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# Disability Retirement for Federal Employees

Patrick Purcell

*Congressional Research Service; Domestic Social Policy Division*

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# Disability Retirement for Federal Employees

## **Abstract**

[Excerpt] Federal civilian employees earn 13 days of paid sick leave per year. Sick leave can be used because of the worker's own illness or injury or to care for an ill or injured family member. A worker's employing agency can advance up to 30 additional days of sick leave to an employee who has exhausted his or her accrued sick leave. A federal worker with a long-term disability can separate from service through a disability retirement. A federal employee who sustains a disabling injury on the job can receive benefits under the Federal Employees' Compensation Act (FECA). FECA benefits consist of cash compensation, payment of medical costs related to the injury, vocational rehabilitation assistance, the cost of attendant care services, and burial benefits. A disabled federal employee may not receive a disability retirement annuity and FECA benefits simultaneously. This report will be updated as legislative developments warrant.

## **Keywords**

federal employees, disability, retirement, sick leave, Federal Employees' Compensation Act, FECA, benefits

## **Disciplines**

Disability Law

## **Comments**

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## CRS Report for Congress

# Disability Retirement for Federal Employees

Patrick Purcell  
Specialist in Income Security  
Domestic Social Policy Division

### Summary

Federal civilian employees earn 13 days of paid sick leave per year. Sick leave can be used because of the worker's own illness or injury or to care for an ill or injured family member. A worker's employing agency can advance up to 30 additional days of sick leave to an employee who has exhausted his or her accrued sick leave. A federal worker with a long-term disability can separate from service through a disability retirement. A federal employee who sustains a disabling injury on the job can receive benefits under the Federal Employees' Compensation Act (FECA). FECA benefits consist of cash compensation, payment of medical costs related to the injury, vocational rehabilitation assistance, the cost of attendant care services, and burial benefits. A disabled federal employee may not receive a disability retirement annuity and FECA benefits simultaneously. This report will be updated as legislative developments warrant.

Federal civilian employees may be compensated for periods of illness, injury, or disability through one of three systems: paid sick leave, disability retirement, or workers' compensation benefits for injuries sustained at work. In most cases, short-term illness or injury is compensated through paid sick leave. A federal employee who experiences a permanent disability can take a disability retirement before reaching the statutory retirement age. Disability retirement benefits differ between the two federal retirement systems: the Civil Service Retirement System (CSRS) and the Federal Employees' Retirement System (FERS). Federal employees hired before 1984 are covered by CSRS and those who were hired in 1984 or later are covered by FERS.<sup>1</sup> Employees enrolled in CSRS do not pay Social Security taxes and do not earn Social Security benefits while employed by the federal government. Employees enrolled in FERS pay Social Security taxes and earn Social Security benefits. Until age 62, disability retirement annuities under FERS are offset in part by the amount of Social Security benefits the annuitant receives.

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<sup>1</sup> Federal employees covered by CSRS were given the opportunity to switch to FERS during open seasons held in 1987 and 1998. For more information on CSRS and FERS, see CRS Report 98-810, *Federal Employees' Retirement System: Benefits and Financing*, by Patrick Purcell.

## Sick Leave

Workers who experience short-term illnesses or injuries can use paid sick leave to take time off from work. Federal employees accrue sick leave at the rate of 4 hours for each two-week pay period up to a total of 104 hours (13 days) per year.<sup>2</sup> Unused sick leave continues to accrue without limit throughout a federal employee's career. If an employee has exhausted his or her accrued sick leave balance, the worker's employing agency can advance up to 30 days of sick leave per year.<sup>3</sup> Ill or injured workers who have exhausted their accrued sick leave but who expect to be able to return to work can use their accrued annual leave or, in some cases, can take leave without pay until they have recovered and can return to work.

The federal government does not offer short-term disability insurance to workers who have exhausted their accrued sick leave and annual leave. The Federal Employees Leave Sharing Act of 1988 (P.L. 100-566) authorizes a voluntary leave bank program through which federal agencies may allow employees to donate unused *annual leave* to employees who have exhausted their accrued sick leave.<sup>4</sup> Employees cannot donate unused sick leave.

When a worker covered by CSRS retires, any unused sick leave that he or she has accrued is added to the employee's length of service for purposes of computing the employee's CSRS annuity.<sup>5</sup> Workers covered by FERS forfeit any unused sick leave when they retire.<sup>6</sup>

## Disability Retirement

### Civil Service Retirement System (CSRS)<sup>7</sup>

**Eligibility.** A federal employee enrolled in CSRS is eligible for a disability retirement if

- he or she has completed at least five years of creditable civilian service;
- the employee has a disability that results in deficient performance, conduct, or attendance or that is incompatible with the individual continuing to perform useful and efficient service in his or her job;
- a physician certifies that the disability is expected to last a year or more;

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<sup>2</sup> 5 USC §6307(a). If an employee separates from employment with a negative sick leave balance, it will be charged first against his or her annual leave and then against earnings.

<sup>3</sup> 5 USC §6307(d).

<sup>4</sup> 5 USC §6361-§6371.

<sup>5</sup> 5 USC §8339(m).

<sup>6</sup> See CRS Report RL32596, *Sick Leave: Usage Rates and Leave Balances for Employees in Major Federal Retirement Systems*, by Curtis W. Copeland.

<sup>7</sup> 5 USC §8337.

- the worker's employing agency is unable to accommodate the disability in the worker's current job or in an existing vacant position at the same grade or pay and in the same commuting area, and
- an application for disability retirement is filed with the employing agency before separation or with the Office of Personnel Management within one year of the date of separation from employment.

To be eligible for a disability retirement annuity, the employee does not have to be disabled for *any* employment in the national economy. Eligibility requires the employee to be unable to perform the job to which he or she was assigned or a job at the same pay in the same commuting area.

Unless the Office of Personnel Management (OPM) certifies that the individual's disability is permanent, an employee who has retired due to disability is required to undergo periodic medical reevaluations until age 60. If the individual recovers, disability annuity payments continue temporarily while the individual seeks reemployment. The disability annuity terminates at the earliest of (1) the date on which the individual is reemployed by the government, (2) one year from the date of a medical examination showing that the individual has recovered from the illness or disability, or (3) six months from the end of the calendar year in which the individual demonstrates that his or her earning capacity has been restored. The individual's earning capacity is deemed to have been restored if, in any calendar year, his or her income from wages, self-employment, or both is equal to at least 80% of the current rate of pay for the position he or she occupied immediately before retiring.<sup>8</sup>

**Annuity.** Under CSRS, a disabled worker is eligible for a retirement annuity equal to the *greater* of (1) the annuity that he or she would receive under the regular retirement formula, or (2) a minimum benefit that is the *lesser* of

- 40% of the average of the employee's highest three consecutive years of basic pay, ("high-three" pay), or
- the annuity that would be paid if the employee continued working until age 60 at the same high-three pay, including in the annuity computation the number of years of service and the years between the date of retirement and the date on which the individual would reach age 60.

The method of computing a CSRS disability retirement annuity assures that an employee will not receive a larger annuity through a disability retirement than he or she would receive from having worked to the minimum age and years of service required for a normal retirement. In general, a worker who becomes disabled after 22 or more years of federal service will receive an annuity computed under the regular CSRS annuity formula, regardless of his or her age. Because CSRS has been closed to new entrants since 1984, most federal employees covered by CSRS now have 24 or more years of

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<sup>8</sup> Earnings include wages, salaries, income from self-employment, and deferred compensation earned during the calendar year. Earnings do not include gifts, pensions, annuities, Social Security, workers' compensation, insurance proceeds, unemployment compensation, interest, dividends, rents, inheritances, capital gains, prizes, awards, or net business losses.

service. Under CSRS, a regular retirement annuity after 24 years of service would replace 44.25% of the worker's high-three average pay. A CSRS annuity after 30 years of service would replace 56.25% of a worker's high-three average pay. A federal employee covered by CSRS can take regular retirement with an immediate, unreduced annuity at age 55 or later with at least 30 years of service, at age 60 or later with at least 20 years of service, or at age 62 with at least five years of service. CSRS retirement annuities are indexed annually to the rate of growth of the Consumer Price Index (CPI), regardless of whether the individual retired due to disability or under normal retirement rules.<sup>9</sup>

## Federal Employees' Retirement System (FERS)<sup>10</sup>

**Eligibility.** A federal employee who is enrolled in FERS must have completed at least 18 months of service to be eligible for a disability retirement. All other eligibility rules for disability retirement under FERS are the same as under CSRS.

**Annuity.** Federal employees enrolled in FERS also are covered by Social Security, and the amount of a disability annuity under FERS is offset until age 62 by a portion of any Social Security Disability Insurance (SSDI) benefit that the individual receives. Federal employees covered by FERS who apply for disability retirement also must apply for Social Security disability benefits.<sup>11</sup> Eligibility for Social Security disability benefits requires a determination by the Social Security Administration that the individual is unable to perform substantial gainful activity in any job in the national economy.<sup>12</sup> Therefore, an individual covered by FERS may be determined to be disabled for purposes of his or her job with the federal government, but not with respect to other employment. In such a case, the individual would be eligible to receive a FERS disability annuity but be ineligible for SSDI. A federal employee who is disabled under both the FERS and Social Security statutes would be eligible to receive both a FERS disability annuity and a Social Security benefit, subject to the provisions of federal law integrating the two benefits.

For federal employees under 62 years of age, the FERS disability retirement annuity in the first year of disability is 60% of the individual's high-three average pay minus 100% of any Social Security benefit that he or she is receiving. In years after the first year of disability, the FERS disability annuity is 40% of the individual's high-three average pay minus 60% of any Social Security benefit that he or she is receiving. The FERS disability annuity remains at that level — adjusted annually by the FERS cost-of-living

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<sup>9</sup> For more information on COLAs under CSRS and FERS, see CRS Report 94-834, *Cost-of-Living Adjustments for Federal Civil Service Annuities*, by Patrick Purcell.

<sup>10</sup> 5 USC §8451- §8456.

<sup>11</sup> FERS disability benefits usually begin before the application for SSDI has been processed. If SSDI benefits are approved, the FERS disability annuity is offset by 100% of the SSDI benefit for the first 12 months of the annuity and 60% thereafter, retroactive to the SSDI eligibility date.

<sup>12</sup> The Social Security Act deems anyone who earns more than a certain monthly amount to be engaging in substantial gainful activity (SGA). In 2008, the monthly SGA amount for statutorily blind individuals is \$1,570. For non-blind individuals, the monthly SGA amount for 2008 is \$940. SGA for the blind does not apply to Supplemental Security Income (SSI), while SGA for the non-blind disabled applies to both Social Security and SSI benefits. See 42 U.S.C. §423(d).

adjustment — until the individual reaches age 62. When a FERS disability annuitant reaches age 62, the FERS annuity is adjusted to the amount that the individual would have received if he or she had continued to work until age 62. This ensures that an individual who retires from federal employment as the result of disability does not receive a higher annuity after this age than he or she would have received as the result of taking a normal retirement. The adjusted annuity at age 62 is equal to 1.0% of the individual's high-three average pay (increased by the FERS cost-of-living adjustments since the date of the disability retirement) multiplied by the sum of years of service performed before the date of disability retirement plus the number of years since that date. If the total number of years is 20 or more, the annuity is 1.1% of high-three average pay multiplied by this number of years. If an employee covered by FERS becomes disabled at age 62 or later, his or her FERS annuity is computed under the regular FERS retirement rules.

In most cases, the adjusted FERS benefit payable at age 62 will be lower than the annuity that was paid before age 62. However, at age 62 and later, the offset to the FERS annuity for any Social Security benefits that the individual may be receiving will cease. Also, a worker who was receiving a FERS annuity but was not eligible for SSDI can apply for Social Security retired worker benefits at age 62, provided that he or she has completed the required 40 quarters of employment covered by Social Security. The Social Security benefit will compensate in part for the reduction in the FERS annuity.

FERS disability annuities are adjusted for inflation beginning in the second year of payment. If the CPI has increased by 2.0% or less during the year ending on September 30, the FERS cost-of-living adjustment in the following January is equal to the percentage change in the CPI. If the CPI has increased by more than 2.0% but less than 3.0%, the FERS COLA is 2.0%. If the CPI has increased by 3.0% or more, the FERS COLA is one percentage point less than the increase in the CPI.

**FERS Annuity Adjustment for Periods of Workers' Compensation.** FERS retirement benefits consist of the FERS annuity, Social Security, and the Thrift Savings Plan. P.L. 108-92 (October 3, 2003) changed the computation of the FERS annuity for federal employees who are injured on the job. An injured employee cannot contribute to Social Security or to the Thrift Savings Plan while receiving workers' compensation. Social Security taxes and TSP contributions must be paid from *earnings*, and workers' compensation payments are not classified as earnings under either the Social Security Act or the Internal Revenue Code. As a result, the employee's future retirement income from Social Security and the TSP may be reduced. P.L. 108-92 increased the FERS basic annuity from 1.0% percent of the individual's high-three average pay to 2.0% of high-three average pay for the duration of the period when the individual received workers' compensation. This is intended to replace income that may have been lost from lower Social Security benefits and reduced income from the TSP.

## **Federal Employees' Compensation Act (FECA)<sup>13</sup>**

**Eligibility.** The Federal Employees' Compensation Act (FECA) provides benefits to federal employees who suffer a partial or total disability as the result of an injury incurred at work. In the event of the worker's death as the result of an on-the-job injury,

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<sup>13</sup> 5 USC, chapter 81.

FECA pays benefits to the worker's surviving dependents. FECA pays benefits only in the case of an illness, injury, or disability that is determined by the OPM to be work-related. Federal workers are covered by FECA immediately upon employment.

**Benefits.** FECA benefits consist of cash compensation, payment of medical expenses related to the illness or injury, vocational rehabilitation assistance, and payment for attendant care services. The cash payment is calculated as a percentage of average annual earnings prior to the individual's injury or death. FECA benefits are indexed annually to the rate of growth of the CPI. FECA benefits are not subject to income taxes.

FECA cash compensation equals two-thirds of lost earning capacity if the worker has no dependents or three-fourths of lost earning capacity if the worker has dependents. FECA payments may not exceed 75% of the maximum rate of pay for grade GS-15 of the general schedule, and in case of total disability, may not be less than the minimum pay for the GS-2 pay grade. FECA cash benefits continue as long as the disability lasts. Compensation does not end when the individual reaches retirement age. An injured employee may elect to receive a disability retirement annuity instead of FECA benefits, but may not receive both simultaneously. If an employee covered by FERS elects to receive FECA compensation, it will be reduced by the amount of any Social Security benefits that are based on the period of his or her federal employment. An election between FECA and a disability retirement annuity may be changed at any time. For certain listed injuries, minimum cash benefits are provided, regardless of how long the disability lasts. In case of injuries resulting from a specific incident, the employee's full pay continues for the term of the disability up to a maximum of 45 days, after which regular FECA compensation payments begin if the disability continues.

**FECA Death Benefits.** If a federal employee dies from a work-related injury, FECA pays cash compensation to the worker's surviving dependents. A surviving spouse receives annual compensation equal to 50% of the worker's last annual rate of pay. Benefits terminate if the surviving spouse remarries before age 60, although in the event of remarriage before age 60, the surviving spouse is paid a lump sum equal to two years of benefits. If the worker had both a spouse and dependent children, the spouse's benefit is equal to 45% of the worker's last annual rate of pay, and each dependent child receives a benefit equal to 15% of pay, up to a maximum family benefit equal to 75% of pay. If the worker had dependent children but no spouse, the compensation is equal to 40% of pay for one child and an additional 15% for each additional child up to a maximum of 75% of pay. A dependent child's benefit ends at age 19, unless he or she is incapable of self-support due to disability. In some cases, other surviving dependent relatives, including parents, siblings, grandparents, and grandchildren may be eligible for compensation, according to the extent of their financial dependence on the deceased worker.

**Death Gratuity Payment.** Section 651 of P.L. 104-208, the Omnibus Consolidated Appropriations Act for FY1997, authorizes the heads of federal agencies to pay a gratuity payment of up to \$10,000 to the executor of the estate of a federal employee who dies as the result of injury sustained in the performance of official duties after August 1, 1990.<sup>14</sup>

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<sup>14</sup> Also see CRS Report RS21029, *Survivor Benefits for Families of Civilian Federal Employees and Retirees*, by Patrick Purcell.