§ 81. Preferred lists; certification and reinstatement therefrom. 1. Establishment of preferred lists; general provisions. The head of any department, office or institution in which an employee is suspended or demoted in accordance with the provisions of section eighty of this title shall, upon such suspension or demotion, furnish the state civil service department or appropriate municipal commission, as the case may be, a statement showing his name, title or position, date of appointment, and the date of and reason for suspension or demotion. It shall be the duty of such civil service department or commission, as the case may be, forthwith to place the name of such employee upon a preferred list, together with others who may have been suspended or demoted from the same or similar positions in the same jurisdictional class, and to certify such list, as hereinafter provided, for filling vacancies in the same jurisdictional class; first, in the same or similar position; second, in any position in a lower grade in line of promotion; and third, in any comparable position. Such preferred list shall be certified for filling a vacancy in any such position before certification is made from any other list, including a promotion eligible list, notwithstanding the fact that none of the persons on such preferred list was suspended from or demoted in the department or suspension and demotion unit in which such vacancy exists. No other name shall be certified from any other list for any such position until such preferred list is exhausted. The eligibility for reinstatement of a person whose name appears on any such preferred list shall not continue for a period longer than four years from the date of separation or demotion. An employee whose name was placed on the preferred list and at the time of such placement was on active duty with the armed forces of the United States, as pursuant to title ten, fourteen or thirty-two of the United States code, shall not be eligible for employment reinstatement for a period longer than four years after the date of termination of military duty.

2. Order of certification of names from preferred lists. Except as hereinafter provided, the names of persons on a preferred list shall be certified therefrom for reinstatement to a vacancy in an appropriate position in the order of their original appointments.

(a) Upon the occurrence of a vacancy in an appropriate position in the

service of a civil division, except in a city having a population of one million or more, the names of persons on the preferred list shall be certified to fill such vacancy in the following order: (1) persons suspended from or demoted in the department or agency within which such vacancy occurs; and (2) persons suspended from or demoted in other departments and agencies in such civil division.

(b) Upon the occurrence of a vacancy in an appropriate position in the state service, or in the service of a city having a population of one million or more, the names of persons on the preferred list shall be certified to fill such vacancy in the following order: (1) persons suspended from or demoted in the department in which such vacancy exists, except that where such vacancy exists in a separate suspension and demotion unit, the names of persons suspended from or demoted in such unit, and not those suspended from or demoted in the entire department, shall be certified first; and (2) all other persons on such preferred list.

3. Eligibility and order of certification for reinstatement of persons suspended from or demoted in the service of a county in a city wholly including within its limits two or more counties. Any person suspended or demoted from a position in the service of a county in a city wholly including within its limits two or more counties, where the compensation of such position is paid directly from the treasury of such city, shall be eligible for certification and reinstatement from the preferred list to the same or similar position, or a similar position in a lower grade in the same occupational field, in the service of any county within such city. Upon the occurrence of a vacancy in an appropriate position in the service of any such county, the names of persons on the preferred list shall be certified to fill such vacancy in the following order: (a) persons suspended from or demoted in the particular county office in which such vacancy occurs; (b) persons suspended from or demoted in other county offices in the same county in which such vacancy occurs; (c) persons suspended from or demoted in county offices in other counties within such city.

4. Certification of probationers from preferred list. Notwithstanding the provisions of subdivisions two and three of this section, no person

suspended or demoted prior to the completion of his probationary term shall be certified for reinstatement until the exhaustion of the preferred list of all other eligibles thereon. Upon reinstatement, such probationer shall be required to complete his probationary term.

5. Effect of failure or refusal to accept reinstatement. The state and municipal civil service commissions shall adopt rules providing for the relinquishment of eligibility for reinstatement upon failure or refusal to accept reinstatement from a preferred list.

6. Salary upon reinstatement. A person reinstated from a preferred list to his former position or a similar position in the same grade shall receive at least the same salary such person was receiving at the time of suspension or demotion.

7. Notwithstanding any other provisions of this chapter, the civil service department or appropriate municipal commission may disqualify for reinstatement and remove from a preferred list the name of any eligible who is physically or mentally disabled for the performance of the duties of the position for which such list is established, or who has been guilty of such misconduct as would warrant his dismissal from the public service, except that a partially physically handicapped person, who is suspended pursuant to section eighty of this chapter because of lack of work, but who, within six months of the date of his suspension, is certified for reinstatement to any job item having the same physical requirements as the job item from which the person was suspended shall not be disqualified because of his physical handicap unless a medical examination discloses that because his handicap has become greater he would not be able to satisfactorily perform in such job item. No person shall be disqualified pursuant to this subdivision unless he is first given a written statement of the reasons therefor and an opportunity for a hearing at which such reasons shall be established by appropriate evidence, and at which such person may be represented by counsel and present evidence. The civil service department or municipal commission may designate a person to hold such hearing and report thereon.

8. Notwithstanding any other provisions of this chapter, any person may voluntarily remove his or her name from a preferred list by application to the civil service department or appropriate municipal commission.

9. An employee who is eligible to be placed on a preferred list pursuant to this section and who elects, as a member of a public employee retirement system, to retire upon a suspension or demotion, shall be placed on a preferred list and shall be eligible for reinstatement from such list.