

## Disability Retirement in the Federal Sector

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During the course of a career in the federal government, an employee may encounter debilitating medical issues that make it very difficult to continue employment. Federal government employees in the FERS and CSRS systems are generally eligible for disability retirement depending on their time in service. FERS employees typically must have 18 months of service and CSRS employees must have approximately 5 years of service.

Disability retirement applications should be reviewed by an experienced attorney before the process begins. Often times there are crucial differences between filing for this type of retirement while still employed in federal service and being removed from federal service for the inability to perform the duties of a position. It is important to understand that while many human resources employees at federal agencies may be helpful, employees should not rely on their assistance because they may not provide the most accurate or helpful advice. Their client is the federal agency for which they work, not the federal employees that work for the agency in question. Many times an agency, for its own reasons, would prefer to see an employee resign or apply for early disability retirement, which can hurt an individual's chances for a successful application.

Federal employees can face many different problems when going through this difficult process. Obtaining legal advice at the beginning of the process, before submitting any documentation or filing an application, can give federal employees the best chance of success at obtaining disability retirement from the Office of Personnel Management (OPM).

It is crucial that federal employees, when considering whether to apply for disability retirement, obtain legal advice on many important issues. Two of the more typical questions that come up are as follows (although many different types of issues can arise and should be reviewed on a case-by-case basis):

- 1. Should a federal employee apply for disability retirement early or wait for their federal employer to take action in removing them from employment based on their inability to perform their duties?** Depending upon the circumstances, it may often times be advantageous for a federal employee to be removed from employment rather than voluntarily apply for disability retirement while employed in order to give the employee the best opportunity for his or her application to be accepted by OPM.
- 2. Is a federal employee's "disability" well defined in the United States Code and other applicable regulations?** If the medical condition does not qualify a person as disabled, an application can often be denied. An individual can usually ensure the best opportunity for a successful disability retirement application by utilizing the services of an attorney to work with his or her physicians to thoroughly articulate the individual's medical difficulties and the reasons why these constitute a covered disability.

Typically, the first step in the OPM disability retirement process is an employee's realization and/or acknowledgement that he or she cannot continue in his or her current position. The employee seeks medical attention and is told that he or she has medical limitations. These can be physical or mental, and can be very serious. A federal agency sometimes can be compassionate and cooperative in enabling a federal employee's continued employment, and it may even accommodate a federal employee's physical or mental needs to allow him or her to stay employed with the agency.

However, this is not always the case. Many agencies will attempt to place the employee on administrative leave, sick leave, leave without pay, or in other unfavorable circumstances to encourage him or her to resign. If that does not work, and the agency really wants the employee to leave, then it may attempt to remove the federal employee on the basis of his or her disability or for non-disability related reasons. Removal, solely on the basis of disability, can be a positive development in certain cases (in the right situation), as the law often presumes that if the federal employee is disabled then he or she should qualify for disability retirement. This sometimes will make it easier to prevail in the federal employee's application with OPM. However, if the action is based on misconduct, then the federal employee will not be able to obtain retirement relief.

A number of issues may arise in the processing of disability retirement applications, such as when to file the application, the deadlines for filing, how to obtain helpful medical statements and other issues; therefore, it is important for an individual to seek legal advice early in the process. This article is only intended for general information. Disability retirement issues are extremely individual in nature and vary in each case. Federal employees should consult with an attorney for specific legal advice.

Berry & Berry, PLLC specializes in assisting individuals with disability retirement applications and providing legal advice involving the application process. Please contact us at (703) 668-0070 to schedule an initial consultation with an attorney to discuss your disability retirement issue.

## Attorneys

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## Practice Areas

Disability Retirement