

## **WHAT DOES THE VETERAN'S PREFERENCE ACT PROTECT?**

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In a recent case the Pennsylvania Supreme Court explained the protection provided by the Veteran's Preference Act. When applying for employment with a public employer in Pennsylvania the Court held that a veteran has a legal right to the preference established by the Veteran's Preference Act, but only if it can be established that the veteran meets the requisite qualifications of the position. The veteran has no protected interest in the position itself, however. The case was Merrell v. Chartiers Valley School District, 855 A.2d 713 (Pa. 2004) and it dealt with the non-civil service provisions of the Veteran's Preference Act.

If an employer has a multi-step process for considering applicants, for example, a veteran's right to the preference would not ripen until he or she had reached the final level of consideration. This is a very important point to understand. Veterans do not receive preferential treatment throughout a selection process, but only once they have been deemed qualified for the position. In a three step process, for example, if a veteran were to be deemed less qualified than other applicants in step two of the process, the right to a preference would never ripen. If, on the other hand, the veteran successfully proceeded to step three, and was therefore equally qualified for the position when compared with other applicants, the preference would apply.

Another significant point from this case was that the Court ruled that, because the veteran's preference had not ripened in this case, the denial of employment could not be considered an "adjudication" under the Local Agency Law. As such, the 30-day time limit for an appeal under that law did not apply. The applicant in this case was permitted to pursue his challenge even though it had been filed almost ninety (90) days after he received notice that he had not been hired for the position.

This analysis raises the interesting possibility that, those who are denied employment after their veteran's preference has ripened have only 30 days to appeal under the Local Agency Law, while those who are denied employment before their preference has ripened have a longer time period in which to appeal. The real result will probably be that all Veteran's Preference challenges will be provided the additional time to file and employers cannot rely on the 30-day Local Agency Law statute of limitations to be assured of the finality of their decisions.