

# Divorce and Division of Retirement Pay



In 1982, Congress passed the Uniformed Services Former Spouse Protection Act (USFSPA). This law allows state courts to treat disposable retired pay as property of the service member and his or her spouse according to the laws of the state.

## **Does My Spouse Automatically Get a Portion of My Retirement Pay If We Divorce?**

The USFSPA does not give your former spouse a federal right to receive part of your retirement pay; the outcome depends on the laws of the state where you are divorced. Since this law was passed, all state courts have allowed for division of military retired pay.

However, different states have divided retired pay differently. For example, a court could divide military retired pay 50/50 for a marriage that only lasted two months. A state could also decide to award a majority of the retired pay to the former spouse, if the state laws allowed such a division. Conversely, a court may also choose to treat retired pay as the exclusive property of the military member. Many states use a formula that divides retirement pay based on the overlap of the marriage and the service member's career, divided by the total amount of time the service member spent in the military.

In addition, if a court awards your former spouse a portion of your retirement pay, they only receive this money upon your retirement. No court, or any other authority, can order you to retire so that your spouse can receive his or her part of your retirement pay.

## **Which Courts Can Divide Retirement Pay?**

Military retirement pay can be divided by a U.S. state, territorial, or federal court of competent jurisdiction. It can also be divided by a foreign court of competent jurisdiction if there is a treaty that requires the U.S. to honor court orders from that particular country. There is no such treaty with Japan, so a Japanese court cannot award your former spouse part of your retirement pay.

In order for a state court to have jurisdiction over a member's retired pay, the court must have jurisdiction over the member by:

- his/her residence, other than because of military assignment, in the territorial jurisdiction of the court,
- his/her domicile in the territorial jurisdiction of the court, or
- his/her consent to the jurisdiction of the court.

For example, Jack is stationed in California, but claims Nebraska as his legal residence. His wife Jill's legal residence is in Colorado. If Jill files for divorce in California or Colorado, the court would not be allowed to divide Jack's military retired pay unless Jack consents to the jurisdiction of the court.

### **When Does Payment Terminate?**

Because the USFSPA treats retirement pay as property, payment ends on the death of the former spouse or the service member, unless the court order provides for earlier termination. Payment does not end if the former spouse remarries.

A court may also order a service member to make the former spouse a beneficiary for a survivor benefit plan. The beneficiary of this plan will receive an annuity upon the death of the retired service member.

### **What is “Disposable Retirement Pay?”**

Disposable retirement pay is the total monthly pay a retired service member is entitled to, less certain authorized deductions. For example, in order to receive disability pay, a service member must waive an equivalent amount of retirement pay. Disability benefits are not part of the service member's disposable retirement pay, nor is the money he waives to receive the benefits.

### **How Can a Former Spouse Get Direct Payments From DFAS?**

In order for the Department of Defense (DOD) to make direct payments of a military member's retired pay to the former spouse, the following guidelines must be met:

- (1) There must be a final decree of divorce, legal separation or court approval of a property settlement agreement;
- (2) The court order must provide for payment from military retirement pay, in a specific dollar amount or percentage of disposable retirement pay;
- (3) The court order must show that the court has proper jurisdiction over the military member, as discussed above; and
- (4) The ex-spouse must have been married to the military member for a period of at least 10 years, with at least 10 years of the marriage overlapping a period of military service creditable to retired pay.

The former spouse should complete a DD Form 2293 (Jan 1999), which is available at the Military Personnel , Customer Service Section. The former spouse should send the completed form along with a certified copy of the divorce decree ordering a division of retirement pay and other required/specified documents to the appropriate address listed on the form.

Direct payments will not be made for division of retired pay in excess of 50 percent. If there is more than one divorce, it is first come, first serve. For example, if a court awards ex-spouse number one 40 percent of retired pay,

and another court awards ex-spouse number two 40 percent of retired pay, DOD Finance will directly pay ex-spouse number one 40 percent and will direct pay ex-spouse number two 10 percent (however, the service member must still pay ex-spouse two another thirty percent to comply with the court order). Disability pay is not subject to division as property. It is subject to garnishment for alimony or child support, however.

Alimony or child support can be paid in addition to division of retired pay. In this event, DOD Finance will not pay over 65 percent of an individual's disposable retired pay for property division and alimony/child support.

### **What Are the Tax Implications of Receiving Direct Pay?**

Amounts paid directly to a former spouse by DFAS will not be treated as retired pay earned by the retiree. Direct payments of retired pay received from DFAS by the former spouse are now subject to withholding. DFAS will withhold taxes on amounts paid directly to ex-spouses. Separate W-2 forms are issued to the retiree and the former spouse.

### **Additional Information**

Check out [www.dfas.mil/money](http://www.dfas.mil/money) for more information.

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