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THE EX-FILES

WHAT FEDERAL EMPLOYEES AND RETIREES NEED TO KNOW BEFORE DISSOLVING THEIR MARRIAGE

By Everett A. Chasen

More than 90 percent of Americans marry by age 50 – and between 40 to 50 percent of married couples divorce at some point in their lives. Location, education levels, religious beliefs, mental health and if one's parents were divorced all contribute to whether a marriage will endure.



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WHAT FEDERAL EMPLOYEES
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Although no statistics exist, it's easy to assume federal employees divorce at the same rate as other Americans. It's even possible the divorce rate is higher among those who work for the government, due to the high stress levels of many federal jobs that can disrupt otherwise stable marriages.

Divorces are often complicated legal procedures. The economic implications of divorce, in which joint property and other items accumulated over the course of a life together are divided, are particularly significant. This is especially true for federal employees, whose benefits can be significantly affected in settlements.

Office of Personnel Management (OPM) pamphlet RI 84-1, "Court-Ordered Benefits for Former Spouses," is available on OPM's website (www.opm.gov). A senior OPM official and an employment retiree lawyer who works on federal employee divorce issues explain what every federal employee, retiree and spouse should know about divorce.

COURT ORDERS

Courts can issue orders that award benefits to legally separated spouses, former spouses and children of current employees, former employees and retirees under the Civil Service Retirement System (CSRS) and the Federal Employees Retirement System (FERS), noted Ken Zawodny, OPM's associate director of retirement services. "Both parties should be aware of potential court awarded retirement benefits."

Court ordered benefits can affect:

- CSRS or FERS annuities
- Refunds of retirement contributions
- Thrift Savings Plan (TSP) accounts
- FERS basic employee death benefits
- FERS Annuity Supplements
- Survivor annuities payable upon the death of employees or retirees
- Continued coverage under the Federal Employees Health Benefit (FEHB) Program and the Federal Employees Group Life Insurance (FEGLI) program for former spouses and an employee's child or children

Divorces are often complicated legal procedures. The economic implications of divorce are particularly significant.

A certified court order applicable to CSRS and FERS meeting the requirements found in the United States Code and the Code of Federal Regulations should be provided to OPM to enable the division of benefits.

"OPM must comply with qualifying court orders, decrees or court-approved property settlements in connection with divorces, annulments of marriages or legal separations of employees or retirees that award the former spouse survivor annuities," Zawodny explains.

"The court order should specify exactly what it wants OPM to do," he continues. "It must expressly provide for payment of a portion of the employee's or retiree's monthly annuity or contributions. In addition, the spouse's share must be stated as either a fixed amount, a percentage of the annuity, or be expressed as a formula whose value is 'readily apparent' to OPM."

Zawodny notes that qualified domestic relations orders (QDRO) may not be valid when one of the parties to the divorce is a federal employee.

Court orders that affect private-sector pensions are governed by the Employee Retirement Income Security Act (ERISA), Zawodny notes. However, CSRS and FERS are exempt from ERISA. Under ERISA, the former spouse's share of the benefit can begin when the employee reaches the minimum retirement age, even if the employee is still working. This is not true for federal employees, who must be eligible for the benefits being divided, and must also have made the proper application for the benefit.

Courts can also require employees or retirees to cover their children under FEHB, to assign FEGLI coverage to a former spouse or to the employee's child or children, and to name either the former

spouse or the children, or both, as beneficiaries under FEGLI. Retirement benefits may be garnished for alimony, child support, or to collect amounts awarded in child abuse cases.

OPM defines “former spouses” as living persons who were married for at least nine months to employees or retirees who performed at least 18 months of civilian federal service covered by either FERS or CSRS, and whose marriage terminated before the death of the employee or retiree.

A LAWYER’S PERSPECTIVE

Kimberly Berry, Esq., managing partner of Berry and Berry PLLC, is an employment lawyer in Reston, Virginia. “My husband started the practice in 2000 and mostly represented federal employees,” she explains. “I joined him in 2006. We found a lot of our federal employee work involved retirement issues, some of which involved clients who had divorced or were going through divorces.”

“Besides a family law attorney, you need a lawyer for divorce who knows about federal retirement law,” she continues.

Every family lawyer working with federal employees should know about RI 38-116, “A Handbook for Attorneys on Court-ordered Retirement, Health Benefits and Life Insurance,” a 137-page publication that can be found on OPM’s website (www.opm.gov).

“There are very specific rules, and you’ve got to know them,” says Berry. “Most family lawyers don’t really know all the nuances. Even though they may have this handbook, it can be overwhelming.”

She urges family lawyers to draft court orders clearly and simply and to follow the handbook. “The Court Order Acceptable for Processing, or COAP as OPM likes to refer to it, is not for the family court judge; it’s for OPM,” she explains. “You just need the family court to approve or certify the document.”

If a court order is not prepared correctly, “what might happen is that OPM might interpret the court order in a way that’s based on what the

federal retirement rules permit it to do, and that might not necessarily be what either party in the divorce intended.”

Besides helping family lawyers draft court orders properly or fixing problems relating to them, Berry sometimes challenges OPM’s decisions. “Sometimes OPM makes a determination and it’s not right, or OPM takes too long to resolve a matter. In some cases, I take a client’s court ordered benefits matter all the way to the Merit Systems Protection Board if we have to.”

“Besides a family law attorney, you need a lawyer for divorce who knows about federal retirement law.”
- Kimberly Berry

RETIREMENT ANNUITIES

If the court orders it, a divorced spouse can receive the entire net amount of a retirement annuity.

The maximum survivor benefit payable to any spouse after the employee dies, however, is 55 percent of the self-only rate of annuity under CSRS, and 50 percent of the self-only rate of annuity under FERS. (Self-only annuities are the monthly annuity payments under CSRS or FERS to a retiree who has elected not to provide a survivor annuity to anyone after he or she dies.)

Employees who remarry can provide their new spouse with a retirement survivor benefit only if the former spouse is receiving less than the maximum survivor benefit. OPM gives precedence to court orders, and new spouses can receive only what remains from the 55 or 50 percent annuity.

Berry warns that retirees cannot award, increase, reduce or eliminate a former spouse survivor annuity either awarded in a pre-retirement or pre-death court order, or in a first order dividing the marital property, which many family lawyers don’t know. Employees can also voluntarily elect for former spouses to receive survivor benefits without a court order.



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FEHB, FEGLI AND TSP BENEFITS

"Under certain conditions," says Zawodny, "a former spouse who is awarded a portion of an employee's or retiree's CSRS or FERS annuity is eligible to enroll in health benefits coverage under the FEHB program." This is true if the spouse is awarded a portion of the employee's annuity by a qualifying court order, and whether or not that benefit is payable immediately or in the future.

One of the things court orders can do is to require an assignment of life insurance benefits to a former spouse or children.

Authority for this is found in the Civil Service Retiree Spouse Equity Act of 1984. Former spouses are eligible to enroll under Spouse Equity provisions if:

- The divorce took place during the time the federal worker was employed, or while he or she was receiving an annuity
- The spouse was covered as a family member under a FEHB plan for at least one day during the 18 months before the marriage ended
- He or she is entitled to a portion of the employee's annuity, or to a survivor annuity
- He or she has not remarried before age 55

If those conditions are not met, former spouses lose coverage as a family member under FEHB at the time of the divorce, but there can be a 31-day extension of coverage. However, Zawodny warns, "enrollment under the Spouse Equity provisions may not begin for several months after the divorce, depending on how long it takes to establish eligibility."

Zawodny suggests, "it's advisable to stay with the same [FEHB] plan if a former spouse is seeking coverage under the Spouse Equity provisions." There's also the possibility former spouses can receive cov-

erage retroactively once an enrollment under Spouse Equity provisions has been approved. To do that, an application must be made, and satisfactory proof of eligibility must be provided, within 60 days after the date of divorce.

One of the things court orders can do is to require an assignment of life insurance benefits to a former spouse or children. "If a valid court order is filed," Zawodny says, "the court order will be followed instead of the order-of-precedence for benefits paid under FEGLI." For this to apply, a certified copy of the court order must have been received before the death of the insured individual. For employees, the court order should be filed at the employing agency and at OPM. Retirees should file the court order at OPM.

The TSP is not administered by OPM, but by the Federal Retirement Thrift Investment Board. TSP also requires a court order to divide accounts. Valid court orders may award a specific dollar amount or a portion of the entire account to a divorced spouse as of a specific past or current date.

TSP will freeze an account until the award is paid out or the order is otherwise resolved, preventing federal employees from taking out any loans or withdrawals. A freeze, however, will not prevent employees from making contributions or changing contribution allocations or investment choices – and divorced employees will still be required to make payments on existing loans.

Berry warns that TSP language in court orders should also be simple and straightforward. "Sometimes, people try to specify either an earlier date from which they want the funds to be divided, or a period of time during which they want that division to be done, and the board won't do that. The rules are very specific."

BENEFIT ESTIMATES

"The employing agency is the proper source for information concerning a current employee's service and benefits," explains Zawodny. "OPM does not receive an employee's records until the employee leaves the agency."



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In response to a judge's subpoena, or a release signed by the employee, agencies commonly provide a statement of CSRS or FERS coverage; the amount of money that has been withheld by the agency to the employee's credit in the retirement fund and an annuity estimate using the employee's service history to date.

Zawodny cautions that annuity estimates made before retirement are only estimates, and that official computations are made by OPM only at the time the benefits become payable. He also explains that agencies should not attempt to make a "present value" computation of an employee's future benefits or attempt to determine the proper division of benefits between an employee and his or her spouse.

"Present value computations should be prepared by a qualified private actuary," he says. "They are beyond the scope of an employing agency's or OPM's responsibility."

Berry will sit down with clients and provide a rough estimate of the potential amount(s) of the former spouse's marital share apportionment of the retiree's annuity. "I work out the scenarios for people," she tells us, "so they actually see what a former spouse's marital share apportionment will look like when they retire."

FINAL ADVICE

Berry had these final words of advice for divorcing federal employees, retirees and their soon-to-be former spouses. "Get educated," she says. "If your family lawyer doesn't know something, look it up yourself, do the digging, and find out what the retirement rules require. Make sure you provide OPM what it needs. And if you're sensing that the family lawyer's understanding or OPM's decisions are not really on the mark, remember that this is your financial future, so take the time to do the work necessary early to avoid mistakes and problems down the road."

"Remember, once the deal is done, and the divorce is finalized, you may not be able to change certain things. So be very careful," she

ONCE THE DIVORCE IS DONE

OPM suggests all court orders pertaining to divorces and legal separations be sent to the agency immediately, once they are filed by the courts. The court orders must be original certified documents, signed by a judge, and have a raised/ink seal. If additional orders are provided, such as Separation and Property Settlement Agreements, Court Orders Acceptable for Processing (COAP) and Qualified Domestic Relations Orders (QDRO), OPM requires a signed, original, certified copy of those documents as well.

All court order documentation should be sent immediately upon issue to:

Office of Personnel Management -
Retirement Programs
Court Order Benefit Section
Post Office Box 17
Washington, DC 20044

If one party is still employed by the federal government, a copy of the divorce decree or legal separation papers should be sent to the employing agency. However, OPM needs certified court ordered documents to determine if future benefits are awarded. A copy is not acceptable.

concludes. "Find a family lawyer and, if possible, a federal retirement lawyer, who can help and advise you properly." [i](#)

—EVERETT A. (EV) CHASEN IS A WRITER AND COMMUNICATIONS CONSULTANT IN THE WASHINGTON, D.C., AREA. HE RETIRED FROM THE FEDERAL GOVERNMENT AFTER 35 YEARS OF SERVICE.