
Restoration Rights of Federal Employees Who Sustain Job-Related Injuries or Illnesses

This fact sheet provides Federal employees with a general overview of their restoration rights under section 8151, of Title 5, United States Code, following full or partial recovery from a compensable injury.

INTRODUCTION

The Federal Employee's Compensation Act (FECA) provides workers' compensation benefits to Federal employees who sustain job-related injuries or illnesses. The law also guarantees employees certain job rights upon recovery. Upon their return to work, employees will be treated as though they had never left for purposes of rights and benefits based upon length of service.

The law assigns a dual responsibility to the Department of Labor's Office of Workers' Compensation Programs (OWCP) and to the U.S. Office of Personnel Management (OPM). OPM administers the restoration rights provision of the law. OWCP administers all other aspects of the law.

WHO IS COVERED?

Virtually all Federal employees (including employees in the legislative and judicial branches), except those serving under time-limited appointment, have restoration rights upon full or partial recovery from a job-related injury or illness.

ELIGIBILITY FOR RESTORATION

To be eligible for restoration, the employee must have been receiving benefits from OWCP (or have been eligible for OWCP benefits).

NOTE: Receipt of a "schedule award" which OWCP pays to an injured worker for permanent impairment of a specified member, function, or organ of the body (e.g., an arm, foot, lung, or loss of vision or hearing) does not necessarily mean the individual has recovered for purposes of restoration rights. It only means that part of the body has reached maximum medical improvement. Restoration rights for full recovery are triggered when compensation is terminated on the basis of medical evidence that the employee no longer has residual limitations from the injury and can return to the former job without limitations.

DISABILITY RETIREMENT

Disability retirement and injury compensation are governed by two separate laws and are administered by two different agencies - OPM and OWCP. Thus, entitlement to one does not automatically establish entitlement to the other.

Ordinarily, an injured employee should apply for both disability retirement and injury compensation. If both are approved, he or she must decide between receiving one or the other. A person who chooses disability retirement instead of injury compensation has restoration rights, provided he or she applies for restoration as soon as the specific job-related injury has been overcome.

AGENCY OBLIGATIONS

An employee who sustains a job-related injury must be allowed to seek treatment from the physician of his or her choice without agency interference. The agency can require the employee to undergo a medical examination by its own doctors for the purpose of determining employability. An agency-required examination has no effect on the payment of compensation benefits by OWCP.



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An employee who is unable to perform the full duties of his or her position may be placed on leave without pay (LWOP) or separated at any time. This is a non-disciplinary action and has no effect on the employee's restoration rights upon recovery. However, an agency must tell an employee who is being separated or placed on LWOP, how benefits will be affected and what the employee's restoration rights are. The obligation to reemploy rests with the former agency; other agencies have no obligation to reemploy a recovered worker.

EMPLOYEE OBLIGATIONS

The employee has an obligation to cooperate with the agency, to keep the agency informed of his or her medical status, and to seek restoration as soon as the medical condition permits.

RESTORATION RIGHTS

The restoration rights of employees who sustain compensable injuries fall into four separate categories depending on the length and extent of recovery. Other factors affecting restoration rights are the timeliness of the application for restoration, the employee's performance and conduct prior to the injury, and the availability of positions.

Full recovery is determined by the cut-off of compensation on the basis that the employee is medically able to resume regular employment.

Note: For purposes of restoration rights, a position with the same seniority, status, and pay means a position that is equivalent to the former one in terms of pay, grade, type of appointment, tenure, work schedule, and, where applicable, seniority. Standing in the organization, such as first or second supervisory level, is not a factor.

Fully recovered within one year. An employee who fully recovers within one year from the date compensation began has mandatory restoration rights to the position he or she left, or to an equivalent position. An employee's basic entitlement is to a position in the former commuting area. If a suitable vacancy does not exist, the restoration right is agencywide. The employee must apply for restoration immediately and must be restored immediately and unconditionally by his or her former agency.

Fully recovered after one year. If full recovery takes longer than one year from the date compensation begins, the individual is entitled to priority consideration for the former position or an equivalent one, provided he or she applies for restoration within 30 days of the date compensation ceases. Priority consideration means the agency enters the individual on its reemployment priority list. If the agency cannot place the individual in the former commuting area, he or she is entitled to priority consideration for an equivalent position elsewhere in the agency.

Physically disqualified. An individual who is medically unable to return to his or her former occupation, but who is able to do other work, is considered to be physically disqualified. He or she is entitled, within one year of the date compensation begins, to be placed in a position that most closely approximates the seniority, status, and pay to which otherwise entitled, according to the circumstances in each case. This restoration right, too, is agency-wide. After one year, the individual is entitled to the same restoration rights as individuals who partially recover.

The difference between a physically disqualified employee and one who is partially recovered is that the partially recovered employee is expected to fully recover eventually. By contrast, the physically disqualified employee typically has a permanent medical condition, such as the loss of an arm, which is disqualifying and makes it unlikely that he or she will ever be able to return to the former position.



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Partially Recovered. An individual who has not yet fully recovered, but who is able to work in some capacity, is entitled to be considered for employment *in the former commuting area*. The agency must make every effort to place the employee but there is no absolute right to restoration. If the individual is restored at a lower grade or pay level, OWCP will make up the difference in pay, or the agency may elect to pay the employee at the former rate. If the employee later fully recovers, he or she is then entitled to the restoration rights of a fully recovered employee, according to the timing of the recovery.

A partially recovered employee has an obligation to seek employment within his or her capabilities. If a partially recovered employee refuses to accept a suitable job offer, OWCP may terminate compensation. OWCP determines whether an agency job offer is suitable according to the individual's medical restrictions, education, and vocational background.

EFFECT OF PERFORMANCE AND CONDUCT ON RESTORATION RIGHTS

If an employee was separated because of a compensable injury, the agency cannot refuse to restore the individual because of alleged poor performance prior to the injury. In other words, the agency may not use the injury as a basis to circumvent performance-based or adverse action procedures that would otherwise apply. However, an allegation of an on-the-job injury by an employee does not stop an agency from taking action against the employee for performance or conduct. If an employee is removed for cause (performance or conduct) he or she has no restoration rights.

STATUS UPON RECOVERY

An employee who is restored following compensable injury is generally entitled to be treated as though he or she had never left. This means that the entire period the employee was receiving compensation or continuation of pay is creditable for purposes of rights and benefits based upon length of service, including within-grade increases, career tenure, time-in-grade restrictions, leave rate accrual, and completion of the probationary period. However, an employee does not earn sick or annual leave while off the rolls or in a non-pay status. The injured employee is also generally entitled to be considered for promotion as though still present. This means that an employee who occupies a career ladder position, or whose position is reclassified at a higher grade, is entitled to be considered for promotion under the provisions of the agency's merit promotion plan. However, an employee on compensation is generally not entitled to a promotion unless it is clear that the employee would have been promoted if the injury had not occurred.

RIF PROTECTION

An injured employee enjoys no special protection in a reduction in force (RIF) and can be separated like any other employee. An injured employee separated by RIF has no restoration rights.

PLACEMENT IN OTHER AGENCIES

The primary responsibility to reemploy an injured worker rests with the employee's former agency. However, if the employee's executive branch agency has been abolished, or the legislative or judicial branch is unable to place employees eligible for competitive status, OPM will provide placement assistance.

APPEAL RIGHTS

Executive branch employees who are entitled to restoration or priority consideration because of a compensable injury, may appeal to the Merit Systems Protection Board as follows:

An employee who fully recovers within one year or who is physically disqualified, may appeal the agency's failure to restore or improper restoration.



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An employee who takes longer than one year to fully recover may appeal the agency's failure to place the employee on its reemployment priority list; the agency's failure to reemploy the individual from the priority list by showing that restoration was denied because of the employment of another person who otherwise could not properly have been appointed; or the agency's failure to place the employee in an equivalent position with credit for all rights and benefits.

A partially recovered employee may appeal by showing that the agency's failure to reemploy is arbitrary and capricious. If reemployed, the employee may appeal the agency's failure to credit time spent on compensation for all benefits based upon length of service.

Appeals must generally be filed with 30 calendar days of the action being appealed.

WHERE TO GO FOR HELP

Employees should direct all questions about compensation to the servicing OWCP office. Agency personnel offices can answer questions about restoration rights.



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