

CHAPTER 8

STATE AND LOCAL RETIREMENT SYSTEMS

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STATE AND LOCAL RETIREMENT SYSTEM

Twelve million employees of state and local governments are covered by some 2,600 retirement systems. Each state, county, or city sets the rules for pension eligibility and the rights of former spouses under these retirement systems. This chapter provides some general information about how these retirement systems are likely to operate, and it gives you tips on getting information and collecting benefits. It does not discuss specific state or local retirement systems because the plans are so different from each other.

How State and Local Retirement Systems Work

Within a single state, there may be separate retirement systems for state, county, and city employees, teachers; police, and firefighters. On the other hand, several categories of employees may be included under a single retirement system.¹ A state or local retirement system will normally be based on legislation passed by a state legislature, a city council, or a county commission. A "retirement board" or "board of trustees" is usually responsible for the day-to-day operations of the retirement system. Most state and local employees are required to pay into their retirement systems, though usually not as much as the state or local government is likely to pay in.

Generally, state and local government employees are also covered by social security, but not always.

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¹ A large retirement system may be called the "Public Employee Retirement System" (PERS).

Many state and local retirement systems have only limited benefits for spouses and no provisions for *divorced* spouses. However, lawmakers are gradually coming to realize that a wife's contributions the marriage should be recognized even after the marriage ends. In some states, lawmakers have modeled public employee retirement provisions after federal retirement system protections. But progress has been slow.

Pension Rights of Divorced Wives

Your husband's pension eligibility and your pension rights under a state or local retirement system are likely to depend on state statutes (laws), city or county ordinances, rules issued by a retirement board, or a combination of these. The list of questions in *Part Two* (page 17) suggests the basic information you need to have about his retirement system.

You can probably assume that no benefits from the retirement system are *automatically* available to a divorced spouse. It is likely that you will be able to receive a share of the pension only if you have a court order or property settlement that specifically awards you benefits from your ex-husband's retirement system. Also, there is a good chance that you can only get a share of the benefits your ex-husband would receive, paid to you in the same way (for example, in monthly amounts) and at the same time he is paid.

Special Problems

Trying to get a pension share from a state or local government retirement system can be especially frustrating. If you are dealing with a small retirement system, you may be one of the first ex-wives to try to claim pension benefits in a divorce from that plan. Whatever the size of the retirement system, you may discover that it has few, if any, benefits for an ex-wife, or that the retirement system has no procedures for handling a court order awarding pension benefits to a divorced wife. Plan officials also may be unfamiliar with state divorce laws. These factors can result in tremendous delays and bureaucratic hassles for you.

Here are some problems often encountered by divorcing women when trying to claim benefits from a state or local retirement system and some tips for solving them.

If the tips provided don't help, and retirement system officials insist on being uncooperative, you may have to go to court to enforce your rights. You and your lawyer will have to decide if the time and expense of additional legal action, such as taking the retirement system to court, would be worthwhile.

If You Can't Get Information

Even before you start to figure out what your share of the benefits might be, you may have a problem just getting *information* about how the retirement system works and what your husband's benefits are. Plan officials may not want to tell you about the retirement system rules, at least not without your husband's consent.

If you are having trouble getting information, consider asking a state legislator or city council member (or member of that person's staff) to help you get a copy of the laws or statutes that govern the retirement system, or at least get you a copy of the plan booklet or other general plan materials. Your state is likely to have a "Freedom of Information Act" which would allow you to get these materials from plan officials.

If no one from the lawmaker's office or the retirement system will mail you information, ask if you can go to the retirement system office and do the copying yourself, or at least go in and look at the material it does have.

If Benefits Are Not "Assignable"

Nearly all retirement systems have a provision that says that a pensioner may not "assign," or sign over to another, person, his right to a pension. Some plan officials (and; retirees) have argued that this restriction means that they cannot be required to hand over a share of the pension to a former wife. But don't be put off by this objection: Try to persuade your husband or plan officials that this rule doesn't apply to you. In almost every such case that has gone to court, the court has said that the provision against assignment is meant only to protect a pension from the claims of the retiree's creditors (such as a bank where the retiree owes money), not from the former wife.

Deferred Compensation Retirement Plans

Many state and local governments now provide benefits for employees in the form of Deferred Compensation Retirement Plans, also known as "Section 457" plans. These plans operate similarly to private sector 401(k) plans in the sense that they allow the employee to make voluntary contributions to a retirement account. The contributions are then invested and the contributions plus earnings are all paid out when the employee retires.

Deferred compensation plans are not required by federal law to accept domestic relations orders assigning benefits to a former spouse, so some of them accept such orders and some don't, depending on the policy of the plan's retirement board. Even if a plan does accept domestic relations orders, federal tax law prevents it from paying the former spouse until the employee terminates his employment or reaches age 59 1/2. If and when you receive benefits from one of these plans, the money you receive will be taxable to your former husband and not you.

It would be necessary for Congress to change the tax law so that these types of plans could pay a former spouse earlier or so that benefits would be taxable to the former spouse rather than the employee. Although legislative reforms have been proposed within the last few years, none has yet been enacted.

Congress is considering changing the law so that a former spouse who receives a share of the benefits from a state or local government deferred compensation plan under a domestic relations order will automatically be taxed on her share. In other words, if this proposal becomes law, the IRS would consider the benefits that the former spouse receives to be her income and not her former husband's.

If the Retirement System Doesn't Provide for Divorced Wives

Retirement system officials may tell you that even if you get a court order awarding you a pension share, they don't have to comply with the order because their retirement system doesn't specifically allow any payments to former spouses. For example, some retirement system officials may say that divorced wives can't collect widows' benefits because a "widow," as defined in the retirement system rules, is a person still *married* to the retiree when he dies.

Your lawyer should find out from those officials what retirement system provisions they are basing their decision on, and then see whether they are correctly understanding the plan. Even if the officials are right about the rules of the retirement system, your lawyer should find out whether there is a state *divorce* law that would help you. For example, there may be a state law that says that pensions of all kinds may be divided at divorce. Or there may be a state law specifically authorizing courts to award widows' pensions to former wives in all cases. It is possible that the state divorce law may let you receive a certain benefit by overruling a restrictive provision of the retirement system.

What Can You Do?

What can you do if none of the applicable laws are in your favor? Many state and local retirement systems still have outdated rules, set years ago before divorce became commonplace, that affect the rights of a spouse. But laws can be changed.

Some ex-wives have successfully launched personal campaigns to get reforms in the law. They have persuaded a legislator or council member to introduce legislation to expand pension protections for divorced spouses. As a result, state divorce laws and state and local retirement system rules have been improving.

If you have trouble getting a pension share, chances are that there are other divorced women who have or will have the same problem with the same retirement system. These women may be glad to join a lobbying effort. You may find that other individuals or groups in your community would also support pension reforms. Organizations in your state, city, or county that may have heard from other women with the same problem, or that may be interested in helping to bring about reforms for divorced spouses, include the state commission on women, the family law section of your state or local bar association, state or area agencies on aging, and retiree and women's organizations.