

MEMORANDUM

To: Nebraska Council of School Administrators
From: Greg Perry and Josh Schauer, The Perry Law Firm
Date: January 9, 2015
Re: Amendments to Nebraska Veterans Preference Law

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The Nebraska Veterans Preference Law was originally enacted in 1969. It applies to the State of Nebraska and its political subdivisions.¹ Effective January 1, 2015, a number of important changes were made to the law—these include:

- Spouses of certain veterans are now entitled to the Law’s preferences.²
- Notices of open positions and applications for such positions must state that the position is subject to a veterans preference.³
- Within thirty days after filling a position, veterans who applied and were not hired shall receive notification they were not hired.⁴

These and other new provisions are addressed in turn below.

We note first, though, that the Attorney General has determined the Law only applies to persons seeking initial employment.⁵ It thus should not apply to employees seeking a promotion.

Spousal Preference

The Law now provides that “veteran” includes the “spouse⁶ of a veteran who has a one hundred percent permanent disability as determined by the United States Department of Veterans Affairs.”

This definition is not necessarily as simple as it appears. The term “spouse” is included in the definition of “veteran.” The Law defines a veteran as a “person who served full-time duty with military pay and allowances in the armed forces of the United States, except for training or for determining physical fitness, and was discharged or otherwise separated with a characterization of honorable or general (under honorable conditions).”⁷

¹ Neb. Rev. Stat. § 48-226.

² Neb. Rev. Stat. § 48-225(1)(b).

³ Neb. Rev. Stat. § 48-227(3).

⁴ Neb. Rev. Stat. § 48-227(5).

⁵ See, e.g. 1991 Neb. AG LEXIS 62

⁶ Any marriage claimed for this purpose must be valid under Nebraska law. Neb. Rev. Stat. § 48-227(4).

⁷ Neb. Rev. Stat. § 48-225(1)(a).

The Law defines “full-time duty” as “duty during time of war” or, with certain qualifications, duty from January 31, 1955 to February 28, 1961.⁸ Outside of that specified period from 1955 to 1961—which generally requires service of 180 days—there is no requirement of a certain amount of service.

The Law does not define “time of war.” Federal law, though, provides such a definition. The following is a list of periods of “wartime” as designated by Congress (since the conclusion of World War II):

- Korean Conflict—June 27, 1950, through January 31, 1955⁹;
- Vietnam Era—August 5, 1964, through May 7, 1975¹⁰; and
- Persian Gulf War—August 2, 1990, through a date to be prescribed by Presidential proclamation or law.¹¹

Accordingly, the spouse of a veteran who served during such “wartime” is potentially eligible for the preference.

The next issue is whether the applicant is the spouse of a veteran who has one hundred percent disability; without such disability, the spousal preference is inapplicable. Disability information is provided via a copy of the veteran’s disability verification from the United States Department of Veterans Affairs.¹²

In sum, to receive the preference, a spouse must present: (1) a copy of the veteran’s Department of Defense Form 214, (2) a copy of the disability verification referenced above and (3) proof of marriage to the veteran.

If all the requirements are met, the spouse shall have 5% added to his or her score on pre-employment numerical-based scoring systems.¹³ If no such system is used, the “preference shall be given to the veteran if two or more equally qualified candidates are considered for the position.”¹⁴ In other words, the spouse is placed in the same position as a veteran, but does not receive the additional percentage accorded to disabled veterans.

Notices

⁸ Neb. Rev. Stat. § 48-225(2).

⁹ 38 U.S.C. § 101(9); 38 C.F.R. § 3.2(e).

¹⁰ 38 U.S.C. § 101(29); 38 C.F.R. § 3.2(f). Military personnel who served in the Republic of Vietnam between February 28, 1961, and May 7, 1975, are also considered to have served during the Vietnam Era.

¹¹ 38 U.S.C. §§ 101(33), 1501(4); 38 C.F.R. §§ 3.2(I), 3.3(a)(3), 3.17, 3.54(a)(3)(viii). At the present time, no termination date has been established.

¹² Neb. Rev. Stat. § 48-227(4).

¹³ Neb. Rev. Stat. § 48-227(1).

¹⁴ Neb. Rev. Stat. § 48-227(2). **This preference is also applicable to veterans, including disabled veterans, where numerical testing is not utilized.**

The Law now requires the public employer to include the following on all job advertisements, posting and applications: “This position is subject to a veterans preference.”

Additionally, the Law now requires employers to notify veterans (and, as provided above, their spouses) who were not hired for the position(s) for which they applied. The notice must be provided within thirty days after filling a position and may be provided by “regular mail, electronic mail, telephone call, or personal service.”¹⁵ The notice must also advise the veteran/qualifying spouse of any administrative appeal available to unsuccessful applicants.

Action

The Law carries significant enforcement power. Those who do not comply may be charged with a Class IV misdemeanor and are not eligible to receive compensation from public funds during the period of noncompliance.¹⁶ As such, public schools and ESUs should immediately:

1. Include the veterans preference notice on all notices of positions of employment (i.e., job advertisements) and all application forms.
2. Apply the proper preferences. For numerically scored employment examinations, add 5% for veterans and qualifying spouses, and add an additional 5% for disabled veterans. Where numerical scores are not used, give the hiring preference where there are two or more equally qualified candidates to the veteran or qualifying spouse.
3. Within 30 days of filling the position, notify veterans and qualifying spouses who applied but were not hired that they were not hired for the job.

This memorandum is intended as a general overview. There are many potential nuances for employers based on these statutory changes. For example, districts with application “pools” will have to address notification to veterans whose applications remain on file. Schools and ESUs will need to address such specific matters with their counsel.

¹⁵ Neb. Rev. Stat. § 48-227(5).

¹⁶ Neb. Rev. Stat. § 48-230.