

## **FEDERAL LEGISLATIVE UPDATE - FECA REFORM**

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**October 21, 2011**

This is a summary of recent activity in Congress and at the U. S. Department of Labor regarding changes and proposed changes to the Federal Employees' Compensation Act (FECA).

### **1. Regulatory changes proposed in 2010**

On August 13, 2010, the U. Department of Labor's Office of Workers' Compensation Programs (OWCP) issued proposed regulations encompassing many changes to the regulations governing FECA. These were found at <http://edocket.access.gpo.gov/2010/pdf/2010-18965.pdf>. See item 8 below for current status of these regulatory changes.

The main changes involved expanding the list of scheduled members to include the skin (a pro-employee change), a new requirement that reconsideration requests must be received (not just mailed) within one year of an adverse decision, and incorporation of the ECAB's decision in K.R. (discussed in footnote below) regarding recurrences of disability.<sup>1</sup>

#### **Anti-employee proposed changes:**

##### Layoffs, recurrences and Loss of Wage Earning Capacity (LWEC) determinations

OWCP clarified 20 C.F.R. §§10.509 and 10.510 to provide that losing one's job as a result of downsizing of any sort (whether or not a formal Reduction in Force - RIF) does not constitute a compensable recurrence of disability, AND that when an employee loses his/her job due to such downsizing an LWEC should be established based on the last position the employee was performing before the downsizing, subject to the requirements of §10.510. Since the Postal Service steadfastly maintained that its massive National Reassessment Process (NRP) was not a

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<sup>1</sup> In early 2010, ECAB overturned its prior decision in K.R. and USPS, Docket No. 09-415 (Sept 30, 2009), with its decision in K.R. and USPS, Docket No. 09-415 (February 4, 2010). The Board in the latter decision ruled that a claimant's limited-duty position being withdrawn does not constitute a recurrence of disability under FECA, and therefore the injured worker is not automatically entitled to wage loss compensation if that injured worker already had a loss of wage earning capacity (LWEC) determination in place. This reverses the earlier K.R. decision and is in opposition to other aspects of federal employment law, under which an injured federal worker is entitled to "restoration to duty" within certain limitations after an industrial injury, and the later withdrawal of a limited-duty position is included in the definition of "failure to restore" the employee to duty - which is an appealable employment action. See 5 U.S.C. §8151; 5 C.F.R. §353.301; Merit Systems Protection Board (MSPB) cases such as Brehmer v. USPS, 106 MSPR 463 (2007); Barachina v. USPS, 2009 MSPB 227, 113 MSPR 12 (issued 12/14/09); Chen v. USPS, 2010 MSPB 129 (issued 07/08/10); Marquez v. USPS, 2010 MSPB 144 (issued 07/16/10); Kinglee v. USPS, 110 LRP 43007 (issued 07/23/10). MSPB recently issued a public request for *amicus curiae* briefs to be filed on this issue in Latham v. USPS, Docket No. DA-0353-10-0408-I-1 and related cases (pending), and the undersigned filed such a brief on 08/24/11. Joining in the brief were several other federal employee rights attorneys and WILG; OPM later filed an *amicus curiae* brief agreeing with our position. The February 2010 K.R. decision also conflicts with 20 C.F.R. 10.5(x): "... A recurrence also means an inability to work that takes place when a light duty assignment made specifically to accommodate an employee's physical limitations is ... withdrawn." An employee with an LWEC in place can still obtain FECA wage-loss benefits if he can show that his condition has deteriorated, or that the original LWEC was in error (including that the position that served as the basis of the LWEC determination was "odd-lot" or makeshift).

RIF<sup>2</sup> (as that would be contrary to the CBAs it has agreed to with Postal unions), and many of these job offers are seen as make-shift or odd-lot “positions”, these changes seemed directly aimed at Postal employees and at defeating their wage-loss claims after being affected by NRP. §10.510 sets forth the requirements for a position to serve as the basis of an LWEC determination. It states that the position must be a classified position to which the employee has formally been reassigned, must conform to the established physical limitations of the injured employee, must have a written position description outlining the duties and physical requirements, and must correlate to the type of appointment held by the injured employee at the time of injury. The Board’s decision in A.J.<sup>3</sup> (see footnote below) elaborates on and expands these pro-employee requirements for purposes of setting LWECs.

The proposed changes to §10.509 and §10.510 seemed designed to allow a federal employer, such as the Postal Service, to hire back injured workers in some capacity for a short period of time, then “downsize” the “position” that the injured worker returned to, and thereafter simply ask OWCP to set the injured worker’s permanent future LWEC based on the eliminated “position”. The Postal Service had already been doing this as a way of avoiding paying workers’ compensation benefits before these changes were proposed.

#### Contingency fees:

§10.702 and §10.703(b) – these sections state that contingency fees for attorneys are not allowed, even if the client agrees with the fee amount. This follows up on FECA Circular 09-03 issued 06/01/09 stating informally that such fees are not allowed but which was based entirely on legal precedents interpreting the pre-1999 regulations. This was an unnecessary attempt to further limit the right of injured workers to obtain competent legal counsel. When the fee rules were changed in 1999 it was on the basis that, as stated in the Federal Register at the time, “Section 10.702 implements a new procedure by which OWCP will automatically approve all fees unless the represented party objects to the amount billed.” OWCP backtracked on that change, for no good reason and based on its apparent desire to discourage or exclude attorneys from representing FECA claimants.

#### No mailbox rule for reconsideration requests:

§10.607 - changes the deadline for filing reconsideration requests from the mailbox rule (*i.e.*

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<sup>2</sup> According to a letter not disclosed publicly until July 2011, USPS discontinued NRP in January 2011.

<sup>3</sup> It is not all bad news for workers affected by the NRP. In A.J. and USPS, 61 ECAB \_\_\_\_, Docket No. 10-619, 110 LRP 39850 (June 29, 2010), the ECAB seems to have lowered the bar as to what kind of position will be considered “odd-lot” and therefore would be inappropriate to use in determining an employee’s LWEC. In A.J. the Board ruled that a claimant’s position was makeshift because:

1. It was created specifically for the employee and tailored to her medical work restrictions,
2. The position did not allow her to perform the general duties of a clerk, although it was described as a clerk position, and
3. There was no evidence that she would have been able to secure a position in the community at large that required such limited duties.

The Board also found the position was temporary, and therefore could not be the basis of an LWEC because there was no indication that the job offered was permanent; in fact, the employer had eliminated the position because it could no longer accommodate the appellant’s restrictions. This decision should make it easier for Postal workers affected by the NRP to petition OWCP to overturn LWEC ratings based on light duty or modified duty positions (but see the regulatory changes discussed herein).

deemed filed when placed into the mail stream) to "when received". This of course raises the question: how would one know exactly when OWCP receives anything – especially since they lose so many documents?

**Other anti-employee proposed changes:**

§10.18 - affirmative duty for beneficiary to report to OWCP any incarceration based on a felony conviction that would result in forfeiture of beneficiary's right to compensation.

§10.617 - changes hearings to being generally limited to one hour.

§10.511 - codifies ECAB law which delineates the only circumstances under which loss of wage-earning capacity can be modified, *i.e.*: only where the party seeking modification establishes that there is a material change in the nature and extent of the injury-related condition, the employee has been retrained or otherwise vocationally rehabilitated, or the original determination was erroneous.

§10.517 - when employee refuses to seek or accept suitable work, termination of compensation applies to prior injuries in which comp is payable as well as to the current claim.

§10.525 - employees must now report all employment activities including all outside employment in determining disability, even when the employment is dissimilar to their current job. Regarding this, §10.526 includes volunteer activities as well.

§10.618 - when changing a hearing request to a request for review of the written record, all evidence and argument must be submitted with that request.

§10.703 - OWCP can only approve OWCP fees and ECAB can only approve ECAB fees. When the fee is disputed, OWCP considers customary local charges for a representative with similar qualifications in considering what is a reasonable fee.

**Pro-employee proposed changes:**

Addition of skin as a body part on the schedule:

§10.404 - Includes the skin as an organ - 205 weeks compensation for total loss. Covers people suffering such losses on or after September 11, 2001. [Note – how would this be coordinated with the special fund set up for 911 first responders?]

Electronic submission of documents:

§§ 10.1,10.101,10.102, 10.103 and 10.105 revised to allow electronic submission of notices and claim forms by December 31, 2012.

Travel distance

§10.315 increases reasonable distance of travel up to a roundtrip distance of 100 miles for reimbursement.

Attendance at medical exams:

§10.32 - can allow another person at medical examination where someone needs assistance because s/he is hearing impaired or possibly needs an interpreter.

Miscellaneous:

§10.417 - reduces reporting requirements re dependency for adult children who are incapable of self-support to once a year. Also adds option to change dependency to permanent.

§10.501 allows OWCP to require less medical documentation for continuing benefits where circumstances merit such reduced documentation. Specifically for employees over 65 and with serious conditions not likely to improve (but still usually not less than once every 3 years).

§10.609 - OWCP won't wait to give Agency chance to comment on recon when comments from agency are not germane to the issue.

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### **Neutral proposed changes:**

§10.103 - OWCP can create a separate form for schedule awards.

§10.104 - clears up what a recurrence is and what is the basis for modifying a loss of wage earning capacity determination.

§10.606 – reconsideration requests must be signed and dated.

§10.712 - better clarification re third party claims and crediting.

§10.801 - clarifies how medical billing works.

New rules for non-citizen and non-resident employees of U.S., any territory, or Canada, re FECA coverage.

Public comment on these regulatory changes was invited through October 12, 2010. The author, on behalf of WILG,<sup>4</sup> filed detailed objections to some of the proposed changes on behalf of the WILG FECA Section. Unlike in prior years when proposed regulations were issued, OWCP received many hundreds of comments from the public and from law firms and employee organizations about the proposed changes to its FECA regulations. OWCP later adopted nearly all of its proposed changes, however (see item 8, below).

### **2. S.B. 4000**

“U. S. Postal Service Improvements Act of 2010” – introduced by Senator Collins in December 2010 (in the previous Congress), this bill dealt primarily with easing the Postal Service’s financial woes; but it also contained a section<sup>5</sup> proposing that injured federal employees be transitioned from OWCP (workers’ compensation) benefits to CSRS or FERS (federal civilian retirement) benefits at retirement age. Retirement age was defined as the age when the employee reached eligibility for Social Security retirement benefits under 42 U.S.C. §416(l)(1). As written, it would also have made retirement-age employees ineligible for any FECA benefits in the event of an industrial injury, in effect forcing them to immediately retire unless they simply did not file a FECA claim. This bill died in committee.

### **3. S.B. 261**

After the new Congress was seated in January, in February Senator Collins re-introduced the FECA-related provisions of S.B. 4000 as a stand-alone bill entitled “Federal Workers’ Compensation Reform Act of 2011”. The provisions are identical to the earlier bill. Senator Collins also requested that the Government Accountability Office (GAO) study what provisions existed in state workers’ compensation laws relating to continued receipt of workers’ comp benefits after retirement age. This bill has not been acted on.

### **4. S.B. 353**

Also in February 2011 Senator Collins re-introduced the FECA-related provisions of S.B. 4000 as part of another Postal Service financing bill entitled “U. S. Postal Service Improvements Act of 2011, Title III” The provisions related to FECA are identical to those in the other bills, S.B. 4000 and S.B. 261. This bill also has not been acted on.

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<sup>4</sup> Workers Injury Law & Advocacy Group, the nation’s only organization of attorneys dedicated to representing workers’ compensation claimants/applicants, with over 850 members and members in all 50 states. The author is Chair of the FECA Section of WILG.

<sup>5</sup> Title III – “Federal Workers Compensation Reforms for Retirement Eligible Employees”

## 5. FIERA

At about the same time as S.B. 261 was introduced, on February 9, 2011 OWCP invited various federal employee union officials to the Department of Labor's offices in Washington and made a presentation outlining OWCP's FECA reform ideas, which it called the "Federal Injured Employees' Reemployment Act of 2010". This is a comprehensive set of changes which would result in an overall decrease in workers' compensation benefits. When asked by one of the union officials whether there would be an opportunity to discuss these proposals before they were enacted, the OWCP officials said that would "not be necessary". Later, however, several of OWCP's proposals met with opposition from federal unions and some members of Congress at hearings (see below). While no bill on FIERA has been introduced in either House of Congress as of this writing, it was outlined and discussed in the three hearings on the Hill mentioned below, and it is still circulating as the basis for various reform proposals. Also on July 8, 2011 the Government Accountability Office [GAO] was asked to conduct, and is conducting, a study on how several of FIERA's key proposals would affect federal employees; the results of the study are not expected for several more months.

### SUMMARY OF OWCP'S FIERA PROPOSAL PACKAGE

Vocational rehabilitation – can start six months after an injury, even if the employee is not yet considered permanently disabled. Increases maintenance allowance paid to workers in rehab by 50%. Allows OWCP to reimburse employers who hire a previously injured federal worker for up to three years, and allows OWCP to reimburse federal agencies that reemploy injured workers after they suffer a recurrence of disability.

Total disability rates for new injuries payable at 70% of wages for all employees instead of at the current 66-2/3% or 75% of wages (for employees with dependents).

Total disability rates, for new injuries or periods of disability, reduced from 75% or 66-2/3% of wages to 50% of wages after the employee reaches Social Security retirement age and has been receiving benefits for at least a year.

Schedule award benefits payable at 70% of wages for all employees instead of at 66-2/3% or 75% of wages. All awards to be calculated on the pay rate of a GS-11 step 3 employee regardless of the injured employee's actual wages. Awards to be paid in a lump sum, and also may be paid while employee is receiving wage-loss benefits.

Schedule awards for disfigurement increased from maximum of \$3,500.00 to maximum of \$50,000.00, for new injuries, with this maximum adjusted yearly for cost-of-living increases.

Earnings reporting - Requires all disabled claimants receiving benefits for total or partial disability to report earnings, but eliminates this requirement, and the requirement to participate in vocational rehabilitation, after the employee's benefits are reduced due to reaching Social Security retirement age.

Death benefits payable at a maximum of 70% of deceased employee's wages for all dependents, reduced from current 75% maximum. Adds domestic partners as eligible survivors.

Continuation of Pay [COP] to be recouped by OWCP from third party settlements and credited to federal employing agency that paid it – currently COP cannot be recouped. 45-day period of COP increased to 135 days for employees injured in a zone of armed conflict, and COP for those employees is available for both traumatic and occupational disease claims.

Burial expense reimbursement maximum increased from \$800.00 to \$6,000.00 for new death claims.

Physicians' assistants and nurse practitioners are added to the list of recognized medical providers.

Election between workers' comp and retirement - Requires employees who have retired to permanently elect to receive either OWCP benefits or retirement (CSRS or FERS) benefits within a reasonable time after retiring.

Sanctions - Imposes a new sanction (suspension of benefits) against employees who fail to cooperate with OWCP field nurses. Cooperation with such nurses has been voluntary.

Matching of benefits and earnings - Allows new automatic matching of FECA recipients to those receiving earnings per Social Security records to eliminate improper payments.

Chargeback - Allows reimbursement of claims administration expenses to be paid from the Employees' Compensation Fund, and requires federal agencies for the first time to pay their fair share of these costs back to OWCP.

#### MAIN CRITICISMS THAT HAVE BEEN VOICED ABOUT OWCP'S FIERA PROPOSALS

Total disability benefits should not be reduced from 75% to 70% for employees with dependents, as those employees have higher living expenses.

Schedule award benefits should not be calculated on the pay rate of a GS-11 step 3 employee (currently \$53,639.00 per year), as that would drastically reduce awards for higher-paid employees, many of whom are law enforcement and other public safety officers.

Death benefits should not be reduced from current maximum of 75% of deceased employee's wages for all dependents to a maximum of 70%, since some deceased employees have several dependents and the number of such claims is relatively small.

Employees who have retired should not be required to permanently elect to receive either OWCP benefits or retirement (CSRS or FERS) benefits, since some of them retired early on disability retirement while their OWCP claim was not yet even decided, and they should not lose the much higher OWCP benefit if and when it is granted.

#### **6. Congressional hearings**

On April 13, 2011 a hearing entitled "*FECA: A Fair Approach*" was held in the House Committee on Oversight and Government Reform ["OGR"], Subcommittee on the Federal Workforce, chaired by Darrell Issa (R-CA). Witnesses were:

Gary Steinberg, Acting Director, Office of Workers' Compensation Programs, USDOL

Bill Siemer, Assistant Inspector General for Investigations, U. S. Postal Service  
Lisa McManus, President, CCS Holdings, L.P.  
Milagro Rodriguez, Occupational Health and Safety Specialist, American Federation of  
Government Employees AFL-CIO

At this hearing Mr. Steinberg outlined FIERA in detail. Mr. Siemer complained about fraud in the FECA system allegedly being perpetrated by Postal workers. Ms. McManus, whose firm is a private workers' comp claims administration service, argued for privatization of the FECA system. Ms. Rodriguez argued against any reduction in employee benefits under FECA.

On May 12, 2011 a hearing entitled "*Reviewing Workers' Compensation for Federal Employees*" was held in the House Education and Workforce Committee, Subcommittee on Workforce Protections, chaired by Tim Walberg (R-MI). Witnesses were:

Daniel Bertoni, U. S. Government Accountability Office  
Susan Carney, Human Resources Director, American Postal Workers Union AFL-CIO  
Elliot P. Lewis, Assistant Inspector General, U. S. Department of Labor  
Gary Steinberg, Acting Director, Office of Workers' Compensation Programs, USDOL  
Scott Szymendera, Congressional Research Service.

At this hearing, Mr. Bertoni testified about a 1996 GAO report on FECA and how he felt it was still relevant, based on secondary sources such as the Congressional Research Service, but not based on any legal analysis; he concluded that any proposal to replace FECA benefits with retirement benefits for older workers should be very carefully studied before being implemented. Ms. Carney voiced objections to the provisions that reduced employee benefits and certain other procedural changes, citing numerous reasons. Mr. Lewis made recommendations for changing the 3-day waiting period, cautioned against forcing FECA claimants onto the retirement rolls, favored allowing OWCP to gain SSA earnings information more easily, and favored bolstering OWCP efforts in the area of vocational rehab and return to work. Mr. Steinberg again outlined FIERA in detail, but curiously stopped short of advocating its adoption in legislation. Mr. Szymendera reviewed the history of federal employee workers' compensation laws and the various amendments to FECA since 1916.

Following these hearings in April and May, staffers for the Subcommittee on Workforce Protections began working on a piece of legislation to be proposed after the July 4<sup>th</sup> holiday that would reform FECA (see H.R. 2465, below).

On July 26, 2011 a hearing entitled "*Examining the Federal Workers' Compensation Program for Injured Employees*" was held in the Senate Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia. Witnesses were:

Christine Griffin, Deputy Director, U. S. Office of Personnel Management  
Gary Steinberg, Acting Director, Office of Workers' Compensation Programs, USDOL  
Andrew Sherrill, Director, Education, Workforce, and Income Security, USGAO  
Joseph Beaudoin, President, National Active and Retired Federal Employees Association  
Ronald Watson, Consultant, National Association of Letter Carriers, AFL-CIO  
Gregory Krohm, Executive Director, International Association of Industrial Accident  
Boards and Commissions.

At this hearing, Ms. Griffin argued against transferring retirement-age FECA recipients to federal employee pension benefits, and said she preferred OWCP's FIERA proposal to reduce FECA benefits at retirement age instead. Mr. Steinberg again outlined FIERA in detail. Mr. Sherrill discussed a previous related GAO report and reiterated its continued relevance. Mr. Beaudoin generally opposed all benefit reductions to active and retired employees. Mr. Watson opposed the reduction of benefits to 70% for all claimants and the mandatory switch to retirement for injured FECA claimants as unfair to employees, Mr. Krohm provided rather murky personal comments, not on behalf of IAIABC, comparing and commenting on some differences between FECA and state workers' compensation laws.

**7. H.R. 2465**

The result of the bipartisan efforts of the House staffers involved with the May 12 hearing was this bill, entitled "Federal Workers' Compensation Modernization and Improvement Act", which was introduced on July 8, 2011 and was quickly reported out of committee on July 13, 2011.

HR 2465 FECA Amendments	
District of Columbia employees	Amends §8101 to exclude employees of the District of Columbia, who have their own WC law effective 03/03/79.
Physicians' Assistants and Nurse Practitioners	Amends §§8101(3), 8103(b), and 8121(6) to provide that the services of Physicians' Assistants or Nurse Practitioners are covered medical services and allow them to certify disability for periods of COP in traumatic injury cases only.
Injuries outside of U. S.	Amends §8102(b) to strike outdated language, and to include injuries from terrorist attacks.
Schedule Award Disfigurement	Amends §8107(c)(21) - maximum of \$3,500 increased to \$50,000 for disfigurement of the head, face or neck, effective for injuries starting 3 years prior to date of enactment. Adds language adjusting this amount yearly using the existing FECA cost of living adjustment in 5 U.S.C. §8146a.
Social Security Provisions	Amends §8116 by adding section (e) to allow USDOL to require claimants to consent to release of SSA earnings records to OWCP as a condition of receiving FECA benefits.
Continuation of Pay / Zone of Armed Conflict	Amends §8118 to expand continuation of pay from 45 days to up to 135 days to ease benefit delivery for employees injured in a zone of armed conflict - applies to both traumatic and occupational injuries. Also increases time to claim COP from 30 to 45 days for these employees.
Subrogation-Continuation of Pay (COP)	Amends §§8131 and 8132 to allow COP cost to be recouped from Claimant's recovery from liable third party by DOL, credited to employing agency that paid it. Eliminates double recovery of wares.
Burial Expenses	Amends §8134 - Increases maximum benefit from \$800 to \$6,000 for burial expenses (applies to death claims after enactment) and adds language adjusting this amount yearly using the existing FECA cost of living adjustment in 5 U.S.C. §8146a.

Employees' Compensation Fund – claim admin. expenses	Amends §8147 to allow for payment of administrative expenses from the fund and to require agencies to pay their share of costs associated in administering the statute.
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The WILG FECA Section has supported this bill, as have several federal employee unions. As this bill contains only non-controversial revisions to FECA, it is widely viewed as not addressing the financial concerns driving FECA reform.

## **8. Regulatory changes adopted**

On June 28, 2011, while noting the many voices opposing several of the changes, OWCP adopted its regulatory change proposals nearly intact. The changes were effective August 29, 2011, and can be found at <http://frwebgate2.access.gpo.gov/cgi-bin/PDFgate.cgi?WAISdocID=bvP8VL/32/2/0&WAISaction=retrieve>. Notable was a change in the first sentence of 20 CFR §10.510 from ““A light duty position may form the basis of a loss of wage-earning capacity determination ...” to “A light duty position that fairly and reasonably represents an employee’s ability to earn wages may form the basis of a loss of wage-earning capacity determination ...” [emphasis added]; this change makes that Section a bit more palatable to claimants and is more in line with the Board’s A.J. ruling.

## **9. H.R. 2309**

This bill was introduced on June 23, 2011, sponsored by Darrell Issa (R-CA) and co-sponsored by Dennis Ross (R-FL); it affects employees covered by FECA as part of a larger plan to reorganize the Postal Service. Some effects of this bill would be:

- A. creates a Commission on Postal Reorganization to oversee Postal operations, with powers such as voiding existing Postal employee union contracts, recommending closure of Postal facilities, etc.;
- B. increases employee costs for health care coverage and life insurance at expiration of the current union contracts, and eliminate the right to collectively bargain over these benefits;
- C. eliminates Saturday delivery.

On June 23, 2011 this bill was referred to the House Committee on Oversight and Government Reform [“OGR”].

## **10. Ross Amendment to H.R. 2309**

“Postal Service Workers’ Compensation Reform” - This amendment to Cong. Issa’s bill, sponsored by Cong. Ross (R-FL) [“Issa-Ross Postal Reform Act”] and introduced on September 21, 2011, would create special workers’ compensation rules and procedures, within FECA just for Postal Service employees, including:

- A. giving the Postal Service the right to determine which doctors can treat injured workers (except for emergency treatment);
- B. limiting payment of disability benefits to “a total of not to exceed 104 weeks per incident” unless the [Postal Service approved] physician “finds that one or more temporary extensions are necessary or that the disability is permanent”;

C. reducing disability benefits to 50% of wages for employees who have reached Social Security retirement age [as in FIERA], after the employee receives current-level benefits for 12 months;

D. would apply to current benefits for all injuries to Postal workers, past and present.

On September 21, 2011 the Federal Workforce, U. S. Postal Service, and Labor Policy Subcommittee of OGR reported out this bill to the full committee. An October 5, 2011 hearing before OGR on this bill was canceled due to an inter-committee jurisdictional dispute.

## **11. Final Amendment to H.R. 2309**

News reports on October 13, 2011 stated that the Ross-Issa bill was reported out of committee in a different form – namely the FECA reform provisions were changed to provide that all U. S. Postal employees would be removed from FECA coverage to be placed into an as-yet-unnamed new workers’ compensation system. Exact language of this amendment is not yet available. It is felt that this change would be extremely harmful to the rights of injured Postal employees.

## **12. S. 1625**

On September 23, 2011 this bill was introduced by Senator McCain (R-AZ) as the “Postal Reform Act of 2011”, co-sponsored by Senator Tom Coburn (R-OK); it mostly deals with Postal reform issues, but it contains a section (Section 311) which provides as follows:

### SEC. 311. SENSE OF CONGRESS.

“It is the sense of Congress that--

- (1) the Postal Service should develop and manage a program to pay compensation for the disability or death of an officer or employee of the Postal Service which results from an injury sustained while in the performance of duty;
- (2) such program should include an automatic transition to retirement and provide a retirement pension based on the average salary of the officer or employee, determined as if such officer or employee had continued to receive basic pay from the date of injury to the date of retirement; and
- (3) officers or employees of the Postal Service receiving compensation for a disability from an injury sustained while in the performance of duty should be transitioned to the program described in paragraph (1).”

Thus this Senate bill appears to be a moderated version of Senator Collins’s various bills that would require “transition” from FECA benefits to retirement benefits for injured workers once they reach retirement age, and would require the worker be credited with time-in-service for the period between disability onset and retirement. This bill was read twice and on September 23, 2011 was referred to the Senate Committee on Homeland Security and Governmental Affairs.

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