

The Firehouse Lawyer

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UPCOMING MUNICIPAL ROUNDTABLE

As many of our clients are aware, we put on a quarterly Municipal Roundtable (MR) in which we discuss issues that are relevant to the fire service and municipal corporations, such as counties, cities, and special purpose districts. We have not settled on a location or topic for our Q-2 MR, set for the end of June. Please inform us what topics you would like to discuss and whether your agency is willing to host this free discussion group.

HONORING OUR VETERANS

Because Memorial Day is upon us, we want to remind our clients that various laws give veterans a preference over other employees, or applicants—rightfully so. We have written about these laws extensively. For example:

1. The Family and Medical Leave Act (12 weeks of unpaid leave and federally guaranteed employment upon return), as applicable to veterans and their families¹;

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<https://www.firehouselawyer.com/Newsletters/v09n01jan2009.pdf>

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2. Veterans scoring criteria under RCW 41.04.010, in which veterans are entitled to have certain points added to their final (passing) scores in all competitive examinations during the hiring process²;
3. Paid military leave for public employees, permitting 21 days of paid military leave during a period of deployment, pursuant to RCW 38.40.060³;
4. Freedom from discrimination on the basis of honorably discharged veteran or military status, under RCW 49.60.180;
5. 15 days of unpaid leave for military spouses per “period of military conflict,” pursuant to RCW 49.77.030, after the spouse has been notified of an impending call to duty of the other spouse; and

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<https://www.firehouselawyer.com/Newsletters/v03n12dec1999.pdf>

<https://www.firehouselawyer.com/Newsletters/v05n02feb2005.pdf>

<http://www.firehouselawyer.com/Newsletters/April2018FINAL.pdf>

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<https://www.firehouselawyer.com/Newsletters/v03n03mar1999.pdf>

6. Certain employment and re-employment rights under USERRA, the Uniformed Services Employment and Re-Employment Rights Act of 1994, 43 U.S.C. Part III, Title 38. The regulations are located at 20 CFR 1002.210.

We wish a Happy—and solemn—Memorial Day to all veterans, their families, and to all Americans, especially those who stand for what is great about our country.

We can expand on each of the foregoing by discussing some issues we have dealt with over many years, that raised specific issues of interpretation of each of these statutes.

1. We noted, for example, in January of 2009 that the exigency leave for spouses of military members does not apply to the regular military branches, but only to reservists and similar non-regulars (see footnote 1).

2. We have often advised that the "veterans preference" can be tricky. For example, suppose you use a multi-part entry level examination but then combine all parts into a final score that equates to a perfect score of 200. Further suppose that a passing score is deemed to be 140. Does a veteran whose raw, unimproved score is 139 get the preference? No, because RCW 41.04.010 states that the points are

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added to a passing score. What if you had a five part test, but all five parts have to be passed before an applicant can move forward to the interview phase of hiring? Using that method, you would have to add the preference to each examination as they are separately scored and a person can fail at each step along the way. We advise against using such a method, as you can not eliminate a qualifying veteran without applying the preference. Moreover, we conclude you could not spread the points by adding 20% of the eligible points to each of the five phases because under the statute they are each a separate examination.

3. The paid 21 "days" of military leave can also be tricky. The question has arisen: how do you count days when the firefighter is a shift worker called up to duty? We have dealt with that question in a contested situation. About ten years ago, we concluded that such shift firefighters should be given 21 paid shifts off, counting each shift as a day of work. We disagreed with an Attorney General Opinion on the subject.

4. We have nothing to add with regard to discrimination under RCW 49.60, except not to do it.

5. RCW 49.77 provides for leave for employed spouses during time of deployment and is broader than the parallel federal law on such "exigency

leave" for spouses. Please note, however, that all of the enforcement provisions of this statute do not take effect until December 31, 2019 (apparently to allow employers to prepare for this mandate).⁴

6. USERRA is aimed at protecting the rights of military members returning from active duty to return to their prior employment without loss of seniority and status.

We failed to mention the Soldiers and Sailors Civil Relief Act, a federal statute that bars default judgments in all civil cases against active duty military members. That law requires an "Affidavit of Non-Military Service" in all attempts to obtain default judgments against any person in Washington.

SAFETY BILL

We remind fire departments that management must post information about the safety laws in a conspicuous place. WAC 296-305-01509 (5).

Furthermore, sleeping areas shall be protected by smoke and carbon monoxide detectors. WAC 296-305-06507 (2).

Additionally, employers must establish policies related to treatment of heat-

⁴ See RCW 49.77.040 ("Effective Date"):
<http://app.leg.wa.gov/RCW/default.aspx?cite=49.77.040>

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induced stress and/or illness. WAC 296-305-05004.

Finally, the number of firefighters present on an aerial device used for firefighting must be in accord with the manufacturer's instructions. WAC 296-305-04510 (4)(a).

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