

PART ONE

OVERVIEW OF RETIREMENT SYSTEM RULES

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PART ONE

OVERVIEW OF RETIREMENT SYSTEM RULES

The rules of your husband's retirement system, or pension plan, play an important part in determining your pension rights at divorce.¹ While it is rare for a retirement system to provide benefits automatically to a divorced wife, most retirement systems allow a divorce court to divide the pension. Within certain limits, most retirement systems also will pay a pension share directly to a former wife, and will pay her a benefit after the ex-husband dies. You or your lawyer will need to find out what benefits your husband's retirement system has available for divorced wives and what you need to do in order to claim those benefits.

In *Part One* you will find a list of questions that will suggest what you and your lawyer may want to ask about your husband's retirement system in order to figure out what benefits you can expect to receive. If your husband worked at more than one job during his career, you should ask these questions about all his pension plans. If your husband's retirement system is discussed in this handbook, most of these questions will be answered for you in the chapter in *Part Three* that covers his particular retirement system. Bear in mind that these are not necessarily the only questions you should ask, but they are good starting points.

Also included in *Part One* is an explanation of how retirement systems work and tips for contacting the retirement system.

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¹ Although "pension plans" may be included under a larger "retirement system," *Part One* uses these terms to mean the same thing.

How Do Pension Plans Work?

A traditional pension plan is a fund in which money is set aside by an employer to pay benefits to employees at retirement. The money in the fund is likely to be invested in bank accounts, stocks, bonds, government securities, or real estate. Types of investments vary a great deal from plan to plan.

Most pension plans, whether they are company or government plans, are one of two main types - *defined benefit* or *defined contribution*. If you know which type of plan your husband has, it will be easier to understand how the plan works.

A *defined benefit* plan is one that promises to pay an individual a *specific benefit* at retirement. The benefit is usually based on a percentage of an employee's average earnings multiplied by his years of work under the plan. Sometimes employees are required to pay into these plans, but the employee's contributions usually do not determine the amount of the benefit he eventually receives.

The most common method of payment from a defined benefit plan is a lifetime monthly pension starting at retirement age. Some plans also pay benefits in the form of a lump sum. In a defined benefit plan, employees do not have separate accounts because all the money is pooled in a single fund. But the plan is still required to keep track of the amount of benefits each worker has earned.

Examples of defined benefit plans are the social security system, the railroad retirement system, the federal civil service and military retirement systems, and most large company and union pension plans.

Under a new type of plan known as a *cash balance plan*, an employee's benefit is shown as a lump sum "account balance," as it would be in a defined contribution plan, although these plans are still considered to be defined benefit pension plans. Each year, a typical cash balance plan adds to the employee's account balance a certain specified amount of interest, known as an "interest credit," and also an amount which is equal to a certain percentage of the employee's earnings, known as a "compensation credit." At retirement, the employee usually receives a monthly pension or a single lump sum based on the final account balance. Many large companies with defined benefit pension plans are converting their traditional plans into cash benefit plans. The typical result is that older employees (that is, over age 40 or 45) earn lower benefits than they would have if the plan had not been changed.

Under a *defined contribution* plan, the employer only promises to contribute a certain amount per year to the plan for each employee, but *does not specify the benefit* the employee will receive at retirement. The contribution is usually a percentage of the worker's earnings that year.

Employees have separate accounts. Employees do not necessarily pay into a defined contribution plan; some plans require employee contributions while other plans allow employees the choice of paying.

In a defined contribution plan, the money that is paid in by employer and employee is invested by the plan. The benefit that an employee receives at retirement consists of whatever money has been paid in plus the investment earnings. Many of these plans pay benefits in the form of a lifetime pension, but they also commonly offer benefits in the form of a one-time payment or lump sum. Small companies often have defined contribution plans, such as profit-sharing plans, savings plans, and 401(k) plans. An example of a large defined contribution pension plan is TIAA -CREF (the Teachers Insurance and Annuity Association-College Retirement Equities Fund). This plan covers many college and university employees.

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Questions You Need to Ask About Retirement System Rules

What Type of Pension Plan Does Your Husband Have?

- Is your husband covered by only one plan or more than one? Some employers provide several plans for each employee.
- What is the name of his pension plan? This information is especially important if his employer has more than one plan.
- Is his plan a "*defined benefit*" plan, or a "*defined contribution*" plan? (See page 10.)
- Are the plan rules determined mainly by federal law? by state law? or by another group of laws?
- Is your husband required to pay into his plan? Can he choose to make contributions to the plan? If yes, has he done so?
- Is he also covered by social security? (If so, it is very important for you to *read Part 3, Chapter 1, "Social Security,"* page 49.)

What Benefits Will Your Husband Collect?

- If your husband is already collecting a benefit from his retirement plan, in what form is his benefit being paid? Is it being paid as a lifetime monthly pension, or in some other form?
- If he is now collecting a benefit, how much does he actually receive? Is his benefit the official amount of the pension or are deductions being made? What is being subtracted and why? (For example, there may be deductions for income taxes, life insurance, or health insurance.)
- If he is not already collecting a benefit, what is the earliest date that he could begin receiving benefits? Does he plan to retire at that time, or later?
- If your husband stopped working today, for any reason, would he still be eligible to collect a pension at retirement age?
- How will his benefit be figured? A pension is typically based on how much an employee earned and how many years he worked.
- If your husband hasn't yet started collecting his pension, how much has he earned in benefits thus far? How much can he be expected to accumulate by the time he does retire?

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- What pension payment choices will he have at retirement? Can he be paid a benefit only in the form of a lifetime monthly pension, or can he choose a lump sum or payments in several installments? Can he provide a benefit for a survivor? Has he already provided a benefit for a survivor? [12]
- Does the plan provide cost of living increases for pensions?
- Does the plan provide that an employee may temporarily or permanently lose benefits under certain circumstances? For example, a government or company pension may be temporarily suspended when a retiree goes back to work for the same employer or in the same industry. A government employee may lose benefits permanently if he is fired for serious misconduct.

What Benefits Can You Receive From Your Husband's Plan?

- If a court awards you a share of your ex-husband's pension, or if you can negotiate a share through your property settlement, would the plan agree to pay you your share *directly* (if the court or property settlement provided for it), or would the money have to be paid by your ex-husband?
- What is the maximum amount of your ex-husband's benefits the plan would permit you to receive? (*Note:* Keep in mind that your own state divorce law may restrict the amount you can receive even if the plan does not.)
- Does the plan say that payment to you can be made only in a certain form? (For example, must you accept your share in the way your ex-husband is paid, such as month by month?) Can your benefits start only at a certain time, such as when your ex-husband retires?
- Once you obtain a court order providing you a pension share, to which plan official *or* office do you send it? Do you have to send the plan other documents or information with the order?
- Keep in mind that although it is usually an advantage to receive your share of the benefits directly from the plan through a domestic relations order signed by the court, getting benefits paid by the plan rather than by your ex-husband usually means that the benefits you receive will be taxable as your income, not his.
- Does the plan have any special rules about what information must be contained in your court order? For instance, does the order need to say when your pension share starts and stops being paid?
- If you are to receive your share of the pension from your ex-husband rather than the plan, what can you do if he stops paying his share? Will the plan allow you to "garnish" his pension? (*See* "Garnishment," page 40.)

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- Would your remarriage affect your share of the pension? Would his remarriage have any effect?
- Will your pension share stop if your ex-husband dies before you do? (See below.)

What Benefits Can You Receive After Your Husband Dies?

- If your ex-husband dies before you, will the plan pay a widow's pension to a *divorced* wife? Is a widow's pension payable only in certain situations, such as when the divorce occurs before the ex-husband's retirement?
- If a widow's pension is payable to a divorced wife, can you get this benefit if your ex-husband dies while he's still working? What if he dies after he stops working under his current plan, but before he starts collecting his pension?
- If he is already collecting his pension, did he choose a form of benefit that would provide a pension or other benefit to a survivor after his death? This is sometimes called a "*survivor option*." (A retiree is often required to take a cut in his own pension in order to provide benefit for a survivor.)
- If your husband did choose a survivor option, are you the person he selected to receive these benefits after his death? Can you still be eligible for the widow's pension once you are divorced? What do you have to do to make sure your widow's pension *is* protected? (Chances are you will need a court order that specifies you are to receive this benefit.)
- Will the plan obey a court order requiring that you be paid a widow's pension? Or can this benefit be provided after divorce only if your ex-husband chooses to provide it?
- If your husband is already retired, but didn't choose a survivor option, will the plan let him change his mind now?
- If a widow's pension or other benefit is available to you after divorce, in what form will payment be made? That is, will you get a lifetime monthly pension or some other form of benefit, such as a lump sum? Will you have a choice?
- How much is the widow's pension is it based on a certain percentage of the retiree's benefit, such 50 percent or 55 percent?
- Is the widow's pension payable to you regardless of your or your ex-husband's age when he dies? Will it start being paid immediately after his death, or only at some later date, such as the year in which he would have reached retirement age?
- Does the plan give cost of living increases to widows' pensions?
- Will your benefit be affected if you remarry? If you lose your widow's pension rights because of your remarriage, can you start collecting benefits again if your later marriage ends?

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Getting Information

- Does the plan have available a booklet for employees that summarizes the plan rules? Can you or your lawyer get a copy of this booklet?
- If your husband is not yet collecting benefits, does the plan give out "individual benefit statements" to employees? Does your husband have a recent statement? The statement is likely to tell you how much in benefits he has earned thus far.
- Who runs the plan? Where is the retirement board or administrator located? Can you obtain information from that office? Do you have to have your husband's written consent or a court order before the plan will release information to you?
- Do you know your husband's social security number? Nearly every retirement system uses an employee's social security number for identification purposes.

Tips for Contacting the Pension Plan

- Make sure any letter or paper you send to the plan or retirement system contains identifying information, such as your ex-husband's name and social security number, or other information the plan will need to have in order to know whose pension you are asking about. Remember that large plans, especially government plans, may handle thousands or even millions of documents each year. Even if it is correctly addressed and identified, your letter will often go through many hands before it gets to the right person.
- Whenever you send a copy of your court order or other important documents to the pension plan, it is a good idea to use certified mail, return receipt requested.
- Always keep a copy of letters or documents you send to the plan.
- If you talk to plan officials by phone, be sure to write down the name of the person you talked to, that person's title and office or department, what you discussed, and the date of your call. Keep these records together in case you need to refer to them later.