

FECA EXCLUSIVITY & THE FTCA

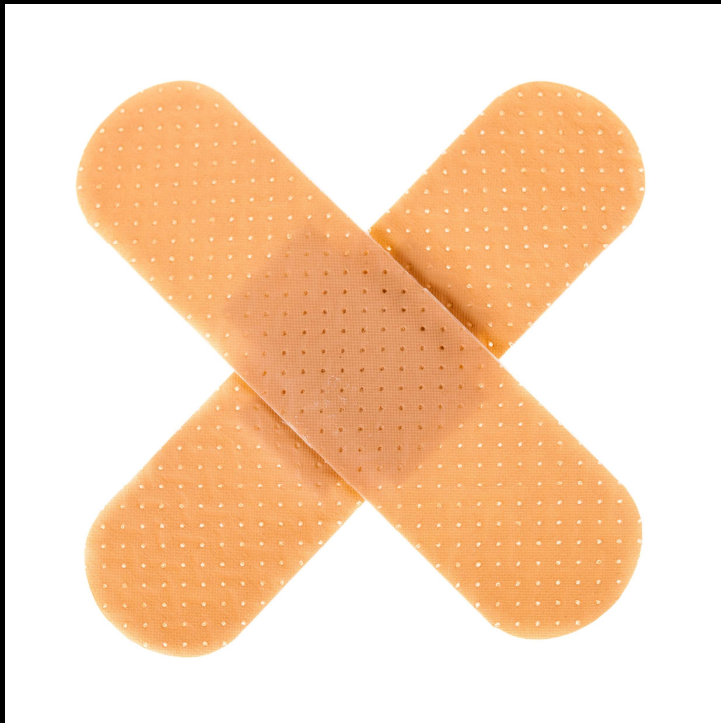
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OVERVIEW

- Basics of FECA coverage
- FECA's exclusivity provision
- Federal Tort Claims Act (FTCA)
- Other types of litigation where FECA records are requested.
- Brief overview of the Privacy Act and the Department of Labor's routine uses.
- Steps to take when someone asks for FECA records for a lawsuit.

FEDERAL EMPLOYEES' COMPENSATION ACT (FECA)

Compensation for the disability or death of an employee from personal injury sustained while in the performance of their duty.



To establish a FECA claim the individual must show:

- That they are a civil employee of the United States;
- Fact of Injury: that the event occurred, and the medical condition is related to that event;
- The injury occurred while the employee was in the performance of duty; and
- The medical condition is causally related to the claim injury.

FECA APPEALS ARE LIMITED TO THE DEPARTMENT OF LABOR

5 U.S.C. § 8128 Review of Reward

....

(b) The action of the Secretary or his designee in allowing or denying a payment under this subchapter is--

- (1) **final and conclusive** for all purposes and with respect to all questions of law and fact; and
- (2) **not subject to review by another official of the United States or by a court** by mandamus or otherwise.

IF FECA APPLIES, IT IS THE EXCLUSIVE REMEDY

- The FECA remedy is exclusive instead of all other liability of the United States. 5 U.S.C. § 8116(c).
- FECA is not only **exclusive** for the employee, but also the **spouse, dependents, next of kin**, and any other person otherwise entitled to recover damages from the United States. 5 U.S.C. § 8116(c).
- Similar to state workers' compensation programs, employees get immediate, fixed benefits regardless of fault and without the need for litigation, but they cannot sue their employer in turn.

SO, WHAT DOES THAT MEAN?

8128(b) → the Secretary of Labor, not a federal district court, has final say in the interpretation of FECA.

8116(c) → FECA constitutes an injured federal employee's exclusive remedy.

FEDERAL TORT CLAIMS ACT (FTCA)

- ▶ What is the FTCA?
- ▶ What types of claims does the FTCA cover?
- ▶ FTCA Process

FEDERAL TORT CLAIMS ACT

The FTCA is a **limited waiver of sovereign immunity** that authorizes payments of claims for money damages against the United States **for negligent acts or omissions of its employees** acting within the scope of their employment in circumstances where a private party would be liable under state law.

FTCA EXAMPLES

- Car accident
- Injured in government parking lot
- Assault
- Harassment
- Failure to properly inspect a mine
- Emotional Distress
- Death

FTCA CLAIMS PROCESS

- Claims come from a Standard Form (SF) 95 that is submitted to the agency.
- The agency will review the claim and request additional information, as needed.
- If the agency denies the claim or does not provide a resolution to the claim within six months, the individual can file suit in federal district court.
- DOJ handles all litigation with assistance from the agency.



**AN INDIVIDUAL CANNOT CHOOSE
BETWEEN FECA AND THE FTCA, IF
FECA APPLIES, THAT IS THE INDIVIDUAL'S
EXCLUSIVE REMEDY.**

OTHER TYPES OF LITIGATION

- Claims before the Equal Employment Opportunity Commission
- State Court Actions
- DOJ Criminal Cases



HOW TO HANDLE A RECORDS REQUEST FROM YOUR GENERAL COUNSEL'S OFFICE

LOOK TO THE PRIVACY ACT

- FECA records are confidential and can only be released in accordance with the Privacy Act, 5 U.S.C. § 552a.
- All FECA records are DOL records, regardless of where they are located.
- Generally, FECA Records can only be released with a signed Privacy Act waiver, a federal district court order signed by the judge, or in accordance with one of DOL's routine uses.
- The DOL has a Universal Routine Uses of the Records and DOL/GOVT-1 specific for FECA files.

DOL ROUTINE USES

- DOL/GOVT-1 Routine Use b—Allows for the release of the relevant and necessary FECA records to assert a defense based on FECA's exclusivity remedy provision for litigation filed under the FTCA.
- DOL Universal Routine Use 1—Disclosure of records to the DOJ when the agency is party to litigation and the **DOL determines** that the records are both relevant and necessary to the litigation. However, the **use of such records MUST be compatible with the purpose for which the agency collected the records.**
 - It is not compatible to use the records in a way that will have a negative impact on the claimant.

INQUIRIES REGARDING FTCA CLAIMS

Notify the Department of Labor to assist with the claim or litigation:

Young.Milne.a@dol.gov

or

Gordon.Jim@dol.gov

- You can advise whether a FECA claim has been filed.
- If yes → Refer them to DOL to determine what documents may be turned over.
- If no → Would FECA apply based on the allegations **as alleged**? If so, refer to DOL.

STEPS FOR IF THE FECA CLAIM WAS DENIED

- Advise your Office of General Counsel → Even though the claim was denied, FECA may still be the exclusive remedy.
- Review the file to determine why the claim was denied.
- Was it denied because they were not in the performance of duty or another reason?
- Often FECA claims are not denied because the claim isn't covered but because there is insufficient information.

IS THERE FECA BASED ON THE ALLEGATIONS?

The standard **is not** whether the individual will be able to prove their allegations



The standard **is** whether – based on the allegations – is there a substantial likelihood of FECA Coverage

EXAMPLE ONE

Allegations: I was assaulted in the breakroom by my supervisor causing me emotional distress.

Is there a Substantial likelihood of FECA coverage?

Yes

EXAMPLE TWO

Allegations:

- Plaintiff and John, a security personal, worked at a federal agency.
- John “interrogated” Plaintiff for over two hours making comments about his ethnicity.
- John would email and call Plaintiff stating he would make things worse for him.
- Plaintiff was at home when he opened the door, his family behind him, to two masked men.

EXAMPLE TWO CONTINUED . . .

- One said, “you did not respond to me.” And John confirmed that it was him.
- After a brief back and forth, John shouted and reached out and grabbed Plaintiff’s wrist.
- Plaintiff and his family allege that they suffered psychological, emotional, and mental anguish.

Is there a substantial likelihood of FECA Coverage?

EXAMPLE TWO ANSWER

- Plaintiff's injuries – yes.
- To determine whether an emotional condition falls under FECA, it is necessary to determine “whether the emotional reaction was precipitated or aggravated by the conditions of employment.” *Anna J. Backman*, 30 ECAB 118 (1978).
- For the family's injuries – it depends.
 - No, if their injuries are from feeling physically intimidated from John showing up at their door.
 - FECA would bar their injuries if they were related to Plaintiff's injuries.

EXAMPLE THREE

Allegations:

- Plaintiff, a government employee, submitted medical documentation to request maximum telework as an accommodation for a medical condition.
- The agency Personnel Bulletin stated that medical accommodation decisions are to be made within 15 business days, but Plaintiff's accommodation was not granted until after 48 days.
- Because Plaintiff was not granted her accommodation timely her medical condition worsened.

EXAMPLE THREE CONTINUED . . .

Is there a substantial likelihood of FECA coverage?

Yes

For an injury resulting from an administrative or personnel matter to be deemed in the performance of duty, the employee needs to establish that the employing agency erred or acted abusively in discharging its administrative or personnel responsibilities.

R.D., Docket No. 21-0050, 2022 WL 2131237 (Feb. 25, 2022).

When asked whether there is a substantial likelihood of FECA Coverage:

- Advise that the DOL makes that determination, and you should contact Young.Milne.a@dol.gov or Gordon.Jim@dol.gov.
- Do not issue a decision on any open claim where there is a corresponding FTCA claim or litigation.

EEOC CASES

- FECA records cannot be released without a signed Privacy Act waiver because none of the routine uses would apply because it will fail the compatibility test.
- Under the Privacy Act, records **cannot** be released pursuant to a subpoena or an order from an administrative law judge.

STATE COURT CASES

- FECA records cannot be released without a wavier.
- Under the Privacy Act, the U.S. Government cannot release records pursuant to state court order or subpoena.

CRIMINAL CASES

- FECA records cannot be released without a signed Privacy Act waiver because none of the routine uses will apply because it fails the compatibility test.
- Records cannot be released pursuant to a subpoena either federal or state. Subpoenas are signed by an attorney and not the judge.
- FECA records can be released pursuant to a federal court order. However, the order must be signed by a federal district court Judge and must state that they understand that the decision will impact the individual's rights under the Privacy Act.

RESOURCES

- DOL/GOVT-1:
<https://www.dol.gov/agencies/sol/privacy/govt-1>
- FECA Procedural Manual:
<https://www.dol.gov/agencies/owcp/FECA/procedure-manual>

DOL CONTACT INFORMATION

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Questions