

CHAPTER 37-19.1 VETERANS' PREFERENCES

37-19.1-01. Definitions. As used in this chapter:

1. "Agency" or "governmental agency" means all political subdivisions and any state agency, board, bureau, commission, department, officer, and any state institution or enterprise authorized to employ individuals either temporarily or permanently.
2. "Chief deputy" means the individual who is appointed by an elected or appointed official under express statutory authority to hire a chief deputy and who is authorized to act on behalf of that official. The term does not include an individual appointed to a position that must be filled under a personnel system.
3. "Disabled veteran" means a veteran who is found to be entitled to a service-connected disability rating as determined by the United States veterans' administration.
4. "Justifiable cause" means grounds for action that are in accord with sufficient reason that can be justified or defended as correct. Justifiable cause not to hire a veteran must be something specific to that individual which renders the individual unsuitable for the position.
5. "Personnel system" means a system that rates applicants for a position using an objective set of skills, knowledge, abilities, behaviors, or other characteristics required for the position.
6. "Political subdivision" means counties, cities, townships, and any other governmental entity created by state law which employs individuals either temporarily or permanently.
7. "Private secretary" means the individual who is appointed by an elected or appointed official under express legal authority to hire a private secretary or administrative assistant and who is authorized to handle correspondence, keep files, schedule appointments, and do other clerical work of a more personal and confidential nature for that official, but does not include an individual appointed to a position that must be filled under a personnel system.
8. "Veteran" means a North Dakota resident who is a wartime veteran as defined in subsection 2 of section 37-01-40.

37-19.1-02. Public employment preference to veterans - Residency requirements.

1. Veterans are entitled to preference, over all other applicants, in appointment or employment by governmental agencies, provided that such veteran is a United States citizen at the time of application for employment. Veterans qualified for preference may not be disqualified from holding any position with an agency because of physical or mental disability, unless the disability renders them unable to properly perform the duties of the position applied for.
2. When a veteran applies for appointment or employment under subsection 1, the officer, board, or person whose duty it is to appoint or employ an individual to fill the available position shall, except where the veteran has been qualified for the position applied for under a personnel system, investigate the qualifications of the veteran. If the veteran is found to possess the qualifications required for the position applied for, whether educational or by way of prior experience, and is physically and mentally able to perform the duties of the position applied for, the officer, board, or person shall appoint or employ the veteran.

3. A disabled veteran is entitled to a preference superior to that given other veterans under this section, which preference must be accorded in the manner provided in this section.
4. Notwithstanding the preference provisions in subsections 1, 2, and 3, public employment preference for veterans by agencies filling positions through a personnel system are governed by the following:
 - a. No distinction or discrimination may be made in the administration of the examination because the applicant may be a veteran.
 - b. Upon completion of the examination with a passing grade, the applicant must be informed of a veteran's rights to employment preference as hereinafter provided.
 - c. The applicant must be required to furnish proof of the applicant's status as a veteran and, if disabled, proof of the applicant's disability, as defined herein.
 - d. Upon receipt of proof required in subdivision c, on a one hundred point scale, the examiner shall add five points for a nondisabled veteran and ten points for a disabled veteran to the examination grade of the applicant. The total is the veteran's examination score.
 - e. Upon request for the prescribed number of eligible individuals from the eligibility registry, the number of eligible individuals must be certified from the top number of eligible individuals and with the certified list of eligible individuals there must also be submitted a statement as to which of those so certified are veterans, disabled veterans, or nonveterans.
 - f. If the certified list of eligible individuals includes either veterans or disabled veterans, the appointing or employing authority of that particular agency or governmental agency shall make a selection for the available position as follows:
 - (1) A disabled veteran, without regard to the disabled veteran's examination grade, is first entitled to the position and, in the absence of justifiable cause, documented in writing, for not making that selection, must be so appointed or employed. If the list includes two or more disabled veterans, then the one with the highest examination grade is first entitled to the position and, in the absence of justifiable cause, documented in writing, for not making that selection, must be so appointed or employed.
 - (2) If the certified list of eligible individuals does not include one or more disabled veterans and consists only of veterans, then the one with the highest examination grade is first entitled to the position and, in the absence of justifiable cause, documented in writing, must be appointed or employed.
 - (3) If the certified list of eligible individuals includes nonveterans and veterans, but not disabled veterans, then the one with the highest examination grade, whether a nonveteran or a veteran, is first entitled to the position and, in the absence of justifiable cause, must be so appointed or employed; and if the one with the highest examination grade is a veteran and is not appointed or employed, there must be justifiable cause documented in writing for not making that appointment or employment.
5. This section does not apply when the position to be filled is that of a superintendent of schools, teacher, or the chief deputy or private secretary of an elected or

appointed official, the chancellor and vice chancellors of the board of higher education, presidents or executive deans, vice presidents, assistant to the president, provosts, and instructors of board institutions. Temporary committees and individual or group appointments made by the governor or legislative assembly are also excepted from the provisions of this section.

37-19.1-03. Preferences to be granted veterans' spouses.

1. The unremarried spouse of a veteran who died while in service, or later died from a service-connected cause or causes, is entitled, if the person is otherwise qualified, to the appointment or employment preference given to a veteran under section 37-19.1-02 in the manner provided therein.
2. The spouse of a disabled veteran, who is disabled due to a service-connected cause or causes, is, if the disabled veteran is unable to exercise the veteran's right to a veteran's employment preference due to the veteran's disability, entitled, if the person is otherwise qualified, to the appointment or employment preference given to a veteran under section 37-19.1-02 in the manner provided therein.

37-19.1-04. Refusal to give preference - Retaliatory action or removal - Remedies - Procedures.

1. If a veteran, or a qualified veteran's spouse, hereafter known as the applicant, is not given the preference provided in section 37-19.1-02 or 37-19.1-03, the applicant, within fifteen days after notification by certified mail that employment has been refused, may request a hearing as provided in subsection 3. The notification from the employer must include the reasons for nonselection, inform the applicant of the right to an appeal hearing, inform the applicant of the requirement that the request for a hearing must be filed by certified mail within fifteen days after the notification, inform the applicant that a request for an appeal hearing must be made to the commissioner of veterans' affairs at the included commissioner's mailing address, and inform the applicant that if the applicant requests an appeal, the applicant must mail a copy of the request for an appeal hearing to the employer or employing agency. The applicant's request for a hearing must be in writing, must include a copy of the employer's notification that employment has been refused, and must be delivered to the commissioner of veterans' affairs by certified mail. A copy of the written request must be mailed to the employer or employing agency. The applicant is entitled to immediate employment in the position for which application was originally made, or an equivalent position, together with backpay and benefits from the date the appointment should have been made less amounts otherwise earnable through due diligence, if the hearing officer finds in favor of the applicant.
2. Any person who has exercised the right to an employment preference under this chapter, and who, within one year after exercise of that right:
 - a. Is discharged;
 - b. Has had compensation reduced; or
 - c. Is otherwise subject to action by the employing agency designed to cause the veteran or qualified veteran's spouse to resign or quit employment, is entitled to a hearing if the person believes that the employing agency took any of the above-described action due to the exercise of employment preference. The hearing must be held before a hearing officer as provided in subsection 3. If the hearing officer finds that the employing agency took any of the actions described in subdivision a, b, or c due to the person's exercise of the right to an employment preference, the hearing officer shall order the employing agency to cease and desist from such action or to reinstate the veteran or qualified veteran's spouse. The request for a hearing under this subsection must be in

writing addressed to the commissioner of veterans' affairs. The request for a hearing must identify the employer or employing agency that took any action described in subdivision a, b, or c and describe the action taken. A copy of the written request must be mailed to the employer or employing agency. The request, addressed to the commissioner of veterans' affairs, must be made by certified mail within fifteen days after any action described in subdivision a, b, or c is taken by the employing agency.

3. Within fifteen days after receiving a request from an applicant or person under subsection 1 or 2, the commissioner of veterans' affairs may request the director of the office of administrative hearings to designate a hearing officer to hear the grievance arising under subsection 1 or 2. The commissioner shall notify the employer or employing agency that a request for a hearing has been made. The office of administrative hearings is entitled to be reimbursed by the employer or employing agency for all hearing officer services rendered and expenses incurred in performing these duties. The hearing officer shall hold the hearing within thirty days after the hearing officer request is received by the director of the office of administrative hearings. Notwithstanding the time limitation, the hearing officer may postpone or continue the hearing for good cause, at the request of a party. At the hearing, both parties may be represented by counsel. If the hearing is requested pursuant to subsection 1, the employing agency has the burden of proving that the veteran or the qualified veteran's spouse did not possess the qualifications required for the position. If the hearing is requested pursuant to subsection 2, the employing agency has the burden of proving that any action which was taken was not taken because of exercise of the right to an employment preference. The hearing officer shall issue findings of fact, conclusions of law, and an order within fifteen days after the hearing is concluded, briefs filed, and arguments closed. The order is binding on both parties, subject to appeal.
4. Any party aggrieved by the findings of fact, conclusions of law, and order of the hearing officer may appeal in the manner provided for in chapter 28-32, except that the appellant need not execute an undertaking.