



Choose VA

VA's New Accountability Authority

38 U.S.C. 714

VA



U.S. Department of Veterans Affairs
Veterans Health Administration
Lebanon VA Medical Center

Employees Impacted by 38 U.S.C.:

38 U.S.C applies to:

- Title 5 Employees – Clerical, Administrative and Traditional Blue Collar
- Full-Time Title 38 Hybrid Employees – Social Workers, Psychologists, Medical Support Assistants, technologists, etc.

38 U.S.C does not apply to (except for abbreviated timeframe):

- Title 38 Employees (Physicians, Registered Nurses, Ophthalmologists, Dentists etc.)
- Part-Time, Intermittent or Temporary Title 38 Hybrid Employees.



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When Does 38 U.S.C. 714 Apply:

Is used for performance and conduct related actions which only involve “Adverse Action”.

- Suspensions \leq 15 days,
- Demotion
- Removal
- All other actions use the previously defined authorities 5 U.S.C. Chapters 43 and 75



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Significant Changes in Discipline Process

- Removes the requirement to place employees on a formal performance improvement plan (was 90 days)
- Changes the standard of proof from a “Preponderance of Evidence” to the lower legal standard of “Substantial Evidence”
- Shortens timeframe for employee response to a proposed action from 14 days to 7 days
- Management must decide within 15 days from proposal
- Shortens timeframe for employee appeal to the Merit Systems Protection Board (MSPB) from 30 calendar days to 10 business days
- Defines timeframe for MSPB decision to 180 days
- MSPB must sustain or vacate management’s decision based on substantial evidence and not mitigate a penalty(reduce or modify)



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