



DATE: August 1, 2012

PERSL 1413

TO: Human Resource Directors/Designees
Labor Relations Directors/Designees

FROM: Barbara Holmes, Assistant Commissioner
Labor Relations Division

A handwritten signature in black ink that reads "Barbara C. Holmes".

PHONE: (651) 259-3740

RE: Veteran's Preference Hearings – **REPLACES** PERSL dated 02/02/12

The 2009 Legislative Session changed the Veteran's Preference statutes (M.S. 197.455 and 197.46) and state agencies are now covered by all of its provisions. The law provides employment benefits and protections to eligible veterans of the military service.

The 2010 Legislative Session changed the definition of eligible veterans under the Veteran's Preference statutes. The law is now applicable to incumbents of classified positions regardless of their hire date who have completed their probationary period. Therefore, agencies must comply with the statutory requirements for all involuntary separations (of eligible veterans) that occur on or after May 14, 2010. Involuntary separations include demotions for cause under the meaning of the Veteran's Preference Act.

Attached please find guidelines for agencies to use when eligible veterans are involuntarily separated from employment or demoted. The guidelines contain sample Veteran's Preference notice requirements that must be included in dismissal, demotion or layoff letters.

The 2012 Legislative Session added a requirement for the eligible veteran to provide in writing the name, U.S. mailing address, and telephone number of his or her selected representative for the three-person hearing panel within 60 days of the notice of demotion or removal. Updates relating to this new requirement have been added to the attached guidelines on page 3 under the heading "Veteran's Representative" and additional language appears in the applicable template letter. **You should update your template letters to reflect this requirement.**

Please ensure that these guidelines are disseminated to the appropriate personnel in your agency, to ensure agency compliance with the Veteran's Preference Statutes.

VETERAN'S PREFERENCE HEARINGS – GUIDELINES FOR STATE OF MINNESOTA HUMAN RESOURCES PROFESSIONALS

Summary:

Effective July 1, 2009, State agencies are subject to the **Minnesota Veteran's Preference statutes, M.S. 197.455 and 197.46**. The laws provide employment benefits and protections to veterans of the military service. The laws are only applicable to incumbents of classified positions who have passed the probationary period.

Under the laws, eligible veterans may not be involuntarily terminated from employment or demoted, except as permitted by statute. Employers must notify the veteran of their proposed termination or demotion and inform the veteran of their right to contest the termination or demotion in a formal hearing. The veteran has sixty (60) days to petition for a hearing over their proposed termination or demotion, and to provide the name, address and phone number of their selected representative. Terminations and demotions may NOT be effected until after the veteran has exercised their right to a hearing or the sixty (60) day timeline to petition has expired. **Veterans remain in payroll status during the sixty (60) day period. Consistent with the statute, if the veteran chooses to appeal the termination decision, compensation continues until a final determination is made.**

The statute covers all involuntary separations, including layoff and demotions, but does not include probationary non-certifications.

Who is covered?

This provision covers all veterans employed by the State of Minnesota who meet all of the following criteria:

- Are the incumbent of a classified position in the State's civil service;
- Have successfully completed their probationary period;
- Separated under honorable conditions from any branch of the US armed forces and:
 - Served on active duty for at least 181 consecutive days, or;
 - Separated because of a disability incurred while serving on active duty, or;
 - Have met the minimum active duty requirements as required by CFR, Title 38, Section 3.12a, or;
 - Has active military service under 38 USCA Section 106, Part I, Chapter 1.

Who is not covered?

Probationary employees are not covered.

Unclassified employees are not covered.

Veterans who were not honorably separated from the U.S. armed forces are not covered.

Benefits and Protections

The statutes provide the following benefits and protections to eligible veterans:

Job Protection: No veteran employed by a State agency may be demoted or removed from employment except for: incompetence, misconduct or the abolition of their position. (See below for information regarding layoff of a veteran.)

Compensation: Veterans will remain in pay status until final determination of their contested termination or demotion, or their sixty (60) day timeline for an appeal expires.

Notice: Veterans must be notified in writing that the employer proposes to demote them or terminate their employment. The notice of intent to demote or terminate employment must also advise the veteran of their right to a hearing (as described below.)

Right to a Hearing:

- Veterans who are notified of their proposed demotion or termination from employment may request a hearing before a neutral panel. The panel will determine whether the demotion or separation from employment was in good faith. This petition must be made within sixty (60) days of the proposed demotion or termination or the veteran's rights to the hearing are waived.
- If the veteran is covered by a collective bargaining agreement or compensation plan that provides for arbitration of disputes, they may choose grievance arbitration under the collective bargaining agreement or compensation plan, in lieu of the Veteran's Preference hearing. Appeals under the collective bargaining agreement or compensation plan must be made within the timelines specified by that agreement or plan.
- The Veteran may choose one, but not both hearing options.
- Veterans shall remain in full pay status until their right to request a hearing expires (60 days) or the hearing is held and final determination is reached.

Proposed Demotion or Termination – Notice Requirements:

The veteran's proposed demotion or termination notice must include the following information:

Reason(s) for demotion or termination: The permissible, statutory ground(s) for the demotion or termination (e.g., misconduct or incompetence.)

The facts: The proposed demotion or termination must include the facts upon which the proposed demotion or termination is based.

Right to a hearing: An eligible veteran may request a hearing before a neutral panel to contest their proposed demotion or termination.

Requests for a Veteran's Hearing: Requests for such hearing must be made in writing to the Appointing Authority's Human Resources Office. Contact information should be included in the demotion or termination notice.

Timelines for requesting a hearing: Requests for a Veteran's Preference hearing must be made within sixty (60) days of the notice of proposed demotion or termination. If the veteran fails to file a timely petition, their rights to a hearing are waived.

Veteran's Representative Designation (effective August 1, 2012): Additionally, the notification shall state that if the veteran desires to request a hearing, within sixty (60) days of receipt of the notice the veteran must provide in writing to the appointing authority's Human Resources Office the name, U.S. mailing address and telephone number of the veteran's selected representative for the three-person panel. If the veteran fails to timely submit this information, their rights to a hearing are waived.

Consequences of a deficient notice to the veteran:

Failure to provide the information specified above will indefinitely extend the veteran's right to appeal subject to the applicable statute of limitations. If the notice to the veteran is deficient and the veteran chooses to appeal, they will remain in pay status until final determination of their appeal is made.

Grievances filed under a Collective Bargaining Agreement

Veterans may choose to contest their demotion or proposed termination through the grievance procedures contained in the applicable collective bargaining agreement. Such grievance hearing is in lieu of a petition for veteran's preference hearing before a neutral panel. If a grievance is filed under a collective bargaining agreement, an eligible veteran still has sixty days to file their request for a veteran's preference hearing. Therefore, they must remain in pay status until the sixty day appeal period is over, even if a grievance is filed on the veteran's behalf.

Grievances or appeals filed under a Compensation Plan

Consistent with the applicable compensation plan, unrepresented employees may choose to grieve their demotion or involuntary separation under M.S. 43A.33, Subd. 3. If such grievance is filed, an eligible veteran still has sixty days to file their request for a veteran's preference hearing. Therefore, they must remain in pay status until the sixty day appeal period is over, even if a grievance is filed on the veteran's behalf.

Whom Should Agencies Contact?

Agencies that receive a request for hearing from a demoted or terminated veteran should notify their labor relations representative. Agencies are expected to retain their own representative/legal counsel for the hearing.

Agencies that receive a request for hearing from an ineligible veteran should notify their labor relations representative.

Agencies that have questions regarding a grievance filed on behalf of a demoted or terminated veteran should contact their labor relations representative at MMB.

Sample -- Proposed Demotion or Termination Notice:

Dear (Employee Name):

You are hereby notified that Employer intends to demote you or remove you from your position as (identify position.) The statutory ground(s) for your proposed demotion or discharge is/are:

(incompetence) and / or (misconduct)

The specific factual grounds for your proposed demotion or discharge, based on the information currently available, include but are not limited to: (set forth specific facts)

Your Appeal Rights: You may appeal this proposed action under the Collective Bargaining Agreement (union grievance) or applicable compensation plan, or you may appeal the action under the Veterans Preference Act, Minn. Stat. 197.46. If you appeal this proposed action, you must choose either a grievance under the applicable Collective Bargaining Agreement or compensation plan or an appeal under the Veteran's Preference Act.

- Union Grievance: Pursuant to the Collective Bargaining between the State of Minnesota and (identify Union) you may choose to file a grievance under Article (identify article) of the Collective Bargaining Agreement, or:
- Disciplinary Appeal: Your employment is covered by a compensation plan; you may choose to appeal your demotion or discharge under Chapter (identify chapter) of the (identify Plan)
- Veteran's Preference Hearing: Pursuant to the Veterans Preference Act, Minn. Stat. 197.46, if you are an honorably discharged veteran you have the right to request a hearing on your removal within sixty (60) days of receipt of this notice. Your request for a hearing must be made in writing to (identify appropriate recipient in the Agency's Human Resources Office.) *Additionally, you must provide in writing the name, U.S. mailing address, and telephone number of your selected representative for the three-person hearing panel.* Failure to timely request a hearing *or to provide the information on your representative* within this sixty (60) day period shall constitute a waiver of the right to a hearing. Such failure shall also waive all other available remedies for reinstatement to your position.

You will remain in payroll status until the sixty (day) appeal period expires or if you should choose to appeal, you will remain in payroll status pending the outcome of the Veterans' Preference Hearing.

You must provide the employer with a copy of your DD214 form establishing that you are an eligible, honorably discharged veteran. Please forward the necessary proof to my attention within five (5) days of receipt of this notice.

You are entitled to request an opportunity to hear the explanation of the evidence against you and to present your side of the story before the effective date of demotion/discharge. If you desire

such a meeting, it will be held on [insert date and time and location]. You have the right to have a [identify union, if applicable] representative at this meeting. If you desire to exercise your right, it is your responsibility to arrange for union participation.

If you have any questions, please contact me.

Sincerely,

Director of Human Resources

cc: Employee's Personnel File

Layoff of a Veteran:

Veterans are also afforded extra protections in the event that their position is eliminated and they are laid off.

- Employers retain the right to abolish positions and lay off veterans only if such action is taken in good faith, for legitimate purposes and not a subterfuge for removal of a veteran.
- Employers may not abolish the position of a veteran and assign duties to other, less senior non-veterans to avoid the rights provided to veterans.

Pay Status of Veterans Appealing Their Layoff:

Unlike dismissal for cause, veterans who appeal their lay off do not remain in pay status while their appeal is pending. However, if a veteran prevails in their appeal and it is found that their lay off was not done in good faith, the veteran will be eligible for back pay from the effective date of their lay off.

Sample -- Veteran's Preference Language that must be added to the Information contained in Layoff Notices

Dear Employee:

You are hereby notified that employer intends to place you on layoff from your position as (position,) on (effective date.) If you are an honorably discharged veteran you may have certain rights relating to your layoff under the Minnesota Veterans Preference Act. Pursuant to the Act, you have the right to either petition the District Court for a writ of mandamus, Minn. Stat. 197.46, or petition the Commissioner of Veterans Affairs pursuant to Minn. Stat. 197.481 for a hearing, to determine whether your layoff was in good faith. If you choose to take either of these actions, you must do so within sixty (60) days of receipt of this notice. Your failure to do so within sixty (60) days shall constitute a waiver of your rights to contest your layoff under the Veterans Preference Act.

If you have any questions, please contact (identify appropriate recipient in the Agency's Human Resources Office.)

If you appeal this layoff, the issue at the hearing will be whether your layoff was not done in good faith for a legitimate purpose. You will not be paid during the pendency of your appeal. If it is determined that your lay off was not done in good faith or for legitimate reasons, you will be entitled to back pay from the date of your layoff.

Sincerely,

Human Resources Director

cc: Employees Personnel File

The applicable statutes can be found at:

<https://www.revisor.leg.state.mn.us/statutes/?id=197.455>

<https://www.revisor.leg.state.mn.us/statutes/?id=197.46>