**Veterans' Rights**

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| **Additional Credits for Examination** | |
| CSL § 85.2 | The State Constitution requires that examinations for appointment or promotion in State service be competitive, so far as practicable. At the same time, it contains a significant exception to the strict rule of competition by giving additional credits in competitive examinations to war veterans. Disabled veterans receive 10 points additional credit on their examination scores in open-competitive examinations and five points in promotion examinations. Non-disabled veterans are granted five points in open-competitive examinations and two and one-half points in promotion examinations. In every case, however, the veteran must attain a passing mark on an examination before additional credits may be added to his/her score. The additional credits may not be applied to raise a failing grade to a passing one. |
| **Eligibility** | |
| CSL § 85.1 | Veterans eligible for the credits are those who: - were members of the Armed Forces of the United States; - served on active duty for other than training purposes in time of war; - were discharged honorably, released under honorable circumstances, or will be honorably discharged or released under honorable circumstances at the time of appointment; and - are residents of New York State at the time of application for appointment, promotion or retention, as the case may be. A veteran who is disabled is defined as someone who meets the above service criteria and is certified by the United States Department of Veterans Affairs [formerly known as the Veterans Administration] as having a disability rated at ten percent or more which was incurred while serving in the United States Armed Forces in time of war. The disability must be in existence at the time of application for appointment. |
| **Time of War** | |
| CSL § 85.1(c) 38CFR § 3.6(c)(2)(iii) | Time of war means: for World War I, from April 6, 1917 to November 11, 1918; for World War II, from December 7, 1941 to December 31, 1946; for the Korean Conflict, from June 27, 1950 to January 31, 1955; for the Vietnam Conflict, from February 28, 1961 to May 7, 1975; and for hostilities in the Persian Gulf, from August 2, 1990 to the end of such hostilities. In addition, those who were awarded the armed forces, navy or marine corps expeditionary medal during the following periods will qualify: for hostilities in Lebanon, from June 1, 1983 to December 1, 1987; for hostilities in Grenada, from October 23, 1983 to November 21, 1983; and for hostilities in Panama, from December 20, 1989 to January 31, 1990. In addition, men and women qualify for veterans' credits if they were a member of the United States Public Health Service from July 29, 1945 to December 31, 1946, from June 27, 1950 to July 3, 1952, or if disabled while serving as a Merchant Seaman or while on transport service duty, between December 7, 1941 and August 15, 1945. Further, a person qualifies for veterans' credits provided he/she became disabled while serving overseas as a United States civilian employed by the American Field Service under United States Armies and United States Army Groups during armed conflict from December 7, 1941 to May 8, 1945, and was honorably discharged or released. A person also qualifies for veterans' credits provided he/she became disabled while serving overseas as a United States Civilian Flight Crew and Aviation Ground Support Employee of Pan American World Airways or one of its subsidiaries or its affiliates as a result of Pan American's contract with Air Transport Command or Naval Air Transport Service during armed conflict from December 14, 1941 to August 14, 1945, and was honorably discharged or released. |
| **Use of Credits** | |
| CSL § 85.3 | It should be noted that additional credits are applied to a qualifying candidate's score only at the time the eligible list is established. An individual must apply for and prove eligibility for such credit before the eligible list is established, otherwise, it will be too late for him/her to receive credits on that list. By law a list cannot be established until two months after the last day allowed for filing applications for an examination. This assures veterans at least two months in which to apply and demonstrate eligibility for credits. |
| CSL § 85.4 | A veteran may receive additional credits in any or all examinations in which he/she is a successful candidate, up to the time that the additional credits are actually used to obtain an appointment or promotion. That is, these credits are added to passing scores on any number of eligible lists; however, a veteran is only entitled to obtain one appointment resulting from these additional credits. Credits are deemed to be used when a veteran receives a permanent appointment or promotion in the service of the State or a civil division from an eligible list on which he/she was allowed (and had not waived) additional credits, either as a disabled or a non-disabled veteran. The additional credits are not deemed to be used if: - the relative rank of the appointee on the eligible list or on the certification thereof from which the appointment or promotion is made has not been affected by the additional credits, or - the appointee resigns or is terminated at or before the end of his/her probationary term and thus does not acquire permanent status. |
| CSL § 85.5 | A veteran may elect to waive or relinquish additional credits on any examination at any time before appointment or promotion, and accept the lower rank on the eligible list to which he/she is otherwise entitled. If the veteran does this, his/her credits cannot be restored on that list. |
| **Preference in Retention** | |
| CSL §85.7 | Another important benefit granted to disabled and non-disabled veterans is the right of preference in retention in the event of a reduction in force in the competitive class. This preference has already been noted in the discussion on layoffs. The qualifications for eligibility for additional examination credits also apply to eligibility for preference in retention. |
| **War Veterans and Exempt Volunteer Firefighters** | |
| CSL § 86 | The Civil Service Law also contains provisions favoring war veterans and exempt volunteer firefighters who are laid off upon the abolition of positions in the non-competitive or labor jurisdictional class. The law provides that if the non-competitive or labor class position of a veteran or exempt volunteer firefighter is abolished, he/she shall be entitled to transfer to any similar position where a vacancy exists and receive the same compensation. He/she does not have a right to bump a non-veteran, nor does the law mean that a veteran or exempt volunteer firefighter must be given a vacant position even if there are no duties to perform in the position. In other words, it does not mandate the filling of a position that would otherwise stay vacant because of lack of work. However, it does give the laid off war veteran or exempt volunteer firefighter the right of preference to employment in similar positions over others who might otherwise be appointed to such positions. It is incumbent upon the veteran to seek and find such positions. |
| **Military Service and Leaves of Absence** | |
|  | The rights and privileges of public employees who enter military service are provided for in the Military Law, principally in Sections 242 and 243. The former section deals with members of reserve forces who perform ordered military duty in the service of New York State or the United States. The latter deals with the rights of those inducted into, or whose National Guard units are activated into, the regular military forces of the United States. |
| 38USC § 4302 | Additional rights are guaranteed by federal law. In addition, federal law provides that veterans shall be accorded the protections of federal or state law, whichever is more generous. |
| ML § 242.1 242.2 242.3 | A civil service employee who is a member of the organized militia or any of the reserve forces of the Armed Forces of the United States shall be deemed to be on leave of absence while performing ordered military duty. Ordered military duty is defined as any duty performed pursuant to orders issued without the employee's consent; or even though such orders are issued with the consent of the employee, for periods not exceeding a total of 30 calendar days or 22 working days in one calendar year, or any continuous period of absence. |
| ML §242.3 242.3-a | A civil service employee who is a member of a reserve component shall be deemed to be on leave of absence while attending any service school conducted by the Armed Forces, or while in full-time training or active duty for training, even though such orders are issued with the consent of the employee. |
| ML § 242.4 | An employee's absence while performing ordered military leave shall not constitute an interruption of continuous employment nor shall there be any loss of vacation or holiday privilege. |
| ML § 242.5 | A reservist shall be paid his/her salary for all periods of absence while performing military duty, not exceeding a total of 30 calendar days or 22 work days, whichever is greater, during any one calendar year of any continuous period of ordered military service. This period may be extended by rule in times of emergency. |
| ML § 243.1 38USC§4302 | An employee who enlists in the Armed Forces is entitled to a maximum four-year leave of absence, except during a period of war or national emergency declared by the President; or for one additional year, if service is extended for the convenience of the government. |
| ML§243.1(c) | In order to be eligible for reinstatement following military duty or for any of the rights and benefits granted to returning veterans under the Military Law, a veteran must be honorably discharged or released under honorable circumstances. |
| ML§243.2 | Military Law provides that any employee who enlists or is drafted into military duty shall be deemed to be on leave of absence and is entitled to reinstatement to his/her position if application is made up to 90 days after the termination of military duty as defined in such section. Even if reinstatement is not requested within the 90 day period, the employee remains eligible for reinstatement at the discretion of the appointing officer at any time within one year after the termination of military duty. |
| ML § 243.5 | An employee on military leave may "not be subjected directly or indirectly to any loss of time, service, increment or any other right or privilege, or be prejudiced in any way with reference to promotion, transfer, reinstatement or continuance in office." Thus, upon reinstatement following termination of military duty, an employee is entitled to receive the same salary he/she would otherwise be receiving had he/she remained in his/her position, and full credit, for promotional purposes, for the period of absence. |
| **Entitlement to Examinations** | |
| ML §243-c ML §243-b | The Military Law provides certain rights pertaining to civil service examinations. A person serving on active duty in the armed forces of the United States during the filing period for a civil service examination, or a person who has been honorably discharged after an examination filing period shall be permitted to file an application for such examination no later than 10 business days prior to the scheduled examination date or the last date to file for such examination, whichever is later. If qualified, such person shall be allowed to compete in such examination. Further, any member of the Armed Forces of the United States or organized militia who duly filed an application for a civil service examination but was deprived of an opportunity to compete because of active military duty shall be afforded a military make-up examination. |
| ML § 243.5 | If a public employee is on regular military duty and a promotion examination is held for which the employee is entitled to take, the employee may take a comparable examination if a request is made within 60 days after restoration to his/her position. If the employee passes the comparable examination, his/her name is placed on the regular eligible list, provided it still exists. If the final rating is such that the employee would have been reached for certification for appointment between the date when he/she entered military duty and the date that he/she was officially notified of his/her rating, his/her name is placed on a special eligible list. The special list remains in existence for two years and is certified before any subsequent list, including a preferred list. If the employee is promoted from the special eligible list, he/she is entitled to retroactive seniority, for purposes of computing seniority, training and experience credit upon promotion to the earliest date on which any eligible who was ranked lower on the regular promotion list was promoted. The employee is not, however, entitled to have seniority backdated for salary purposes. |
| **Appointment While on Military Duty** | |
| ML § 243.6 243.7 | Military Law also provides that if a person's name is on an open-competitive or promotion eligible list when he/she enlists or is drafted into military duty, that person may, at the discretion of the appointing officer, be appointed from such list and then placed on military leave of absence until he/she returns from military duty. In such case, he/she earns seniority and salary credit from the date of appointment. A person on an eligible list who is not so appointed while on regular military duty may have his/her name placed on a special eligible list following return, provided the person has been reached for certification during military duty and the original eligible list is still in existence. Such a special list will continue for a period of two years following termination of military duty and is certified before any subsequent eligible lists, including a preferred list. If an eligible is appointed from such a special list, he/she is entitled to retroactive seniority for the purposes of computing seniority, training and experience credit upon promotion, and seniority in the event of layoff, to the earliest date upon which any eligible who was lower on the original list was appointed. |
| ML §243.7-b | Applicants who are called to military duty before taking all parts of an open-competitive or promotion examination and are prevented from completing the examination can obtain a comparable holding of the remaining parts of the exam. The applicant may then be entitled to special military list status as described in ML §243.5. |
| **Credit Toward Probationary Requirements** | |
| ML § 243.9 38 USC 4302 | If a person enters military duty as defined in ML § 243 while serving a probationary period, the time absent on military duty shall be credited as satisfactory probationary service. This does not, however, overcome unsatisfactory probationary service rendered before entering military duty nor may it guarantee the employee successful completion of the probationary term. |
| **Age Requirements** | |
| ML §243.10-a | Military Law also provides that if maximum age requirements are established for any position, the period of military duty served by a candidate shall not be included in computing age, up to a maximum of six years. |
| **Leave for Education** | |
| ML § 246 | Military Law provides an educational leave of absence for any employee who served during hostilities in World War II through the Viet Nam era and is eligible to receive educational benefits provided by the federal government on account of such service. Such employee shall be entitled to a leave of absence not exceeding four years while pursuing courses of studies under such federal benefits. |

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