

# Federal Employment Policy Handbook:

## *Veterans and the Civil Service*



United States  
Office of  
Personnel  
Management

Employment  
Service

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# VetGuide

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## ① Introduction

*VetGuide* explains the special rights and privileges that veterans enjoy in Federal civil service employment. The guide conveniently summarizes in one place material from many laws and regulations that affect the employment of veterans. The guide will help Federal personnel specialists ensure that veterans receive the advantages they have earned.

The Office of Personnel Management (OPM) administers entitlement to veterans' *preference* in employment under title 5, United States Code, and oversees other statutory employment requirements in titles 5 and 38. (Title 38 also governs veterans' entitlement to *benefits* administered by the Department of Veterans Affairs (VA).)

Both title 5 and title 38 use many of the same terms, but in different ways. For example, service during a “war” is used to determine entitlement to veterans’ preference and service credit under title 5. OPM has always interpreted this to mean **a war declared by Congress**. But title 38 defines “period of war” to include many non-declared wars, including Korea, Vietnam, and the Persian Gulf. Such conflicts entitle a veteran to VA **benefits** under title 38, but not necessarily to **preference or service credit** under title 5. Thus it is critically important to use the correct definitions in determining eligibility for specific rights and benefits in employment.

For additional information, including the complete text of the laws and regulations on veterans' rights, consult the references cited ❖.



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## ② Veterans' Preference in Appointments

### ☆ Why Preference is Given

Since the time of the Civil War, veterans of the Armed Forces have been given some degree of preference in appointments to Federal jobs. Recognizing their sacrifice, Congress enacted laws to prevent veterans seeking Federal employment from being penalized for their time in military service. Veterans' preference recognizes the economic loss suffered by citizens who have served their country in uniform, restores veterans to a favorable competitive position for Government employment, and acknowledges the larger obligation owed to disabled veterans.

Veterans' preference in its present form comes from the Veterans' Preference Act of 1944, as amended, and is now codified in various provisions of title 5, United States Code. By law, veterans who are disabled or who served on active duty in the Armed Forces during certain specified time periods or in military campaigns are entitled to preference over others in hiring from competitive lists of eligibles and also in retention during reductions in force.

In addition to receiving preference in **competitive** appointments, veterans may be considered for special **noncompetitive** appointments for which only they are eligible. See Chapter 4.

### ☆ When Preference Applies

Preference in hiring applies to permanent and temporary positions in the competitive and excepted services of the executive branch. Preference does not apply to positions in the Senior Executive Service or to executive branch positions for which Senate confirmation is required. The legislative and judicial branches of the Federal Government also are exempt from the Veterans' Preference Act **unless** the positions are in the competitive service (Government Printing Office, for example) or have been made subject to the Act by another law.

Preference applies in hiring from civil service examinations conducted by the Office of Personnel Management (OPM) and agencies under delegated examining authority, for most excepted service jobs including Veterans' Readjustment Appointments (VRA), and when agencies make temporary, term, and overseas limited appointments. Veterans' preference does not apply to promotion, reassignment, change to lower grade, transfer or reinstatement.

Veterans' preference does not require an agency to use any particular appointment process. Agencies have broad authority under law to hire from any appropriate source of eligibles including special appointing authorities. An agency may consider candidates already in the civil service from an agency-developed merit promotion list

or it may reassign a current employee, transfer an employee from another agency, or reinstate a former Federal employee. In addition, agencies are required to give priority to displaced employees before using civil service examinations and similar hiring methods.

❖ *Civil service examination*: Title 5 United States Code (U.S.C.) 3304-3330, title 5 Code of Federal Regulations (CFR) Part 332, OPM Delegation Agreements with individual agencies, OPM Examining Handbook, OPM Delegated Examining Operations Handbook; *Excepted service appointments, including VRA's*: 5 U.S.C. 3320; 5 CFR Part 302; *Temporary and term employment*: 5 CFR Parts 316 and 333; *Overseas limited employment*: 5 CFR Part 301; *Career Transition Program*: 5 CFR Part 330, Subparts F and G.

## ☆ Types of Preference

To receive preference, a veteran must have been **separated from active duty in the Armed Forces with an honorable or general discharge**. As defined in 5 U.S.C. 2101(2), "Armed Forces" means the Army, Navy, Air Force, Marine Corps and Coast Guard. The veteran must also be eligible under one of the preference categories below (also shown on the Standard Form (SF) 50, *Notification of Personnel Action*).

Military retirees at the rank of major, lieutenant commander, or higher are not eligible for preference in appointment unless they are disabled veterans.

Active duty for training or inactive duty by National Guard or Reserve soldiers does not qualify as "active duty" for preference.

For purposes of this chapter and 5 U.S.C. 2108, "war" means only those armed conflicts declared by Congress as war and includes World War II, which covers the period from December 7, 1941, to April 28, 1952.

When applying for Federal jobs, eligible veterans should claim preference on their application or resume. Applicants claiming 10-point preference must complete Standard Form (SF) 15, *Application for 10-Point Veteran Preference*, and submit the requested documentation.

The following preference categories and points are based on 5 U.S.C. 2108 and 3309 as modified by a length of service requirement in 38 U.S.C. 5303A(d). (The letters following each category, e.g., "TP," are a shorthand reference used by OPM in competitive examinations.)

### ▼ 5-Point Preference (TP)

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Five points are added to the **passing** examination score or rating of a veteran who served:

- During a war;

**or**

- During the period April 28, 1952 through July 1, 1955;

**or**

- For more than 180 consecutive days, other than for training, any part of which occurred after January 31, 1955, and before October 15, 1976;

**or**

- In a campaign or expedition for which a campaign medal has been authorized. Any Armed Forces Expeditionary medal or campaign badge, including El Salvador, Lebanon, Grenada, Panama, Southwest Asia, Somalia, and Haiti qualifies for preference. For more information, see Chapter 7 of *The Guide to Processing Personnel Actions*, an OPM operating manual.

A campaign medal holder who originally enlisted after September 7, 1980, (or began active duty on or after October 14, 1982, and has not previously completed 24 months of continuous active duty) must have served continuously for 24 months or the full period called or ordered to active duty. The 24-month service requirement does not apply to 10-point preference eligibles separated for disability incurred or aggravated in the line of duty, or to veterans separated for hardship or other reasons under 10 U.S.C. 1171 or 1173.

#### ▼ 10-Point Compensable Disability Preference (CP)

Ten points are added to the **passing** examination score or rating of:

- A veteran who served at any time **and** who has a compensable service-connected disability rating of at least 10 percent but less than 30 percent.

#### ▼ 10-Point 30 Percent Compensable Disability Preference (CPS)

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Ten points are added to the **passing** examination score or rating of a veteran who served at any time and who has a compensable service-connected disability rating of 30 percent or more.

▼ **10-Point Disability Preference (XP)**

Ten points are added to the **passing** examination score or rating of:

- A veteran who served at any time and has a present service-connected disability or is receiving compensation, disability retirement benefits, or pension from the military or the Department of Veterans Affairs but does not qualify as a CP or CPS;

**or**

- A veteran who received a Purple Heart.

▼ **10-Point Derived Preference (XP)**

Ten points are added to the **passing** examination score or rating of spouses, widows, widowers, or mothers of veterans as described below. This type of preference is usually referred to as "derived preference" because it is based on service of a veteran who is not able to use the preference.

Both a mother and a spouse (including widow or widower) may be entitled to preference on the basis of the same veteran's service if they both meet the requirements. However, neither may receive preference if the veteran is living **and** is qualified for Federal employment.

*Spouse*

Ten points are added to the **passing** examination score or rating of the spouse of a disabled veteran who is disqualified for a Federal position along the general lines of his or her usual occupation **because of a service-connected disability**. Such a disqualification may be presumed **when the veteran is unemployed and**

- is rated by appropriate military or Department of Veterans Affairs authorities to be 100 percent disabled and/or unemployable;

**or**

- has retired, been separated, or resigned from a civil service position on the basis of a disability that is service-connected in origin;

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**or**

- has attempted to obtain a civil service position or other position along the lines of his or her usual occupation and has failed to qualify **because of a service-connected disability**.

Preference may be allowed in other circumstances but anything less than the above warrants a more careful analysis.

**NOTE:** Veterans' preference for spouses is different than the preference the Department of Defense is required by law to extend to spouses of active duty members in filling its civilian positions. For more information on that program, contact the Department of Defense.

#### ***Widow/Widower***

Ten points are added to the **passing** examination score or rating of the widow or widower of a veteran who was not divorced from the veteran, has not remarried, or the remarriage was annulled, **and** the veteran either:

- served during a war **or** during the period April 28, 1952, through July 1, 1955, **or** in a campaign or expedition for which a campaign medal has been authorized;

**or**

- died while on active duty that included service described immediately above under conditions that would not have been the basis for other than an honorable or general discharge.

#### ***Mother of a deceased veteran***

Ten points are added to the **passing** examination score or rating of the mother of a veteran who died under honorable conditions while on active duty during a war **or** during the period April 28, 1952, through July 1, 1955, **or** in a campaign or expedition for which a campaign medal has been authorized;

**and**

she is or was married to the father of the veteran;

**and**

- she lives with her totally and permanently disabled husband (either the veteran's father or her husband through remarriage);

**or**

- she is widowed, divorced, or separated from the veteran's father and has not remarried;

**or**

- she remarried but is widowed, divorced, or legally separated from her husband when she claims preference.

### *Mother of a disabled veteran*

Ten points are added to the **passing** examination score or rating of a mother of a living disabled veteran if the veteran was separated with an honorable or general discharge from active duty performed at any time **and** is permanently and totally disabled from a service-connected injury or illness; and the mother:

- is or was married to the father of the veteran;

**and**

- lives with her totally and permanently disabled husband (either the veteran's father or her husband through remarriage);

**or**

- is widowed, divorced, or separated from the veteran's father and has not remarried;

**or**

- remarried but is widowed, divorced, or legally separated from her husband when she claims preference.

**Note: Preference is not given to widows or mothers of veterans who qualify for preference under 5 U.S.C. 2108 (1) (B) or (2). Thus, the widow or mother of a disabled veteran who served after 1955, but did not serve in a war, campaign, or expedition, would not be entitled to preference.**

❖ 5 U.S.C. 2108 and 3309; 38 U.S.C. 5303A

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## ☆ Adjudication of Veterans' Preference Claims

Agencies are responsible for adjudicating all preference claims except claims for preference based on common-law marriage, which should be sent to the Office of Personnel Management (OPM), Office of the General Counsel, Washington, DC 20415.

Detailed instructions on adjudicating veterans' preference claims are contained in Chapter 7 of *The Guide to Processing Personnel Actions*, an OPM operating manual. That guide describes evidence needed as proof of service, honorable discharge, campaign service, the existence of a service-connected disability, and proof required of a spouse, widow, widower, or mother of a veteran.

❖ 5 U.S.C. 3309, 3313 and 5 CFR 332.401, 337.101

## ☆ Crediting Experience of Preference Eligibles

In evaluating experience, an examining office must credit a preference eligible's Armed Forces service as an extension of the work performed immediately prior to the service, or on the basis of the actual duties performed in the service, or as a combination of both, whichever would most benefit the preference eligible.

The examining office must also give all applicants credit for job-related experience, paid and unpaid, including experience in religious, civic, welfare, service and organizational activities.

❖ 5 U.S.C. 3311, 5 CFR 337.101

## ☆ Physical Qualifications

In determining qualifications, agencies must waive a medical standard or physical requirement when there is sufficient evidence that the employee or applicant, with or without reasonable accommodation, can perform the essential duties of the position without endangering the health and safety of the individual or others.

**Special provisions apply to the proposed disqualification of a preference eligible with a 30 percent or more compensable disability. See *Disqualification of 30 Percent or more Disabled Veterans* below.**

❖ 5 U.S.C. 3312, 5 CFR Part 339.204

## ☆ Preference in Competitive Examinations

Preference eligibles who are qualified for a position (achieve a score of 70 to 100) have 5 or 10 extra points added to their numerical ratings depending on which of the previously described categories of preference they meet. This means the highest possible rating is 110 (a disabled veteran who earns a score of 100 has 10 extra points added).

Names of eligible applicants are placed on lists, or registers of eligibles, in the order of their ratings. Registers are established as **standing registers** from which selections will be made over a period of time and for **case examining** in which a register is used to fill a single position or a group of positions and is closed after the needed selection(s) is made.

**For scientific and professional positions in grade General Schedule (GS) - 9 or higher**, names of all qualified applicants are listed on a register in order of ratings, augmented by veteran preference, if any.

**For all other positions**, the names of 10-point preference eligibles who have a compensable, service-connected disability of 10 percent or more (CP and CPS) are listed at the top of the register in the order of their ratings ahead of the names of all other eligibles. The names of other 10-point preference eligibles, 5-point preference eligibles, and other applicants are listed in order of their numerical ratings.

A preference eligible is listed ahead of a nonpreference eligible having the same final rating.

❖ 5 U.S.C. 3309, 3313 and 5 CFR 332.401 and 337.101

## ☆ Filling a Position From a Competitive Examination

### • Announcing the Vacancy

To fill a vacancy by selection from a competitive examination the selecting official requests a list of eligibles from the examining office. The examining office must announce the competitive examination to the public and report it to the Office of Personnel Management (OPM), which notifies the State employment service. Subsequently, the examining office determines which applicants are qualified, rates and ranks them based on their qualifications, and issues a **certificate of eligibles**, which is a list of eligibles with the highest scores from the top of the appropriate register. A certificate of eligibles may be used for permanent, term, or temporary appointment.

### • The "Rule of Three" and Veteran Passovers

Selection must be made from the highest three eligibles on the certificate who are available for the job--the "**rule of three.**" However, an agency may not **pass over** a preference eligible to select a nonpreference eligible with the same or lower score.

**Example:** If the top person on a certificate is a 10-point disabled veteran (CP or CPS) and the second and third persons are 5-point preference eligibles, the appointing authority may choose any of the three.

**Example:** If the top person on a certificate is a 10-point disabled veteran (CP or CPS), the second person is not a preference eligible, and the third person is a 5-point preference eligible, the appointing authority may choose either of the preference eligibles. The appointing authority may not pass over the 10-point disabled veteran to select the nonpreference eligible unless an objection has been sustained.

## ☆ Disqualifications of Preference Eligibles

A preference eligible can be eliminated from consideration only if the examining office sustains the agency's objection to the preference eligible for adequate reason. These reasons, which must be recorded, include medical disqualification under 5 CFR Part 339, suitability disqualification under 5 CFR Part 731, or other reasons considered by the Office of Personnel Management (OPM) or an agency under delegated examining authority to be **disqualifying**.

OPM must approve the sufficiency of an agency reason to **medically disqualify** or pass over a preference eligible on a certificate based on medical reasons to select a nonpreference eligible. **Special provisions apply to the proposed disqualification or pass over for any reason of a preference eligible with a 30 percent or more compensable disability. See *Disqualification of 30 Percent or more Disabled Veterans below*.**

Agencies must refer suitability disqualifications to OPM for final approval, unless OPM has delegated authority to the agency in accordance with 5 CFR Part 731.

The preference eligible (or his or her representative) is entitled on request to a copy of the agency's reasons for the proposed pass over and the examining office's response.

An appointing official is not required to consider a person who has three times been passed over with appropriate approval or who has already been considered for three separate appointments from the same or different certificates for the same position. But in each of these considerations, the person must have been within reach under the rule of three and a selection must have been made from that group of three. Further, the preference eligible is entitled to advance notice of discontinuance of certification.

❖ 5 U.S.C. 3317, 3318 and 5 CFR 332.402, 332.404, 332.405, 332.406, and Parts 339 and 731

## ☆ Disqualification of 30 Percent or More Disabled Veterans

The following special provisions apply to disabled veterans with a compensable service-connected disability of 30 percent or more:

- If an agency proposes to pass over a disabled veteran on a certificate to select a person who is not a preference eligible, or to disqualify a disabled veteran based on the physical requirements of the position, it must at the same time notify both the Office of Personnel Management (OPM) and the disabled veteran of the reasons for the determination and of the veteran's right to respond to OPM within 15 days of the date of the notification.
- The agency must provide evidence to OPM that the notice was timely sent to the disabled veteran's last known address.
- OPM must make a determination on the disabled veteran's physical ability to perform the duties of the position, taking into account any additional information provided by the veteran.
- OPM will notify the agency and the disabled veteran of its decision, with which the agency must comply. If OPM agrees that the veteran cannot fulfill the physical requirements of the position, the agency may select another person from the certificate of eligibles. If OPM finds the veteran able to perform the job, the agency may not pass over the veteran.
- OPM is prohibited by law from delegating this function to any agency.

❖ **5 U.S.C. 3312, 3318**

• **Preference Eligibles and the Nepotism Provision**

A public official may not advocate a relative for appointment, employment, promotion, or advancement, or appoint, employ, promote, or advance a relative, to a position in an agency in which the public official is employed or over which he or she exercises jurisdiction or control.

This restriction does not, however, prohibit the appointment of a preference eligible whose name is within reach for selection on an appropriate certificate of eligibles when an alternative selection cannot be made from the certificate without passing over the preference eligible and selecting an individual who is not a preference eligible.

❖ **5 U.S.C. 3110(e) and 5 CFR Part 310, Subpart A**

## ☆ **Filing Late Applications**

A veteran may file a late application under the following circumstances by contacting the employing agency. Agencies are responsible for accepting, retaining, and

considering their applications as required by law and regulation regardless of whether the agency uses case examining or maintains a continuing register of eligibles.

Applications from 10-point preference eligibles must be accepted, as described below, for future vacancies that may arise after a case examining register or continuing register is closed. Agencies must accept applications from other individuals who are eligible to file on a delayed basis only as long as a case examining register exists.

- A **10-point preference eligible** may file a job application with an agency at any time. If the applicant is qualified for positions filled from a register, the agency must add the candidate to the register, even if the register is closed to other applicants. If the applicant is qualified for positions filled through case examining, the agency will ensure that the applicant is referred on a certificate as soon as possible. If there is no immediate opening, the agency must retain the application in a special file for referral on certificates for future vacancies for up to three years. The Office of Personnel Management's *Delegated Examining Operations Handbook* provides detailed instructions.
- A **preference eligible** is entitled to be reentered on each register (or its successor) where previously listed if he or she applies within 90 days after **resignation** without delinquency or misconduct from a career or career-conditional appointment.
- A **preference eligible** is entitled to be entered on an appropriate existing register if he or she applies within 90 days after furlough or separation without delinquency or misconduct from a career or career-conditional appointment or if found eligible to apply **after successfully appealing a furlough or discharge** from career or career-conditional appointment.
- A person who lost eligibility for appointment from a register because of **active duty** in the Armed Forces is entitled to be restored to the register (or its successor) and receive priority consideration when certain conditions are met. See 5 CFR 332.322 for more details.
- A person who was unable to file for an open competitive examination or appear for a test because of **service in the Armed Forces or hospitalization** continuing for up to 1 year following discharge may file after the closing date if the register of eligibles still exists.
- A **Federal employee** who was unable to file for an open competitive examination or appear for a test because of **active Reserve duty** continuing beyond 15 days may file after the closing date of an existing register.

❖ 5 U.S.C. 3305, 3314, 3315, and 5 CFR 332.311, 332.312, 332.321, 332.322

## ☆ Temporary Appointment Outside of Competitive Registers

In making a temporary appointment not to exceed 1 year, agencies may use competitive registers as discussed above or an alternative ranking process called "**outside the register.**" (Agencies may also make noncompetitive temporary appointments under the limited situations in 5 CFR 316.402(b). These noncompetitive appointments may be made without regard to competitive examining or outside-the-register procedures but agencies must notify the Office of Personnel Management (OPM) of the vacancy when the appointment will be for 90 days or more **and** the agency will consider applicants from outside the agency.)

Agencies may use "outside-the-register" procedures, described in 5 CFR Part 333, to make a temporary appointment even if they have competitive examining authority or an existing register for permanent appointment to a similar position. **Veterans' preference** is applied as described below. Employees selected do not acquire status or noncompetitive eligibility for a career-conditional appointment.

Here is a summary of the Part 333 outside-the-register process for making temporary appointments to competitive service positions. Agencies:

- Issue job announcements and report the announcement to OPM which then notifies State employment service offices of the vacancy. (See 5 CFR 333.102.)
- Screen applicants to determine whether they meet OPM's qualification standard for the position.
- Disqualify applicants, as necessary, for medical reasons as provided in 5 CFR Part 339. OPM must approve the sufficiency of an agency reason to medically disqualify or pass over a preference eligible on a certificate based on medical reasons to select a nonpreference eligible. **Special provisions apply to the proposed disqualification or Pass over for any reason of a preference eligible with a 30 percent or more compensable disability. See *Disqualification of 30 Percent or more Disabled Veterans* above.**
- Refer suitability disqualifications to OPM for final approval, unless OPM has delegated authority to the agency in accordance with 5 CFR Part 731.
- Rank eligible applicants according to one of two methods:

### **Method 1**

Method 1 is the same as the process for making a permanent appointment from a competitive examination. The agency assigns numerical ratings of 70-100 based on the degree to which each applicant possesses knowledge, skills, and abilities required by the job to be filled and grants an additional 5 or 10 points to preference eligibles, as described above under *Types of Preference*. The agency ranks candidates as described above under *Preference in*

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*Competitive Examinations* and makes a selection as described above under *Filling a Position From a Competitive Examination*. Method 1 is preferable when the position requires specialized skills.

OR

## Method 2

The agency ranks eligible candidates on the basis of their veterans' preference status. Method 2 is preferable for jobs that require no specialized qualifications or when all applicants have substantially the same qualifications.

**For professional and scientific jobs at the GS-9 level or above**, all preference eligibles are listed ahead of nonpreference eligibles, but no distinction is made in the type of preference a candidate has. In other words, an agency may select any candidate entitled to veterans' preference.

**For all other jobs**, agencies first refer preference eligibles with compensable service-connected disabilities of 10 percent or more (CP and CPS), then all other preference eligibles, then candidates without veterans' preference.

A nonpreference eligible may not be selected when a preference eligible is available, except when objections to preference eligibles are sustained as discussed above under *Filling a Position From a Competitive Examination*, or an appointing authority has three times with appropriate approval passed over the eligible for the same position and selected another eligible, or the appointing authority has considered the preference eligible, when within reach, for three separate appointments for positions at the same grade level and for the same line of work and selected another eligible.

❖ 5 CFR Part 316, Subpart D; 330.102; and Part 333

## ☆ Excepted Service Employment

The Veterans' Preference Act requires an appointing authority in the executive branch to select from among qualified applicants for appointment to excepted service vacancies in the same manner and under the same conditions required for the competitive service by 5 U.S.C. 3308-3318. Appointments made with the advice and consent of the Senate are exempt.

Office of Personnel Management regulations governing the application of veterans' preference in excepted appointments are in 5 CFR Part 302.

❖ 5 U.S.C. 3320 and 5 CFR Part 302

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## ☆ Administration and Enforcement of Veterans' Preference

Office of Personnel Management (OPM) is charged with prescribing and enforcing regulations for the administration of veterans' preference in the **competitive service** in executive agencies. OPM is charged with prescribing regulations for the administration of veterans' preference in the **excepted service** in executive agencies. Agencies themselves are generally responsible for enforcement.

❖ 5 U.S.C. 1302

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## ③ Veterans' Preference in Reduction in Force

Veterans have advantages over nonveterans in a reduction in force (RIF). Also, special provisions apply in determining whether retired military members receive preference in RIF and whether their military service is counted. This chapter deals with RIF in the competitive service; some, but not all, of the provisions apply in the excepted service.

### Eligibility for Veterans' Preference in RIF

Determinations of veterans' preference eligibility are made in accordance with the information under **Preference in Appointments** in Chapter 2, except that a **retired member** of a uniformed service must meet an additional condition to be considered a preference eligible for RIF purposes. This condition differs depending on the rank at which the individual retired from the uniformed service. Uniformed service as defined in 5 United States Code (U.S.C.) 2101 means the Armed Forces, the commissioned corps of the Public Health Service, and the commissioned corps of the National Oceanic and Atmospheric Administration.

**Retirees below the rank of major (or equivalent)** get preference if:

- Retirement from the uniformed service is based on disability that either resulted from injury or disease received in the line of duty as a direct result of armed conflict, **or** was caused by an instrumentality of war and was incurred in the line of duty during a period of war as defined in section 101(11) of title 38, U. S. C. "Period of war" includes World War II, the Korean conflict, Vietnam era, the Persian Gulf War, or the period beginning on the date of any future declaration of war by the Congress and ending on the date prescribed by Presidential proclamation or concurrent resolution of the Congress;

**or**

- The employee's retired pay from a uniformed service is not based on 20 or more years of full-time active service, regardless of when performed but not including periods of active duty for training;

**or**

- The employee has been continuously employed in a position covered by the 5 U.S.C. chapter 35 since November 30, 1964, without a break in service of more than 30 days.

**Retirees at or above the rank of major (or equivalent)** get preference if they are disabled veterans as defined in 5 U.S.C. 2108(2) (includes XP, CP, and CPS) and also meet one of the criteria above for a person retired below the rank of major.

A preference eligible who at age 60 becomes eligible as a **reservist** for retired pay under 10 U.S.C. chapter 1223 (previously chapter 67) and who retires at or above the rank of major (or equivalent) is considered a preference eligible for RIF purposes at age 60 only if he or she is a disabled veteran as defined in 5 U.S.C. 2108(2) (includes categories XP, CP, and CPS). Receipt of retired pay under chapter 1223 meets the requirement that retired pay not be based on 20 or more years of full-time active service. Eligibility for retired reservist pay occurs at age 60; up to that time a reservist is not considered a retired member of a uniformed service and, if otherwise eligible, is a preference eligible for reduction in force purposes.

❖ 5 U.S.C. 3501, 3502; 5 Code of Federal Regulations (CFR) 351.501

### **RIF Retention Standing**

Employees are ranked on retention registers for competitive levels (groups of similar jobs) based on four factors: tenure, veterans' preference, length of service, and performance.

First they are placed in Tenure Group I, II, or III, depending on their type of appointment. Within each group, they are placed in a subgroup based on their veteran status:

- Subgroup AD includes each preference eligible who has a compensable service-connected disability of 30 percent or more.
- Subgroup A includes all other preference eligibles not in Subgroup AD, including employees with derived preference (see Chapter 2).
- Subgroup B includes all employees not eligible for veterans' preference.

Within each subgroup, employees are ranked in descending order by the length of their creditable Federal civilian and military service, augmented by additional service according to the level of their performance ratings.

When a position in a competitive level is abolished, the employee affected (released from the competitive level) is the one who stands the lowest on the retention register. Because veterans are listed ahead of nonveterans within each tenure group, they are the last to be affected by a RIF action.

Employees are not subject to a **reduction in force** while they are serving in the uniformed services. After return from active duty, they are protected from RIF action. If they served for more than 180 days, they may not be separated by RIF for 1 year after their return. If they served for more than 30 but less than 181 days, they may not be separated by RIF for 6 months.

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❖ 5 U.S.C. 3502; 5 CFR 351.404(a), 351.606(a), and Subpart E

### Assignment Rights (Bump and Retreat)

When an employee in Tenure Group I or II with a minimally successful performance rating is released from a competitive level within the competitive area where the RIF takes place, he or she is entitled under certain circumstances to displace another employee with lower retention standing. The superior standing of preference eligibles gives them an advantage in being retained over other employees. These displacement actions apply to the competitive service although an agency may, at its discretion, adopt similar provisions for its excepted employees.

- **Bumping**

An employee may bump in the same competitive area to a position **no more than three grades (or grade intervals) lower** than the position from which the employee is released that is held by an employee **in a lower group or subgroup**.

- **Retreating**

An employee may retreat in the same competitive area to a position held by another employee with lower retention standing in the same tenure group and subgroup that is essentially identical to one **previously held** by the retreating employee and is **no more than three grades (or grade intervals) lower** than the position from which the employee is released.

A preference eligible with a **compensable service-connected disability of 30 percent or more** may retreat to a position **up to five grades (or grade intervals) lower**.

An employee with an unacceptable performance rating has no right to bump or retreat.

An employee with a performance rating of minimally successful may retreat only to positions held by an employee with the same or lower rating.

- **Qualifications**

In reviewing the qualifications of a preference eligible to determine assignment rights in a RIF, the agency must waive requirements as described under *Physical Qualifications* in Chapter 2. If the veteran involved has a 30 percent or more compensable disability, special procedures apply as described under *Disqualification of 30 Percent or more Disabled Veterans* in Chapter 2. OPM must approve the

sufficiency of the agency's reasons to medically disqualify a 30 percent or more compensably disabled veteran for assignment to another position in a RIF.

❖ **5 U.S.C. 3502, 3504; 5 CFR Part 351, Subpart G, and Part 339**

### **Appeal of RIF Actions**

An employee who has been furloughed, separated, or demoted by RIF action has the right to appeal the action to the Merit Systems Protection Board except when a negotiated procedure must be used. Assignment to a position at the employee's same grade or representative rate is not appealable. Appeals must be filed during the period beginning on the day after the effective date of the RIF action and ending 30 days after the effective date. Time limits for filing a grievance under a negotiated procedure are contained in the negotiated agreement.

❖ **5 CFR 351.901, Part 1201**

### **Reemployment Priority for Separated Employees**

After a RIF, separated competitive service employees in tenure groups I and II are listed on the agency's Reemployment Priority List. The agency generally may not hire from most outside sources when qualified employees are on the List. In hiring from the List, preference eligibles receive preference over other employees. Excepted service employees separated by RIF receive similar priority in excepted employment.

❖ **5 U.S.C. 3315; 5 CFR Part 330, Subpart B, and Part 302**

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## ④ Miscellaneous Provisions Pertaining to Veterans

### ☆ Jobs Restricted to Preference Eligibles

Appointment through competitive examination and "outside the register" procedures for positions of guards, elevator operators, messengers, and custodians are restricted to preference eligibles when they are available.

❖ title 5 United States Code (U.S.C.) 3310; Title 5 Code of Federal Regulations (CFR) Part 330, Subpart D

### ☆ Reinstatement

Preference eligibles, including those with derived preference, who served under career or career-conditional appointment for any period of time have lifetime reinstatement eligibility to any competitive service position for which qualified. They have this eligibility regardless of whether their Armed Forces service occurred before or after career or career-conditional appointment. Competition under the agency's merit promotion plan is required if the position is at a higher grade level or has more promotion potential than a position previously held.

❖ 5 U.S.C. 3316; 5 CFR Part 315, Subpart D

### ☆ 180-Day Restriction on Department Of Defense (DOD) Employment of Military Retirees

A retired member of the Armed Forces may not be appointed to a civilian position in DOD (including a nonappropriated fund position) within 180 days after retirement unless:

- the Secretary concerned authorizes the appointment;

**or**

- the position is authorized special pay under 5 U.S.C. 5305;

**or**

- a state of national emergency exists.

Although the Office of Personnel Management (OPM) approval is required by law, OPM has delegated the authority to DOD to make these determinations.

❖ 5 U.S.C. 3326; no regulation

## ☆ Reduction in Military Retired Pay

Retired **regular officers**, including warrant officers, of all uniformed services (including the Armed Forces and the commissioned corps of the Public Health Service and the National Oceanic and Atmospheric Administration) under any work schedule must take a reduction in military retired or retainer pay when employed in a permanent or temporary Federal civilian job in the executive, legislative or judicial branch, including the U.S. Postal Service and nonappropriated fund instrumentalities (NAFI).

**Retired Reserve officers and enlisted personnel** are not subject to a reduction unless the sum of retired pay and civilian basic pay (excluding locality pay) exceeds the **pay cap**. The pay cap is the basic pay of level V of the Executive Schedule.

There is no reduction:

- for retired regular officers during the first 30 days of a temporary, part-time, or intermittent appointment;

**or**

- when the military retired or retainer pay is based in whole or in part on a disability incurred in the line of duty as a direct result of armed conflict or caused by an instrument of war during a period of war as defined in 38 U.S.C. 101(11). "Period of war" includes World War II, the Korean conflict, Vietnam era, the Persian Gulf War, or the period beginning on the date of any future declaration of war by the Congress and ending on the date prescribed by Presidential proclamation or concurrent resolution of the Congress;

**or**

- when OPM approves a specific exception on a case-by-case basis in exceptional and unusual circumstances. These circumstances are limited to exceptional difficulty in recruiting or retaining a qualified employee for a specific job and to emergency conditions that pose an immediate and direct threat to life or property. OPM may delegate authority to an agency head to approve exceptions in these emergency situations.

### • Calculating the Reduction

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Reductions are adjusted annually according to changes in the Consumer Price Index. Amounts effective for 1996 are as follows:

Retired regular officers who entered a uniformed service **prior to 8/1/86** have their retired pay reduced to an annual rate equal to the first \$9,819.69 of their retired pay, plus one half of any remainder.

The annual rate for those who entered uniformed service **on or after 8/1/86** is \$8,999.27, plus one half of any remainder.

### ☆ **Affirmative Action for Certain Veterans Under Title 38**

Section 4214 of title 38, U.S.C., was enacted as part of the Veterans' Readjustment Appointment Act of 1974. This act placed into law the provisions of the executive order that authorized the noncompetitive appointment of Vietnam era veterans under Veterans' Readjustment Appointment (VRA).

The law also requires a separate affirmative action program for disabled veterans as defined in 38 U.S.C. 4214. The program is part of agency efforts to hire, place, and advance persons with disabilities under the Rehabilitation Act of 1973 [29 U.S.C. 791(b)]. Title 38 does not provide any preference for veterans; preference is provided only under title 5, U.S.C. Rather, section 4214 calls upon agencies to:

- provide placement **consideration** under special noncompetitive hiring authorities for VRA eligibles and 30 percent or more disabled veterans;

**and**

- ensure that all veterans are considered for employment and advancement under merit system rules;

**and**

- establish an affirmative action plan for the hiring, placement, and advancement of disabled veterans.

❖ **38 U.S.C. 4214; 5 CFR Part 720, Subpart C**



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## ⑤ Service Credit

### ☆ Service Credit for Leave Rate Accrual and Retirement

- **Not Retired from Uniformed Service**

For non-retired members, full credit for uniformed service (including active duty and active duty for training) performed under honorable conditions is given for leave accrual purposes, and for retirement purposes provided a deposit, as required by law, is made to the retirement fund. Uniformed service as defined in 5 U.S.C. 2101 means the Armed Forces, the commissioned corps of the Public Health Service, and the commissioned corps of the National Oceanic and Atmospheric Administration.

Veterans first employed in a position covered by the Civil Service Retirement System (CSRS) on or after October 1, 1982, or in a position covered by the Federal Employee Retirement System (FERS) on or after January 1, 1984, must make a **deposit to the retirement fund** of 7 percent (for CSRS) or 3 percent (for FERS) of basic military pay to obtain retirement credit.

Veterans employed in civil service positions before October 1, 1982, have the option of either making a deposit to cover their military service or having their civil service annuity recomputed to delete post-1956 military service if they are eligible for social security at age 62.

If civilian service is interrupted by uniformed service, special rules apply (see Chapter 7, Restoration After Uniformed Service).

- **Retired from Uniformed Service**

Credit for uniformed service is substantially limited for retired members. In enacting the Dual Compensation Act in 1964, Congress adopted a compromise between the view that retired members should receive preference and full credit for their service and the view that there should be no advantage for retired members.

**For leave accrual**, retirees receive credit only for:

- actual service during a war declared by Congress (includes World War II covering the period December 7, 1941, to April 28, 1952) or while participating in a campaign or expedition for which a campaign badge is authorized;

**or**

- all active duty when retirement was based on a disability received as a direct result of armed conflict or caused by an instrumentality of war and incurred in the line of duty during a period of war as defined in 38 U.S.C. 101(11). "Period of war" includes World War II, the Korean conflict, Vietnam era, the Persian Gulf War, or the period beginning on the date of any future declaration of war by the Congress and ending on the date prescribed by Presidential proclamation or concurrent resolution of the Congress.

**For retirement:**

An employee must waive military retired pay to receive any credit for military service unless the retired pay is awarded based on a service-connected disability incurred in combat with an enemy of the United States or caused by an instrumentality of war and incurred in the line of duty during a period of war as defined by 38 U.S.C. 301, or awarded under 10 U.S.C. chapter 1223 (previously chapter 67).

- ❖ 5 U.S.C. 6303, 8332 and 8411(c); and the CSRS and FERS Handbook

**Creditable Service for RIF--Not Retired from Uniformed Service**

- Total time in active service in the Armed Forces, including active duty and active duty for training as defined in 37 U.S.C. 101, is credited for reduction in force purposes for those who are not retired members, regardless of the type of discharge.
- If civilian service is interrupted by uniformed service, special rules apply (see Chapter 5 on "Restoration After Uniformed Service").

**Creditable Service for RIF--Retired from Uniformed Service**

- Credit for uniformed service is substantially limited for retired members. In enacting the Dual Compensation Act in 1964, Congress adopted a compromise between the view that retired members should receive preference and full credit for their service and the view that there should be no advantage for retired members. Thus, retirees receive credit only as follows:
  - A uniformed services retiree who is a preference eligible for RIF purposes receives service credit for all active duty. Other retirees receive service credit only for active duty during a war as defined in Chapter 2, or service in a campaign or expedition for which a campaign badge has been authorized. See *Eligibility for Veterans' Preference in RIF* in this chapter to determine if a retiree is a preference eligible for RIF purposes.

- ❖ 5 U.S.C. 3501, 3502; 5 CFR 351.501(d), 351.503

**Creditable Service for Severance Pay**

- In computing the amount of severance pay a separated employee receives, credit is given only for military service performed by an employee who returns to civilian service by exercising a restoration right under law, executive order, or regulation. Military service performed prior to an individual's Federal civilian service is not creditable for severance pay purposes.

❖ **5 U.S.C. 5595; 5 CFR 550.708**



## ⑥ Special Appointing Authorities for Veterans

### ☆ Veterans' Readjustment Appointment (VRA) Authority

The VRA is a special authority by which agencies can, **if they wish**, appoint eligible veterans **without competition** to positions at any grade level through General Schedule (GS) 11 or equivalent. (The promotion potential of the position is not a factor.) VRA appointees are hired under excepted appointments to positions that are otherwise in the competitive service.

If the agency has more than one VRA candidate for the same job and one (or more) is a preference eligible, the agency must apply the **veterans' preference** procedures prescribed in 5 Code of Federal Regulations (CFR) Part 302 in making VRA appointments. A veteran who is eligible for a VRA appointment is not automatically eligible for veterans' preference.

After two years of satisfactory service, the agency **must** convert the veteran to career or career-conditional appointment, as appropriate.

#### • Eligibility Requirements

To be eligible for a VRA a veteran must:

- ▼ have served in the Armed Forces on **active duty** (not active duty for training or inactive duty as a Reservist) for more than 180 days, any part of which occurred after August 4, 1964, (or February 28, 1961, for those who actually served in the Republic of Vietnam) and received other than a dishonorable discharge. If the component block at the top of DD form 214, *Certificate of Release or Discharge from Active Duty*, indicates enlistment in the Reserves, the person does not have active duty qualifying for VRA appointment.

The 180-day requirement does not apply to veterans who were discharged or released from active duty because of a service-connected disability, or members of the Reserve or National Guard ordered to active duty under 10 United States Code (U.S.C.) 12301(a), (d), or (g), 12302, or 12304 for service during a period of war as defined in 38 U.S.C. 101(11) or in a campaign or expedition for which a campaign badge is authorized. "Period of war" includes World War II, the Korean conflict, Vietnam era, the Persian Gulf War, or the period beginning on the date of any future declaration of war by the Congress and ending on the date prescribed by Presidential proclamation or concurrent resolution of the Congress;

**and**

▼ meet the qualification requirements for the position. The individual's military service is considered qualifying for positions at GS-3 and below. For positions above GS-3, the appointee must meet the qualification requirements, but the agency may waive any written test requirement. If a test is required, a designated agency examiner may administer the test noncompetitively.

- **Time Limits**

A Vietnam-era veteran with service between August 5, 1964, (or February 28, 1961, for those who actually served in the Republic of Vietnam) and May 7, 1975, may be appointed within 10 years of last discharge or separation.

A post-Vietnam-era veteran whose initial service was after May 7, 1975, may be appointed within 10 years of last discharge or separation or until December 31, 1999, whichever is later.

These time limits do not apply to a veteran with a 30 percent or more service-connected disability.

- **Making Appointments**

Ordinarily, an agency may simply appoint any VRA eligible who meets the basic qualifications requirements for the position to be filled without having to announce the job or rate and rank applicants. However, as noted, veterans' preference applies in making appointments under the VRA authority. This means that if an agency has 2 or more VRA candidates and 1 or more is a preference eligible, the agency must apply veterans' preference. Furthermore, an agency must consider **all** VRA candidates on file who are qualified for the position and could reasonably expect to be considered for the opportunity; it cannot place VRA candidates in separate groups or consider them as separate sources in order to avoid applying preference or to reach a favored candidate.

- **Terms and Conditions of Employment**

A VRA appointee may be promoted, demoted, reassigned, or transferred in the same way as a career employee. As with other competitive service employees, the time in grade requirement applies to the promotion of VRAs. If a VRA-eligible employee is qualified for a higher grade, an agency may, at its discretion, give the employee a new VRA appointment at a higher grade up through GS-11 (or equivalent) without regard to time-in-grade.

Agencies must establish a training or education program for any VRA appointee who has less than 15 years of education. This program should meet the needs of both the agency and the employee.

- **Appeal Rights**

During their first year of employment, VRA appointees have the same limited appeal rights as competitive service probationers, but otherwise they have the appeal rights of excepted service employees. This means that VRA employees who are **preference eligibles** have adverse action protections after one year (see Chapter 7). VRA's who are not preference eligibles do not get this protection until they have completed 2 years of current continuous employment in the same or similar position.

- **Nonpermanent Appointment Based on VRA Eligibility**

Agencies may make a noncompetitive temporary or term appointment based on an individual's eligibility for VRA appointment. The temporary or term appointment must be at the grades authorized for VRA appointment but is not a VRA appointment itself and does not lead to conversion to career-conditional.

❖ 38 U.S.C. 4214; 5 CFR Part 307; 5 CFR 752.401 (c)(3)

## ☆ 30 Percent or More Disabled Veterans

An agency may give a noncompetitive temporary appointment of more than 60 days or a term appointment to any veteran:

- retired from active military service with a disability rating of 30 percent or more

or

- rated by the Department of Veterans Affairs (VA) within the preceding year as having a compensable service-connected disability of 30 percent or more.

There is no grade level limitation for this authority, but the appointee must meet all qualification requirements, including any written test requirement.

The agency may convert the employee, without a break in service, to a career or career-conditional appointment at any time during the employee's temporary or term appointment.

❖ 5 U.S.C. 3112; 5 CFR 316.302, 316.402 and 315.707

## ☆ Disabled Veterans Enrolled in a VA Training Program

Disabled veterans eligible for training under the VA vocational rehabilitation program may enroll for training or work experience at an agency under the terms of an agreement between the agency and VA. While enrolled in the VA program, the veteran is **not a Federal employee** for most purposes but is a beneficiary of the VA.

Training is tailored to the individual's needs and goals, so there is no set length. If the training is intended to prepare the individual for **eventual appointment** in the agency rather than just provide work experience, the agency must ensure that the training will enable the veteran to meet the qualification requirements for the position.

Upon successful completion, the host agency and VA give the veteran a Certificate of Training showing the occupational series and grade level of the position for which trained. The Certificate of Training allows any agency to appoint the veteran noncompetitively under a status quo appointment which may be converted to career or career-conditional at any time.

❖ **38 U.S.C. chapter 31; 5 CFR 3.1 and 315.604**

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## 7 Restoration after Uniformed Service

### ☆ Basic Entitlement

Any Federal employee, permanent or temporary, in an executive agency other than an intelligence agency, but including the U.S. Postal Service, Postal Rate Commission, and nonappropriated fund activity, who performs duty with a uniformed service (including active duty, active duty for training, or inactive duty training), whether voluntary or involuntary, is entitled to be restored to the position he or she would have attained had the employee not entered the uniformed service, provided the employee:

- gave the agency advance notice of departure except where prevented by military circumstances;

**and**

- was released from uniformed service under honorable conditions;

**and**

- served no more than a cumulative total of 5 years (exceptions are allowed for training and involuntary active duty extensions, and to complete an initial service obligation of more than 5 years);

**and**

- applies for restoration within the appropriate time limits.

Employees in the intelligence agencies have substantially the same rights, but are covered under agency regulations rather than the Office of Personnel Management's (OPM) and have different appeal rights.

While on duty with the uniformed services, the agency carries the employee on leave without pay unless the employee requests separation. A separation under these circumstances does not affect restoration rights.

Uniformed service as defined in 38 United States Code (U.S.C.) 4303(16) means the Armed Forces; the Army and Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty; the commissioned corps of the Public Health Service; and any other category of persons designated by the President in time of war or emergency.

❖ **Title 38 U.S.C. chapter 43; Title 5 Code of Federal Regulations (CFR) Part 353**

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## ☆ Advising Employees / Resolving Employment Conflicts

Agencies must tell employees who enter the service about their entitlements, obligations, benefits, and appeal rights.

Employees in a Reserve component have an obligation both to the military and to their civilian employers. Because of military downsizing, the Reserves are being used increasingly to complement the active duty component on operational missions that go beyond week-end drills and summer training. As a result, some conflict may be unavoidable and good-faith efforts by the employee and the agency are needed to resolve any differences.

Agencies may not question the timing, frequency, duration, and nature of the uniformed service, but employees are obligated to try to minimize the agency's burden. For example, Department of Defense (DOD) directives provide that it is DOD policy for Reserve component members to give their employer as much advance written notice as practicable of any pending military duty.

When there is a conflict between the Reserve duty and the legitimate needs of the agency, the agency may contact appropriate military authorities (typically, the unit commander) to express concern or to determine if the military service could be rescheduled or performed by another member. If military authorities determine that the service is necessary, the agency is required to permit the employee to go.

### ☆ Time Limits

Employees who served in the uniformed services:

- **Less than 31 days** (or who leave to take a fitness exam for service) must report back to work at the beginning of the next regularly scheduled work day following their completion of service and the expiration of 8 hours after a time for safe transportation back to the employee's residence.
- **More than 30 but less than 181 days** must apply for reemployment no later than 14 days after completion of service.
- **More than 180 days** have 90 days after completion of service to apply for restoration.

Employees who fail to meet these time limits are subject to disciplinary action.

**Agencies must reemploy as soon as practicable, but no later than 30 days after receiving the application.** Agencies have the right to ask for documentation showing the length and character of the employee's service and the timeliness of the application.

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## ☆ Positions to Which Restored

- **Employees who served less than 91 days** must be placed in the position for which qualified that they would have attained had their employment not been interrupted. If not qualified for such position after reasonable efforts by the agency to qualify the person, the employee is entitled to be placed in the position he or she left.
- **Employees who served more than 90 days** have essentially the same rights as described above except that the agency has the option of placing the employee in a position for which qualified of like seniority, status, and pay.
- **Employees with service-connected disabilities** who are not qualified for the above must be reemployed in a position that most closely approximates the position they would have been entitled to, consistent with the circumstances in each case.
- **Employees who were under time-limited appointments** finish the unexpired portion of their appointments upon their return.

## ☆ Service Credit

Upon restoration, employees are generally treated as though they had never left. This means that time spent in the uniformed services counts for seniority, within-grade increases, completion of probation, career tenure, retirement, and leave rate accrual. (Employees do not earn sick or annual leave while off the rolls or in a nonpay status.)

To receive civil service retirement credit for military service, a deposit to the retirement fund is usually required to cover the period of military service. Only active, honorable military service is creditable for retirement purposes. If the employee is under the Civil Service Retirement System (CSRS), a deposit of 7 percent of military basic pay (plus interest under certain conditions) is required. The deposit is 3 percent if the employee is under the Federal Employees Retirement System (FERS). However, these amounts may be different if:

- the employee's creditable civilian service was interrupted by military duty;
- and**
- reemployment occurred pursuant to 38 U.S.C. chapter 43 on or after August 1, 1990.

In such a situation, the contribution is either the above-prescribed amount or the amount of civilian retirement deductions which would have been withheld had the individual not entered uniformed service if this amount is less than the normal deposit for military service.

- **National Guard Service**

Special rules apply to crediting National Guard service.

Prior to the enactment of Public Law 103-353 in October 1994, National Guard service was creditable military service for civil service retirement only when the National Guard was activated in the service of the United States.

**The 1994 law made full-time National Guard service (as defined by 10 U.S.C. 101(d)) which interrupted creditable Federal civilian employment under CSRS or FERS and was followed by restoration under chapter 43 of title 38, U.S.C., on or after August 1, 1990, creditable as military service.**

### ☆ OPM Placement

If the employing agency is unable to reemploy an individual returning from duty with a uniformed service, OPM will order placement **in another agency** when:

- OPM determines that it is impossible or unreasonable for an agency in the executive branch (other than an intelligence agency) to reemploy the person;

**or**

- an intelligence agency or an agency in the legislative or judicial branch notifies OPM that it is impossible or unreasonable to reemploy the person, and the person applies to OPM for placement assistance;

**or**

- a noncareer National Guard technician who is not eligible for continued membership in the Guard for reasons beyond his or her control applies to OPM for placement assistance.

### ☆ Employee Protections

Employees are not subject to a **reduction in force** while they are serving in the uniformed services. If they served for more than 180 days, they may not be separated, **except for cause**, for 1 year after their return. If they served for more than 30 but less than 181 days, they may not be separated, except for cause, for 6 months. (Reduction in force is not considered “for cause” under OPM’s regulations.)

The law expressly prohibits any kind of discrimination or act of reprisal against an applicant or employee because of his or her application, membership or service in the uniformed services.

### ☆ Paid Military Leave

Each fiscal year, employees under permanent appointment are entitled to 15 calendar days of military leave, with pay, to perform active duty as a member of a Reserve component. Part-time employees are entitled to military leave pro-rated according to the tour of duty, e.g., an employee who works 20 hours a week earns 7 ½ days of military leave.

Employees may carry over 15 days of unused military leave into a new fiscal year. Therefore, potentially they may have a total of 30 days to use in any one fiscal year. This means that Reservists whose military duty spans two fiscal years may use up to 45 days of military leave at one time. Nonworkdays count against the 15 days of military leave allowed during the year except when the non-workdays occur at the beginning or end of the military leave period.

Reservists may not use annual leave or leave without pay interchangeably with military leave, on a selective basis, to avoid being charged military leave during weekends and holidays. Also, except for Postal Service employees, Reservists may not use military leave to cover drill periods since monthly drills are considered inactive duty training and paid military leave is intended only for periods of active duty. They may, however, use annual leave or leave without pay.

The Comptroller General has held that generally an employee must be in a pay status either immediately before or after taking military leave. The test for determining entitlement to military leave is whether, but for the active duty, the employee would have been in a civilian pay status.

Upon request, an employee performing duty with the uniformed services is entitled to use either accrued annual leave or military leave for such service. However, military leave cannot be used for inactive duty, e.g., drills.

❖ 5 U.S.C. 6323; 11 Comp. Gen. 469; 29 Comp. Gen. 269; 32 Comp. Gen. 204; 17 Comp. Gen. 174; and 37 Comp. Gen. 608

## ☆ Life and Health Insurance

The **life insurance** of an employee who takes leave without pay to enter the uniformed services continues for up to 12 months. If the employee separates, life insurance continues for up to 12 months, or 90 days after uniformed service ends, whichever is sooner. There is no cost to the employee for this extension of coverage.

Employees who enter the uniformed services may elect to have their **health insurance** coverage continue for up to 12 months, and the employee continues to pay his or her share of the premium. Employees who remain in the uniformed services

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beyond 12 months may continue their health insurance for an additional 6 months by paying 102 percent of the premium, i.e., the employee's share, the Government's share, and a 2 percent administrative fee.

❖ 5 CFR Parts 870.501 and 890.303, 304, 305, 502

### ☆ Thrift Savings

Employees who perform uniformed service may make up any contributions to the thrift savings plan they missed because of such service.

❖ 5 CFR Part 1620

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## ⑧ Special Redress And Appeals

The redress and appeal rights available to veterans under law depend upon the nature of the action being appealed. These actions fall into the following categories:

### ☆ Adverse Actions

Preference eligibles have protections against adverse actions, including demotion, suspension for more than 14 days, furlough for 30 days or less, and removal. These protections include advance notice, a reasonable time to respond, representation by an attorney or other person, a final written decision, and an appeal right to the Merit Systems Protection Board.

The law provides adverse action rights to preference eligibles of any rank who are:

- under career or career-conditional appointment and not serving probation.
- under competitive service appointments other than a temporary appointment not to exceed 1 year or less and who have completed 1 year of continuous service.
- under excepted appointment in an executive agency, the U.S. Postal Service or the Postal Rate Commission and who have completed 1 year of current continuous service in the same or similar positions. Because the law also exempts certain categories of excepted employees, it is always necessary to check the law in specific cases.

❖ **Title 5 United States Code (U.S.C.) 2108 (4) chapters 43 and 75; Title 5 Code of Federal Regulations (CFR) Parts 432 and 752**

### ☆ Reduction in Force

Employees who believe that an agency has not complied with the law or with the Office of Personnel Management's (OPM) regulations governing reduction in force may appeal to the Merit Systems Protection Board as discussed in Chapter 3.

❖ **5 CFR 351.901**

## ☆ Restoration after Uniformed Service

Applicants or employees who believe that an agency has not complied with the law or with OPM regulations governing the restoration rights of employees who perform duty with the uniformed services may file a complaint with the Department of Labor's local Veterans' Employment and Training Service office or appeal directly to the Merit Systems Protection Board.

❖ 38 U.S.C. chapter 43

## ☆ Other Actions

### • Memorandum of Understanding between OPM and Department of Labor

By law, the Department of Labor's Veterans' Employment and Training Service (VETS) is required to monitor the application of veterans' preference in agencies and the posting of job vacancies with the State Employment Service. When VETS finds that an agency has failed to carry out its responsibilities, VETS reports the matter to OPM for corrective action.

OPM and VETS have entered into a Memorandum of Understanding (MOU) for applying these provisions. An **eligible** veteran may file a complaint with the local VETS office within 45 days of an action covered by the MOU.

The MOU covers the following **actions**:

- agency failure to list with OPM and the State Employment Service, as required by 5 U.S.C. 3327(b), competitive vacancies for which it is soliciting "outside" candidates;
- agency failure to accord veterans' preference in initial employment to a veteran who is entitled to preference under 5 U.S.C. 2108, and
- agency failure to promote the maximum of employment and job advancement opportunities for disabled veterans and veterans eligible for a Veterans' Readjustment Appointment as required by 38 U.S.C. 4214(a).

The MOU does not cover:

- matters which are grievable or appealable to other third parties such as arbitrators, the Merit Systems Protection Board, the Equal Employment Opportunities Commission, or the Office of Special Counsel;
- alleged discrimination against a veteran that is not directly related to the denial of a right or benefit provided for under the MOU;

- actions such as promotions that are not within the purview of the statutes that the MOU implements. For example, the veterans' preference laws do not give veterans' preference in promotion. If a veteran believes he or she was improperly excluded from the best-qualified group in a promotion action, the proper remedy is to file a grievance under the agency administrative or negotiated grievance procedures.

To be **eligible to file a complaint** under the MOU, a veteran must:

- have served on active duty in the Armed Forces for more than 180 days (other than for training) and been released or discharged with other than a dishonorable discharge,

**or**

- have been released or discharged from active duty because of a service-connected disability,

**or**

- as a member of a Reserve component ordered to active duty under 10 U.S.C. 12301(a), (d), or (g), 12302, or 12304, have served on active duty during a period of war as defined in 38 U.S.C. 101(11) or in a campaign or expedition for which a campaign or expeditionary medal is authorized, such as El Salvador, Lebanon, Grenada, Panama, Southwest Asia, Somalia, and Haiti and been released or discharged from active duty with other than a dishonorable discharge.

"Period of war" includes World War II, the Korean conflict, Vietnam era, the Persian Gulf War, or the period beginning on the date of any future declaration of war by the Congress and ending on the date prescribed by Presidential proclamation or concurrent resolution of the Congress

❖ **Title 38 U.S.C. 4103(c)(13) and (14); Interagency Advisory Group memo of 1/18/94 from OPM to Directors of Personnel, subject: Special Employment Complaint Procedure for Veterans under 38 U.S.C. 4103.**

- **Veterans' Preference**

OPM is committed to ensuring that veterans' preference is properly applied and will look into any credible complaint from a veteran who believes his or her rights or benefits were denied. The veteran may present a complaint to the local OPM Service Center or to the OPM Office of Merit Systems Oversight and Effectiveness, Washington, DC 20415. This OPM service is in addition to the formal appeal rights veterans have under law.

## ☆ Prohibited Personnel Practice

It is a prohibited personnel practice for an officer or employee of the Department of Defense or member of the Armed Forces having authority to take, direct, recommend, or approve a personnel action to take such actions, or fail to do so, if the action violates veterans' preference. Coverage includes veterans' preference under title 5, United States Code, and other laws. A person who believes a prohibited personnel practice has occurred may file a complaint with the Office of Special Counsel.

❖ **Pub. L. 104-201, sec. 1615**