

Uniformed Services Former Spouses' Protection Act

Introduction

Divorces involving a military member or retired military member can create issues not found in typical divorces. Members and their spouses often have questions about the division of retired pay and the provision of other military-related benefits. This handout outlines some of these issues.

Retirement Pay

In 1982, Congress enacted the Uniformed Services Former Spouses' Protection Act (USFSPA), which enables state courts to divide disposable military retired pay between the member and the spouse if the state court desires. Disposable military retired pay is defined as the member's monthly retired pay minus qualified deductions, such as certain disability compensation. Such deductions do not include income tax withholdings or Survivor Benefit premiums.

There is no Federal law that automatically entitles a former spouse to a portion of a member's military retired pay. A former spouse must have been awarded a portion of a member's military retired pay in a State court order. The USFSPA, accomplishes two things. First, it authorizes (but does not require) State courts to divide military retired pay as a marital asset or as community property in a divorce proceeding. Second, it provides a mechanism for a former spouse to enforce a retired pay as property award by direct payments from the member's retired pay. Retired pay as property payments are prospective only. Retired pay arrears cannot be collected under the USFSPA.

USFSPA does not set any limits on the amount of retirement pay that can be awarded to a former spouse. Courts are required only to make an "equitable" division. "Equitable" will mean something different in every case. Depending on the facts of the case, it may range from zero to more than fifty percent. The court will consider the length of the marriage and the number of married years coinciding with retirement-creditable military service, but there is no magic number. Essentially, states are allowed to treat military retired pay as a piece of marital property, similar to civilian pensions. Division of retired pay does not affect award of alimony.

Direct Payment to Former Spouse

If a court does award division of retired pay, the former spouse may be able to receive his or her payment directly from the military pay center (DFAS). This way, the former spouse is not left to rely on their ex-spouse for payment. Direct payment is available if the military member and the former spouse were married for at least 10 years during which the military member performed retirement-creditable service.

Direct payment is limited to fifty percent of the military member's disposable retired pay. This does not mean that a court is limited to awarding fifty percent of the pay; it merely means that

This handout is meant for informational purposes only and does not substitute for the advice of a competent attorney. The discussion of law here is only a brief overview. Laws can and do change. If you would like to speak with an attorney, please call the Malmstrom Legal Office at 731-2878.

only an amount equal to fifty percent of the military member's disposable retired pay may be received directly from DFAS.

A certified copy of the court order providing division of retired pay is necessary to receive direct payment.

Commissary & Exchange

Former spouses may be entitled to commissary and exchange privileges if they meet the following requirements (a.k.a. the "20/20/20" rule):

- The former spouse and the military member must have been married for at least twenty years;
- The member must have performed at least twenty years of retirement-creditable military service; and
- At least twenty years of the marriage must have coincided with at least twenty years of retirement-creditable military service.

Exchange and commissary privileges terminate if the former spouse remarries. The privileges can be regained upon dissolution of the subsequent marriage, however.

Medical Benefits

Former spouses may be eligible for space-available medical care if they meet the following requirements:

- The former spouse must remain unmarried
- The former spouse must not have medical coverage under an employer-sponsored healthcare plan
- The former spouse must meet the requirements of the 20/20/20 rule

Former spouses who do not meet these requirements may still be eligible for medical care or health insurance under certain other circumstances. Please speak with an attorney if you wish to discuss this issue.

This handout is meant for informational purposes only and does not substitute for the advice of a competent attorney. The discussion of law here is only a brief overview. Laws can and do change. If you would like to speak with an attorney, please call the Malmstrom Legal Office at 731-2878.