

§ 10.735

that the rate equals or exceeds the pay rate on the date of injury. It is defined in accordance with 5 U.S.C. 8142(a), not 8101(4).

NON-FEDERAL LAW ENFORCEMENT OFFICERS

§ 10.735 When is a non-Federal law enforcement officer (LEO) covered under the FECA?

(a) A law enforcement officer (officer) includes an employee of a State or local Government, the Governments of U.S. possessions and territories, or an employee of the United States pensioned or pensionable under sections 521-535 of Title 4, D.C. Code, whose functions include the activities listed in 5 U.S.C. 8191.

(b) Benefits are available to officers who are not “employees” under 5 U.S.C. 8101, and who are determined in the discretion of OWCP to have been engaged in the activities listed in 5 U.S.C. 8191 with respect to the enforcement of crimes against the United States. Individuals who only perform administrative functions in support of officers are not considered officers.

(c) Except as provided by 5 U.S.C. 8191 and 8192 and elsewhere in this part, the provisions of the FECA and of subparts A, B, and D through I of this part apply to officers.

§ 10.736 What are the time limits for filing a LEO claim?

OWCP must receive a claim for benefits under 5 U.S.C. 8191 within five years after the injury or death. This five-year limitation is not subject to waiver. The tolling provisions of 5 U.S.C. 8122(d) do not apply to these claims.

§ 10.737 How is a LEO claim filed, and who can file a LEO claim?

A claim for injury or occupational disease should be filed on Form CA-721; a death claim should be filed on Form CA-722. All claims should be submitted to the officer’s employer for completion and forwarding to OWCP. A claim may be filed by the officer, the officer’s survivor, or any person or association authorized to act on behalf of an officer or an officer’s survivors.

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§ 10.738 Under what circumstances are benefits payable in LEO claims?

(a) Benefits are payable when an officer is injured while apprehending, or attempting to apprehend, an individual for the commission of a Federal crime. However, either an actual Federal crime must be in progress or have been committed, or objective evidence (of which the officer is aware at the time of injury) must exist that a potential Federal crime was in progress or had already been committed. The actual or potential Federal crime must be an integral part of the criminal activity toward which the officer’s actions are directed. The fact that an injury to an officer is related in some way to the commission of a Federal crime does not necessarily bring the injury within the coverage of the FECA. The FECA is not intended to cover officers who are merely enforcing local laws.

(b) For benefits to be payable when an officer is injured preventing, or attempting to prevent, a Federal crime, there must be objective evidence that a Federal crime is about to be committed. An officer’s belief, unsupported by objective evidence, that he or she is acting to prevent the commission of a Federal crime will not result in coverage. Moreover, the officer’s subjective intent, as measured by all available evidence (including the officer’s own statements and testimony, if available), must have been directed toward the prevention of a Federal crime. In this context, an officer’s own statements and testimony are relevant to, but do not control, the determination of coverage.

§ 10.739 What kind of objective evidence of a potential Federal crime must exist for coverage to be extended?

Based on the facts available at the time of the event, the officer must have an awareness of sufficient information which would lead a reasonable officer, under the circumstances, to conclude that a Federal crime was in progress, or was about to occur. This awareness need not extend to the precise particulars of the crime (the section of Title 18, United States Code, for example), but there must be sufficient