

INTRODUCTION

The Federal Employees' Compensation Act ("FECA"), passed in 1916, is one of the oldest federal employment laws. It has undergone some amendments over the years but has not changed significantly since 1974. While the law remained relatively unchanged, federal employees' working conditions have not. The FECA's drafters certainly could not have envisioned the types of injuries related to computer use or the proliferation of technology seen so frequently today. Physicians in 1916 were not using the term "carpal tunnel syndrome" to diagnose the compression of the median nerve due to repetitive keyboarding. The recent increase of telework and flexiplace agreements has resulted in a legal framework for determining when employees injured working at home may be entitled to compensation. So, while the law has not changed much in recent times, the FECA's application to ever-evolving work situations keeps it dynamic.

Most federal supervisors and many federal employees will at some point come into contact with the FECA for one reason or another. It may be because he or she has sustained an injury, witnessed an injury, or, in the case of a supervisor, needs to help process an employee's claim. The FECA is a complex law, often involving highly technical and difficult medical determinations. An employee who is injured on the job or a supervisor whose employee files a claim for workers' compensation will (fortunately) not need to learn the FECA's intricacies. The purpose of this book is to provide practical guidance that will enable an employee or supervisor to navigate a claim without being bogged down by overly-technical or legal information. To this end, I have kept citation to the law minimal and have attempted to illustrate certain points by using straightforward examples. Where statutes, regulations and ECAB decisions are quoted, I have provided citation to those authorities. The [Glossary](#) in the back of this book explains what those citations mean and how to find them. Also contained in the [Glossary](#) are definitions of select technical terms common to workers' compensation claims. The reader interested in a more detailed review and analysis is referred to *Federal Sector Workers' Compensation*, 4th Edition ([Dewey Publications, Inc. 2011](#)), along with lots of coffee.

Though, as noted, the FECA has not changed as much in recent years as many other federal employment laws, this guide describes the FECA, and the regulations, caselaw, and other guidance interpreting it, as it stood at the time of publication. Even if the FECA itself is not amended, some of the information in this book may still become outdated for a variety of reasons. For example, between the time I sent my manuscript off to be reviewed by the wonderful cadre of Dewey editors and the time of the book's final publication, the U.S. Supreme Court found the Defense of Marriage Act ("DOMA") unconstitutional. Accordingly, I had to change the book to reflect that DOMA will no longer preclude same-sex couples who live in states where same-sex marriage is legal from being considered "spouses" under the FECA. The supervisor who is involved in a FECA claim is advised to consult with the agency's legal and/or human resources department before taking any significant steps on an employee's FECA claim. The employee is likewise advised to consult

with an attorney or someone with comprehensive and up-to-date knowledge before acting on a claim.

I hope this book proves useful to the many federal employees and supervisors who are not, as part of their day-to-day duties, involved in workers' compensation claims. I welcome your feedback and comments.

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Eleanor Laws

CHAPTER 1

OVERVIEW: FEDERAL EMPLOYEES' COMPENSATION ACT

I. FECA BASICS

The Federal Employees' Compensation Act ("FECA" or "Act") is a federal law designed to provide medical benefits and wage loss compensation for federal employees injured in the course of performing their jobs. The Department of Labor is responsible for administering workers' compensation claims for federal employees and exercises this responsibility primarily through its Office of Workers' Compensation Programs ("OWCP" or "Office"). The Division of Federal Employees' Compensation ("DFEC") of OWCP processes employees' claims and makes a determination as to whether they are entitled to compensation or medical benefits. The Employees' Compensation Appeals Board ("ECAB" or "Board"), a completely separate part of the Department of Labor, is responsible for reviewing appeals of OWCP's determinations.

A. THE LAW

The FECA is a complex law that provides for the payment of workers' compensation benefits to civilian officers and employees of all branches of the U.S. government and individuals employed by the District of Columbia. It provides for the payment of compensation for wage loss and for certain permanent bodily impairments or disfigurements that result from injury, illness or death sustained while in the performance of duty. In addition to financial compensation, employees may receive reasonable medical and related services. In some instances, vocational rehabilitation services, aimed at returning employees to work, are provided. The Act also provides for payments to certain survivors of an employee whose death is the result of an employment-related injury and for payment of burial expenses. The FECA is in the United States Code at 5 USC Chapter 81.

B. REGULATIONS AND OTHER GUIDANCE

The Department of Labor issues regulations under the FECA, found in the Code of Federal Regulations at 20 CFR Part 10. The Department of Labor has done an outstanding job of interpreting the FECA by issuing its regulations in a plain English question-and-answer format. They are organized into subparts by topic and provide useful and user-friendly guidance. The FECA regulations can be accessed on the Government Printing Office's e-CFR website at www.ecfr.gov.

In addition to the regulations, OWCP issues the DFEC Procedure Manual (DFEC PM), which is extensive and updated regularly. The manual covers all aspects of claims processing and provides useful examples from ECAB case law. The DFEC PM is available on the Department of Labor's website at www.dol.gov/owcp/dfec/

[procedure-manual.htm](#). A more basic manual, also available on the website, is *Injury Compensation for Federal Employees*. <http://www.dol.gov/owcp/dfec/regs/compliance/agencyhb.pdf>. It provides comprehensive information but is much less detailed than the DFEC PM.

C. OWCP/DFEC ORGANIZATION

Initial claims for workers' compensation are filed with OWCP's local DFEC district office. The districts are broken down geographically, except for District 25, which handles the claims of all special category employees, discussed in more detail below. Claims should be filed with the district office having geographic jurisdiction over the agency facility where the employee works. The districts, and the areas they cover, are set forth in *Injury Compensation for Federal Employees*, Chapters 1–4:

District 1—Boston, MA: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.

District 2—New York, NY: New Jersey, New York, Puerto Rico, and the Virgin Islands.

District 3—Philadelphia, PA: Delaware, Pennsylvania, and West Virginia.

District 6—Jacksonville, FL: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.

District 9—Cleveland, OH: Indiana, Michigan, Ohio, and all special claims and all areas outside the U.S., its possessions, territories, and trust territories.

District 10—Chicago, IL: Illinois, Minnesota, and Wisconsin.

District 11—Kansas City, MO: Arkansas, Iowa, Kansas, Missouri, and Nebraska; Department of Labor employees except job corps enrollees and their relatives.

District 12—Denver, CO: Colorado, Montana, New Mexico (for cases April 1, 2010 forward), North Dakota, South Dakota, Utah, and Wyoming.

District 13—San Francisco, CA: Arizona, California, Hawaii, and Nevada.

District 14—Seattle, WA: Alaska, Idaho, Oregon, and Washington.

District 16—Dallas, TX: Louisiana, New Mexico (for cases prior to April 1, 2010), Oklahoma, and Texas.

District 25—Washington, DC: District of Columbia, Virginia and Maryland except when the injured worker's zip code begins 21***. Also handles Members of Congress and their staffs, White House officials and employees, Executive Office of the President, Architect of the Capitol, Library of Congress, employees of the Government Accounting Office, employees of the Capitol Hill Police, employees whose cases involve security consideration and employees of the OWCP Midwest Region and their relatives.

The address and telephone number of each district office can be found on the

Department of Labor's website at <http://www.dol.gov/owcp/contacts/fecacont.htm>.

Each district office has a director and at least two supervisory claims examiners. Reporting to them are claims examiners and senior claims examiners, who are responsible for processing claims and for making initial determinations as to whether an employee is entitled to compensation or other benefits. An employee dissatisfied with the claims examiner's determination has multiple levels of appeal within DFEC, including an evidentiary hearing with a DFEC hearing officer, as well as appeal to the ECAB. The employee's options are discussed in [Chapter 3](#).

D. EMPLOYEES' COMPENSATION APPEALS BOARD

Employees have a right to appeal decisions from OWCP to the Employees' Compensation Appeals Board. The Board consists of three judges appointed by the Secretary of Labor and it sits in Washington, DC. The ECAB issues written decisions in all cases. These decisions are final and not subject to judicial review. A party may, however, petition the Board for reconsideration of a decision within 30 days of its issuance.

ECAB decisions dating back through 1998 are published on the Board's website at www.dol.gov/ecab/decisions.htm and are indexed by year. Decisions also can be searched by keyword, date and/or topical index on [Cyberfeds \(www.cyberfeds.com\)](http://www.cyberfeds.com), administered by LRP Publications on a fee-for-service basis.

II. EMPLOYEES COVERED

The FECA applies to all civilian officers and employees in all branches of the United States government and the government of the District of Columbia. The definition of "employee" appears in the FECA at 5 USC § 8101(1) and is more cumbersome than useful. The categories of individuals covered under the FECA's definition of "employee" encompass groups of individuals who technically are not employees of the United States government, though usually the benefits to such groups are less generous. In most cases it is obvious whether an individual is an employee. In cases where it is not so obvious, the supervisor need not worry because somebody at OWCP will make this determination.

OWCP makes two inquiries when considering whether a claimant is an employee within the meaning of the FECA. First is whether the employer is a branch of the United States government as defined by the Act as a component of the legislative, judicial, or executive branch. Second is whether the claimant actually was employed as an officer or employee of the branch of government claimed. The answer to the first question usually is clear; the same is not always true of the second question.

A. APPLICANTS FOR EMPLOYMENT

Unlike some employment statutes, applicants for employment are not covered under the FECA. Although, there are instances where an individual who has not yet attained the status of "employee" may be covered. The most common situations involve casual employees or employees who are injured right around the time

employment is about to begin. Injuries from pre-employment examinations, vaccinations, and like situations may be covered even if the individual is not yet technically an employee. In unclear cases, an OWCP claims examiner will determine coverage.

B. INDEPENDENT CONTRACTORS

Independent contractors are not covered under the FECA. Whether an individual is an employee of the federal government or an independent contractor is determined largely by examining how much control the government asserts over the employment relationship. In general, the more control asserted over the individual, the more likely he or she is an employee and not an independent contractor. Among all the factors, the Board has held that the right to control the work activities of the person whose status as an “employee” is at issue is the most important factor. As with applicants for employment, supervisors need not concern themselves too much with whether an individual is an employee or contractor. An OWCP claims examiner will make this determination if it is unclear.

C. MEMBERS OF CONGRESS

Members of Congress are covered by the FECA and must pursue work-related injuries under the FECA the same way as other federal employees.

D. U.S. POSTAL SERVICE

The Office has considered whether two particular classes of individuals who perform services for the U.S. Postal Service should be considered employees or independent contractors. In each case—mail messengers and contract job cleaners—OWCP has decided to reserve judgment on these classes of individuals and decide on a case-by-case basis. A senior claims examiner determines whether individuals in these categories are employees.

E. OTHER EMPLOYEES

Congress has granted several groups of volunteers, members, and trainees FECA coverage. In most cases, though, the benefits provided are less than benefits provided to federal civilian employees. These are spelled out in the FECA and will not be of concern to the vast majority of federal supervisors. In addition to employees named in the FECA, OWCP has determined that certain other groups are covered. They are detailed in the DFEC PM, Ch. 2-0802.

Non-federal law enforcement officers may be covered under the FECA if they are engaged in apprehending a person committing a crime against the United States; a person sought for committing a crime against the United States; or a person sought as a material witness in a criminal proceeding initiated by the United States.

While most do not consider jury duty particularly hazardous, petit and grand jurors are nonetheless covered by the FECA during the period of their service. The pay rate, for compensation purposes, for grand or petit federal jurors will be that of a

GS-2, step 1, unless the juror is a federal employee. In that case the pay rate is based on the juror's actual federal employment.

Individuals in Department of Veterans Affairs' Volunteer Service Program are covered if they are rendering services similar to those performed by employees. A claims examiner or senior claims examiner from OWCP will make this determination. Attendants authorized to travel with Department of Veterans' Affairs' patients are considered employees while engaged in authorized travel.

III. EMPLOYEES EXCLUDED

The FECA excludes from coverage:

- certain commissioned officers of the Regular Corps and active duty Reserve Corps of the Public Health Service,
- commissioned officers of the Environmental Science Services Administration, and
- members of the Metropolitan Police or the Fire Department of the District of Columbia who are pensioned or pensionable under certain sections of the District of Columbia Code.

A. FEDERALLY FUNDED ENTITIES

An employee of a private institution that is the recipient of federal funds is not an employee for purposes of the FECA. Such an institution is not a branch of the government or a wholly owned government corporation. The government cannot hire, fire, or control the activities of the institution's employees. For example, the Board has determined that an employee of Gallaudet University, which receives federal funds, is not employee under the FECA.

B. COMMUNITY WORK EXPERIENCE PROGRAMS PARTICIPANTS

Community Work Experience Programs participants are excluded from coverage under the FECA for all injuries arising after 1984. Compensation is still payable for eligible dependents, but at a reduced rate.

C. INCARCERATED FELONS

An otherwise-covered employee is not entitled to receive compensation during a period of incarceration for a felony. This period is not restored upon release. If the claim was pending at the time of conviction, any compensation for periods prior to the incarceration is payable when the claimant is released. Compensation may resume after release, but the compensation payable for the periods of incarceration is permanently forfeited.

IV. BENEFITS

The basic terms of eligibility for compensation due to work-related injuries, illnesses, or death are set forth in the FECA at 5 USC § 8102. The benefits can be broken down into five basic areas:

- (1) compensation for loss of wages or wage-earning capacity;
- (2) compensation for permanent disfigurement or loss of use of a body member;
- (3) payment of medical and related expenses;
- (4) payment for vocational rehabilitation services; and
- (5) death benefits.

The FECA does provide other benefits. Each of the five areas of benefits is summarized below.

A. LOSS OF WAGES

Perhaps the most obvious benefit provided by the FECA is compensation for wages lost due to a work-related injury or illness. In order to receive wage-loss compensation, an employee must be considered disabled under the FECA. The FECA defines “disability” as: “The incapacity, because of an employment-related emotional injury, to earn the wages the employee was receiving at the time of injury.” 20 CFR § 10.5(f). A disability may be total, meaning the employee can perform no work at all, or partial, meaning the employee can perform some work but not his or her pre-injury job.

The basic rate of wage-loss compensation for an employee who is unable to work at all because of a work-related injury is 66 2/3% of the employee’s monthly pay. This basic rate of compensation may be augmented to 75% if the employee has dependents. The actual compensation received, however, is determined by whether the injury results in a total or partial disability. In cases involving partial disability, where the employee can no longer do his or her pre-injury job but retains the ability to do some work, the FECA provides compensation for the loss of wage-earning capacity instead of actual wages lost. Wage loss compensation is discussed in more detail in [Chapter 11](#).

B. PERMANENT IMPAIRMENT

An employee who suffers a permanent impairment involving the loss, or loss of use, of a member or function of the body or disfigurement or disfigurement of the head, face, or neck is entitled to be compensated for that loss in the form of a schedule award under 5 USC § 8107(a). At first blush, it may seem crass to set forth such a schedule of benefits, reducing the loss of limbs and organs to a set number of weeks of compensation. No consideration is given to the particular circumstances in which such a loss occurs provided it falls within the basic parameter of being work-related. On the other hand, workers compensation was not meant to be a

substitute for litigation where the nature and extent of damages is hotly disputed. Instead, the overall purpose is to provide a quick and, hopefully, equitable means of resolving claims.

Section 8107(c) of the FECA provides the following compensation schedule:

- (1) Arm lost, 312 weeks' compensation.
- (2) Leg lost, 288 weeks' compensation.
- (3) Hand lost, 244 weeks' compensation.
- (4) Foot lost, 205 weeks' compensation.
- (5) Eye lost, 160 weeks' compensation.
- (6) Thumb lost, 75 weeks' compensation.
- (7) First finger lost, 46 weeks' compensation.
- (8) Great toe lost, 38 weeks' compensation.
- (9) Second finger lost, 30 weeks' compensation.
- (10) Third finger lost, 25 weeks' compensation.
- (11) Toe other than great toe lost, 16 weeks' compensation.
- (12) Fourth finger lost, 15 weeks' compensation.
- (13) Loss of hearing—
 - (A) complete loss of hearing of one ear, 52 weeks' compensation; or
 - (B) complete loss of hearing of both ears, 200 weeks' compensation.
- (14) Compensation for loss of binocular vision or for loss of 80 percent or more of the vision of an eye is the same as for loss of the eye.
- (15) Compensation for loss of more than one phalanx of a digit is the same as for loss of the entire digit. Compensation for loss of the first phalanx is one-half of the compensation for loss of the entire digit.
- (16) If, in the case of an arm or a leg, the member is amputated above the wrist or ankle, compensation is the same as for loss of the arm or leg, respectively.
- (17) Compensation for loss of use of two or more digits, or one or more phalanges of each of two or more digits, of a hand or foot, is proportioned to the loss of use of the hand or foot occasioned thereby.
- (18) Compensation for permanent total loss of use of a member is the same as for loss of the member.
- (19) Compensation for permanent partial loss of use of a member may be for proportionate loss of use of the member. The degree of loss of vision or hearing under this schedule is determined without regard to correction.

- (20) In case of loss of use of more than one member or parts of more than one member as enumerated by this schedule, the compensation is for loss of use of each member or part thereof, and the awards run consecutively. However, when the injury affects only two or more digits of the same hand or foot, paragraph (17) of this subsection applies, and when partial bilateral loss of hearing is involved, compensation is computed on the loss as affecting both ears.
- (21) For serious disfigurement of the face, head, or neck of a character likely to handicap an individual in securing or maintaining employment, proper and equitable compensation not to exceed \$3,500 shall be awarded in addition to any other compensation payable under this schedule.
- (22) For permanent loss or loss of use of any other important external or internal organ of the body as determined by the Secretary, proper and equitable compensation not to exceed 312 weeks' compensation for each organ so determined shall be paid in addition to any other compensation payable under this schedule.

Regulations have added other body parts, including the breast, kidney, larynx, lung, penis, testicle, tongue, ovary, uterus/cervix, vulva/vagina, and skin. The entitlement of an award for "serious disfigurement" of the head, face or neck does not extend to other body parts. Employees who are partially or totally disabled after the schedule award benefits are exhausted may receive wage-loss compensation.

The determination of schedule awards is extremely technical and derived from established medical criteria. Beyond receiving the notice of injury and forwarding it to the Office as it would with any injury, the agency has no meaningful role in the adjudication of a schedule award claim. Because of this, there is not a separate chapter in this book devoted to schedule awards. For the reader desiring to learn more about schedule awards, the DFEC PM offers extensive guidance, as does *Federal Sector Workers' Compensation*, 4th Edition ([Dewey Publications, Inc. 2011](#)).

C. MEDICAL BENEFITS

The FECA provides for payment of medical expenses for work-related injuries. Unlike benefits for loss of wages, medical benefits are not determined by whether an injury results in a total or partial disability or whether any disability is permanent or temporary. Even the employee who loses no work time as the result of an injury is entitled to medical treatment under the Act if such treatment is required because of a work-related injury.

The Employees' Compensation Fund is authorized by 5 USC § 8147, which establishes a fund separate from the general treasury for payment of workers' compensation medical expenses. Medical expenses and other medical benefits are discussed in [Chapter 10](#).