



ADMINISTRATIVE RULES OF MONTANA



2.21.1423 APPLYING PREFERENCE

- (1) As provided in 39-30-201, MCA, an applicant who is eligible for preference under these rules shall be hired over any other applicant with substantially equal qualifications who is not a preference-eligible applicant, when:
 - (a) the applicant has claimed a preference as required in ARM 2.21.1414, and
 - (b) the hiring is an initial hiring to employment covered in ARM 2.21.1422.
- (2) A preference-eligible applicant who is a person with a disability shall be hired over any other preference-eligible applicant with substantially equal qualifications when the applicant also meets the requirements of this rule.
- (3) As provided in 39-30-103, MCA, an initial hire means "a personnel action for which applications are solicited from outside the ranks of the current employee of:
 - (a) a department, as defined in 2-15-102, MCA, for a position within the executive branch;
 - (b) a legislative agency for a position within the legislative branch;
 - (c) a judicial agency, such as the office of supreme court administrator, office of supreme court clerk, state law library, or similar office in a state district court for a position within the judicial branch;
 - (d) a city or town for a municipal position, including a city or municipal court position; and
 - (e) a county for a county position, including a justice's court position.
- (4) A personnel action limited to current employees of a specific public entity identified in [this rule], current employees in a reduction-in-force pool who have been laid off from a specific public entity identified in [this rule], or current participants in a federally-authorized employment program is not an initial hiring."
- (5) A current employee of an agency who meets eligibility requirements may claim and shall receive the persons with disabilities preference when the employee is considered an applicant for a position which is an initial hire as that term is defined in this policy, whether or not the agency originally limited recruitment for the position to current employees.
- (6) As provided in 39-30-103, MCA, substantially equal qualifications means "the qualifications of two or more persons among whom the public employer cannot make a reasonable determination that the qualifications held by one person are significantly better suited for the position than the qualifications held by the other persons."

- (7) Substantially equal qualifications does not mean a situation in which two or more applicants are exactly equally qualified. It means a range within which two applicants must be considered to be substantially equal in view of the qualifications set for the job. Qualifications shall include job-related competencies, which are knowledge, skill, and behaviors.
- (8) The public employer covered by the Persons with Disabilities Employment Preference Act, 39-30-101 et seq., MCA, has the burden of proving by a preponderance of the evidence that the employer made a reasonable determination of the applicant's qualifications for the position and that substantially equally qualified applicants were afforded preference.
- (9) The public employer shall retain a record of the hiring decision for at least 90 calendar days after the notice of the hiring decision. Depending on the selection procedures used, the record may include, but is not limited to, the following:
 - (a) a copy of the vacancy announcement or external recruitment announcement;
 - (b) a record of the selection procedure used to screen job applicants;
 - (c) a record of written and oral evaluations of applicants;
 - (d) a copy of applications that were considered for the specific vacancy; and
 - (e) a record of the notice of the hiring decision, the written request for an employer's explanation of the hiring decision by an applicant, and the employer's written explanation.

Authorizing statute(s): 39-30-106, MCA

Implementing statute(s): 39-30-101 et seq. , MCA

History: NEW, 1984 MAR p. 425, Eff. 3/16/84; AMD, 1990 MAR p. 485, Eff. 3/16/90; AMD, 1997 MAR p. 2277, Eff. 12/16/97; AMD, 2000 MAR p. 448, Eff. 2/11/00.