

## HR/LR General Memo #2015-4

### Veterans Preference Hearings (Former Policy #1413)

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**Authority:** MMB Labor Relations

#### General Guidance and Information

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State agencies are subject to the Veterans Preference hearing requirements set forth at [M.S. 197.46](#). The requirements are applicable only to incumbents of classified positions who have passed their probationary period. The statute covers all involuntary separations of classified, non-probationary employees, including discharge, layoff, and demotions, but does not include probationary non-certifications.

Covered veterans may not be involuntarily separated from employment (discharge or layoff) or demoted except as permitted by statute. Agencies must follow these guidelines when covered veterans are involuntarily separated from employment or demoted. These guidelines contain sample Veterans Preference notice requirements that must be included in discharge, demotion, or layoff letters.

#### Covered Veterans

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 for the classified position;
- Separated under honorable conditions from any branch of the U.S. 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 [38 CFR Section 3.12a](#), or;
  - Have active military service certified under [38 USCA Section 106, Part I, Chapter 1](#). The active military service must be certified by the U.S. Secretary of Defense as active military service, and the Secretary must issue a discharge under honorable conditions, or;
  - Are a veteran of the Secret War in Laos as defined in [M.S. 197.448](#)

## Veterans 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

- **Job protection.** No covered veteran employed by a state agency may be demoted or separated from employment, except for demotion or discharge for incompetence or misconduct, or because of the good faith abolition of the position (layoff).
- **Compensation.** Covered veterans must remain in pay status until final determination of their contested discharge or demotion, or the thirty (30) day timeline to request a Veterans Preference hearing expires. Covered veterans appealing their layoff under the Veterans Preference Act do not remain in pay status while their appeal is pending.
- **Notice.** Covered veterans must be notified in writing that the employer proposes to demote them or discharge them from employment, and the reasons for the demotion or discharge. The notice of intent to demote or discharge from employment must also advise the veteran of the right to a Veterans Preference hearing. In the case of layoff, the covered veteran must be notified in writing of the veteran's right to a hearing on whether the agency acted in good faith.
- **Right to a hearing for discharge or demotion.**
  - Covered veterans who are notified of their proposed demotion or discharge from employment may request a Veterans Preference hearing before a neutral arbitrator. This request for a Veterans Preference hearing must be made within thirty (30) days of the proposed demotion or discharge, or the veteran's rights to the hearing are waived.
  - If the covered veteran is covered by a collective bargaining agreement or compensation plan that provides for arbitration of disputes, the veteran may choose grievance arbitration under the collective bargaining agreement or compensation plan, in lieu of the Veterans Preference hearing. Appeals under the collective bargaining agreement or compensation plan must be made within the timelines specified by that agreement or plan.
  - The covered veteran may choose either a Veterans Preference hearing or grievance arbitration under the collective bargaining agreement or compensation plan, but not both hearing options.
- **Right to a hearing for layoff.**
  - Covered veterans who are notified of a layoff may request a hearing on whether the agency acted in good faith. The covered veteran has thirty (30) days to petition the district court for a writ of mandamus compelling reinstatement and back pay, or to petition the Commissioner of Veterans Affairs for a hearing.

## Proposed Demotion or Discharge – Notice Requirements

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

- **Reason(s) for demotion or discharge:** The permissible, statutory ground(s) for the demotion or discharge (e.g., misconduct, incompetence.)
- **The facts:** The proposed demotion or discharge must include the facts upon which the proposed demotion or discharge is based.
- **Right to a hearing:** A covered veteran may request a Veterans Preference hearing before a neutral arbitrator to contest the proposed demotion or discharge.
- **Requests for a Veterans Preference 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 discharge notice.
- **Timelines for requesting a Veterans Preference hearing:** A covered veteran's request for a Veterans Preference hearing must be made within thirty (30) days of receipt of the notice of proposed demotion or discharge. If the veteran fails to make a timely request for a Veterans Preference hearing, the rights to a hearing are waived. The request for a Veterans Preference hearing must be made in writing and delivered by mail or personal service to the Appointing Authority's human resources office within the thirty (30) day period.

## Selection of a Neutral Arbitrator

In cases where the employing agency receives a timely appeal filed by a covered veteran, the agency shall request a list of seven (7) arbitrators from the Bureau of Mediation Services (BMS). The agency shall strike the first name from the list and the parties shall alternately strike the names from the list until one arbitrator remains. The covered veteran has forty-eight (48) hours each time it is his or her turn to strike an arbitrator from the list. The remaining arbitrator must preside over the Veterans Preference hearing. The agency shall notify the selected arbitrator and request available dates to hold the hearing.

## Fees Associated with the Veterans Preference Hearing

The employing agency must pay the arbitrator fees and other costs of the hearing. The veteran is responsible for his or her own attorney fees, unless the veteran prevails and the arbitrator reverses the agency's decision. In that case, the employing agency must pay the veteran's reasonable attorney fees.

## Grievances Filed under a Collective Bargaining Agreement

Covered veterans may choose to contest their demotion or proposed discharge through the grievance procedures contained in the applicable collective bargaining agreement. Such a grievance hearing is in lieu of a Veterans Preference hearing before a neutral arbitrator. If a grievance is filed under a collective bargaining agreement, a covered veteran still has thirty (30) days to make a request for a Veterans Preference hearing. Therefore, the covered veteran who is discharged or demoted must remain in pay status until the thirty (30) day appeal period is over, even if a grievance is filed on the covered veteran's behalf.

## **Grievances or Appeals Filed under a Compensation Plan**

Consistent with the applicable compensation plan, unrepresented permanent classified employees may choose to grieve a demotion or discharge under [M.S. 43A.33, subd. 3](#). If such grievance is filed, a covered veteran still has thirty (30) days to make a request for a Veterans Preference hearing. Therefore, the covered veteran who is discharged or demoted must remain in pay status until the thirty (30) day appeal period is over, even if the covered veteran files a grievance under M.S. 43A.33, subd. 3.

## **Whom Should Agencies Contact?**

Agencies should contact their labor relations representatives at MMB when the agency receives a request for a Veterans Preference hearing or has questions regarding a grievance filed on behalf of a demoted or discharged veteran.

## **Special Provisions for Layoff of a Covered Veteran**

Covered veterans are afforded protections in the event that they are laid off.

- Employers retain the right to abolish positions and lay off covered veterans only if such action is taken in good faith, for legitimate purposes, and not as a subterfuge for removal of the covered veteran.
- Employers may not abolish the position of a covered veteran and assign duties to other, less senior non-veterans to avoid the rights provided to covered veterans.
- Covered veterans who are laid off must receive notice of their rights to appeal under the Veterans Preference Act in order to trigger the thirty (30) day appeal period.

## **Pay Status of Covered Veterans Appealing Their Layoff**

Unlike discharge or demotion for cause, covered veterans who appeal their layoff under the Veterans Preference Act do not remain in pay status while their appeal is pending. However, if a covered veteran prevails in a Veterans Preference appeal and it is found that the layoff was not done in good faith, the covered veteran may be awarded back pay from the effective date of the layoff (subject to the six-year statute of limitations).

## Forms and Sample Communication

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### Sample Demotion or Discharge Notice

Dear [Employee Name]:

This letter is to notify you that the [Agency] intends to demote you or discharge 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: [insert 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, M.S.197.46 if you are a covered veteran. 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 Veterans Preference Act.
- [Agency must insert language relating to Union Grievance OR Disciplinary Appeal:]
  - Union Grievance: According to the collective bargaining agreement between the State of Minnesota and [identify Union] you may choose to file a grievance under Article [identify article] of the collective bargaining agreement.
  - 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].
- Veterans Preference Hearing: Under the Veterans Preference Act, M.S. 197.46, if you are an honorably discharged veteran in a non-probationary, classified position, you have the right to request a hearing before an arbitrator on your demotion or discharge within thirty (30) days of receipt of this notice. You must make your request for a hearing in writing to [identify appropriate recipient in the agency's human resources office]. With this request, provide your most recent contact information including telephone number, address, and email.
- If you submit a timely request for a Veterans Preference hearing, the [Agency] will contact you after receiving a list of arbitrators from the Bureau of Mediation Services to begin the process of selecting an arbitrator as outlined in MS. 197.46.
  - If you fail to request a hearing within the thirty (30) day period, your right to a Veterans Preference hearing will be waived. Such failure will also waive all other available legal remedies for reinstatement to your position.

You will remain in payroll status until the thirty (30) 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 are expected to be available during normal business hours while you remain in payroll status.

You must provide the [Agency] 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,

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Director of Human Resources

cc: Employee's Personnel File

### **Sample Veterans Preference Language that Must be Added in Layoff Notices**

Dear Employee:

This is a notice that your employer intends to place you on layoff from your position as [position], on [effective date]. If you are an honorably discharged veteran in a non-probationary classified position, 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, pursuant to M.S. 197.46, or petition the Commissioner of Veterans Affairs pursuant to M.S. 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 thirty (30) days of receipt of this notice. Your failure to do so within this thirty (30) day period constitutes a waiver of your rights to contest your layoff under the Veterans Preference Act.

If you have any questions, contact [identify appropriate recipient in the agency's human resources office].

If you appeal this layoff under the Veterans Preference Act as described above, the issue at the hearing will be whether the agency abolished your position in good faith. You will not be paid during the appeal process. If it is determined that the agency did not abolish your position in good faith, you may be entitled to back pay from the date of your layoff, subject to applicable statutes of limitation.

Sincerely,

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Human Resources Director

cc: Employee's Personnel File

## Statutory References

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[M.S. 43A.33](#), Grievances

[M.S. 197.455](#), Veterans Preference Applied

[M.S. 197.46](#), Veterans Preference Act

[M.S. 197.481](#), Enforcement

[38 CFR 3.12a](#), Minimum active-duty service requirement

[38 USCA 106](#), Certain service deemed to be active service

## Contact

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MMB Labor Relations Representative