

“VINDICATING FEDERAL EMPLOYEE RIGHTS THROUGH THE EEOC”  
CALIFORNIA EMPLOYMENT LAWYERS ASSOCIATION  
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OUTLINE OF REMARKS – STEVEN E. BROWN

This segment deals with other remedies that federal employees frequently have, independent of their discrimination claims. I am going to focus on workers’ compensation and disability retirement.

I find it very useful, when first interviewing a discrimination client, to try to determine what overall result the client is looking for. Does s/he want to continue working at the agency or not? What does s/he think about the prospect of working outside the federal sector? Does s/he have serious mental or physical health concerns? The answers to these questions may give some clues as to what remedies to pursue.

**WORKERS’ COMPENSATION**

Basic benefits:

The Federal Employees’ Compensation Act (FECA) provides benefits for federal civilian employees for the following types of injuries:

- **Accidental injuries** at the workplace may entitle the employee to continuation of regular pay and worker’s compensation benefits (*including medical care*) while unable to work.
- **Chronic exposures and repetitive injuries** such as Carpal-Tunnel Syndrome, noise exposure, etc., may also entitle the employee to the same benefits.

The basic workers’ compensation rights of injured workers are: to receive compensation for lost pay, to be afforded medical treatment and reimbursement for medical expenses, and (in some cases) to be vocationally rehabilitated after an industrial injury.

Coverage:

The FECA covers federal civilian employees who work for U.S. government agencies, including the Postal Service. Also covered are certain volunteers, Peace Corps personnel, and state law enforcement officers injured while apprehending a federal criminal, and others. Temporary employees and probationary employees are covered.

There are several other federal laws that govern work-related injuries, including:

The Jones Act covers seaman who are injured in the course of their service to a vessel in navigation. This can include workers on movable oil platforms and work boats, as well as ocean-going ships.

The Longshoremen's and Harbor Workers' Compensation Act (LHWCA) covers longshoremen and others working in maritime employment; extensions of the LHWCA covering defense base employees (Nonappropriated Fund Instrumentalities Act – NFIA, and Defense Base Act), oil platforms (Outer Continental Shelf Lands Act - OCSLA), and war injuries to civilians (War Risk Hazards Act);

The Black Lung Benefits Act (BLBA) covers mine workers.

The Federal Inmate Compensation system covers inmates in federal prisons; etc. Injuries may also give rise to other federal benefits such as Social Security payments.

Only the FECA covers federal civilian employees whose pay is issued from the Treasury. It is important to determine whether the employee is in fact a civilian employee of the government before assuming FECA applies.

Relationship to discrimination cases:

Employees who have suffered discrimination typically interact with the workers' compensation system in two ways: (1) they have a work-related disability and are being discriminated against because of it, or (2) they become emotionally disabled because of illegal discrimination and lose the ability to work. In addition, employees with ongoing discrimination cases who file workers' compensation claims may feel their FECA claims are interfered with in some way, in retaliation for their protected EEO activity.

FECA does not provide for damages for illegal discrimination, but it provides disability benefits for those unable to work. This disability may stem from emotional reaction to events at work. While FECA generally does not provide benefits for labor-management disputes, it will provide benefits if the employer is shown to have acted erroneously or abusively. OWCP may find such erroneous or abusive action even if there has been no finding of discrimination. If there has been a finding of discrimination, OWCP will accept that determination as evidence of facts that may prove up a claim. EEO settlements, however, do not qualify as "findings" of discrimination.

FECA also provides benefits for physical disabilities that may be either related or unrelated to any discrimination issue, and those benefits can affect the client's overall financial future.

Strategy:

Evaluate the strength and weaknesses of a FECA claim. If there is a reasonable chance of success, advise the employee to file a claim. Ultimately, the FECA claim could be worth far more than the discrimination complaint. Another advantage of pursuing a FECA claim is that it will provide the employee with certain restoration rights once (or if) the disability is overcome. Another advantage is that some FECA benefits are payable even while the employee is working or otherwise not losing pay.

There is no time limit or dollar limit on FECA benefits. The benefit for temporary total disability is either 66-2/3% or 75% of base pay, tax-free. Even if the employee partially recovers and can work, there is a benefit for residual loss of earning capacity.

## **DISABILITY RETIREMENT**

### General provisions:

Federal employees who become disabled from performing their regular job, whether or not due to on-the-job injuries, may be eligible for disability retirement. This "early-out" for disability is a program administered by the U.S. Office of Personnel Management, and is available under both retirement systems (CSRS and FERS) set up for federal employees. Federal regulations set out the requirements for a successful disability retirement application, but each case depends on its specific facts and the evidence presented.

### Time for applying:

With certain exceptions, an application for disability retirement must be received by OPM while the employee is still working for the federal government or within one year after employment ends. Specific medical information must be provided to OPM by the applicant. If the applicant is mentally incompetent, the time for filing may be extended. If the employee stops working but remains on the payroll, for example receiving administrative leave, sick leave, annual leave, or leave without pay, the time for filing does not begin to run.

### Relationship to discrimination cases:

Employees who have suffered discrimination typically consider disability retirement programs in two situations: (1) they are being discriminated against, either because of a disability or for some other reason, suffer a work stoppage and must replace lost income, and/or (2) they become emotionally disabled on a long-term basis because of illegal discrimination and lose the ability to work.

### Strategy:

In cases where there appears to be a long-term disability (likely to last one year or more after the disability retirement application is filed), consider discussing with the client the possibility of filing an application. EEO settlements can include provisions that the agency will not contest the application and will state on its portions of the forms that the employee's disability is too severe for it to reasonably accommodate. In mental disability cases, consider asking the client's doctor about the advisability of retirement. Determine whether the client's doctor(s) have already been recommending retirement.

The retirement benefit, once won, lasts a lifetime and can only be terminated if either (1) the employee fully recovers, *i.e.* becomes able once again to perform the full-time, full-duty requirements of the last federal position held, or (2) the employee earns, in any one calendar year, more than 80% of the current pay of the last federal position held.

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