

Federal and Public Sector Retirement

Disability Retirement

Federal Employee Disability Retirement

Federal employees, in both the Civil Service Retirement System (CSRS) and the Federal Employees Retirement System (FERS) are eligible for [disability retirement](#) should the need arise. In order to be eligible for such retirement, CSRS employees generally must have five (5) years of federal service and FERS employees must have 18 months of creditable service.

While disability retirement before the Office of Personnel Management (OPM) can be a detailed and complex process in many cases, entitlement to these benefits is based on a disability that is suffered by the federal employee that prevents them from performing the duties of their individual position. It is not necessary that the disability be related to an on-the-job injury. This distinguishes federal disability retirement from the on-duty requirements of injuries for purposes of federal workers compensation through the Department of Labor, Office of Workers' Compensation Programs (OWCP). It is important to have an OPM disability retirement lawyer advise and assist federal employees in the applications and/or appeals process before OPM.

A key component of disability retirement is the requirement that the application be filed no later than one (1) year from the date of a federal employee's separation from employment. We advise our clients to file for disability early due to the strict filing deadlines. If disability retirement is ultimately approved, an individual is still generally permitted to maintain other, non-federal employment, subject to an 80% earnings limitation which is helpful to many annuitants. Disability retirement can be terminated by OPM only under certain conditions which rarely occur. These include the following conditions: (1) the individual has medically recovered from their disability condition; (2) the individual exceeds the 80% earnings limitation in their new employment; or (3) the individual is reemployed in the federal service in an equivalent position held prior to retirement.

The Federal Employee Disability Retirement Process

When the decision to file for disability retirement is made and the federal employee is still employed, the first step is to work through an attorney to confirm that the federal agency cannot accommodate the individual in another position. A key component of the disability retirement application process is to obtain the assistance of the physician(s) who will be providing the key documentation needed for the approval process.

Typically, it is important to confirm that the federal agency cannot accommodate the federal employee's disability by placing them in another position. This issue generally has not been a significant hurdle in our experience. Furthermore, there is a requirement that the disability involved must be expected to last for at least one (1) year.

The disability retirement process can be initiated while a federal employee is still employed by

the federal government or after they have been separated (up to one year following separation). We also advise the federal employee, in conjunction with his or her OPM disability retirement application, to apply for social security benefits as is required for processing.

Our OPM disability retirement attorneys assist federal employees in the preparation of their OPM disability retirement applications. We work with the individual's personal physicians, represent the individual before his or her federal agency and/or directly work with OPM in preparing the disability retirement application for submission. Typically, a current federal employee's agency will process the disability retirement application through the agency. If a federal employee has been separated for more than 31 days, the individual is usually required to submit his or her disability retirement application directly to OPM. In either case, it is important to work with the federal employee's personal physician(s) to best facilitate the documentation needed for approval. It is important to supply as much medical documentation and other witness documentation in support of the disability as possible.

OPM Reconsideration and MSPB Appeals

Following submission of the disability retirement package to OPM, our law firm also represents federal employees in reconsideration requests before OPM where initial applications for disability retirement have been denied. In such situations, it is important to act quickly and with as much additional documentation in support of the disability retirement application as possible. Typically, there is a 30-day window in which to submit additional documentation or evidence to OPM when requesting reconsideration of OPM's initial decision. In cases where OPM has denied a disability retirement application following reconsideration, we further represent federal employees in appeals of final adverse OPM decisions with respect to disability retirement before the MSPB. In cases where the MSPB does not reverse OPM's adverse decision, we also represent federal employees before the U.S. Court of Appeals for the Federal Circuit on disability retirement matters.

We Can Help

It is very important for federal employees considering disability retirement to obtain legal advice and counsel to discuss their retirement issues prior to filing an application for disability retirement. Berry & Berry, PLLC represents and advises federal employees nationwide and abroad before their individual federal agencies, OPM and the Merit Systems Protection Board (MSPB) in regard to their federal disability retirement applications and requests for reconsideration. In addition, we also advise federal employees, in advance, as to their potential eligibility for federal disability retirement benefits. Please [contact our firm](#) to schedule a consultation with one of our disability retirement attorneys to discuss your individual disability retirement issue.