

Guide to MSPB Rights for Federal Employees



Being a federal employee comes with extensive benefits. Chief among these is the extensive due process rights that protect you from arbitrary and illegal disciplinary action and removal. And unlike most employees in the private sector, federal employees do not work at will. Their employers have to carefully explain and prove any adverse actions before the Merit Systems Protection Board (MSPB). Read on to learn more about your MSPB rights as a federal employee. Our experienced federal employment attorneys will also discuss the MSPB's history, purpose, and some of the most common questions we receive.

PURPOSE OF THE MERIT SYSTEMS PROTECTION BOARD

The MSPB is an essential pillar of the federal employment system. It plays a critical role in maintaining the principles of fairness, transparency, and integrity. The MSPB's central function is to guard the merit principles that underpin the federal workforce and protect employees' rights.

The MSPB achieves this purpose through a combination of responsibilities. These include resolving individual employee appeals, providing whistleblower protections, and investigating allegations of prohibited personnel practices. By fulfilling these duties, the MSPB contributes to a federal employment environment where individuals receive the respect and fairness they deserve.

THE MSPB'S APPLICATION TO FEDERAL EMPLOYEES

Let's expand on how the MSPB helps protect the rights of employees.

Resolving Employee Appeals

The MSPB hears the appeals of federal employees contesting adverse personnel actions. These appeals protect the employees from having to accept unfair and illegal actions. Any federal employee who is the target of an adverse action can file an MSPB appeal, provided they have finished their probationary period. Federal employees in a probationary period have rights under the MSPB. However, these appeal rights are limited. Probationary employees may only appeal adverse actions if they believe that their political affiliation or marital status led to the adverse action.

Whistleblower Appeals and Retirement Disputes

Federal employees who believe they are the targets of retaliation for whistleblowing can also appeal to the MSPB. However, they must first file a complaint with the Office

of Special Counsel (OSC), a government agency dedicated to investigating claims of whistleblower retaliation and other prohibited personnel practices. Once you file a complaint with OSC, you may file an individual right of action (IFA) appeal to the MSPB. By handling these cases, the MSPB helps protect those who expose government wrongdoing. The MSPB has jurisdiction over certain retirement disputes as well. These include disagreements over eligibility for retirement and annuity computations.

USERRA Appeals

USERRA refers to the Uniformed Services Employment and Reemployment Rights Act of 1994. That law prohibits discrimination based on military service, both current and past. In addition, it provides certain employment benefits to uniformed and reserve military members. For instance, it bans an employer from discriminating against an employee who has to take a leave of absence from their job to go on active military service. So while the employee is serving in the military, their employer cannot fire them or take disciplinary action against them. An employee can file an MSPB appeal if they believe their employer has violated USERRA.

WHAT MSPB RIGHTS DO FEDERAL EMPLOYEES HAVE?

The MSPB endows federal employees with five vital rights to protect them from arbitrary and unfair personnel actions.

- **The right to appeal.** Federal employees have the right to appeal certain personnel actions that they believe to be unjust. This includes adverse actions such as removals, suspensions, reductions in grade or pay, and furloughs.
- **The right to a timely process.** Employees have the right to a timely appeals process. In general, the MSPB seeks to issue an initial decision within 120 days of the date you file the appeal.
- **The right to representation.** Employees have the right to choose an attorney or another individual as their representative in the MSPB proceedings.
- **The right to discovery.** The discovery process permits employees to request information and documents that are relevant to their case from the agency. This, in turn, allows for a comprehensive examination of the facts.
- **The right to a hearing.** Employees have the right to an MSPB hearing. At this hearing, they can present evidence, call witnesses, and make arguments to support their case.

Understanding these rights is vital, but navigating the MSPB process can be complex. Therefore, it's best to hire a qualified firm like Pines Federal Employment Attorneys to assist you with the process.

HOW TO FILE AN MSPB APPEAL

Properly filing an appeal with the MSPB is key to successfully overturning your employer's unfair personnel action. Here's a step-by-step process for properly filing an MSPB appeal:

- 1. Determine eligibility.** Make sure that your employer's adverse action against you falls under the MSPB's jurisdiction. This means it must be either a removal, suspension for more than 14 days, reduction in grade or pay, or a short-term furlough.
- 2. Prepare your appeal.** Use the MSPB's Appeal Form (MSPB Form 185) or write a letter containing all the essential information for your appeal. This includes details about the action you're appealing, your agency, your contact information, and a clear statement of the relief you are seeking.
- 3. Make a timely submission.** With a few exceptions, you must file your appeal within 30 days from the effective date of the action that you're appealing or from the date you received the agency's decision notice, whichever is later.
- 4. Choose the filing method.** Most appellants file their appeal online using the MSPB's e-Appeal Online system. However, you can also submit an appeal by fax, by mail, or in person at the appropriate MSPB regional or field office.
- 5. Include supporting documents.** Attach any relevant supporting documents, such as the agency's decision notice, that will help explain the basis for your appeal.
- 6. Request a representative.** If you want a representative to assist you in the appeal process, you must include an Appointment of Representative form (MSPB Form 284) with your appeal.
- 7. Await acknowledgment.** Once the MSPB receives your appeal, you'll receive an acknowledgment order. This order will include critical information about the process, timelines, and your rights and responsibilities.

Finally, ensure you adhere to all deadlines throughout the process. Failure to meet deadlines may lead to the dismissal of your appeal. Hiring our experienced MSPB attorneys will give you peace of mind because we take care of all the legal details and make sure everything gets filed properly and on time.

FREQUENTLY ASKED QUESTIONS (FAQS)

What Are My Rights If I Lose My Initial MSPB Appeal?

If you lose your initial MSPB appeal, you can still take action to protect your rights. For one, you may file a Petition for Review (PFR) within 35 days of the initial decision. To prevail with a PFR, you must demonstrate there has been a legal error or that new evidence is available. If MSPB denies your PFR, you may seek judicial review with the U.S. Court of Appeals for the Federal Circuit within 60 days of the final MSPB decision.

Can I File an MSPB Appeal Myself, or Do I Need an Attorney?

While you have the right to file an MSPB appeal on your own, the process is not straightforward and requires adherence to specific procedures and deadlines. An MSPB attorney with expertise in federal employment law can guide you through the process. They can also help ensure that your appeal is presented in the most effective manner.

What Happens If I Miss the Deadline to File an MSPB Appeal?

Generally, you have to file an MSPB appeal within 30 days of the effective date of the action you're appealing. Missing this deadline may result in the dismissal of your appeal. However, in certain circumstances, the MSPB may waive the time limit if you can show good cause for the delay. It's advisable to consult with an attorney to understand if any exceptions apply to your situation.

At Pines Federal, our experienced MSPB lawyers have decades of combined experience serving federal employees nationwide. Contact us today for assistance.