



Disability Retirement and Problem Employees

Working for America

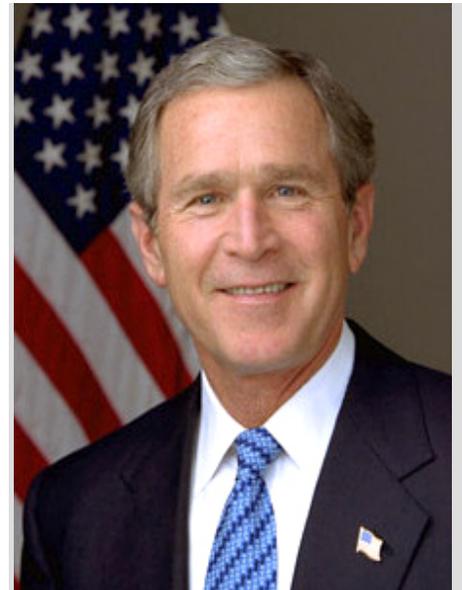
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Message from the President

We want younger workers to own and manage their own retirement under Social Security, so that one day every worker can have the security of a personal account.

- George W. Bush



Message from the Director



“We all know that we never cease to learn and that we are better workers, better Americans and better people for it.”

- Kay Coles James

Definition

- **An employee benefit intended only for those employees who are unable to complete a normal career due to disease or injury, and who meet the statutory and regulatory criteria**
- **Disability retirement should be the last resort**



Statutory and Regulatory Provisions

- 5 U.S.C., Section 8337 – CSRS
- 5 U. S C, Section 8451 – FERS
- 5 CFR 831.502 and 831.1203 – CSRS
- 5 CFR 844.104 - FERS



Criteria for Entitlement



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Criteria for Entitlement

Definition of Disability

- **Unable to render useful and efficient service because of a disease or injury**
 - **In the employee's current position, or**
 - **In a vacant position in the same agency at the same grade or pay level for which qualified for reassignment**



Factors for Establishing Disability

- **Deficiency in service**
- **Medical condition**
- **Relationship between service deficiency and medical condition**



Factors for Establishing Disability

- **Duration of a year or more**
- **Non pre-existing**
- **Inability to reasonably accommodate**
- **Inability to reassign**



Minimum Service Requirement

CSRS

- 5 years creditable civilian service
- Become disabled while serving in a position covered by CSRS
- CSRS Offset, must apply for Social Security and submit proof with application to OPM



Minimum Service Requirement

FERS

- 18 months creditable civilian service
- Become disabled while serving in a position covered by FERS
- Must apply for Social Security and submit proof with application to OPM



Reasonable Accommodation

- **Adjustment to a job or work site that enables a qualified handicapped person to perform essential duties**
- **Any action which the agency would be obligated to take under The Rehabilitation Act of 1973**



Reassignment

- Reviewing vacant positions at the same grade, pay and tenure within the commuting area for which the person is qualified
- Agency not obligated to create a position for a disabled employee



Reassignment

- Agency should notify OPM of employee's refusal and take whatever action is necessary
- An employee's refusal to accept a reassignment to a vacant position terminates agency's obligation to identify any other position



Retirement



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Duration of Disability Annuity

- A disability annuity continues unless any of the following occurs:
 - Medical recovery
 - Restoration to earning capacity
 - Re-employment
 - Administrative recovery



Medical Recovery

- **Medical conditions are re-evaluated through a survey until the age of 60**
 - **If no response is received to the survey, the annuity is suspended**
 - **If survey reveals medical recovery, disability benefits are terminated 12 months from the date of the medical examination on which recovery is found**



Restoration

- Earnings limitation is 80% of the current rate of pay of the position which the annuitant occupied, or of the former salary.
- If annuitant meets earnings limitation, benefits terminates six months from the end of the calendar year in which the earning capacity was restored.



Reemployment

- A disability annuitant may be re-employed in any position for which he/she is qualified
- Annuity payments continue if annuitant is under the age of 60, and is not found recovered or restored to earning capacity by OPM, as long as the employee is re-employed in a position of different tenure



Administrative Recovery

- Takes place when an employee returns to work in a federal position at the same grade and pay level
- Agency must notify OPM, using SF 50, of the position and salary of the annuitant



Office of Worker's Compensation - OWCP

- A disabled employee may wish to apply for disability retirement and worker's compensation benefits simultaneously
- Disability retirement annuity is suspended while annuitant is in receipt of OWCP



OWCP

- The employee can apply for disability retirement up to 1 year after separation
- Protects rights in the event that OWCP benefits terminate
- Protects rights of potential survivors to benefits in the event the employee dies



Adverse Actions



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Adverse Actions

- Under parts 432 and 752 of 5 CFR, Agencies are required to obtain and evaluate any medical documentation on the employee in question
- Based on documentation, Agency should consider positions for reassignment or methods of reasonable accommodation



Adverse Actions

- If efforts to accommodate or reassign fail, the agency proceeds with whatever administrative action is appropriate
- Agencies should not delay taking an administrative action under 432 and/or 752 because an employee files an application for disability retirement



Adverse Actions

- If there is an action to remove an employee, and the employee is eligible for severance pay, the agency should counsel the employee that an approval of disability retirement means the severance pay must be paid back



Adverse Actions

- Include the removal notice and all documentation of adverse action with the application for disability retirement to OPM
- Language in the removal notice should not presume that an individual removed for physical inability to perform meets the requirement for disability retirement



Settlement Agreements

- When making settlement agreements with employees, agencies should consider the impact on retirement, and see that the agreement does not change the disability decision



Discontinued Service Retirement

- An immediate annuity benefit for employees who are separated against their will (unless they are separated for cause on charges of misconduct or delinquency)

NOTE: DSR provisions are outlined in detail in Chapter 44 of the *CSRS and FERS Handbook for Personnel and Payroll Offices*



Discontinued Service Retirement

Minimum Requirements

Age and Service

Age 50 with 20 years of service

Any age with 25 years of service

Involuntary Separation

Any separation against the will and without the consent of the employee other than a separation for cause on charges of misconduct or delinquency



Involuntary Separation -Examples

- Reduction-in-force (RIF)
- Abolishment of position
- Reassignment outside commuting area when no mobility agreement exists
- Unacceptable performance (unless due to employee's misconduct)
- Removal due to disability or illness
- Expiration of appointment



DSR Requirements – Specific Notice

- **Must be directed to an individual employee**
- **Must inform the employee the s/he faces involuntary separation from her/his position or from Federal service**
- **Must specify the reason for the action**
- **Must state the date the action is to be effective**



DSR Requirements – Reasonable Offer

- **Must be in writing**
- **Employee must be qualified for the position**
- **Position must be in the employee's agency**
- **Position must be within the employee's commuting area, unless a mobility agreement is in effect**



DSR Requirements – Reasonable Offer

- Position must be of the same tenure (i.e. same service same type, same work schedule) and
- Position must not be lower than the equivalent of 2 grade/pay levels below the employee's current grade or pay level



Unacceptable Performance

Definition

Failure to fulfill the requirements of high standards of service. The employee's work may not measure up to the standards the agency expects, due to his or her actual inability to do the work after sincere effort has been put forth

(in contrast to misconduct or delinquency which denotes culpable wrongdoing)



Unacceptable Performance

Rule

A separation is qualifying for discontinued service retirement if it is caused by unacceptable performance. The separation may be processed under 5 CFR 432 or 752 (or similar procedures for employees not covered by these regulations).



Expiration of Appointment

General rule

A separation is not qualifying for discontinued service retirement if the employee voluntarily leaves regular long-term (career) employment to accept a short-term appointment with full knowledge of its early termination



Expiration of Appointment - Exception

- Terminations from short-term employment may be considered involuntary for DSR if:
 - The appointment immediately followed an involuntary separation; or
 - The employee could have retired under a Voluntary Early Retirement Authority, but accepted a time limited appointment at the agency's request



References

- Title 5 United States Code (USC), Chapters 83 and 84
- Title 5 Code of Federal Regulations (CFR), Parts 831 – 844
- *CSRS and FERS Handbook for Personnel and Payroll Offices*
- Federal Benefits Web Site:
www.opm.gov/benefits



Agency Guidance

- *CSRS and FERS Handbook for Personnel and Payroll Offices*, Chapter 60 and 61
- The Rehabilitation Act of 1973, 29 U.S.C., Section 701 et seq.
- The Americans with Disabilities Act of 1990



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Thank you!



We hope you have found this session useful and that you were provided with information that you will be able to take back to your Agency to be successful.

Please complete your evaluations and leave them on your desk and we will come around and pick them up.

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