

Court-Ordered Benefits

Court orders related to divorce or separation can divide federal retirement benefits and refunds of retirement contributions, provide survivor benefits for former spouses upon a retiree's death, permit former spouses to continue Federal Employees Health Benefits (FEHB) program coverage and require assignment of Federal Employees' Group Life Insurance (FGLI).

There is a difference between a court order that would apply to a private-sector pension and a court order that would apply to your federal retirement. Court orders that affect private-sector pensions are governed by the Employee Retirement Income Security Act (ERISA). However, federal pensions under both the Civil Service Retirement System (CSRS) and the Federal Employees Retirement System (FERS) are exempt from ERISA. ERISA created the term qualified domestic relations order (QDRO) to describe a court order that divides retirement benefits under ERISA plans. QDROs are not acceptable to affect CSRS or FERS benefits. However, this does not apply if the court order labeled QDRO also expressly states that it is written in conformity with Office of Personnel Management (OPM) regulations. The importance of this is that attorneys sometimes prepare federal retirees' court orders on the assumption that they can provide any benefits available under ERISA from CSRS or FERS. An example of the most important difference is that ERISA can provide that a former spouse's share of a benefit can begin when the employee reaches a minimum retirement age, even if the employee

is still working. However, this benefit is not available under CSRS or FERS.

The way to avoid mistakes in drafting divorce, separation or annulment is to have your attorney consult the booklet, *A Handbook for Attorneys on Court-ordered Retirement, Health and Life Insurance Benefits*. It is available on the OPM website at www.opm.gov/retirement-services/publications-forms/pamphlets/ri38-116.pdf.

The maximum possible combined total of all current and former spouse survivor annuities equals 55 percent of the rate of a self-only annuity under CSRS or 50 percent under FERS. A court order awarding a survivor annuity to a former spouse reduces the maximum that can be paid to the spouse married to the annuitant at the time of death. An insurable interest election can be made at retirement to provide a current spouse with additional survivor benefits if the retiree is in good health. You should see your human resources office if you are still employed and interested in this election in a divorce situation.

It is very important that provisions of a decree intended to award a survivor annuity both reflect the intent of the parties and conform to law and regulations. While orders can be changed before the employee retires or dies, in general, they cannot be modified to affect survivor benefits after the employee retires or dies.



For further information, contact fedbenefits@narfe.org.