

Veterans: Divorce & Military Benefits

Should I read this?

Yes, if both these are true:

- You get military retirement and/or veterans' benefits.
- You are divorcing.

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- ❖ The Department of Defense's Defense Finance and Accounting Service (DFAS) sends veterans retirement checks and handles requests to divide military retirement.
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Why should I read this?

Because we discuss how your divorce may affect your

- Military Retirement Pay
- Military Retirement Medical Benefits
- VA Disability and Pension Benefits

Federal law treats your retirement pay as "disposable retired pay." [10 U.S.C. § 1488 \(a\)\(4\)](#). The Department of Defense can apportion (pay) your disposable retired pay directly to your ex-spouse.

What is the 10-10 rule?

A Washington State court can divide your military retirement **only if** your divorce decree states both of these:

- You and your spouse were married for at least ten years.
- Ten years of your marriage overlapped with ten years of your military service.

If your divorce decree does not say this, DFAS will not honor it.

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- ❖ You do NOT need to have been married for ten years to be entitled to a portion of retired pay. The 10-10 rule is a requirement for DFAS to honor the order.
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What is Military Retirement Pay?

Veterans who formally retire from military service get monthly retirement pay. Some people call this "pension." **But retirement pay is different from VA Pension!** See "What are VA's income benefits" later in this publication.

Who gets military retirement pay?

Normally you must have served for twenty years or more to get military retirement. The military may offer some veterans with fewer than 20 years' service "early retirement" options.

Will divorce affect my Military Retirement Pay?

Probably. The federal [Uniformed Services Former Spouse Protection Act \(USFSPA\)](#) lets state courts distribute your retirement benefits as property according to state rules. The divorce court could award your spouse some of your retirement benefits as maintenance (alimony).

The court must have personal jurisdiction over the service member and subject matter jurisdiction to enter your Divorce Decree. [10 U.S.C. § 1408\(c\)\(4\)](#) (personal jurisdiction). "Jurisdiction" is the court's authority to make decisions regarding certain people and issues.

The court usually puts the division of retired pay in a separate order called an **Order to Divide Military Retired Pay** (a military QDRO).

How long after the divorce can my ex get some of my retirement pay?

If the court or DOD gives your ex a percentage of your retired pay, your ex will receive it until your death, even if they remarry.

What are military medical benefits?

Military retirees and your dependents, including your spouse, get life-long medical care at the military's expense.

Will divorce affect my or my ex-spouse's military medical benefits?

Maybe. Under the USFSPA, your ex-spouse **may** still be eligible for continued medical coverage. [10 U.S.C. §§ 1072\(2\)\(F\), 1076\(b\)](#) and [1086\(c\)](#). If not, your ex might be able to pay for continuing [Tricare](#) benefits.

What are VA's income benefits?

We discuss two here:

- **VA Disability Compensation** - for veterans who get or make worse a disability-causing injury while in service.
- **VA Pension** - A needs-based financial benefit for totally disabled veterans who have a very low income OR are 65 or older.

❖ **VA Pension is not Military Retirement Pay.** Some people mistakenly call VA retirement pay "pension."

Can divorce affect my VA disability benefits?

Yes, but only when you get disability benefits instead of military retirement pay. [10 U.S.C. § 1408\(a\)\(4\)](#).

We are separating. We will not divorce. Will this affect my VA pension?

If your spouse gets a veteran's income benefit, the VA can divide the pension through apportionment. The apportionment form is [available online](#) (form 21-0778). Your spouse could receive 20% to 50% of your benefit. The VA decides how much your spouse will get. [38 C.F.R. § 3.450\(a\)\(2\)](#).

Will divorce affect my VA pension?

Maybe not. A Washington court cannot divide your veteran pension benefit. *Perkins v. Perkins*, 107 Wash. App. 313, 26 P.3d 989 (2001). See also [38 U.S.C. § 5301\(a\)\(1\)](#). **Exception:** The VA treats the portion of VA pension you get **instead of retirement** the same as military retirement pay. See section above on Military Retirement. See also [10 U.S.C. § 1408 \(a\)\(4\)](#).

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