying a Maximum Age

Applicants may deduct the time spent in federal military service from their ages when applying for positions which specify maximum age limitations at the time of examination or appointment. The allowable age deduction varies depending upon the nature and extent of qualifying military service:

- **Four Years:** Any person who performed active duty in the armed forces of the United States, whether involuntary or voluntary, is entitled to an age deduction of up to four years, depending upon the actual duration of duty. The computation includes time traveling to and from such duty and any period[s] of terminal leave.
- **Five Years:** Individuals who voluntarily entered the armed forces of the United States after July 1, 1970, but did not serve in time of war may deduct up to five

NEW YORK STATE DEPARTMENT OF CIVIL SERVICE
STATE PERSONNEL MANAGEMENT MANUAL
Advisory Memorandum #21-01

1200 Examinations/2300 Reductions in Force
2800 Automated Position-Personnel System

February 2021

years, if the fifth year was at the request of and for the convenience of the federal government (see pp. 5 and 6 for definition of “time of war”).

- **Six Years:** Individuals may deduct up to six years of time served during a time of war or national emergency declared by the President.

Make-up Examinations

Any member of the armed forces who has met the announced minimum qualifications **and** who properly filed an application for a competitive examination within the announced filing period but was unable to participate in the examination due to active military duty is entitled to a special military make-up examination. *The eligible list resulting from the original examination must still be in existence at the time the request for the make-up examination is made.* This benefit is available to any examination candidate and is not limited to State employees (Military Law, §243-b). Requests for make-up examinations must be made in writing to the Staffing Services Division at the NYS Department of Civil Service.

If a **promotion** examination is held while a public employee who would be entitled to participate in the examination is on military duty, the employee is entitled to a comparable examination, *provided that the employee makes such request within 60 days after being restored to his/her position* (Military Law, §243.5). Requests for comparable examinations pursuant to §243.5 must be made in writing to the Staffing Support Unit, NYS Department of Civil Service.

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 is entitled to complete the examination, *provided that such request is made within 90 days from the termination of military duty* (Military Law §243.7-b). This benefit is available to any examination candidate and is not limited to State employees. Requests to complete an examination pursuant to §243.7-b must be made in writing to the Staffing Services Division at the NYS Department of Civil Service.

List Eligibility

While on military duty, **any** person whose name is on an eligible list shall retain all associated rights and status on that list.

A person may be appointed from an eligible list while on military duty (Military Law §243.6). If a candidate is canvassed while on military duty and fails to respond timely, the person should be recorded as temporarily unavailable (code “TI”) for purposes of that canvass. A person on military duty should not be recorded on a Report of Canvass as declining a position (code “DP”) absent that eligible’s actual declination. (Refer to SPMM Policy Bulletins ## 00-01, 97-05, and 97-04 for list canvassing policies and procedures.)

NEW YORK STATE DEPARTMENT OF CIVIL SERVICE
STATE PERSONNEL MANAGEMENT MANUAL
Advisory Memorandum #21-01

1200 Examinations/2300 Reductions in Force
2800 Automated Position-Personnel System

February 2021

Special Military Lists

If a person's score becomes reachable for certification from an eligible list during military duty, that eligible's name will be placed on a special military list upon request following separation from military duty, *provided the original eligible list is still in existence* (Military Law §243.7). A person who has competed in a comparable examination (Military Law §243.5) or has completed all parts of a prior examination following military duty (Military Law §243.7-b) is entitled to special military list status if his or her score was reached for appointment between the date of entrance into military duty and the date he or she is notified of passing the examination.

Eligibility on any special military list is for a maximum period of two years. While an eligible retains special military list status, his or her name also remains active on the regular eligible list so long as that list is in existence. If an eligible is appointed from a special military list, his or her name may also be removed from the regular list for other positions filled from that list at that salary grade (or lower). A person appointed from a regular eligible list will have his or her name removed from the corresponding special military list.

Eligibility for Retroactive Seniority from Appointments from Special Military Lists

An employee performing military duty who is appointed from an open-competitive, transition, or promotion special military eligible list may be entitled to retroactive seniority from the date on which *any* eligible was appointed with a lower score from the regular eligible list. This retroactive seniority can be used for computing seniority credit in promotion examinations, computing training and experience credit for promotion, and determining eligibility for admission to promotion examinations.

Certification of Special Military Lists

Special military lists established pursuant to Military Law §§243.5 and 243.7-b generally enjoy priority in certification over any other lists, including the original eligible list, any subsequent eligible list for that title, or any subsequent reemployment lists.

Special military lists established pursuant to Military Law §243.7 have certification priority over the original eligible list and any subsequently created eligible list.

Special military lists never have priority over a previously established (already existing) mandatory reemployment list.

There can be no more than one special military list for each regular eligible list. No matter what the source of special military list status (e.g., from status on an existing eligible list, or following administration of a make-up or comparable examination), the names of all

NEW YORK STATE DEPARTMENT OF CIVIL SERVICE
STATE PERSONNEL MANAGEMENT MANUAL
Advisory Memorandum #21-01

1200 Examinations/2300 Reductions in Force
2800 Automated Position-Personnel System

February 2021

eligibles should be interfiled on a single special military list, in rank order, recording eligibility dates and the statutory basis for special list status. A special military list is **not** a mandatory list, unless it includes three or more names of individuals willing to accept appointment to a given position.

VETERANS' AND DISABLED VETERANS' BENEFITS

In addition to the benefits described above, qualified veterans and disabled veterans receive merit system benefits under the State Constitution and Civil Service Law.

Additional Credit in Examinations

Eligible war-time veterans are entitled to receive an additional five points on open competitive examinations and two and one-half points on promotion examinations. Eligible war-time disabled veterans are entitled to receive an additional ten points on open competitive examinations and five points on promotion examinations. These credits are added to the final earned rating for passing candidates and may be used only **once**, for appointment to a State or municipal civil service job (New York Constitution, Article V, §6; §85 Civil Service Law).

Additional Service Credit for Retention

Non-disabled war-time veterans serving in positions subject to Civil Service Law §§80 or 80-a, or labor class employees granted equivalent rights pursuant to collective bargaining agreements, are deemed to have received an original classified service appointment date 30 months prior to their actual date of permanent appointment. War-time disabled veterans serving in such positions are deemed to have received an original classified service appointment date 60 months prior to their actual date of permanent appointment (Civil Service Law §85).

A spouse of a veteran with a 100 percent service-connected disability and who is also a head of household and is domiciled with the veteran-spouse has a seniority date deemed to be 60 months earlier than the date of original permanent appointment to the classified service. The veteran with the 100 percent service-connected disability need not be a current or former New York State employee (Civil Service Law §85).

Tenure Protection

Veterans, disabled or non-disabled, who are not subject to contract disciplinary procedures, obtain the due process protections against discipline or removal pursuant to Civil Service Law §75. Veterans may obtain §75 rights even if they serve in a position in the exempt class or in the non-competitive class which has been designated confidential or policy influencing, provided they do not hold a position of private secretary, cashier, or deputy of any official or department (Civil Service Law §75-b).

NEW YORK STATE DEPARTMENT OF CIVIL SERVICE
STATE PERSONNEL MANAGEMENT MANUAL
Advisory Memorandum #21-01

1200 Examinations/2300 Reductions in Force
2800 Automated Position-Personnel System

February 2021

Transfer Upon Abolition of Positions

Veterans, disabled or non-disabled, serving in positions in the labor class or the non-competitive class which are not subject to the provisions of Civil Service Law §80-a, who are **not** private secretaries, cashiers or deputies, and whose positions have been abolished, may request a transfer to another similar vacant position at the same salary grade. This benefit is available for one year from the date of layoff (Civil Service Law §86).

Specific questions about the military service and veterans' benefits noted should be referred to your Staffing Services Representative.

ELIGIBILITY FOR VETERANS' AND DISABLED VETERANS' BENEFITS

Veterans

To be considered a veteran for all purposes under the Civil Service Law, an individual **MUST:**

- be a United States citizen or alien lawfully admitted for permanent residence and a resident of the State of New York at the time of application for appointment or promotion or retention;
- have been honorably discharged or released under honorable circumstances from the armed forces of the United States or is in possession of a letter from the New York State Division of Veterans' Services that restores access to state benefits pursuant to the Restoration of Honor Act. The armed forces of the United States includes the army, navy, marine corps, air force, coast guard, including all components thereof; and the national guard when in the service of the United States pursuant to call as provided by law, on a full-time duty basis, other than active duty for training purposes; **and**
- have served anywhere in the US armed forces during a designated "time of war". "Time of war" includes the following wars and hostilities:

Persian Gulf Conflict	August 2, 1990 – the date upon which such hostilities end (includes the Global War on Terrorism)
*Hostilities in Panama	December 20, 1989 – January 31, 1990
*Hostilities in Lebanon	June 1, 1983 – December 1, 1987
*Hostilities in Grenada	October 23, 1983 – November 21, 1983

[* Service during these periods is qualifying only if the veteran received the armed forces, Navy, or Marine Corps expeditionary medal.]

NEW YORK STATE DEPARTMENT OF CIVIL SERVICE
STATE PERSONNEL MANAGEMENT MANUAL
Advisory Memorandum #21-01

1200 Examinations/2300 Reductions in Force
2800 Automated Position-Personnel System

February 2021

Viet Nam Conflict February 28, 1961 – May 7, 1975

Korean Conflict June 27, 1950 – January 31, 1955

Service in the commissioned corps of the US Public Health Service:

July 29, 1945 – September 2, 1945 **or**

June 26, 1950 – July 3, 1952

World War II December 7, 1941 – December 31, 1946

World War I April 6, 1917 – November 11, 1918

(Civil Service Law §85, General Construction Law, Section 13-a.)

Notes:

- An otherwise eligible individual may apply for extra credits in an examination as a war-time veteran or disabled veteran if he or she **expects to receive** an honorable discharge or release under honorable conditions or is in possession of a letter from the New York State Division of Veterans' Services that restores access to state benefits pursuant to the Restoration of Honor Act.
- Dates of service and award of campaign medals are typically detailed on a veteran's federal Form DD-214, "Certification of Release or Discharge from Active Duty."

Disabled Veterans

In order to qualify for status as a disabled veteran, an individual, **in addition to meeting all of the criteria for veterans' status, must:**

- be certified by the United States Department of Veterans Affairs (DVA; formerly the Veterans Administration) as entitled to disability payments for a disability incurred while serving in the United States armed forces during a designated time of war as defined above;

NEW YORK STATE DEPARTMENT OF CIVIL SERVICE
STATE PERSONNEL MANAGEMENT MANUAL
Advisory Memorandum #21-01

1200 Examinations/2300 Reductions in Force
2800 Automated Position-Personnel System

February 2021

- have his or her disability rated by the DVA at 10 percent or more;
- have the qualifying disability at the time of application for appointment or promotion or retention; and
- be receiving payment from the DVA for such disability at the time of application for appointment or promotion, or for retention.

(NYS Constitution, Article V., Civil Service Law §6; §85.1(b))

VERIFYING CLAIMS OF VETERANS' AND DISABLED VETERANS' STATUS

As the appointing authority, you are responsible for verifying claims of a veteran's or a disabled veteran's eligibility for additional service credit in the event of a reduction in force. Because gathering appropriate documentation may take some time, we recommend that you verify a veteran's or a disabled veteran's qualifying status as soon as possible—upon appointment, upon notification by the employee, or upon a change in an employee's status (following a period of military duty, for example). You should retain copies of the veteran's or disabled veteran's documentary evidence in the employee's personal history folder.

To document a claim of veterans' status, you should inspect the employee's federal Form DD 214 (NAVPERS-553 / NAVMC-78 PD / WDAGO-53, 55 / WDAGO-53, 98) to verify the dates of qualifying service (and for service in Lebanon, Grenada, or Panama, the award of an appropriate expeditionary medal) and that separation from the service occurred under honorable circumstances. If applicable, review the employee's letter from the Division of Veterans' Services that restores access to state benefits pursuant to the Restoration of Honor Act. If the employee is still a member of the armed forces of the United States (the National Guard or Reserves) and cannot provide a DD-214, you should examine the employee's military orders to evaluate whether a specific period of service was qualifying.

To assist in verifying an employee's claim for status as a disabled veteran pursuant to Civil Service Law §85, the Department of Civil Service provides form S-7 [see last page of this Advisory Memorandum]. After completing the top of the form with the employee's name and your office's return address, please ask the employee to complete Section 1.

Employees should also complete and sign federal form VA 10-5345, "Request for and Authorization to Release Medical Records or Health Information," and attach it to Form S-7. When completing form VA 10-5345, we suggest that the employee indicate that the information requested on the accompanying form S-7 concerns the employee's service-connected disability (check "other" in the "Information Requested" section of form VA 10-5345 and describe the information sought), and explain that the information is needed to establish or verify the employee's status as a disabled war-time veteran for purposes of

NEW YORK STATE DEPARTMENT OF CIVIL SERVICE
STATE PERSONNEL MANAGEMENT MANUAL
Advisory Memorandum #21-01

1200 Examinations/2300 Reductions in Force
2800 Automated Position-Personnel System

February 2021

New York State Civil Service Law benefits (and so indicate in the “Purposes(s) or Need for which the Information is to be Used by Individual to Whom Information is to be Released” section of VA 10-5345). Form VA 10-5345 can be obtained and printed from the DVA web site at <http://www.va.gov/vaforms>. Simply type “10-5345” in the search window. Please note that the DVA may revise or replace forms without notice; it is likely that current forms will remain available at the DVA website.

The employee should attach the completed Form S-7 to the VA 10-5345 and forward both forms to the appropriate DVA office.

The DVA will complete the S-7 and return it to your office. At that time, please review the responses to ensure that the veteran’s claim is supported. Questions 1, 2, and 3 must be answered YES. If question 4 is answered NO, then question 5 must be answered YES. This completed form should be retained as a permanent part of the employee’s personal history file.

Reviewing Veterans’ and Disabled Veterans’ Status in NYSTEP

Agencies may verify/maintain documentation in veterans in NYSTEP at **NYSTEP Reports > Agency Management Reports > Employee Listing**. On the Employee Listing panel, you may customize a report for veterans’ information using the new checkboxes. The NYSTEP record reflects information on an employee submitted by your agency or by an earlier appointing authority.

Please update an employee’s NYSTEP records once a claim of veterans’ or disabled veterans’ status has been established or the employee’s recorded status has changed.

QUESTIONS AND ANSWERS RE: ELIGIBILITY FOR VETERANS' STATUS

The following questions and answers are provided as background information only. For answers to detailed inquiries regarding specific employees or applicants, please consult with your Staffing Services Representative.

Q1: A candidate or employee claims veterans’ status based upon designation as a veteran or disabled veteran for other State or federal programs or benefits. Is this sufficient to establish an entitlement under the State Constitution and Civil Service Law?

A: No. The Civil Service Law definitions of veteran and disabled veteran are specific to such law. Proof of veterans’ or disabled veterans’ status for purposes of other programs or benefits will not necessarily establish eligibility for merit system benefits under the NYS Constitution and Civil Service Law.

NEW YORK STATE DEPARTMENT OF CIVIL SERVICE
STATE PERSONNEL MANAGEMENT MANUAL
Advisory Memorandum #21-01

1200 Examinations/2300 Reductions in Force
2800 Automated Position-Personnel System

February 2021

Q2: Is the United States now in a designated time of war?

A: Pursuant to Civil Service Law §85.8, the United States has been in a designated time of war for hostilities participated in by the military forces of the United States in the Persian Gulf from August 2, 1990 until the end of such hostilities. Service during this designated time of war is not limited to the Persian Gulf theater of operations and does not require an employee or examination applicant to possess a specific expeditionary medal or campaign ribbon. For the purposes of the veterans' and disabled veterans' benefits described in this memorandum, the current time of war period will continue until it is formally ended by action of the State Legislature with approval of the Governor.

Q3: Is an employee on military leave, regardless of pay status, a veteran under the Civil Service Law?

A: Not necessarily. Pursuant to Military Law §242 and §243 and provisions of federal law, public employees have a right to military leave while performing ordered military duty. However, an employee's absence on military leave does not automatically establish veterans' status since certain types or periods of ordered military duty for which military leave is granted do not qualify toward attainment of veterans' status. Each period of ordered military duty must be evaluated independently against the standards for qualifying service. (Note that many of the merit system rights and benefits described in this memorandum **do not** require veterans' status.)

Q4: What is the difference between military service in the armed forces of the United States and in the organized militia of New York State? Is all military service creditable toward obtaining veterans' status under the Civil Service Law?

A: Only active military service in the armed forces of the **United States** during a time of war, other than active duty for training, is creditable towards attaining veterans' status under the Civil Service Law. References to federal active duty service (other than for training) on a United States Department of Defense Form DD-214 may reference "Executive Orders (of the President of the United States)," "Orders of the Secretary of Defense," or provisions of Title 10 of the United States Code. These descriptions address military duty in the armed forces of the United States, and potentially may be used in establishing a claim for veterans' status. Federal military orders which include the code "IADT" may indicate federal initial activation for training purposes. Federal active duty for training or less-than-full-time duty in the armed forces of the United States is not qualifying for veterans' or disabled veterans' purposes.

Since September 11, 2001, certain individuals and units of the National Guard have been ordered to active duty by the Governor for disaster relief and homeland security operations. Military orders referencing "Orders of the Governor" or provisions of Title 32 of the United States Code or Military Law §6 describe military duty in the service of New York

NEW YORK STATE DEPARTMENT OF CIVIL SERVICE
STATE PERSONNEL MANAGEMENT MANUAL
Advisory Memorandum #21-01

1200 Examinations/2300 Reductions in Force
2800 Automated Position-Personnel System

February 2021

State, which **cannot** be used to support an application for veterans' status. A federal Form DD-214 is not issued for State military service.

An employee's or applicant's military unit or the New York State Division of Military and Naval Affairs may be able to assist you with questions regarding the specific military orders recorded on a person's Form DD-214 or other military documentation.

Q5: An employee's or applicant's orders show that he or she has been released from active duty, but his or her service obligation has not yet terminated. Is he or she already a veteran?

A: Perhaps. An individual may attain veterans' status if he or she is released under honorable circumstances from qualifying military duty (or expects such release, if applying for additional examination credits only). A release can occur when a specific set of military orders for active duty ends, but **before** an individual's reserve obligation terminates. Periods of military service and the termination of the reserve obligation date (if applicable) will be recorded on an individual's Form DD-214. To be creditable towards attainment of veterans' status, each release following a period of federal active duty (other than for training) must be under honorable conditions.

Orders for active military duty in the armed forces of the United States (other than active duty for training) may vary in duration from periods of less than a day, to continuous absences of several months, or more. Original military orders may also be modified and extended. In the case Matter of the City of New York, et al., v. City Civil Service Commission (60 NY2d 436), the New York State Court of Appeals determined that veterans' status under the Civil Service Law should be granted only to those individuals whose service "was on a full-time basis evidencing a sacrifice in the form of disruption of civilian life and divorce from civilian occupation..." and should be denied if it "did not significantly interfere with the applicant's normal employment and way of life." (See SPMM Advisory Memorandum No. 85-01)

For individuals who claim veteran status based solely upon one or more periods of active duty (other than for training) in a reserve component of the armed forces of the United States, appointing authorities should review each request against the standard for military service described by the Court of Appeals (see above). Any agency policies on the crediting of active duty reserve service towards attainment of veterans' status should be reasonable and applied consistently for all similarly situated employees or examination applicants.

Q6: An employee or applicant bases a request for veterans' status on a period of active duty but cannot produce a Form DD-214 for such service. Should his or her claim be automatically denied?

A: No. Outright rejection of claims for veterans' status should be avoided if an individual describes potentially qualifying service but is awaiting appropriate documentary proof. An

NEW YORK STATE DEPARTMENT OF CIVIL SERVICE
STATE PERSONNEL MANAGEMENT MANUAL
Advisory Memorandum #21-01

1200 Examinations/2300 Reductions in Force
2800 Automated Position-Personnel System

February 2021

employee or applicant may not be able to promptly supply documentary proof of active duty for a variety of reasons. A Form DD-214 may not be issued for periods of active duty shorter than 90 days, or military paperwork processing delays may occur. Personnel offices can assist employees or applicants to document periods of service by contacting military officials; usually an employee or applicant's military unit is a good place to start.

When a federal Form DD-214 has not been issued, a commanding officer or other appropriate military official may forward a signed summary of military duty on official letterhead or the employee may furnish copies of his or her actual military orders. However, the individual requesting veterans' status must still establish that his or her release from active duty (other than active duty for training) following a period of claimed service occurred under honorable conditions.

As necessary, preliminary approval can be granted, but final determinations of veterans' or disabled veterans' status should be withheld until appropriate documentation can be obtained.

Additional credits on examinations may be approved in expectation of honorable discharge or release under honorable circumstances from qualifying service or is in possession of a letter from the New York State Division of Veterans' Services that restores access to state benefits pursuant to the Restoration of Honor Act. However, an individual must have already obtained an appropriate discharge or release following qualifying military service prior to requesting veterans' benefits in retention situations.

Q7: An individual claims status as a disabled veteran but does not appear to meet all of the eligibility requirements. Could this person be a veteran?

A: For purposes of Civil Service Law §85, a disabled veteran must be a veteran who has a qualifying service-related disability incurred during a designated time of war and is currently receiving disability payment from the DVA. Therefore, each element of the veteran and disabled veteran definitions must be reviewed carefully; an individual who cannot qualify as a disabled veteran may nevertheless be eligible for merit system benefits as a veteran.

Q8: Must a veteran (disabled or non-disabled) be a New York State resident to qualify for additional service credits (seniority) for purposes of retention?

A: State residency at the time of layoff is necessary for adjusted seniority, as required by a 1993 amendment to §85(1)(a) of the Civil Service Law. Agencies should review each veteran's recorded place of residence when verifying the information on seniority rosters prepared by the Department of Civil Service. Individuals who are not New York State residents at the time of layoff are not entitled to adjusted seniority as war-time veterans or disabled veterans.

NEW YORK STATE DEPARTMENT OF CIVIL SERVICE
STATE PERSONNEL MANAGEMENT MANUAL
Advisory Memorandum #21-01

1200 Examinations/2300 Reductions in Force
2800 Automated Position-Personnel System

February 2021

Q9: Must a veteran (disabled or non-disabled) be a New York State resident at the time of exam application in order to qualify for additional credits on examinations?

A: No. However, an individual must establish his or her entitlement to veterans' credits prior to the creation of the resulting eligible list. In almost all cases, this means that a candidate is a New York State resident at the time he or she applies for an examination. If an otherwise qualified veteran or disabled veteran obtains New York State residency during the period between applying for an examination and issuance of the eligible list, he or she should contact the Staffing Services Division at the Department of Civil Service. Appropriate veterans' credits can then be added to his or her score.

By law, veterans' credits cannot be conferred after establishment of an eligible list.

A veteran must be a New York State resident at the actual time of appointment, as indicated on Form S-203. Thus, an individual who was a New York State resident at the time of application for examination/eligible list establishment, but who is no longer a State resident when an offer of appointment is made, will not be able to use veterans' credits at that time.

Residency requirements for veterans' or disabled veterans' status are independent of other New York State residency requirements for certain State jobs.

Q10: An employee is recorded in NYSTEP as a veteran or disabled veteran, but there is no supporting documentation in his/her personal history folder. Should that employee's veterans' or disabled veterans' status be changed to non-vet (or non-disabled vet, as the case may be)?

A: Not immediately. You should inquire further. First, the employee should be consulted. Members and veterans of the armed forces are advised to retain copies of important military documents, including any Forms DD-214 produced for separate periods of duty. Documentation may also have been retained by one of an employee's previous appointing authorities. The New York State Division of Military and Naval Affairs, the United States Department of Defense, including the various branches of the armed services, and the United States Department of Veterans Affairs may be able to assist the employee or personnel office in obtaining military service records.

Q11: Does Civil Service certification of an employee or applicant as CSL §55-c eligible automatically establish that individual's status as a disabled veteran? (Civil Service Law §55-c is entitled "Employment of veterans with disabilities by the state.")

A: No. The criteria for eligibility under CSL §55-c are different than the criteria to determine disabled veterans' status for the purpose of receiving additional credits on an examination or for receiving additional seniority in event of a reduction in force. A §55-c

**NEW YORK STATE DEPARTMENT OF CIVIL SERVICE
STATE PERSONNEL MANAGEMENT MANUAL
Advisory Memorandum #21-01**

**1200 Examinations/2300 Reductions in Force
2800 Automated Position-Personnel System**

February 2021

employee may nevertheless be entitled to veterans' or disabled veterans' merit system benefits if he or she otherwise meets the criteria of CSL §85. Questions regarding eligibility for participation in the §55-c program **only** should be directed to the Governor's Program to Hire Disabled Veterans at the Department of Civil Service at (518) 473-8961 or (866) 297-4356.

Attachment (S-7)

NEW YORK STATE DEPARTMENT OF CIVIL SERVICE

STATE PERSONNEL MANAGEMENT MANUAL

Advisory Memorandum #94-03

2300 Reductions in Force

October 21, 1994

This memorandum replaces Advisory Memorandum No. 92-05, Layoff Units, dated October 14, 1992, which should be removed from your manual and destroyed.

BACKGROUND

The agency's layoff unit configuration affects both the layoff process and certification of preferred lists. All mandated layoff activities (such as vertical bumping and retreat) occur within the defined layoff unit. When a preferred list is certified, preferred list eligibles from the layoff unit where the job is being filled have greater reinstatement rights than those from other layoff units.

While changes in an agency's layoff unit configuration are infrequent, they may occur when the agency is significantly restructured in some way, such as consolidation of agencies, closure of or addition of facilities or regional offices, or major programmatic changes. Employee organizations must agree to any changes. It is evident, therefore, that the need for such changes must be anticipated and they cannot be implemented precipitously.

It is critical to the administration of the layoff and preferred list certification processes that the Department of Civil Service be involved when an agency's layoff unit configuration may change. This Department has the technical and legal expertise to advise agency management regarding the complex issues involved. In addition, this Department must amend President's Regulation 72.1, which lists agency layoff unit configurations.

Any proposal that restructures an agency's layoff unit structure must provide that:

- all positions and all employees in the agency are included;
- all counties in the State are assigned to a layoff unit, even if an agency does not currently have positions in all counties;
- titles existing in more than one bargaining unit are handled equitably;
- the layoff unit rights of M/C employees are included.

PROCEDURES

Before any employee organizations are invited to discuss layoff unit options, the agency must contact the Director of Staffing Services and Deputy Director for Negotiations of the Governor's Office of Employee Relations in writing, about the changes they are considering. Once this Department has given conceptual approval, agencies should then contact the headquarters and local offices of the affected employee organizations.

NEW YORK STATE DEPARTMENT OF CIVIL SERVICE

STATE PERSONNEL MANAGEMENT MANUAL

Advisory Memorandum #94-03

2300 Reductions in Force

October 21, 1994

When a draft memorandum of understanding describing the new layoff unit configuration has been developed, it must be submitted to the Director of Staffing Services for review, with a copy forwarded to the Deputy Director for Negotiations at GOER. Once the draft is approved, the agency will obtain the appropriate labor/management signatures and forward signed copies to the Director of Staffing Services and the Deputy Director for Negotiations at GOER. Upon receipt of the signed memorandum of understanding, this Department will advise the agency of the effective date of the change and amend President's Regulation 72.1.

Agencies may contact Reemployment Services Section at 457-3090 if additional information is needed.

**NEW YORK STATE DEPARTMENT OF CIVIL SERVICE
STATE PERSONNEL MANAGEMENT MANUAL**

Advisory Memorandum #93-02

2300 Reductions in Force

September 1, 1993

Standard Letter to Confirm Reemployment List Declinations

To assist agencies in canvassing and clearing reemployment list certifications, we have developed the attached standard letter, which agencies may use as a master either with their own letterhead or as a model to create their own version, to confirm declinations of telephone canvasses, or verbal declinations made at the time of interview.

While agencies may modify the format of this letter as they wish, the elements of title, SG, location, type of list, and type of employment must appear, and the letter must be signed and dated, with the title of the personnel office representative.

The declination information on the back of the letter **MAY NOT** be modified; however, agencies may choose to print it and enclose it as a separate sheet if they wish.

Note that such declinations as "temporary unavailability" and declining a specific job but remaining active for other jobs in the same title and location are not appropriate for reemployment list canvasses.

As with declinations made using the standard reemployment list canvass letter, (See Advisory Memorandum #93-01, 1600 Interviewing and Hiring), we require a copy of this confirming letter to "clear" the eligible's name on a certification.


NOTE: Effective October 1, 1993, declinations of contingent permanent positions will have the same effect as declinations of permanent positions. The "Guidelines for Reductions in Force," the booklet, "Information for State Employees Affected by Layoff," other parts of this manual, and the standard canvass letters for use with reemployment lists are being revised accordingly.

ENCLOSED: Master Form Letter

**NEW YORK STATE DEPARTMENT OF CIVIL SERVICE
STATE PERSONNEL MANAGEMENT MANUAL
Advisory Memorandum #92-02**

2300 Reductions in Force

July 27, 1992

TO: Department and Agency Personnel/Affirmative Action Officers
FROM:  James W. Sever, Director of Staffing Services
SUBJECT: Abolitions of Positions

Employees who are laid off pursuant to §80 or §80-a may **ONLY** be impacted as a result of the abolition of positions.

The Division of Budget's form BD-98 documents the specific items which are abolished. When the issuance and/or processing of the BD-98 has been delayed, and funds become available prior to issuance, such abolished items **MAY NOT BE REFILLED**. Instead, new positions **MUST** be classified.

A long standing (May 21, 1976) Attorney General's opinion rendered in a letter to Howard Miller, then Deputy Director of the Division of the Budget sets forth this requirement. The letter states in part:

"In view of the fact that the Civil Service Law makes express provisions for those cases in which tenured employees may be suspended (e.g. §§ 72, 75[3]) and makes no provision for suspension for economy reasons except in the context of abolition (i.e., §80) I must conclude that abolition of positions is a necessary prerequisite. I find nothing to support a contrary view.

Nor do I find any basis for drawing different conclusions based on whether suspensions are the result of legislative or executive action."

(Personnel Officers — Please provide a copy of this memorandum to your agency finance officer.)

**NEW YORK STATE DEPARTMENT OF CIVIL SERVICE
STATE PERSONNEL MANAGEMENT MANUAL
Advisory Memorandum #92-01**

**1200 Examinations/2300 Reductions in Force
2800 Automated Position-Personnel System**

January 6, 1992

UPDATE ON VETERANS

This memorandum is intended to provide agencies with information on legislation, State policy and procedures for certain newly defined categories of individuals who have been recently accorded veterans status under Section 85 of the Civil Service Law. It summarizes and repeats some of the information previously published in General Information Bulletin #91-04, and Advisory Memorandum #91-02.

For each of the new categories below, in addition to any specific requirements for eligibility, these individuals must also meet all the other criteria in Advisory Memorandum #91-02. (See 1200, or 2300 or 2800 of your State Personnel Management Manual).

NEW CATEGORIES AND ENTITLEMENTS

Alternate Test Dates For State Examinations

Section 243-b of the Military Law was enacted as of July 19, 1991, providing for a make up administration of the test(s) for candidates who had filed for an examination, but were unable to take the test on the scheduled date due to active military service. To obtain an alternate test date, veterans must write to the Department of Civil Service, Examinations Processing Section within 60 days of their return from active duty.

Disabled World War II Merchant Mariners

Effective August 2, 1991, Section 85 (b)(2) has been amended to define an additional group of disabled individuals as disabled veterans. However, please note that the legislation stipulates that such individuals are entitled to this status **ONLY IF THEY HAVE TAKEN AN EXAMINATION ON OR AFTER AUGUST 2, 1991**. Therefore, their seniority dates may not be adjusted if they have not taken an examination on or since that date.

Persian Gulf Conflict Veterans

Effective August 1, 1991, Section 85 has been amended to include individuals who served anywhere on active duty in the armed forces from August 2, 1990 to the date upon which such hostilities (the Persian Gulf Crisis) end. In particular this includes members of the reserves who were called to active duty in connection with the Persian Gulf conflict's operations Desert Shield and Desert Storm.

Veterans of Lebanon, Grenada and Panama

Effective August 1, 1991, Section 85 has been amended to include individuals who served in Lebanon, Grenada, and Panama in the armed forces during the dates of those hostilities (See Advisory Memorandum #91-02, page 2). Note that to be eligible, in addition to the usual criteria, these individuals **must have actually served in those locations**, evidenced by having been awarded the armed forces expeditionary medal, the navy expeditionary medal or the marine corps expeditionary medal.

**NEW YORK STATE DEPARTMENT OF CIVIL SERVICE
STATE PERSONNEL MANAGEMENT MANUAL
Advisory Memorandum #92-01**

1200 Examinations/2300 Reductions in Force
2800 Automated Position-Personnel System

January 6, 1992

GENERAL PROCEDURES

To help inform state employees and the public of these changes, the Department of Civil Service has sent information to several Merchant Marine and other veterans organizations, has provided information to the Personnel Council through the office of the Executive Assistant, and has also prepared various press releases and posting notices. In addition:

Additional Credits on Examinations

- For pending eligible lists (by law candidates must apply for additional veterans credits before the eligible list is established):
 - a. For candidates who are state employees, agencies were sent a package containing notices to be delivered to their employees, and a flyer to be duplicated and posted.
 - b. For candidates who are not state employees, the Department of Civil Service mailed notices about the opportunity to apply for credits.
- The form S-203, Disposition of Veterans Credits was revised and reprinted. Agencies were sent a small supply of the revised form with instructions to destroy any current stock.
- Notices for posting have been provided with the collated sets of examination announcements.
- Special notices are being sent to all applicants for examinations which have not yet been held, either directly or with their written test admission notices.
- Forms XD-5 and XD-10 applications are being revised.

Seniority - The Department of Civil Service has provided information to the Department of Labor and the Employment Services Offices. We will not be individually notifying individuals on preferred lists. Agencies may be asked to include a notice on their canvass letters. Agencies must notify their own employees. It is especially important that any employees who may be potentially affected by layoffs be immediately informed and their seniority changed as necessary.

VERIFICATION

For additional examination credit (form S-203), or for additional service credits for seniority, agencies must verify eligibility for veterans status through the standard documents:

- Form DD 2168 or a letter of certification from a VA service officer for designation as a disabled veteran.
- Form DD 214 (NAVPERS-553 / NAVMC-78 PD / WDAGO-53, 55 / WDAGO-53, 98) to indicate the dates of service required to qualify, and for service in Lebanon, Grenada or Panama, the award of the expeditionary medal. For service in the Merchant Marine, the form must indicate active ocean going service from December 7, 1941 to August 15, 1945.

**NEW YORK STATE DEPARTMENT OF CIVIL SERVICE
STATE PERSONNEL MANAGEMENT MANUAL
Advisory Memorandum #92-01**

**1200 Examinations/2300 Reductions in Force
2800 Automated Position-Personnel System**

January 6, 1992

To change a current employee's veterans status, agencies must send a letter to the Employment Records Section of the Department of Civil Service containing a statement that they have reviewed and have on file the appropriate documentation. The letter must also contain the employee's name, social security number and line number.

RETENTION RIGHTS OF PERSIAN GULF VETERANS

Subsequent to the issuance of General Information Bulletin #91-04 which discussed the extensive reinstatement and retention rights provided under Federal law to those who serve in active military duty during the Persian Gulf crisis, including protection from discharge without cause for one year upon return, we have received clarification from the U. S. Department of Labor that reductions in force are considered just cause. Accordingly, because Federal law does not preclude returning veterans from being affected by required reductions in force, they have the same rights as any other employee under the Civil Service Law. The returning veteran must, of course, be provided his/her proper seniority rights in conducting any such reduction in force, including the additional thirty months credit to which non-disabled veterans are entitled pursuant to Civil Service Law §85.7 and the additional sixty months credit to which disabled veterans are entitled.


Notwithstanding this clarification of Federal law, the State of New York remains committed to ensuring that, to the extent possible, diligent efforts be made to re-employ and retain employees upon their return from ordered military duty in connection with the Persian Gulf crisis.

**NEW YORK STATE DEPARTMENT OF CIVIL SERVICE
STATE PERSONNEL MANAGEMENT MANUAL**

Advisory Memorandum #89-04

2300 Reductions In Force

March 24, 1989

TO: Agency Personnel and Affirmative Action Officers
FROM: Robert Parrish 
SUBJECT: Budget Approval Process: Communication with Budget Examiners and Staffing Services Representatives
DATE: March 24, 1989

The State is committed to reemploying those affected by the reduction in force. We must be able to plan early for the filling of available positions if we are to match affected employees with jobs; this is especially true for retraining efforts.

To ensure that plans are made to reemploy/retrain those employees affected by reductions in force, your Staffing Services Representative and your Budget Examiner will be working with your Personnel Officer in reviewing requests to fill positions. Approval is now required from your Staffing Services Representative and your Budget Examiner to fill a position.

Your Staffing Services Representative will be contacting your Budget Examiner and your Personnel Officer to arrange a specific procedure for obtaining the necessary approvals. In general, however, when a position needs to be filled, your Personnel Office should contact your Staffing Services Representative in Civil Service to discuss the request. Staffing Services will determine if there are employees affected by the reduction in force who might be available for filling the position. If not, the Staffing Services Representative will so inform you and the Budget Examiner. If there are placement or retraining possibilities, Staffing Services will begin the process of coordinating them.

It is important that, prior to confirming any appointment, your Personnel Office confirm with the Reemployment Services Section (518) 457-5938, in the Department of Civil Service that there is no mandatory preferred list, reemployment roster or placement roster.

NEW YORK STATE DEPARTMENT OF CIVIL SERVICE

STATE PERSONNEL MANAGEMENT MANUAL

ADVISORY MEMO NO. 86-03

1200 -- Examinations

2300--Reductions in Force

September 11, 1986

TO: Department and Agency Personnel Offices

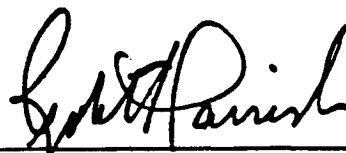
FROM: Robert Parrish

SUBJECT: Veterans' Credits

On June 17, 1986 the U.S. Supreme Court upheld the Federal Appeals Court determination in Attorney General of New York v. Soto-Lopez, et. al. which had struck down the requirement in our State Constitution that the additional points credited to veterans in competitive examinations be limited to those who were residents of the State at the time of their induction into the Armed Forces. We had implemented the Court of Appeals decision in February of 1985 (see Policy Bulletin No. 85-01, Veterans Credits).

To summarize the effects of this decision:

1. For additional credits on examinations, veterans must be residents of the State only at the time of application for credits.
2. For retention rights (i.e., adjusted seniority) at time of layoff and for rank on a preferred list, there are no longer any residency requirements (current residency requirements were removed from Section 85 in 1982).



Deputy Director for the Bureau
of Staffing Services

NEW YORK STATE DEPARTMENT OF CIVIL SERVICE

STATE PERSONNEL MANAGEMENT MANUAL

ADVISORY MEMORANDUM NO. 85-01

1200 Examinations -- 2300 Reductions in Force

May 17, 1985

File this material in the section of the manual referenced above.

TO: Department and Agency Personnel Officers

FROM: Robert Parrish

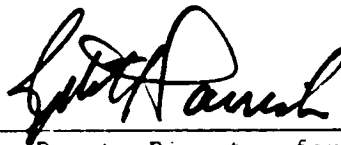
SUBJECT: Veterans' Credits

A recent Policy Bulletin (85-01) clarified the eligibility rules for veterans' credits in light of the Soto-Lopez decision. You should also be aware that the current eligibility requirements, as listed in the attachment to the Commissioner's memorandum, reflect another change which resulted from a separate court decision.

As a result of the Court of Appeals decision in Matter of the City of New York, et al v. City Civil Service Commission, National Guard members activated during the US Postal Strike during the period 3/23/70 to 3/30/70 are no longer eligible for veterans' status based solely on such service. The Court held that veterans' status under Section 85 of the Civil Service Law should be granted only to those whose service "was on a full-time basis evidencing a sacrifice in the form of disruption of civilian life and divorce from civilian occupation..." and should be denied if it "did not significantly interfere with the applicant's normal employment and way of life." The Court rejected a lower court holding in an earlier case which granted veterans' credits based on four days of duty during the postal strike.

As the Section 85 definition addressed in this case applies to both examination credits and preference in retention, neither should be granted to veterans basing their claim solely on service during the 1970 postal strike.

Because of the relatively small number of people affected by this change, we are not asking agencies to undertake a general canvass of their employees. However, agencies involved in a reduction in force must review the records of employees currently having veterans' status to determine if such status needs to be rescinded based on the court decision described above.



Deputy Director for the Bureau
of Staffing Services

cc: Agency Affirmative
Action Officers

NEW YORK STATE DEPARTMENT OF CIVIL SERVICE

STATE PERSONNEL MANAGEMENT MANUAL

POLICY BULLETIN NO. 85-03

1800 Appointments--2300 Reductions in Force September 19, 1985

Page 1

File this material in the section of the manual referenced above.

TO: Department and Agency Personnel Officers

SUBJECT: Seniority for Layoff Purposes

Governor Cuomo has signed into law this Department's legislative proposal changing the way seniority for layoff purposes is calculated pursuant to Sections 80 and 80-a of the Civil Service Law (Chapter 360 of the Laws of 1985).

Under this new act, an individual who has resigned, and who is permanently reinstated or reappointed within three years, will retain full seniority credit for the period of service rendered prior to leaving State employment. If the individual returns after three years, there will be a pro-rata reduction from seniority credit for any time out of the service exceeding three years (example: 7 years previous service, 4-1/2 years absence, 5-1/2 years seniority credit upon return).

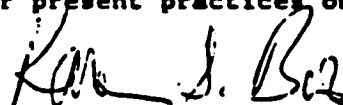
Only persons who had permanent status in the classified service before separation will be eligible for such a reconstructed seniority date.

Therefore, at the time of appointment, agencies must determine whether or not the appointee previously held permanent status in the classified service and the dates of that previous employment. Agencies should confirm the appointee's surname at the time of previous employment, in the event it has changed.

We will shortly provide you with a form on which to collect this information. Once completed, it is to be forwarded to the Employment Records Section of this Department. After we verify the information, we will reconstruct the appointee's continuous service date. The appointee's personnel and history records (maintained in APPS) will then be posted with that reconstructed date and agencies will be notified of it so that they may conform agency records and inform the employee.

This measure will apply to every individual reinstated or reappointed in the competitive or non-competitive classes on or after October 17, 1985. Until then, those returning after a break in service of one year or more will continue to lose all seniority credit for layoff purposes.

The statute does not affect current Attendance Rules provisions on the crediting of prior service nor our present practices on the crediting of seniority for examinations.



Karen S. Burstein
President, Civil Service Commission

cc: Affirmative Action Officers

NEW YORK STATE DEPARTMENT OF CIVIL SERVICE

STATE PERSONNEL MANAGEMENT MANUAL

POLICY BULLETIN NO. 85-01

1200 Examinations -- 2300 Reductions In Force April 26, 1985 Page 1

File this material in the section of the manual referenced above.

TO: Department and Agency Personnel Officers

SUBJECT: Veterans' Credits

The Federal Second Circuit Court of Appeals recently struck down (in Soto-Lopez, et al v New York City Civil Service Commission, et al) the requirement of residency in New York State at the time of induction into military service as a condition of eligibility for veterans' credits. Although the Attorney General is appealing the decision, this Department must implement it in order to minimize potential liability.

The Soto-Lopez decision directly affects two important areas: the addition of veterans' credits to examination scores and the adjustment of seniority dates for layoff and reemployment purposes. Consequently, the Department will proceed as follows:

Veterans' Examination Credits

1. We will notify persons whose names appear on eligible lists that were established between February 15 and April 11, 1985 of the change in the residency criterion and provide them with a form to use to apply for veterans' credits.
2. As of April 11, 1985, all Notices of Examination Results sent to candidates include a notice of the change in the residency criterion. Persons who wish to apply for veterans' credits under the new criterion are advised to write or call the Veterans Claims Processing Unit. The Unit's telephone number is (518) 453-6744.
3. We will notify agencies of eligible list changes resulting from the establishment of veterans' credits based on the new criterion. Appointments made in the interim will not be revoked.
4. We will be revising form S-203, Disposition of Veterans' Credits, to reflect this change. Supplies of this revised form will be distributed in the near future. Meanwhile, departments and agencies should continue to use the current form, taking into consideration that New York State residence at time of entry into the Armed Forces is no longer a requirement for veterans' credits.

Layoff and Reemployment

1. Seniority dates of employees affected by the revised criterion must be adjusted for the purpose of establishing retention standing in cases of layoffs that occur on or after February 15, 1985. In order to make the required adjustments, agencies must canvass their employees to identify

NEW YORK STATE DEPARTMENT OF CIVIL SERVICE

STATE PERSONNEL MANAGEMENT MANUAL

POLICY BULLETIN NO. 85-01

1200 Examinations -- 2300 Reductions in Force April 26, 1985

Page 2

File this material in the section of the manual referenced above.

those who are eligible for additional seniority credit (5 years for disabled veterans, 2 1/2 years for non-disabled veterans). Agencies must verify claims for veterans' status under the new criterion and report the results of this canvass and verification to this Department so that personnel records maintained in the Automated Position/Personnel System can be appropriately revised. This Department will substantiate claims for disabled veterans' status.

In order to assist in this effort, we will provide each agency with a listing of employees currently identified in the Automated Position/Personnel System as Non-Veterans (veterans' status code 3). Agencies may effect necessary adjustments to the Automated Position/Personnel System records by entering a revised veterans' status code (1 - disabled; 2 - non-disabled) directly on the listing.

If, as a result of your canvass, employees request veterans' status under the former criterion, their status may also be revised by entering the status code on the listing. Please identify whether the former or revised criterion is the basis for the request.

All listings must be returned to the Department of Civil Service, Employment Records Section, Room 204, by June 1, 1985. Individual PR-75's will not be required.

2. We will canvass preferred list eligibles laid off on or after February 15, 1985 and will adjust seniority dates as necessary.

Should the United States Supreme Court overrule the Second Circuit Court of Appeals' decision, appointments or layoffs resulting from the granting of veterans' status to non-resident inductees will not be revoked unless the Court specifically directs such action. Such veterans will, however, lose their future eligibility for examination credits and preference in retention.

To avoid any possible confusion, we have attached a description of the revised eligibility requirements for veterans' status.

We will keep you informed of the progress of the Attorney General's appeal.



Karen S. Burstein

President, Civil Service Commission

Attachment

cc: Agency Affirmative Action Officers

**NEW YORK STATE DEPARTMENT OF CIVIL SERVICE
STATE PERSONNEL MANAGEMENT MANUAL
Policy Bulletin #21-01**

1200 Examinations /2300 Reductions in Force

January 2021

TO: Department and Agency Directors of Human Resources, Personnel and Affirmative Action Officers, Equal Opportunity Specialists, Diversity and Inclusion Specialists

FROM: Jessica Rowe, Director, Division of Staffing Services

SUBJECT: Veterans Credits (Attachment to Policy Bulletin 85-01)

**THIS POLICY BULLETIN REPLACES THE ATTACHMENT TO POLICY BULLETIN
85-01 ISSUED ON April 26, 1985.
REMOVE ONLY THE ATTACHMENT TO POLICY BULLETIN 85-01 FROM YOUR
SPMM AND DESTROY.**

**ELIGIBILITY FOR VETERANS' STATUS
(Updated January 2021)**

GENERAL ELIGIBILITY REQUIREMENTS	ACCEPTABLE DOCUMENTARY PROOF
1. Honorable Discharge or Release under honorable circumstances from the Armed Forces of the United States or possession of a letter from the Division of Veterans' Services that restores access to state benefits pursuant to the Restoration of Honor Act. (The "Armed Forces of the United States" means the Army, Navy, Marine Corps, Air Force and Coast Guard, including all components thereof and the National Guard when in the service of the United States pursuant to call as provided by Law on a full-time duty basis other than active duty for training purposes.)	1. Report of Separation and Honorable Discharge and/or Certificate of Service or letter from the Division of Veterans' Services that restores access to state benefits pursuant to the Restoration of Honor Act. Acceptable military forms: NAVPERS-553; NAVMC-78; WDAGO-53, 55; WDAGO-53,98; DD-214. If eligible name is different from that shown of Report of Separation and

**NEW YORK STATE DEPARTMENT OF CIVIL SERVICE
STATE PERSONNEL MANAGEMENT MANUAL
Policy Bulletin #21-01**

1200 Examinations /2300 Reductions in Force

January 2021

<p>2. Dates of active service during any of the following periods:</p> <ul style="list-style-type: none"> a. December 7, 1941 to September 2, 1945 b. June 26, 1950 to January 31, 1955 c. January 1, 1963 to May 7, 1975 d. U.S. Public Health Services: <p>July 29, 1945 to September 2, 1945 -OR- June 26, 1950 to July 3, 1952</p> <p>In the Armed Forces:</p> <ul style="list-style-type: none"> •Aug. 2, 1990 until the Persian Gulf hostilities end •Feb. 28, 1961 to May 7, 1975 •June 27, 1950 to Jan. 31, 1955 •Dec. 7, 1941 to Dec. 31, 1946 <p>or earned the Armed Forces, Navy, or Marine Corps expeditionary medal for service in:</p> <ul style="list-style-type: none"> •(Panama) Dec. 20, 1989 to Jan. 31, 1990 •(Lebanon) June 1, 1983 to Dec. 1, 1987 •(Grenada) Oct. 23, 1983 to Nov. 21, 1983 <p>or in the U.S. Public Health Service:</p> <ul style="list-style-type: none"> •June 26, 1950 to July 3, 1952 •July 29, 1945 to Sept. 2, 1945 	<p>2. Honorable Discharge, or a letter from the Division of Veterans' Services that restores access to state benefits pursuant to the Restoration of Honor Act, a marriage certificate or other legal document to verify the change must be included.</p>
<p>3. Resident of New York State at the time of application for veterans' credits or at the time of retention.</p>	<p>3. Statement of Applicant</p>
<p>ADDITIONAL REQUIREMENTS FOR DISABLED VETERANS</p>	
<p>Employee must be receiving payments from the Veterans' Administration for a service-connected disability rated at ten (10) percent or more incurred during the periods listed in #2 above.</p>	<p>Verification process conducted by the Department of Civil Service.</p>
<p>NOTE: Section 85.7(5) of the Civil Service Law provides special retention status to the spouses of certain disabled veterans. That part provides that the date of original appointment of "... the spouse of a veterans with one hundred percent service connected disability shall be deemed to be sixty months earlier than the actual date, determined in accordance with section thirty of the general construction law, provided, the spouse is domiciled with the veteran-spouse and is the head of the household."</p>	

NEW YORK STATE DEPARTMENT OF CIVIL SERVICE
STATE PERSONNEL MANAGEMENT MANUAL

TRANSMITTAL MEMORANDUM NO. 76

February 2021

2300 REDUCTIONS IN FORCE

Also refer to the [Guidelines in the Administration of Reduction in Force](#)

2350 LAYOFFS IN THE COMPETITIVE CLASS

.2 POLICY/PROCEDURE

.210 Suspension of Employees

.211 Suspension means the layoff or reduction in status of an employee due to abolition of positions in the competitive, non-competitive or labor classes.

.212 When positions in a title in the competitive class are abolished, only employees in the layoff unit within which the abolition occurs are considered for retention and suspension. Employees in other titles, in the same title in other jurisdictional classes, or in the same title in other layoff units are not considered. Suspension of employees in the affected titles in the layoff unit must occur in the following order:

- A. **Temporary, provisional and certain contingent permanent employees** - All temporary and provisional employees are suspended before suspending permanent employees. Even though no set order of suspension is provided in the law for temporary and provisional employees, we recommend suspension be made beginning with the least senior.
- B. **Probationary employees** - Probationers must be suspended before other permanent employees who have completed probation. Probationers have greater retention rights than temporary and provisional employees. Suspension among probationers is made beginning with the least senior.
- C. **Permanent [employees]** - Suspension should be made among permanent non-probationary employees only after all temporary, provisional and probationary employees in the effected title have been suspended. Such employees are suspended beginning with the least senior.
- D. **Contingent permanent employees** - Employees appointed contingent permanent prior to 12/18/80 are combined with temporary and provisional employees (A. above) for suspension. Employees appointed on or after 12/18/80 (when Rule 4.11 was revised) are combined with permanent probationers (B. above) or with permanent employees (C. above) as appropriate.

**NEW YORK STATE DEPARTMENT OF CIVIL SERVICE
STATE PERSONNEL MANAGEMENT MANUAL**

TRANSMITTAL MEMORANDUM NO. 76

February 2021

NOTE: When a contingent permanent employee is affected by the return of the permanent incumbent and that return is NOT necessitated by an abolition of positions, this is not considered a suspension or demotion as described in CSL §80 or CSL §80-a and the retention rights and seniority of the contingent permanent employee are NOT considered.

.220 Determining Seniority

.221 Generally a permanent employee's seniority date for layoff is the date of original permanent appointment to the classified service provided the employee has "continuous service" since that date. There are, however, several reasons why that date would be adjusted.

.222 Adjustment based on status as a veteran, disabled veteran, or for certain spouses of disabled veterans.

A. The specific definitions of veteran and disabled veteran are contained in §85 of the CSL. Briefly, they are as follows:

1. Veteran - An individual afforded status as a veteran must have served in the armed forces in time of war, and received an honorable discharge or release under honorable circumstances or is in possession of a letter from the New York State Division of Veterans' Services that restores access to state benefits pursuant to the Restoration of Honor Act. The date of original permanent appointment is adjusted to 30 months earlier.
2. Disabled veteran - In addition to the above, to qualify as a disabled veteran an individual must be certified by the Veteran's Administration as entitled to receive disability payments for a disability incurred in time of war. The date of original permanent appointment is adjusted to 60 months earlier.
3. Certain spouses of disabled veterans - The head of household spouse of a disabled veteran with a 100 percent service-connected disability has the date of original permanent appointment adjusted to 60 months earlier.

.223 The Blind

A person is considered to be legally blind if he or she is certified as such by the Commission for the Blind and Visually Handicapped and registered with the Library of Congress. A blind individual must be retained over all non-blind individuals having the same appointment status in the same title. That is to say, all permanent non-blind individuals would have to be laid off before a permanent blind

**NEW YORK STATE DEPARTMENT OF CIVIL SERVICE
STATE PERSONNEL MANAGEMENT MANUAL**

TRANSMITTAL MEMORANDUM NO. 76

February 2021

individual in the same title. However, permanent non-blind individuals would not be laid off before a probationary or temporary blind individual.

.224 Breaks in Service and Determination of Seniority Date

- A. Permanent employees who were separated and permanently reemployed in State service up to one year later are deemed to have continuous service and retain their original seniority date.
- B. Permanent employees who were separated and permanently reemployed on or after October 17, 1985 with an absence of more than one year and up to three years have the full amount of their previous service credited in determining their seniority date.
- C. Permanent employees who were separated and permanently reemployed on or after October 17, 1985 with an absence of more than three years have their previous service credited on a pro-rated basis to determine their seniority.
- D. See General Information Bulletin No. 86-01, April 10, 1986 - "Reconstructed Seniority Dates - Sections 80.3 and 80-a.3 of the Civil Service Law" for examples illustrating reconstruction of seniority dates.

.225 Reinstatement Following Disability Termination Pursuant to CSL §71

An individual terminated because of a disability resulting from occupational injury or disease as defined in the Workers' Compensation Law who is reinstated or reappointed is deemed to have continuous service.

.226 Temporary or Provisional Service Following a Break in Service

Temporary or provisional service which precedes the original permanent appointment does not count. However, if a permanent employee resigns or otherwise leaves State service and is reemployed on a temporary or provisional basis within one year and then, without a further break in service, is reemployed on a permanent basis, there is no break in continuous service. This applies even when the subsequent permanent appointment occurs more than one year after separation.

.227 Transfer of Function

Employees transferred to State service upon transfer of functions from another governmental jurisdiction pursuant to §70.2 of the CSL have continuous service beginning with their original permanent

**NEW YORK STATE DEPARTMENT OF CIVIL SERVICE
STATE PERSONNEL MANAGEMENT MANUAL**

TRANSMITTAL MEMORANDUM NO. 76

February 2021

appointment date in the classified service in the other governmental jurisdiction.

.228 Cover-ins

Employees covered into a State classified service position pursuant to CSL §45 will have a seniority date which is the same date as the cover-in. To break ties in this group, use the date of original appointment prior to cover-in.

.229 Preferred List Status

Employees who have been laid off and had their names placed on preferred lists shall not be considered to have a break in service for the time spent on a preferred list.

.2210 Breaking Ties

When several employees have the same layoff seniority date, the appointing authority can use any reasonable and consistent basis for breaking such ties.

.230 Displacement Rights

.231 The displacement rights of permanent employees are considered once the least senior permanent employees occupying positions to be abolished have been identified. It is important to note that probationers who are on leave may not displace but may return to their hold item. Probationers without a hold item may displace provided they have five years of continuous and satisfactory service. Permanent non-probationers must be offered displacement opportunities before probationers.¹ Probationers may not displace permanent employees who have completed their probation.²

¹ CSR §5.5(d)

² CSR §80.7

**NEW YORK STATE DEPARTMENT OF CIVIL SERVICE
STATE PERSONNEL MANAGEMENT MANUAL**

TRANSMITTAL MEMORANDUM NO. 76

February 2021

.232 Vertical Bumping

Employees who are to be suspended and are serving in a title which has a direct line of promotion may displace employees in the next lower occupied title in that series within the layoff unit. This is called vertical bumping. The procedure for vertical bumping is outlined below:

- A. First identify the most senior employee to be suspended from the highest-level title affected by layoff. Compare that incumbent with the least senior incumbent in the next lower occupied title in direct line of promotion.
 1. "Direct line of promotion" is a narrow concept. For example, Office Assistant 1, Office Assistant 2, Office Assistant 3, Head Clerk, Chief Clerk is the direct line of promotion for that series. An Office Assistant 1 Stores/Mail would NOT be considered a title in direct line of promotion. Agencies should work closely with their staffing representative to determine which titles are indirect line of promotion for displacement purposes.
 2. Employees may only vertically bump into occupied positions. Positions held by incumbents on a temporary, provisional, contingent-permanent, probationary, or permanent basis are considered to be occupied. Positions encumbered by employees on leave are considered to be occupied. While employees may not vertically bump to a vacant position, a reinstatement may be possible at the agency's discretion.
 3. A lower level title in which all positions have also been abolished, or in which all positions are vacant is not available for vertical bumping. Displacing employees would then be compared to the incumbents in the next lower level in direct line of promotion.
- B. Next, lay off the employee with the lesser "retention standing" of the two.
 1. If an employee refuses to displace a junior incumbent, then that employee is laid off, and the junior incumbent remains in place.
 2. The junior incumbent is still compared in retention standing with other incumbents if additional positions at the higher level are being abolished.
- C. Repeat steps A and B until all individuals in an affected title series have been compared for vertical bumping.

**NEW YORK STATE DEPARTMENT OF CIVIL SERVICE
STATE PERSONNEL MANAGEMENT MANUAL**

TRANSMITTAL MEMORANDUM NO. 76

February 2021

.233 Retreat

Retreat is only possible when there is no lower level occupied title in direct line of promotion within the layoff unit. Basically, retreat means a return to the title in a lower salary grade last held on a permanent basis. For retreat to occur, the following criteria must be met:

- A. The employee who is retreating cannot have had an opportunity to displace through vertical bumping. An employee who had the opportunity to vertically bump and declined the opportunity, or who lacked sufficient seniority to vertically bump, cannot now be considered for retreat.
- B. The formerly held title must be in the competitive, non-competitive or labor class.
- C. The formerly held title must be occupied. As with vertical bumping, an employee cannot retreat to a vacant position. However, a reinstatement may be possible at the agency's discretion.
- D. The formerly held title must exist in the layoff unit and be at a lower salary grade. Prior service in the retreat title need NOT have been in the layoff unit.
- E. The retreating employee must have more seniority than the least senior employee in the layoff unit in the title to which retreat is sought. A probationer cannot displace an employee who has completed probation regardless of seniority.
- F. The retreating employee's service in the former title must have been satisfactory.
- G. Outlined below are some additional concerns to keep in mind when determining retreat rights:
 1. Title change - If an employee's retreat title has changed, but the duties have remained the same, the retreat will still be allowed to the new title.
 2. Intervening Service - An employee with service in other intervening titles may still retreat as long as service in the intervening titles was on other than a permanent basis or was not at a lower salary level.
 3. Break in service - An employee may retreat to the formerly held title even if there was a break in service of more than one year, as long as all other conditions are met.

**NEW YORK STATE DEPARTMENT OF CIVIL SERVICE
STATE PERSONNEL MANAGEMENT MANUAL**

TRANSMITTAL MEMORANDUM NO. 76

February 2021

.240 Placement Rosters

Prior to the date of layoff, the names of permanent employees who are expected to be affected may be placed on placement rosters. (See 1470.)

.250 Preferred Lists and Reemployment Rosters

As of the date of layoff, the names of permanent employees who are laid off are placed on preferred lists and reemployment rosters. (See 1450 and 1460.)

.4 PROCEDURES

.410 Outlines of Agency Procedures for Layoffs

.411 The following outlines the major steps agencies should follow in reduction in force situations. A more complete and detailed discussion of procedures is described in the "Guidelines for Reductions In Force," Part II Methodologies and Procedures.

- A. Advise Department of Civil Service and the Office of Employee Relations of an impending layoff and indicate the expected effective date.
- B. Determine the titles and number of positions to be abolished and the titles likely to be affected due to displacement through vertical bumping and retreat.
- C. Provide the Department of Civil Service with information on positions which may be affected by layoff. This should include titles which may be affected by vertical bumping or retreat as well as any titles the agency feels may be comparable to be filled by a preferred list consisting of the layoff titles. The Department of Civil Service will determine which titles are comparable to be filled by reinstatement from a preferred list or reemployment roster established for the layoff title.
- D. Request and receive from the Department of Civil Service final direct line determinations for vertical bumping, and seniority rosters for all employees in titles which have positions being affected by abolition, vertical bumping and retreat.
- E. Determine the number and location of positions to be abolished in each title and tentatively identify employees who will be affected.
- F. Determine the potential vertical bumping or retreat possibilities for employees who will be affected in E. above.

**NEW YORK STATE DEPARTMENT OF CIVIL SERVICE
STATE PERSONNEL MANAGEMENT MANUAL**

TRANSMITTAL MEMORANDUM NO. 76

February 2021

- G. Arrange informational meetings for employees potentially affected by abolition, reassignment and displacement. Meetings should include representatives from Civil Service, the Unions and Agency.
- H. Notify employees of their potential layoff and the scheduled informational meetings. This notice should include a completed copy of form S-295.5 Preferred List/ Reemployment Roster Eligible Card with instructions to employees to verify their seniority date, personnel information and indicate the locations where they will accept reemployment. Each employee must also receive a copy of "[Information for State Employees Affected by Layoff](#)." The booklet and form S-295.5 are available from the Department of Civil Service.
- I. Receive signed S-295.5's from employees and send to Department of Civil Service.
- J. No later than three weeks prior to the date of layoff send written notices to all employees being affected by the layoffs.
- K. Notify affected employees with accumulated vacation credits exceeding the 30 days for which lump sum payment is made. These employees will be permitted to use excess vacation credits up to the present maximum of 40 days (maximum of 10 days beyond the 30 compensated days) prior to the effective date of termination. Agency payrolls should be timely submitted to allow the Office of the State Comptroller to process lump sum payments payable in the employee's final check.
- L. A laid off employee who displaces another individual in a lower grade position should have this displacement information noted in the appointment portion of the S-295.5 card. Note the title, grade and location of the position to which the displacing employee is being appointed.

.420 Layoffs in Multiple Locations

In many agencies the layoff unit includes a number of locations in different counties. Where layoffs occur in these situations usually agencies must reassign staff among the positions and locations which will be left after the layoff. In carrying out the layoff process, the horizontal reassignment opportunities and the willingness of employees to relocate must be determined prior to vertical displacement and retreat. While 'several approaches may be taken to carry out horizontal reassignments, the essential legal requirements are that reassignments are in-title with no change in an employee's status; they occur within the confines of the layoff unit, and retention rights and seniority govern the reassignment opportunities

**NEW YORK STATE DEPARTMENT OF CIVIL SERVICE
STATE PERSONNEL MANAGEMENT MANUAL**

TRANSMITTAL MEMORANDUM NO. 76

February 2021

offered to permanent employees. Permanent employees who decline reassignment to another county do not have rights to displace through bumping or retreat. However, the Department of Civil Service provides preferred list and reemployment roster status to such employees.

Agencies should discuss the layoff situation with the Department of Civil Service to determine the most equitable method of reassigning more senior employees. Whatever method is chosen must be applied consistently to all employees in the layoff unit.

.2 POLICY/PROCEDURE

.210 Suspension of employees

- .211 Suspension means the layoff or reduction in status of an employee due to abolition of positions in the competitive, non-competitive or labor classes.**
- .212 Within their own jurisdictional class, non-competitive class employees are afforded the same basic layoff protection with some exceptions as are competitive class employees.**
- .213 Not all non-competitive class employees are covered by the provisions of Section 80-a of the Civil Service Law. Only non-competitive employees who have tenure protection pursuant to Section 75.1(c) of the Civil Service Law are afforded layoff protection under Section 80-a and 81 of the Civil Service Law.**

.214 Definition of Continuous Service for Tenure Protection

Section 75.1(c) grants protection only to non-competitive employees holding positions other than those designated in the rules of the Civil Service Commission as confidential or requiring performance of functions influencing policy. To qualify under Section 75.1(c) (as modified by negotiated agreement) employees in the non-competitive class must have completed at least one year of continuous service in the non-competitive class. Service is considered to be continuous if there has not been a break in service of over one year.

.220 Suspension of Non-competitive Class Employees

- .221 With some exceptions, the suspension of non-competitive class employees is the same as the suspension of competitive class employees.**
 - A. Temporary employees - All temporary employees are suspended before suspending permanent non-competitive employees. Even though no set order of suspension is provided in the law for temporary employees, we recommend suspension be made beginning with the least senior.**

.221 (Continued)

- B. Non-tenured permanent employees - Permanent employees who do not meet the requirements of §75.1(c) are suspended next. These individuals should be ranked in seniority order amongst themselves and laid off. Non-tenured permanent employees do not have retreat or preferred list rights since they are not covered by §80-a.
- C. Tenured permanent employees Last to be suspended are non-competitive employees who meet the requirements of §75.1(c) and who therefore have rights under §80-a. These employees are suspended beginning with the least senior.

.230 Determining Seniority

- .231 Seniority for non-competitive class employees is determined in the same manner as for competitive class employees. (See 2350 .220.)

.240 Displacement Rights

- .241 Once the least senior individuals occupying positions to be abolished have been identified, the next step is to consider the rights of tenured employees.

Non-competitive class employees are not eligible to vertically displace since, by definition, there are no direct promotion lines in the non-competitive class. Non-competitive class employees may displace only through retreat. (See 2350 .233.)

See 2350 .240 and .250 for placement roster, preferred list and reemployment roster rights of permanent non-competitive class employees.

.4 PROCEDURES

.410 Agency Procedure for Layoff of Non-competitive Class Employees

- .411 The steps an agency should follow are outlined on pages 8, 9 and 10 of 2350 .4. For more complete and detailed information, see "Guidelines for Reductions in Force."

NEW YORK STATE DEPARTMENT OF CIVIL SERVICE

STATE PERSONNEL MANAGEMENT MANUAL

2300 REDUCTIONS IN FORCE

2370 LAYOFFS IN THE LABOR CLASS

PAGE 1

Labor class employees have been provided by negotiated agreements with the same basic layoff protection provided to non-competitive class employees. (See 2360.)