

**HR/LR General Memo #2015-4**  
Veterans Preference Hearings (Former Policy #1413)

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**Revised** 03/10/2015  
**Authority** Labor Relations

## GENERAL GUIDANCE AND INFORMATION

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

Eligible veterans may not be involuntarily terminated from employment or demoted except as permitted by statute. The following guidelines must be used when eligible 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 the probationary period for the position;
- 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 [28 CFR 3.12a](#), or;
  - Has 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.

### 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 veteran employed by a state agency may be demoted or removed from employment except for demotion or discharge for incompetence or misconduct, or because of the good faith abolition of the position (layoff).

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- **Compensation.** Veterans must remain in pay status until final determination of their contested termination or demotion, or the sixty (60) day timeline to request a Veterans Preference hearing expires.
- **Notice.** Veterans must be notified in writing that the employer proposes to demote them or terminate their employment, and the reasons for the demotion or termination. The notice of intent to demote or terminate employment must also advise the veteran of the right to a Veterans Preference hearing.
- **Right to a Hearing.**
  - Veterans who are notified of their proposed demotion or termination from employment may request a Veterans Preference hearing before a neutral panel. This request for a Veterans Preference hearing 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, 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 veteran may choose *either* a Veteran's Preference hearing *or* grievance arbitration under the collective bargaining agreement or plan, *but not both* hearing options.

## PROPOSED DEMOTION OR DISCHARGE – NOTICE REQUIREMENTS

The 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:** An eligible veteran may request a Veterans Preference hearing before a neutral panel 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 veteran's request for a Veterans Preference hearing must be made within sixty (60) 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 sixty (60) day period.
- **Veteran's Representative Designation:** Additionally, the notification shall state that if the veteran desires to request a Veterans Preference hearing, within sixty (60) days of receipt of the notice of intent to demote or discharge, 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 Veterans Preference hearing panel. If the veteran fails to timely submit this information, the

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veteran's rights to a Veterans Preference 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 six-year statute of limitations. If the notice to the veteran is deficient and the veteran chooses to appeal, the veteran must remain in pay status until final determination of the 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 a grievance hearing is in lieu of a Veterans Preference hearing before a neutral panel. If a grievance is filed under a collective bargaining agreement, an eligible veteran still has sixty (60) days to make a request for a Veterans Preference hearing. Therefore, the veteran must remain in pay status until the sixty (60) 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 discharge under [M.S. 43A.33, subd. 3](#). If such grievance is filed, an eligible veteran still has sixty (60) days to make a request for a Veterans Preference hearing. Therefore, the veteran must remain in pay status until the sixty (60) 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 Veterans Preference hearing from a demoted or discharged 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 discharged veteran should contact their labor relations representative at MMB.

### SPECIAL PROVISIONS FOR LAYOFF OF A VETERAN

Veterans are 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 as 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.
- Veterans who are laid off must receive notice of their rights to appeal under the Veterans Preference Act in order to trigger the sixty (60) day appeal period.

### PAY STATUS OF VETERANS APPEALING THEIR LAYOFF

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

## FORMS AND SUPPLEMENTS

### Sample -- Demotion or Discharge 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, M.S.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 Veterans Preference Act.
- Union Grievance: Pursuant 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, 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.)
- Veterans Preference Hearing: Pursuant to 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 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)
  - Your written request must include the name, U.S. mailing address, and telephone number of your selected representative for the three-person Veterans Preference hearing panel. This written request must be submitted by mail or personal service to (the agency's human resource office) within this sixty (60) day period. Failure to timely request a hearing or to provide the above-identified information about your representative within this sixty (60) day period shall constitute a waiver of the right to a Veterans Preference hearing. Such failure shall also waive all other available remedies for reinstatement to your position.

You will remain in payroll status until the sixty (60) 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.

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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

**Sample -- Veteran's Preference language that must be added 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 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 sixty (60) days of receipt of this notice. Your failure to do so within this sixty (60) day period shall constitute 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 pendency of your appeal. If it is determined that the agency did not abolish your position in good faith, you will be entitled to back pay from the date of your layoff, subject to applicable statutes of limitation.

Sincerely,

\_\_\_\_\_  
Human Resources Director

cc: Employee's Personnel File

<b>Contacts</b>	MMB Labor Relations Representative
<b>Statutory References</b>	<a href="#">M.S. 43A.33</a> , Grievances
	<a href="#">M.S. 197.455</a> , Veterans Preference Applied
	<a href="#">M.S. 197.46</a> , Veterans Preference Act
	<a href="#">M.S. 197.481</a> , Enforcement
	<a href="#">28 CFR 3.12a</a> , Minimum active-duty service requirement

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