

Title 38 Frequently Asked Questions (F.A.Q.)
Answers Page

1. What is a very important element that is frequently overlooked and must be met to earn a promotion for an RN?

Answer: The scope statement; if you do not meet the scope level of impact for the next grade, you will not earn a promotion. When preparing to give your input, you need the grade performance standards, including the scope statement, for your current level and the next grade level. See, VA Handbook 5013, Part 2.

2. Can a nurse receive more than one educational waiver?

Answer: Yes! If the degree that the employee received the waiver for is obtained, then a second waiver can be granted. See, VA Handbook 5005/27, Part II.

3. What handbooks can I refer to for Title 38 references?

Answer: Most of the Directives & Handbooks apply to Title 38 employees. Some examples are as follows: (5004-exit surveys), (5005-staffing), (5007-Pay Administration), (5009- Employee Benefits), (5011- Hours of Duty and Leave), (5013- Performance Management/Proficiencies), (5015- Employee Development), (5017-Awards & Recognition), (5019-Occupational Health), (5021-Employees & Management Relations/Discipline/DAB), (5023- Labor-Management Relations), (5025-Legal/Tort Claims, etc.), (5383-Drug Testing), (5810-Workers Comp).

4. Why do Title 38 employees have to serve a two year probationary period, when most everyone else has a one year probationary period?

Answer: The law requires this. 38 U.S.C. 7403(b) requires this of employees appointed under 38 U.S.C. 7401(1), Physicians, Dentists, Optometrists, Podiatrists, Chiropractors, Physicians Assistants, Nurses (to Include APNs), and Expanded-Function Dental Auxiliaries.

5. When does a Title 38 employee's probationary period begin?

Answer: The probationary period does not start until after your initial boarding to convert from a temporary appointment to a probationary. This temporary status referred to here is for the purpose of Vet Pro/Credentialing to be completed and should be completed within 90 days. RNs, Nurse Anesthetists, Pas, EFDA may be appointed temporary under 38 U.S.C. 7405. Physicians, Dentists, Optometrists and Chiropractors' appointments can only occur after credentialing and PSB action. VA Handbook 5005/12, Part II, Chapter 3. * Employees should be notified through their Nurse Manager from the NPSB regarding conversion from temporary status after initial boarding. If the employee has received no notification of conversion from temporary to a permanent position after 90 days of appoint, they should check their eOPF (<https://eopf.nbc.gov/va/logon.aspx>) tenure, contact HR and/or the Local Union.

6. How long is the Title 38 probationary period?

Answer: Two years (2). 38 U.S.C. 7403. Remember the probationary period does not start until as above in #5.

7. Can I be pulled to a clinical area that I'm not familiar with?

Answer: Yes! But the employee has the right to express their concerns with the assignment and competency for the area. See the Master Agreement, Article 10.

8. Are there mandated staffing ratios in the VA?

Answer: NO!! Each unit should have in place a minimal staffing plan. The staffing plan can be requested from the service. Annual leave schedules/policies usually contain the number of staff that can be spared from each unit. The use of staffing tracking can help identify areas with consistent problems with understaffing. The information can then be presented in your Labor Forums.

9. What is the timeframe for requesting reconsideration on a Nurse Professional Standards Board (NPSB) action?

Answer: 30 days. VA Handbook 5005, Part II, Chapter 4.

10. What is the difference between Title 38 and Title 38 Hybrid?

Answer: The appointing authority differs (Title 38 under 7401(1)) and (Hybrids under 7403 or 7405). The exceptions clause in 38 U.S.C. 7422 apply to Title 38 and not Hybrids. Hybrids Title 38 employees are covered under Title 38 for appointment, advancement, and pay purposes. For all other personnel actions these employees are treated as Title 5.

11. What occupations fall under each category, Title 38 and Title 38 Hybrid?

Answer: Title 38 positions: Physicians, Dentists, Optometrists, Podiatrists, Chiropractors, Physician Assistants, Nurses, and Extended Function Dental Auxiliaries. Hybrid positions are too numerous to list here, but a few are Audiologists, Speech Pathologists, LPNs, Social Workers, Nursing Assistants, etc. Refer to VA Directive/Handbook 5005, Part III for a full listing.

12. How much annual leave does a Title 38 employee earn per pay period?

Answer: Title 38 Full-Time Nurses, Pas, EFDA earn 8 hours per pay period. Physicians, Dentists, Podiatrists, Optometrists, Chiropractors earn 1 day per pay period. Refer to VA Handbook 5011, Part III.

13. How much sick leave does a Title 38 employee earn per pay period?

Answer: They earn 4 hours per pay period, 13 days per year. Refer to VA Handbook 5011, Part III.

14. What is the maximum accumulation of annual leave per year for Title 38 employees?

Answer: The maximum carry over accumulation of AL for PAs and Nurses is 685 hours. For Physicians, Dentists, etc. it is 86 days. Refer to VA Handbook 5011, Part III. NOTE: Reminder that the “carry over provision” applies when employees are not able to use their leave through no fault of their own. They may request to carry over the additional hours.

15. Is there a time limit on sick leave that an employee may carry forward at the end of the leave year?

Answer: No! There shall be no limitation on the amount of accumulated sick leave which an employee may carry forward at the end of a leave year. For Civil Service Retirement System (CSRS) sick leave is fully creditable toward retirement. For Federal Employees Retirement System (FERS) sick leave is creditable at a rate of 50% through 2013 and fully creditable in 2014. Refer to VA Handbook 5011, Part III.

16. What does 7422 mean?

Answer: The term “7422” is referring to the exceptions contained in 38 U.S.C. 7422 for employees appointed under 38 U.S.C. 7401(1). This includes Physicians, Dentists, Optometrists, Podiatrists, Chiropractors, Pas, Nurses and EFDA. The exception is that any collective bargaining agreement or grievance procedure can have no applicability to 1) Professional conduct or competency; 2) Peer Review; and 3) Setting and determination of Compensation.

17. Do Title 38 employees have a right to union representation if they think their manager is going to discipline them?

Answer: Yes! See, Article 1, Section 3 and Article 17, Section 3 of the Master Agreement. Also, 38 U.S.C. 7422(a).

18. How do I find out about what RN vacancies are available to apply for?

Answer: Article 61, Section 1 states that all Title 38 positions will be posted. If this isn't happening bring to the attention of your AFGE Local.

19. If an RN applies for a position and is not selected, is there any way to find out why he/she was not selected?

Answer: Yes! Ask! In accordance with Article 61, Section 3B the employee will be given the reasons, if they ask.

20. How can Title 38 employees be appointed to a Nurse Professional Standards Board?

Answer: An employee can make a written request to the Chief Nurse through their Nurse Manager. The Local Union can forward recommendations for Professional Standards Boards in accordance with Article 58 of the Master Agreement. The discretion as to who serves is management's. VA Handbook 5005, Part II, Chapter 3 identifies the authorized official at the national or regional level as the USH or designee, at the VISN level is the Network Director and facility level is the Director.

21. How much advance notice should a RN receive that their proficiency is due?

Answer: 90 days. See Article 59 of the Master Agreement.

22. What can I do if my proficiency was late and this caused my time-in-grade pay raise to be late?

Answer: Grieve VA's violation of their Directives/Handbook. VA Handbook 5007/30, Part III allows for retroactive pay adjustments.

23. Where do Title 38 employees find the criteria that they are to be evaluated on for their proficiencies?

Answer: VA Handbook 5005/27, Part II, Appendix G6 and on the Office of Nursing Service (ONS) website. vaww1.va.gov/nursing/qualification_standards.

24. Do Title 38 employees summoned to appear before a Disciplinary Appeal Board have the right to union representation?

Answer: Yes! Refer to Master Agreement Article 60 and VA Handbook 5021/3, Appendix A.

25. When does one start getting paid premium pay for evening shift?

Answer: Tour differential pay for Nurses, Pas, EFDA start at the beginning of the tour if 4 or more hours of the tour falls between 6pm and 6am. Refer to VA Handbook 5007/6, Part V, Chapter 6.

26. What is the evening differential rate?

Answer: "Tour differential rate is 10%." See; VA Handbook 5007/6, Part V, Chapter 6.

27. When does one get paid weekend differential?

Answer: Nurses, Pas, EFDA who perform service on a tour, any part of which is between midnight Friday and midnight Sunday, shall receive weekend differential pay. Refer to VA Handbook 5007/6, Part V, Chapter 6.

28. What is the weekend differential rate?

Answer: 25%. Refer to VA Handbook 5007/6, Part V, Chapter 6.

29. Where does one find the qualification standards?

Answer: Qualification Standards can be found in VA Handbook 5005, Part II.

30. What are the requirements for Nurse II?

Answer: These requirements can be found in VA Handbook 5005, Part II, Appendix G6 and on the ONS website. (vaww1.va.gov/nursing)

31. How does one nominate someone for the Secretary of VA Award for Excellence in Nursing?

Answer: Any VA employee may nominate another local VA employee by written memorandum to the Chief Nurse. See, VHA Directive 2006-062.

32. What appointments exist under Title 38?

Answer: Appointments under 38 U.S.C. 7401(1). Only full-time permanent appointments of Physicians, Dentists, Podiatrists, Optometrists, Chiropractors, Nurses/ Nurse Anesthetists, Pas and EFDA. These are subject to a two- year probationary period. Appointments under 38 U.S.C. 7401(3). Only full-time appointment of {Hybrid Title 38 employees} are made under this authority. These appointments are subject to title 5 probationary period.

Temporary Full-Time Appointment under 38 U.S.C. 7405(a)(1). General. Temporary Full-time authority is under this section. These appointments may be made when they are in the best interest of the service, such as under the following circumstances:

(1) To employ Individuals in occupations identified in sections 7401(1) and 7401(3) when the work to be performed by the employee is of a temporary nature and can be completed within a 3 year or shorter period.

(2) To employ Nurses, Nurse Anesthetists, Pas, EFDA, [or Hybrid Title 38 employees] pending processing of probationary appointments when the applicants meet the basic requirements for appointment. Such appointments may be effected without board action. This includes appointments above the minimal step of a grade for Nurses, Nurse Anesthetists, Pas, and EFDAs provided the application and related documentation show evidence of superior qualifications as described in section E, paragraph 2 of this chapter.

(3) To employ Physicians pending processing of probationary appointments when probationary appointments require the approval of the Under Secretary for Health or designee.

(4) To employ Residents who have just completed their formal VA residency training and are awaiting probationary appointment.

(5) To employ Annuitants.

(6) To employ Noncitizens when it is not possible to recruit qualified citizens for necessary services.

(7) To employ non-licensed Physicians, Dentists, Podiatrists, Optometrists and Chiropractors for utilization in research or academic positions or in positions where there is no direct responsibility for the care of patients. (See section, Paragraph 14).

(8) To employ non-licensed Physicians, Dentists, Podiatrists, Optometrists, Chiropractors, or unregistered Nurses and Nurse Anesthetists when the individual is to serve in a country other than the United States and the individual is licensed or registered in the country in which the individual is to serve. (See section, Paragraph 14 & 15).

(9) To employ Physicians in the research and Development Program as research associates who have been selected in accordance with procedures in M-3.

(10) To employ Physicians in the Distinguished Physician Program who have been selected in accordance with procedures in M-2, part I.

Part-Time and Intermittent Appointments under 38 U.S.C. 7405(a)(1) a. Use of Part-time and Intermittent Personnel

(1) It is VHA policy to use the services of qualified individuals on a part-time or intermittent basis when necessary to alleviate recruitment difficulties and in all cases where VHA work requirements do not support employment on a full-time basis. Decisions concerning utilization of part-time or intermittent employees must be related to patient care and other VA work requirements and supported by relevant staffing guidelines. Part-time physicians on adjustable work hours are also to be held accountable for providing the expected level of patient care and other services to VA as outlined in the Worksheet for determining Percentages on Memorandum of Service Level Expectations, Appendix B, VA Handbook 5011.

33. What is the probationary period for Title 38 employees appointed under 38 U.S.C. 7401(1)?

Answer: 2 years probationary period, as specified under 38 U.S.C. 7403(b)(1).

34. What is the probationary period for Title 38 employees appointed under 38 U.S.C. 7405?

Answer: Temporary employees generally don't have a probationary period. The Caregivers Act, PL 111-163 has specific language for Part-time RNs. Which states in part that part-time service that is performed by a registered nurse after May 5, 2010, is creditable toward completion of the two-year probationary prescribed in 38 U.S.C. 7403(b).

35. What part of Title 38 prohibits collective bargaining over matters arising from direct patient care?

Answer: 38 U.S.C. 7422 Professional conduct and competence.

36. What are the boards called that review Title 38 employees for performance and/or promotions?

Answer: Nurse Professional Standards Boards and (other discipline specific) Professional Standards Boards.

37. What is the board called that reviews probationary Title 38 employees when there is an issue with performance or conduct?

Answer: Summary Review Boards.

38. Who decides if an issue is Title 38 7422?

Answer: Secretary of the VA or designee/Under Secretary for Health.

39. What appeal is available to employees whose issue is deemed to be one of 38 U.S.C. 7422?

Answer: Disciplinary Appeal Board (DAB) for Major Adverse Actions or Grievance Examiners for Admonishment and Reprimands. See, VA Directive/Handbook 5021.