

COURSE # 44

ADA vs. FECA: Are They in Competition?



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Compensation Conference
‘Building a Community of
Excellence’**

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Objectives



- Secure a better understanding of ADA and how it may relate to the FECA;
- Differentiate between the two and the policies and procedures for implementing; and
- Clarify the question do employees who file ADA claims under the EEOC have precedence over employees under the FECA who request accommodation

Discuss

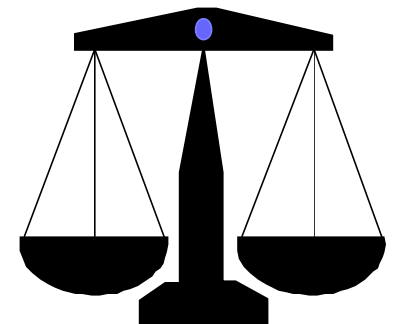
- “Disability” as defined under the ADA and under the FECA
- “Reasonable accommodation”
- Difference between the two and how competition may develop for “vacant positions” within your agency



LAWS AND REGULATIONS

ADA vs FECA

- American with Disability Act (ADA) was a law signed by President Bush July 26, 1990.
- Civil Rights Law for the disabled - passage to Title V of the Rehabilitation Act of 1973
- FECA is a law regulated by 5 U.S.C. 8101 et seq.
- Law benefits civil employees of the U.S. government and postal workers who suffer work-related injuries and illnesses

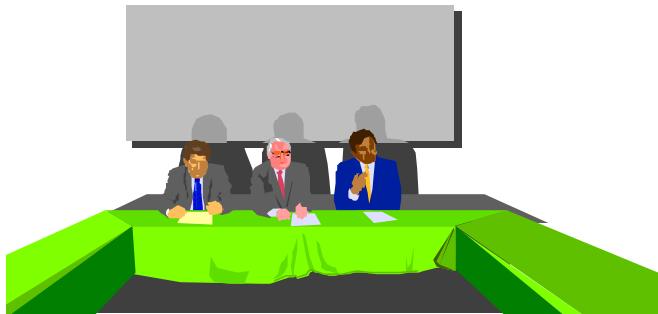


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- ADA prohibits discrimination of individuals with disability in employment; public service; public accommodation; transportation and telecommunications. Title 1 discusses employment.
- Court Decisions, State and Federal law, require conformity
- To be eligible for FECA must meet requirement:
 - **injured in performance of duty,**
 - **meets reporting requirement and “fact of injury” established**
 - **provides “prima facie evidence” that disability is related to job**

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- The FECA is non-adversarial system, informal process with formal reconsideration based on administrative Hearing -reviewed by independent Employees Compensation Appeal Board



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- In administration of the FECA it uses:
 - **FECA Bulletins** which describe new policies and procedures
 - **FECA Transmittals** which include new revisions and changes to the program
 - **FECA Circulars** which include **ECAB Decisions**
 - Also use **Handbook CA-810, CA-550 and AGENCY QUERY SYSTEM**



REASONABLE ACCOMMODATION

Serves two purposes

1. Removes barriers that prevent individuals from performing jobs they are qualified;
2. Enables agencies to expand the pool of qualified workers; and,
3. ADA allows individuals who believe a violation of the Order constitutes violation of Rehabilitation Act and can pursue remedies

FECA

Return to Work Program to Deal with Reasonable Accommodation

- Secure Management support
- Establish a formal program
- Develop policy and procedures for successful implementation
- Determine how the program will be administered and function in agency
- Designate someone to administer program



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- Determine if your budget includes FTE's for program
- Identify short-term limited duty work assignments vs. permanent positions
- Create job analysis for each job
- Utilize medical experts to facilitate program
- Work closely with OWCP



ACCEPTANCE OF CASE

ADA

Fulfills Definition-- Qualified individual with a disability - with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires



FECA

Fulfills Eligibility -- Meet the requirement under FECA that the condition was sustained or aggravated by conditions of employment and provides valid medical documentation to support permanent disability.



DISABILITY

Term under ADA



- a. a physical or mental impairment that substantially limits one or more of the major life activities of such individuals;
- b. a record of such an impairment; or
- c. being regarded as having such impairment.

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Disability Term under the FECA

1. Based on medical evidence provided by employee's physician: (a) employee "partially disabled" with temporary limitations; (2) "partially disabled" with permanent limitations; or (3) "**permanently totally disabled**" with limitations
2. Disability connected with time tables for eligibility and entitlement (COP, loss wages, etc.)

ARE FECA AND ADA IN COMPETITION?

Interaction between Title 1 of ADA and FECA Law

- Title 1 of the ADA prohibits employers from discriminating against qualified individuals because of disability
- FECA provides Federal employees prompt and fair disability benefits due to occupational injuries and illnesses.

ARE THEY IN COMPETITION?

NO. But they can be if you have a permanent position to offer under the FECA to a disabled employee and you are not timely in processing your offer.



Understanding the Meaning of Disability

1. Does everyone with a work-related injury have a disability within the meaning of the ADA?

No. An employee with accepted occupational injury/disease who has a “disability” as defined under FECA statutes may not have a disability for ADA. (Remember criteria for ADA).

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2. Does every person who file a FECA claim have a disability under the ADA?

No. A person who has a disability under the “record of” portion of the ADA needs to have a history that meets FECA criteria.

DIFFERENCE

- FECA laws are different in purpose from the ADA and utilize different standards for evaluating whether an individual has a “disability” or capable of working.
 - Example: Person sustains a back injury and may have a “permanent total disability” and may be able to work (perform the essential functions of the position).

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- Under the FECA the **employer** bears the ultimate responsibility of deciding whether an employee with a disability related occupational injury is ready to return to work.
- Under the ADA employers are mandated to accommodate if the employee can perform the essential functions of their position or in a vacant job they are qualified to perform.

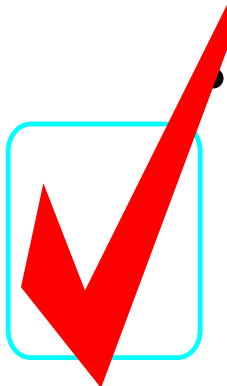
IMPORTANT

You are **reserving** a “limited duty position” for an employee under the FECA (occupational claim). An employee makes an ADA request for consideration, reassignment to that position. Would you be required to give up that position?

Yes. If the employee can perform the essential function with or without a reasonable accommodation and not impose undue hardship.

FECA - Reasonable Offer of Suitable Limited Duty Position

- By phone or in writing within 48 hours to be valid
- description of position, duties and responsibilities, organization and geographic location
- date available
- Is position compatible with employees medical condition, including any non-work related medical conditions?



FECA

- Employee refuses but provides OWCP good rationale to continue benefits
- LWEC --eligible for loss wages
- Constructed position - when reemployment does not occur despite best efforts. Wage earning capacity based on evidence.
 - Nature of injury and degree of physical impairment
 - age, qualifications and education
 - availability of suitable employment

TOP 5 DISABILITIES CITED IN ADA DISCRIMINATION COMPLAINTS

1. Back
2. Emotional/psychiatric
3. Neurological
4. Arms/legs
5. Heart/cardiovascular



ADA LEGAL CASE

Gloria Sells vs. Veterans Administration. October of last year, EEOC awarded \$13,000 to Federal Worker for failure to accommodate.

Agency failed in good faith to reasonably accommodate her hearing impairment before placing her in a lower position.

REASONABLE ACCOMMODATION

- Analyze the job to determine its purpose and essential functions
- Consult with the individual and experts to determine specific physical or mental abilities and limitations. Assess how the barrier could be overcome with an accommodation.

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- Examine the alternatives and consider effects of certain accommodations as well as safety factors.
- Select the accommodation that best serves the needs of the individual and the employer.

Examples of ADA Reasonable Accommodation

- Facility renovation
- Job structuring
- Part-time or modified work
- Reassignment to vacant position
(Remember LWEC does not apply in ADA cases where grades are lower)
- Adjustments (modification, training, etc.)

UNDER FECA POST- ADJUDICATION DECISIONS

- Continuing disability
- Continuing causal relationship
- Refusing suitable employment, 5 U.S.C. § 8106 (c)
- Obstruction of vocational rehabilitation, 5 U.S.C. § 8113 (b)
- Obstruction of medical examination, 5 U.S.C. § 8123 (d)



REMEMBER

- EEOC (U.S. Equal Employment Opportunity Commission) -- found at web site:
 - http://www/eec/gov/dpcs/accommodation_procedures_eec.html
- Describes the time frames for requesting and providing accommodation

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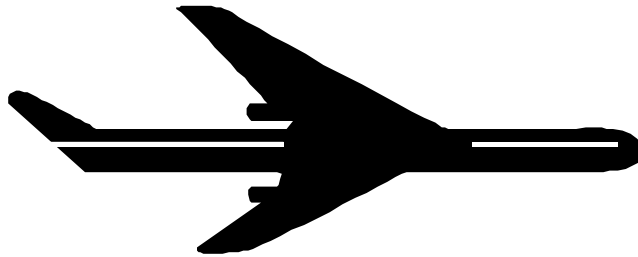
- If you are not timely in offering a “permanent position” to an employee under FECA in writing you may feel you are in competition. Eliminate this by processing cases as soon as possible.
- “Procedures for Providing Reasonable Accommodation for Individuals with Disabilities” available on web site

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- Access to OWCP home page
 - (<http://www.dol.gov/esa/owcp>)
- Work Hardening and Related Occupational Injury Prevention and Rehabilitation Society (OIPRS)
 - www.OIDRS.com
 - Use of hand trucks, etc. 800-622-1359
 - OSHA, www.osha.gov
 - Job Accommodation Network
 - <http://janweb.ICDI.wvu.edu/>

REMEMBER

Make your programs win-win situations for everyone. Plan for success. Good communication is one of the keys to our program's success.



Thank you very much and have a safe trip back home.