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Secretary of State
Certificate and Order for Filing
PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies* are true, full and correct copies of the PERMANENT Rule(s) adopted on February 7, 2012 by the

Bureau of Labor and Industries	Date prior to or same as filing date
Agency and Division	839
Marcia Ohlemiller	Administrative Rules Chapter Number
800 NE Oregon St. Suite 1045, Portland, OR 97232	971-673-0784
Rules Coordinator	Address
	Telephone

to become effective February 8, 2012. Rulemaking Notice was published in the October 2011 Oregon Bulletin.**
Date upon filing or later Month and Year

RULE CAPTION

New and amended rule language to conform to and implement statutes relating to veterans' employment
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

List each rule number separately (000-000-0000)
Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

AMEND: 839-006-0440, 839-006-0450, 839-006-0455, 839-006-0470, 839-006-0480

FILED
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ARCHIVES DIVISION SECRETARY OF STATE

Stat. Auth.: ORS 659A.805

Other Auth.: HB 3207, SB 277, SB 72, HB 2241, Oregon Legislative Assembly 2011.

Stats. Implemented: HB 2241 (expands list of eligible uniformed services protected by discrimination in employment statute), HB 3207 (requires public employers to interview eligible veterans), SB 72 (clarifies definition of disabled veteran), SB 277 (clarifies veterans' preference for promotions), Oregon Legislative Assembly 2011; ORS 408.225 to 408.235; ORS 659A.082

RULE SUMMARY

The new rules would implement HB 2241, which expands the definition of "uniformed service" for purpose of employment protections to match federal definitions.

The new rules would implement HB 3207, which requires public employers to interview each veteran who applies for a civil service position or eligibility list and who has obtained through military education or experience skills that substantially relate to the civil service position.

The new rules would implement SB 72, which clarifies the definition of "disabled veteran" for purposes of statutes relating to veterans' preference in public employment.

The new rules would implement SB 277, which clarifies that a veteran or disabled veteran who applies for a vacant civil position or who seeks promotion to a civil service position with a higher maximum salary rate is entitled to veterans' preference.

Brad Avakian

February 7, 2012

Authorized Signer	Printed name	Date
*With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules. **The Oregon Bulletin is published the 1st of each month and updates rules found in the OAR Compilation. For publication in Bulletin, rule and notice filings must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, when filings are accepted until 5:00 pm on the preceding workday.		

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839-006-0440

Definitions

(1) "Active duty" does not include attendance at a school under military orders, except schooling incident to an active enlistment or a regular tour of duty, or normal military training as a reserve officer or member of an organized reserve or a National Guard unit.

(2) "Armed Forces" means the United States Army, Navy, Marine Corps, Air Force, and Coast Guard, including the reserve components thereof. (Title 38 USC Part I Chapter 1 Section 101). Reserve components mean:

(a) The Army Reserve;

(b) The Navy Reserve;

(c) The Marine Corps Reserve;

(d) The Air force Reserve;

(e) The Coast Guard Reserve;

(f) The Army National Guard of the United States; and

(g) The Air National Guard of the United States.

(3) "Civil service position" means any position for which a hiring or promotion decision is made or required to be made based on the results of a merit based, competitive process that includes, but is not limited to, consideration of an applicant's or employee's relative ability, knowledge, experience and other skills.

(a) A "civil service" position need not be labeled a "civil service position."

(4) "Combat zone" means an area designated by the President of the United States by executive order in which, on the dates designated by executive order, the Armed Forces of the United States are or have engaged in combat.

(5) "Disabled veteran" means a person who has a disability rating from the United States Department of Veterans Affairs, a person whose discharge or release from active duty was for a disability incurred or aggravated in the line of duty or a person who was awarded the Purple Heart for wounds received in combat.

(6) "Eligibility list" means a list of ranked eligible candidates for a civil service position who have become eligible for the position through a test or series of tests and who will be considered for the civil service position in ranked order. Rankings of eligible candidates

identified as tiers, bands or other names function as eligibility lists for purposes of these rules.

(7) "Military leave" means any period of time for which a person is absent from a permanent civil service position for the performance of active duty in the Armed Forces of the United States.

(8) "Promotion" means any position with a higher maximum salary rate.

(9) "Public employer" includes a public body as defined in ORS 174.109, and any person authorized to act on behalf of the public body, with respect to control, management or supervision of any employee. "Public employer" includes but is not limited to:

(a) Employers in local governments;

(b) Employers in a public corporation created under a statute of this state and specifically designated as a public corporation; and

(c) Employers in any public body that is created by statute, ordinance or resolution that is not part of state government or local government.

(10) "Transferable skill" means a skill that a veteran has obtained through military education or experience that substantially relates, directly or indirectly, to the civil service position for which the veteran is applying.

(11) "Veteran" means a person who:

(a) Served on active duty with the Armed Forces of the United States:

(B) For a period of more than 90 consecutive days beginning on or before January 31, 1955, and was discharged or released under honorable conditions;

(C) For a period of more than 178 consecutive days beginning after January 31, 1955, and was discharged or released from active duty under honorable conditions;

(D) For 178 days or less and was discharged or released from active duty under honorable conditions because of a service-connected disability;

(E) For 178 days or less and was discharged or released from active duty under honorable conditions and has a disability rating from the United States Department of Veterans Affairs; or

(F) For at least one day in a combat zone and was discharged or released from active duty under honorable conditions;

(b) Received a combat or campaign ribbon or an expeditionary medal for service in the Armed Forces of the United States and was discharged or released from active duty under honorable conditions; or

(c) Is receiving a nonservice-connected pension from the United States Department of Veterans Affairs.

(d) For questions regarding military discharge, consult the Oregon Department of Veterans' Affairs website at http://www.oregon.gov/ODVA/docs/PDFs/Criminal_Justice_Portal/Military_discharge.pdf?ga=t.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 408.225, 408.230, 408.235, OL 2011, Ch 484, OL 2011, Ch 29

839-006-0450

Applying the Employment Preference

(1) A public employer shall grant a preference to a veteran or disabled veteran who applies for a vacant civil service position or who seeks promotion to a civil service position with a higher maximum salary rate and who:

(a) Successfully completes an initial application screening or an application examination for the position; or

(b) Successfully completes a civil service test the employer administers to establish eligibility for the position; and

(c) Meets the minimum qualifications and any special qualifications for the position.

(2) At each stage of the application process a public employer will grant a preference to a veteran or disabled veteran who successfully completes an initial application screening or an application examination or a civil service test the public employer administers to establish eligibility for a vacant civil service position.

(3) For an initial application screening used to develop a list of persons for interviews, the public employer will add five preference points to a veteran's score and ten preference points to a disabled veteran's score.

(4) For an application examination, given after the initial application screening, that results in a score, the public employer will add five preference points to a veteran's and ten preference points to a disabled veteran's total combined examination score without allocating the points to any single feature or part of the examination.

(5) If a public employer uses an application examination that consists of an evaluation method of ranking an applicant that does not result in a score, the public employer will

devise and apply methods by which the public employer gives special consideration in the public employer's hiring decision to veterans and disabled veterans.

(6) When an interview is a component of the selection process for a civil service position or for an eligibility list for a civil service position, a public employer shall interview each veteran:

(a) Whom the public employer determines meets the minimum qualifications and special qualifications for the civil service position or eligibility list; and

(b) Who submits application materials that the public employer determines show sufficient evidence that the veteran has the transferable skills required and requested by the public employer for the civil service position or eligibility list.

(7) A public employer is not required to comply with subsection (6) of this rule if the employer's practice is to generate an eligibility list without conducting interviews of possible candidates.

(8) A public employer may consult with the Oregon Military Department and the Department of Veterans' Affairs to determine whether certain military education or experience produces a transferable skill. To evaluate a veteran's transferable skills from a transcript of military training, a public employer may consult the American Council on Education's website, "A Guide to Educational Experiences in the Military," at <<http://militaryguides.acenet.edu/CourseSearch.asp>>.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 408.230, 408.235, OL 2011, Ch 484

839-006-0455

Employment Preference for Promotions

A public employer will grant a preference to a person seeking promotion in the manner described at OAR 839-006-0450.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 408.225, 408.230, 408.235, OL 2011, Ch 484

839-006-0470

Enforcement

The Civil Rights Division of the Bureau of Labor and Industries enforces the provisions of ORS 408.230. A person claiming a violation of ORS 408.230 may file a verified written complaint with the Civil Rights Division in accordance with ORS 659A.820.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 408.230, 408.235, 659A.820, OL 2011, Ch 484

839-006-0480

Discrimination Based on Uniformed Service

(1) For purposes of this rule:

(a) "Service" means the performance of duty on a voluntary or involuntary basis in a uniformed service that may involve active duty, active duty for training, initial active duty for training, inactive duty for training, full time duty in the National Guard, funeral honors duty or an examination to determine fitness for service in a uniformed service; and

(b) "Uniformed service" means the Armed Forces of the United States, the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training or full-time National Guard duty, the commissioned corps of the United States Public Health Service and any other category of persons designated by the President of the United States in a time of war or national emergency.

(2) It is an unlawful employment practice for an employer to discriminate against a person because of the person's service in a uniformed service by:

(a) Denying a public officer or public employee the status or rights provided by ORS 408.240 to 408.240 and 408.290, if the employer is a public body.

(b) Discharging, expelling, disciplining, threatening or otherwise retaliating against the person for exercising or attempting to exercise the status or rights provided by this section.

(c) Denying any of the following because a person is a member of, applies to be a member of, performs, has performed, applies to perform or has an obligation to perform service in a uniformed service:

(A) Initial employment;

(B) Reemployment following a leave from employment taken by reason of service in a uniformed service;

(C) Retention in employment;

(D) Promotion; or

(E) Any other term, condition or privilege of employment, including but not limited to compensation.

(3) An employer does not commit an unlawful employment practice under this rule if the employer acted based on a bona fide occupational requirement reasonably necessary to the normal operation of the employer's business and the employer's actions could not be avoided by making a reasonable accommodation of the person's service in a uniformed service.

(4) The federal Uniformed Services Employment and Reemployment Act, 38 USC 43 (USERRA) provides that an employee reemployed following a period of uniformed service is entitled to the seniority and seniority-based rights and benefits that the employee had on the date the uniformed service began, plus any seniority and seniority-based rights and benefits that the employee would have attained if the employee had remained continuously employed. Federal Department of Labor regulation 20 CFR 1002.210 provides that in determining entitlement to seniority and seniority-based rights and benefits, the period of absence from employment due to or necessitated by uniformed service is not considered a break in employment. The rights and benefits protected by USERRA upon reemployment include those provided by the employer and those required by statute.

(5) To the extent possible, this rule shall be construed in a manner that is consistent with similar provisions of the federal Uniformed Services Employment and Reemployment Rights Act of 1994, 38 USC 43.

(6) Protections for spouses and domestic partners of uniformed service members may be found under the Oregon Family Military Leave Act, ORS 659A.090 to 659A.099 and OAR 839-009-0370 - 839-009-0460.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.082, OL 2011, Ch 18