



ADMINISTRATIVE RULES OF MONTANA



2.21.3616 CLAIMING PREFERENCE - DOCUMENTATION AND VERIFICATION

- (1) As provided in 39-29-103, MCA, "a public employer shall, by posting or on the application form, give notice of the preference."
- (2) As provided in 39-29-103, MCA, "a job applicant who believes that the applicant is eligible to receive a preference shall claim the preference in writing before the time for filing applications for the position involved has passed." A public employer may provide a standard form for claiming employment preference. Failure to complete such a form does not negate an applicant's claim for preference, as long as a reasonable and timely claim is made. As provided in 39-29-103, MCA, "Failure to make a timely preference claim for a position is a complete defense to an action instituted by an applicant under 39-29-104, MCA, with regard to that position."
- (3) At the place where applications are received, the hiring authority or other agency receiving applications shall inform applicants of requirements for documentation of eligibility for preference which the applicant may be required to provide to the hiring authority.
- (4) The person claiming eligibility for veterans' employment preference is responsible for providing all information necessary to document the claim.
- (5) The hiring authority must obtain documentation of eligibility for employment preference from an applicant who claims preference and who is selected for the vacancy and may require documentation from others claiming employment preference.
- (6) The hiring authority shall determine when in the selection process submission of documentation of eligibility for the preference shall be provided by the applicant. This may be at the time an offer of employment is made or at an earlier time specified by the hiring authority.
- (7) When appropriate, documentation will include the following or a substitute acceptable to the hiring authority:
 - (a) from a veteran, disabled veteran, or eligible relative:
 - (i) a document issued by the department of defense or equivalent certification from the U.S. department of veterans affairs listing military status, and discharge type, commonly form DD-214 or military discharge papers; or
 - (ii) a document issued by the office of the adjutant general of the Montana national guard which certifies the veteran is or has been a member of the Montana army or air national guard and has satisfactorily completed a minimum of six years service in the armed forces, the last three years of which have been served in the Montana army or air national guard;

- (b) from a disabled veteran, a document from the U.S. department of veterans affairs certifying that the applicant has a service-connected disability or a document from the department of defense or the department of veterans affairs indicating the person has received the purple heart medal;
 - (c) from the unremarried surviving spouse of a deceased veteran, as veteran is defined in 39-29-101, MCA, the documentation required in this rule and a copy of the death certificate or from the unremarried surviving spouse of a deceased disabled veteran, as disabled veteran is defined in 39-29-101, MCA, the documentation required in this rule and a copy of the death certificate;
 - (d) from the eligible spouse of a disabled veteran, a document from the U.S. department of veterans affairs certifying the veteran is disabled, is unable to use the preference because of the disability, and is married to the disabled veteran in accordance with Montana law. When the department of veterans affairs does not certify that the disabled veteran is unable to use the preference because of the disability, the hiring authority shall obtain a signed statement from the disabled veteran that the veteran is incapable of using the employment preference because the veteran is unable to qualify for appointment to a position because of the disability and the disability prevents the veteran from working;
 - (e) from an eligible mother of a deceased veteran or disabled veteran, a document from the U.S. department of veterans affairs certifying that the veteran, as provided in 39-29-101, MCA, "died under honorable conditions while serving in the armed forces" or a document certifying, as required in 39-29-101, MCA, that the veteran has a service-connected permanent and total disability. The veteran's mother must also certify in writing that the mother's spouse is permanently and totally disabled or that the mother is the unremarried widow of the veteran's father;
 - (f) a signed statement by the applicant attesting to U.S. citizenship. If the hiring authority has reason to question the validity of the statement, further documentation may be required. For U.S. citizenship, such evidence may include, but is not limited to, a birth certificate, voter registration card, U.S. passport or naturalization papers.
- (8) All documentation submitted to a public employer, or to an entity designated to receive applications for a public employer, in support of the claim of preference shall be considered confidential.
 - (9) A public employer may release general information relating to a successful applicant's eligibility for preference upon request.
 - (10) Applicants shall be notified that intentional misrepresentation of the claim for preference is cause for immediate discharge.

Authorizing statute(s): 39-29-112, MCA

Implementing statute(s): 39-29-103, MCA

History: NEW, 1990 MAR p. 478, Eff. 3/16/90; AMD, 1994 MAR p. 23, Eff. 1/14/94; AMD, 1997 MAR p. 1445, Eff. 8/19/97; AMD, 2000 MAR p. 450, Eff. 2/11/00; AMD, 2003 MAR p. 2077, Eff. 10/1/03.