

# Clinton County Veterans' Rights For Exams

## Introduction

The information in this summary provides veterans with an overview of their rights as applied to civil service examinations.

Some of the rights discussed are granted to individuals who meet the applicable statutory definitions of a veteran or disabled veteran. Other benefits are provided to people while they are still in military service or otherwise may not qualify for veterans' status.

Veterans derive these rights from various federal and state mandates, including municipal civil service rules. Consequently, not all veterans, disabled veterans or military service members are entitled to the same rights or benefits.

## Definition of a Veteran

The term *veteran*, as used in this summary, is defined as a United States citizen or an alien lawfully admitted for permanent residence who served in the armed forces of the United States during a designated time of war and was honorably discharged or released under honorable circumstances.

*Armed forces*, as used in this summary, are defined as the Army, Navy, Marine Corps, Air Force, Coast Guard and the National Guard when in service of the United States. Such service must be or have been on a full-time active duty basis, other than for training purposes.

*Time of war* is defined as follows: All service in the United States armed forces during:

World War II	December 7, 1941—December 31, 1946
Korean Conflict	June 27, 1950—January 31, 1955
Viet Nam Conflict	February 28, 1961—May 7, 1975
Persian Gulf Conflict	August 2, 1990—the date upon which such hostilities end.

Service for which a veteran received the Armed Forces Expeditionary Medal, the Navy Expeditionary Medal, or the Marine Corps Expeditionary Medal for:

Hostilities in Lebanon	June 1, 1983—December 1, 1987
Hostilities in Grenada	October 23, 1983—November 21 1983
Hostilities in Panama	December 20, 1989—January 31, 1990

Service in the commissioned corps of the United States Public Health Service during the following dates:

July 29, 1945—December 31, 1946  
June 27, 1950—July 3, 1952

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 as having a disability rated at 10 percent or more which was incurred while serving in the United States armed forces during time of war. The disability must be in effect at the time of application or retention.

*See: New York State Constitution, Article V, Section 6  
Civil Service Law, Section 85  
Article 2, Section 13-a, General Construction Law*

**NOTE: Active military service performed in the service of New York State, including homeland security duty under orders of the Governor, cannot be used to establish a claim for veterans' or disabled veterans' status.**

## Age

Municipalities do not typically establish age requirements for appointment to civil service positions. Pursuant to Section 54 of the Civil Service Law, municipalities may, with approval of the State Civil Service Commission set age limits for appointment. Age requirements for entry level competitive police officer positions are imposed by Civil Service Law, Section 58. When determining whether a candidate who has performed military duty meets an established age requirement, there are several issues that must be considered. Those issues are outlined in the *Special Rights for Veterans Chart* found at the end of this manual.

### **Military Law**

Section 243 (10-a) of the New York State Military Law provides age deductions for military service for applicants who seek positions for which maximum age requirements have been established. Generally, an individual may have the period of military duty, as defined in Section 243 (1-b), deducted from his/her chronological age to meet such age requirements. The maximum amount of time which can be deducted is six years. However, there are certain limitations and restrictions provided in the statute. These are summarized below and in the *Special Rights for Veterans Chart*.

One area that may cause confusion is the actual number of years that may be deducted. The definition of military duty found in Section 243 (1-b) limits the amount of time that may be deducted. A veteran may be entitled to deduct up to four, five or six years depending on the dates of service, whether the service was voluntary or involuntary and whether the service was during time of war or national emergency.

Remember, for purposes of age deduction only, a person need not have served during a defined time of war; although, service during time of war will provide the opportunity to deduct additional time.

The following chart describes the amount of time available for deduction and the circumstance under which such time may be credited.

### **Age Deductions for Military Duty**

<b>Four Years:</b>	All veterans, whether service was voluntary or involuntary, are entitled up to a maximum of four years depending on actual duration of duty.
<b>Five Years:</b>	Veterans who entered voluntarily after July 1, 1970, but did not serve in time of war, are eligible to deduct up to five years, if the fifth year was at the request of and for the convenience of the federal government.
<b>Six Years:</b>	All veterans who served during time of war or national emergency declared by the President may deduct the actual time served up to a maximum of six years.

**NOTE:**

**The age deduction may exceed four years by only the amount of time served during time of war or national emergency or convenience of the federal government regardless of total service time. For example, a candidate who entered military service voluntarily and served 10 years, only six months of which were during time of war, would be entitled to deduct only four years and six months.**

Specific questions relative to creditable time for deduction should be directed to legal counsel.

***Civil Service Law***

Section 54 of the Civil Service Law permits municipal civil service agencies, subject to the approval of the State Civil Service Commission, to adopt reasonable maximum age requirements for designated positions. Pursuant to Section 243 (10-a) of Military Law, as previously referenced, time spent on military duty may be subtracted from the age of applicants seeking to qualify for such positions.

*See: Civil Service Law, Section 54 and Section 58  
Military Law, Sections 243 (1-b) and 243 (10-a)*

# Examination Credits

Certain veterans are entitled to receive additional credit in competitive civil service examinations. Article V, Section 6 of the State Constitution provides that to receive additional credit a veteran:

- must have served in time of war;
- must have received an honorable discharge or been released under honorable circumstances;
- must be a resident of New York State at time of application for examination.

**NOTES: A candidate who is currently in the armed forces may receive conditional veterans' credit on an eligible list, however, all of the above criteria must be met prior to certification with such credit.**

**A current member of the National Guard or Reserves may achieve civil service *veteran* status based upon a release under honorable circumstances following a qualifying period of federal *active war time military duty*, even though he or she has not had a final separation from the Guard or Reserve.**

A candidate claiming veterans' credits may make application for such credit at any time between the date of application for examination and the establishment of the resulting eligible list. However, candidates must be provided with a minimum of two months from the last application filing date to establish proof of eligibility for veterans' credit. For a candidate currently in the armed forces, such proof may include military identification, military orders, or other official military documentation that substantiates active military service at the time of examination. Two months from the last filing date should be allowed before establishing the eligible list. A candidate cannot be granted veterans' credit after an eligible list has been established.

In order to be granted additional credit, a veteran must first obtain a minimum passing score on the examination. Disabled veterans are entitled to receive an additional ten (10) points on an open-competitive examination or an additional five (5) points on a promotion examination. Non-disabled veterans are entitled to five (5) points on an open-competitive examination or two and one-half (2.5) points on a promotion examination. In order to be eligible for credits as a disabled veteran, the candidate must be certified by the Department of Veterans Affairs as having a service connected disability rated at 10 percent or more, which was incurred during a time of war.

A candidate who is granted conditional credit while in the armed forces must be restricted from certification using such credit until acceptable documentation is provided of receipt of an honorable discharge or release under honorable circumstances, and that such service was in time of war.

Veterans' credits may be used only once. When a veteran receives a permanent appointment (either original appointment or promotion) from an eligible list using veterans' credits, no additional veterans' credit may be awarded on any subsequent examination. This would apply to any appointment in the civil service of New York State or any of its civil divisions. A veteran is deemed to have used credit if such credit changes the veteran's position relative to other candidates on the eligible list from which

his/her permanent appointment results. If the position of a veteran on an eligible list is not changed by the addition of veterans' credits, the credits are not deemed to have been used.

A veteran may withdraw his/her veterans' credit at any time up to appointment. Such withdrawal may require revision of the eligible list to reflect the veteran's final examination rating after the credit has been deducted. An election to withdraw credits may not be reversed during the life of the affected eligible list. A veteran may apply for, be awarded and subsequently withdraw use of veterans' credits on an unlimited number of examinations until the credit is used in gaining a permanent appointment.

A veteran who receives a permanent appointment from an eligible list using veterans' credit and subsequently is either terminated during or at the end of the probationary term or resigns during or at the end of the probationary period shall not be deemed to have used his/her veterans' credit.

A veteran may apply for, be granted and subsequently withdraw use of veterans' credits many times.

## **Make-Up Examinations**

Service in the military may at times conflict with scheduled civil service examinations. Sections of the New York State Military Law provide special rights for veterans and members of the armed forces who are government employees, candidates on lists, or applicants awaiting examination. When providing make-up or comparable examinations, civil service administrators must ensure the rights of veterans and service members under the law while also ensuring examination security and protecting the examination process for other candidates. Below is a discussion of the various sections of Military Law and the special rights that must be given to a veteran or member of the armed forces.

**NOTE: A military make-up examination is not limited to written tests. If an applicant was unable to appear for a medical, physical agility, performance, psychological or any other type of examination, then he/she would be entitled to a make-up examination.**

### ***Military Law***

#### ***Section 243-b(1)***

Any member of the armed forces who properly filed, within the announced filing period, an application for a competitive examination, but was unable to participate in the examination due to active military service, must be provided with a special make-up examination. This applies to candidates covered by Section 242 or 243 of the Military Law, as well as any other applicant who, due to active military service, was prevented from participating in a competitive examination for which he/she timely filed an application.

#### ***Section 243-b(2)***

Any member of the armed forces, who, because of active military duty other than for training purposes, missed the application filing period for an examination and as a result is deprived of the opportunity to compete in an examination, shall be given a special military make-up exam. The make-up examination is to be administered under the terms and conditions set by the State Department of Civil Service or municipal civil service agency.

*Section 243-b(3)*

Any member of the armed forces, who, because of active military duty other than for training purposes, missed the application deadline for a scheduled examination and who returns from such duty prior to the administration of such examination shall be granted a waiver of the application requirement and be allowed to compete in the examination. A candidate who failed to file a timely application due to military duty is not necessarily entitled to be tested on a walk-in basis. Even if the candidate is available on the scheduled test date, he or she may be required to compete according to alternate test date procedures.

A candidate who is entitled to take an examination under these provisions may not necessarily be entitled to other benefits afforded to military service members or veterans and disabled veterans pursuant to the New York State Constitution or any other laws. The candidate's eligibility for other military system benefits must be evaluated on a case by case basis in accordance with the requirements established by the respective law.

Such make-up examinations are not limited to individuals employed in public service prior to entry into the military, but include all applicants, whether they are current employees or not. An applicant is not entitled to a make-up or comparable examination unless he or she would have met the announced qualifications for the missed examination.

In order for a military make-up examination to be administered under Section 243-b, the eligible list resulting from the original examination holding must still be in existence. A candidate eligible for a military make-up test does not have to wait until discharge from active duty to take the test. Completing the examination at the earliest possible opportunity is advisable, since candidates who pass a military make-up examination can only have their scores added to the existing eligible list for the examination in which the individual was originally unable to participate.

Section 243-b authorizes state and municipal civil service agencies to establish terms and conditions for the administration of the make-up tests. Each approved applicant for a military make-up examination should be sent a letter explaining the terms and conditions under which the test will be given.

The State Department of Civil Service has set the following conditions for make-up examinations where the examination is prepared and rated by New York State:

- The applicant must make full disclosure in writing of *all* New York State and Municipal Civil Service Examinations for which a military make-up test is being or will be requested. This information must be forwarded to the appropriate section of the New York State Department of Civil Service by the municipal civil service agency before any written test will be provided. Please use the web application provided for this purpose available on MSD Online. All written tests in a series, to be taken by the same candidate, must be administered at the same time, so make-up examinations have to be coordinated.
- The applicant must sign the Alternate Test Date/Religious Observer Affirmation (MSD-392). The actual signing should take place before any written test is administered.

- The applicant must submit a copy of a military order, DD-214, or other official military document to the appropriate municipal civil service agency that substantiates his/her active military service, at the time of the examination. This should be submitted before any test is administered.
- The eligible list resulting from the examination applied for must still be in existence. Indicate the expiration date of the eligible list for any test requested. Usually, it is not practicable to administer an exam requested if the list in question will expire soon.
- Applicants should be instructed to request a make-up examination as soon as possible after release from active duty.
- Written exam materials from the originally scheduled exam should not be retained for use in make-up examinations. Requests for military make-up and comparable exams should be sent to the New York State Department of Civil Service.
- Individuals are not entitled to veterans' or disabled veterans' credit on a make-up or comparable examination unless they qualified for such credit as of the last filing date for the original examination.

Agencies using examinations other than those prepared by New York State must develop procedures regarding military make-up examinations.

Once the need for a military make-up examination is anticipated, request a military make-up examination from New York State Department of Civil Service through our Examination Services Web Page as soon as possible. This will avoid unnecessary delays and afford the successful candidate the longest possible eligibility for appointment from the eligible list.

#### *Section 243-c*

This section covers individuals serving on active duty in the armed forces during the filing period for a civil service examination, or individuals who have been discharged with other than a dishonorable discharge after the filing period has commenced. Such individuals must be permitted to file an application for examination no later than 10 business days before the scheduled examination date, or the last date to file, whichever is later. If qualified, the individual must be provided an opportunity to compete in the examination under terms and conditions deemed appropriate by the state or municipal civil service agency.

#### *Section 243(5)*

This section differs from Section 243-b in that it applies only to *current public employees* who return to a position after termination of military duty.

In the event a promotion examination is held while an employee who would be entitled to participate in the examination is on military duty, the employee may have a right to participate in a comparable examination when restored to his/her position. The employee must request a comparable examination within 60 days of being restored to his/her position. Under Section 243(5), the eligible list resulting from the original promotion examination holding need not be in existence.

If the employee passes the examination his/her name may be placed on a special eligible list, as discussed in the next section.

*Section 243(7-b)*

This section differs from Section 243-b, as it applies to any person who has passed one or more parts of an examination but has been prevented from completing the remaining parts of the examination because of military duty. A request to complete the examination must be made within 90 days of the termination of military duty, and the candidate shall be given the opportunity to take a comparable examination. Under Section 243(7-b), the eligible list resulting from the original examination holding need not be in existence. If the candidate passes such examination, his/her name may be placed on a special eligible list, as discussed in the next section.

*See: Military Law, Sections 243-b, 243-c, 243(5) and 243(7-b)*

## **Special Military Lists**

While on military duty, veterans and military service members have certain rights relative to eligible list status. As discussed below, the rights may vary depending on whether the individual is a current public employee or is a candidate for employment.

### ***Military Law***

*Section 243(5)*

This section of Military Law refers to public employees who are on leave of absence from government service while on military duty. If a promotion examination in which a public employee was entitled to participate was held while the individual was on military duty, the employee must be given a comparable examination, provided a request is made within 60 days of the restoration to the original position. The eligible list resulting from the original promotion holding need not be in existence. If the employee passes the examination his or her name must be placed on the original list if still in existence. If the candidate's score would have made him/her reachable for appointment any time between entry into military duty and the date of notification of score from the comparable examination, the employee shall have his/her name placed on a special eligible list. The employee's name will remain on the special eligible list for two years and the list must be certified before any other list, including a preferred list. Appointment from a special eligible list follows the "Rule of Three". If appointment is made from the special eligible list, the employee's seniority for purposes of promotion or retention begins on the earliest date of appointment of any eligible who was lower on the regular promotion list.

*Section 243(7)*

This section applies to *any* candidate for appointment; it is not restricted to current public employees. While on military duty, any candidate whose name is on a list shall retain his/her rights and status on the list pursuant to Section 243(7) of the Military Law. If reached for certification while on military duty, the candidate's name must be placed on a special eligible list. However, the candidate must make the request to be placed on a special eligible list following termination of military duty. Placement on a special eligible list is possible only if the list in question is still in existence. The veteran's name remains on the special eligible list for up to two years from the termination of military duty. If appointment is made from the special eligible list, the appointee's seniority for purposes of promotion

or retention begins on the earliest date of appointment of any eligible who was lower on the original eligible list.

*Section 243(7-b)*

A candidate who has already passed part of an examination but has been unable to complete the remaining parts of the examination due to military duty must be given the opportunity to complete the examination. The eligible list resulting from the original holding need not be in existence. If the candidate passes the remaining parts of the examination, his/her name must be placed on the original list if it is still in existence. If the candidate's name would have been reached for certification on the original list any time between entry into military duty and notification of passing the examination his/her name must also be placed on a special eligible list. The special eligible list shall remain in effect for two years from the date the service member's name is added to the list. The special eligible list must be certified before any open-competitive or promotion list. If an appointment is made from the special military list, the appointee's seniority (seniority for the purpose of promotion or retention) begins on the earliest date of appointment of any eligible lower on the original eligible list or who was lower in relative order of retention on such list.

Appointment from a special military list is not mandatory unless the list contains the names of three or more acceptors for a position filled from the list.

An appointment from a special military list also removes the appointee's name from the corresponding original eligible list for the same position, if the original list still exists.

An individual is not entitled to veterans' or disabled veterans' credits on a special military list unless he/she was awarded such credits on the original list (Section 243(5)), or was entitled to such credits prior to the holding date of the original examination (Sections 243(5) and 243(7-b), and applies for such credits on a comparable examination.

*See: Military Law, Sections 243(5), 243(7), and 243(7-b)*

**NOTES: Section 243(6) permits an appointing authority to fill a vacancy with a person eligible for appointment notwithstanding that the person is in military service.**

**Section 243(9) provides that, where a person enters military service prior to the completion of his/her probation or where a person is appointed pursuant to Section 243(6), the time spent in military service shall be credited as satisfactory service during the probationary period.**

## SPECIAL RIGHTS FOR VETERANS

	ADDITIONAL EXAMINATION CREDIT	PREFERENCE IN RETENTION AND TRANSFER	REMOVAL AND DISCIPLINE	AGE REQUIREMENTS AND DEDUCTION
<b>Applicable Laws</b>	CSL 85	CSL 85, 86	CSL 75	CSL 54 ML 243.10(a), 243.1(b)
<b>Requirements:</b> Residing in NYS at Time of Application	Required	Required at the time of layoff	Not Required	Not Required
Honorable Discharge or Released under Honorable Circumstances	Required	Required	Required	Required
Service in the Time of War	Required	Required	Required	Not Required
<b>Military Service:</b> Service through December 6, 1941	No	No	No	Yes
World War II Dec. 7, 1941 – Dec. 31, 1946	Yes	Yes	Yes	Yes
Jan. 1, 1947 – June 26, 1950	No	No	No	(1)
Korean Conflict June 27, 1950 – Jan. 31, 1955	Yes	Yes	Yes	Yes
Feb. 1, 1955 – Feb. 27, 1961	No	No	No	Yes
Vietnam Conflict February 28, 1961 – May 7, 1975	Yes	Yes	Yes	Yes
May 8, 1975 – August 1, 1990	No	No	No	(2)
Hostilities in Lebanon (*) June 1, 1983 – Dec. 1, 1987	Yes	Yes	Yes	Yes
Hostilities in Grenada (*) October 23, 1983 – Nov. 21, 1983	Yes	Yes	Yes	Yes
Hostilities in Panama (*) Dec. 20, 1989 – Jan. 31, 1990	Yes	Yes	Yes	Yes
Persian Gulf Conflict August 2, 1990 – until hostilities end	Yes	Yes	Yes	Yes

(1) If voluntary entry during period, duty served during period – No;  
If voluntary service during period – Yes

(2) If voluntary entry after July 1, 1970, see Military Law, Section 243.1(b)

(\*) For hostilities in Lebanon, Grenada and Panama, the individual must have received the Armed Forces, Navy, or Marine Corps Expeditionary Medal. Without medal, service is treated as under May 8, 1975 to August 1, 1990.