

Navigating Your Legal Rights as a Title 38 Employee



MEDICAL PROFESSIONAL

In the intricate web of federal employment, [Title 38](#) stands out as a unique provision with its own set of rules and protections. Title 38 primarily covers medical professionals in the Department of Veterans Affairs (VA). This distinct classification comes with a different set of rights, processes, and nuances than those of other federal workers.

This guide seeks to illuminate the complexities of Title 38, shedding light on its employees' exclusive rights, privileges, and distinctions. Whether you're a seasoned VA professional or newly venturing into Title 38 employment, this guide will serve as an essential roadmap to understanding and advocating for your unique place in the federal landscape.

For further assistance, please don't hesitate to contact our [experienced Title 38 attorneys](#) today.

WHAT KINDS OF EMPLOYEES FALL UNDER TITLE 38?

Most employees under Title 38 are in the medical and dental fields and work with the VA.

Specific VA positions that fall under Title 38 include:

- Physicians,
- Dentists,
- Podiatrists,
- Optometrists,
- Nurses (including registered nurses and licensed practical nurses),
- Physician Assistants,
- Dental Auxiliaries,
- Chiropractors,
- Pharmacists, and
- Registered Dietitians.

Apart from these primary roles, several other health professionals and specialized roles fall under the umbrella of Title 38 due to their direct association with the VA healthcare system. The common thread uniting all these professionals is their commitment to serving the health needs of US veterans. This distinction includes a unique set of employment rights and benefits specific to Title 38.

HOW DO TITLE 38 EMPLOYEES DIFFER FROM OTHER FEDERAL EMPLOYEES?

It's easy for people to assume that Title 38 employees exist, given the fact that most federal employees fall under regulations in Title 5 of the US Code of Federal Regulations. This is much more than a simple administrative distinction. Title 38 employees enjoy significantly different working conditions. Let's explore these differences in more detail.

Work Conditions and Pay Scales

A major difference between Title 38 and Title 5 employees lies in their work structure. While those under Title 5 typically adhere to regular business hours, many Title 38 workers do not. Instead, most Title 38 employees work during weekends or are on-call around the clock. This difference in work conditions reflects the nature of healthcare and the need for continuous availability.

The differentiation doesn't stop at working hours. Regarding pay, Title 38 employees have distinct pay scales that often allow for greater financial rewards than their Title 5 counterparts. Title 5 employees fall under the General Schedule (GS) or Executive Schedule (ES) pay systems, which both have a pay cap equating to the Executive Schedule level IV (which stands at \$183,500 in 2023). By contrast, [Title 38 physicians](#) can earn up to \$385,000. This notable disparity in earning potential acknowledges VA medical professionals' unique skills and demands.

Probationary Periods

Another difference lies in the probationary periods that Title 38 new hires must serve. During a probationary period, federal employees are closely monitored and assessed. Employees under Title 5 typically undergo a one-year probationary period. Title 38 employees, however, are required to serve a two-year probationary term. This extended timeframe serves as an added layer of evaluation. The expanded probationary period aims to ensure that these professionals are adequately fit for their roles.

Understanding the distinctions between Title 38 and Title 5 employment is crucial for those looking to enter or are already working within the federal sector. Whether it's the work conditions, pay scales, or rights and protections, knowing where you stand is key to making informed decisions in your career.

WHAT RIGHTS DO TITLE 38 EMPLOYEES HAVE?

While Title 38 employees possess a unique set of working conditions compared to their counterparts governed by Title 5, they receive legal protections from many of the same laws.

Just a few examples include the following:

- **Disciplinary Appeals Board.** Title 38 employees have the right to be heard by three of their peers if they face discipline for patient care violations.
- **Rehabilitation Act of 1973.** This law protects Title 38 employees from disability discrimination.
- **The Equal Pay Act of 1963 (EPA).** This law requires that men and women receive equal pay for substantially similar work. Thus, it aims to eliminate the wage gap between genders.
- **Title VII of the Civil Rights Act of 1964.** Title VII protects Title 38 employees from discrimination based on various inherent characteristics. These characteristics include race, color, national origin, religious beliefs, gender, color, and sexual orientation/identity.
- **The Pregnancy Discrimination Act (PDA).** An amendment to Title VII, the PDA prohibits discrimination on the basis of pregnancy, childbirth, or related medical conditions.
- **Whistleblower Protection Act.** While not solely an anti-discrimination law, this act protects federal employees, including those under Title 38, who disclose information they believe shows wrongdoing or poses a significant risk to public health or safety. These cases are brought to the Office of Special Counsel (OSC), and then later to the MSPB in an Individual Right of Action (IRA) appeal.

Title 38 employees are also covered by the Age Discrimination in Employment Act of 1967 (ADEA) and the Americans with Disabilities Act of 1990.

WHAT RIGHTS DON'T TITLE 38 EMPLOYEES HAVE?

The [Merit Systems Protection Board](#) (MSPB) is a quasi-judicial administrative agency in the Executive branch that adjudicates personnel actions for most federal employees.

However, Title 38 employees cannot appeal disciplinary actions to the MSPB. This lack of access means that if they face disciplinary action, they have fewer avenues for redress than their counterparts under Title 5. It's also worth mentioning that disciplinary procedures for Title 38 employees can be less protective of employees. Indeed, the VA often has greater discretion in disciplinary matters for these employees to ensure the quality and safety of patient care. This could include a trial before a [Disciplinary Appeals Board](#) (DAB) for allegations related to professional conduct or competence.

Let Us Help You Defend Your Rights

No matter what kind of federal employee you are, the law grants you rights against unfair discipline and firing. It also protects you against illegal discrimination. You deserve nothing less than the full enjoyment of your rights. Don't wait to take action if your agency infringes on your rights. Reach out to an expert or legal professional well-versed in Title 38 intricacies. They can provide guidance, offer counsel, and assist you in standing up for your rights. Remember, safeguarding your career and ensuring fair treatment is not just beneficial for you. It also upholds the standards and quality of care for the patients you serve.

The experienced labor and employment lawyers at Pines Federal have decades of experience representing all federal employees, including Title 38 employees. We're familiar with the unique legal wrinkles that come with Title 38 employment, and we can use our knowledge to help vindicate your rights and protect your career. Don't wait. Contact us today.