

## Military Divorce FAQ

Q: My husband was an active duty member of the military for five years during our marriage. He told me that I am not entitled to any of his retirement. Is that true?

A:

Generally, no. You may be entitled to half of the marital share of his retirement, or the portion that was earned during the marriage.

Q: My wife told me that since we weren't married for 10 years during her service with the Navy, I am not entitled to any of her military retirement if we divorce. Is that true?

A:

No, the rule your wife is probably referring to is what's known as the "10/10/10" rule. The Defense Finance and Accounting Services (DFAS) will only make direct payments to you for your share of your wife's retired pay if your wife served in the military for at least 10 years, you have been married for at least 10 years, and 10 years of your marriage overlaps with 10 years of her service. However, that only applies to direct payments from DFAS, not your eligibility to receive a portion of her retired pay in the divorce. If you don't meet the "10/10/10" rule, your wife will simply have to pay you your share of her retired pay.

Q: If my husband elects to receive VA disability benefits after we divorce, will that affect how much of his retired pay I receive?

A:

Probably. If your husband elects to receive disability benefits, he usually must make a dollar-for-dollar waiver of his retired pay. Since disability benefits are typically not distributable in a divorce, this will likely involve a dollar-for-dollar reduction in your portion of his retired pay. To protect your interest in his retirement, your divorce decree should include a provision that requires him to reimburse you for the reduction in your portion of his retired pay.

Q: If my non-service member husband is awarded half of my military retired pay in our divorce, does that mean that if I elect disability pay and waive retired pay I have to reimburse him for his lost share of my retired pay? I am not eligible for Special Combat-Related Compensation or Concurrent Retirement and Disability Pay.

A:

Not necessarily. It will depend on the details of your divorce decree. An experienced military

divorce attorney can craft your divorce decree so that your husband will only receive half of the marital portion of your disposable retired pay (which excludes disability compensation) at the time of your retirement so that you don't have to reimburse him for his share of any waived retired pay.

Q: If my ex-husband dies before I do, will I still receive my share of my husband's retired pay?

A:

It depends. If your husband elected a survivor benefit plan and chose you as the beneficiary then you will receive 55 percent of his retired pay. Your divorce decree should create an affirmative obligation for him to do so.

Q: DFAS told me that the cost of survivor benefits for my ex-wife is about \$150 per month. Who pays that?

A:

Unless your agreement specifies otherwise, DFAS will take the cost right out of your retired pay. Since the survivor benefits are for your ex-wife's benefit, your divorce decree should specify that she is responsible for paying the cost of the survivor benefits.

Q: I am 40 years old and currently going through a divorce. Should my divorce decree require my husband to elect a survivor benefit plan?

A:

Only if you are not going to remarry before age 55. If you remarry before you turn 55 and your ex-husband predeceases you, you will lose your survivor benefits. The survivor benefit plan can be reinstated upon divorce or death of your new spouse. However, in this case a life insurance policy might be a better option.

Q: Will I receive cost-of-living adjustments on my share of my husband's retired pay?

A:

That depends on the wording of your military retired pay division order. If you are awarded a dollar amount in the order then you will not receive cost-of-living adjustments. If the order awards you a percentage of his retired pay then you will receive cost-of-living adjustments. Cost-of-living adjustments can equate to additional hundreds of dollars per month. You should make sure that your divorce decree and retired pay division order grants you cost-of-living adjustments.

Q: Is my wife entitled to my Special Combat-Related Compensation if we divorce?

A:

Probably not. Just like disability compensation, Special Combat-Related Compensation benefits are generally not distributable during a divorce.

Q: I have an 80 percent disability rating. I support myself with my military retired pay and VA disability benefits. Will I have to pay my wife spousal support?

A:

Probably not. While your wife would be entitled to half of the portion of your military disposable retired pay that accrued during your marriage, you generally cannot be made to pay spousal support with your disability benefits. However, if you have other sources of income, such as income producing property, that could be used to satisfy an award of spousal support.

Q: My wife served in the Air Force for 25 years and we had excellent medical insurance with Tri-Care. We are in the process of separating. I have significant medical problems and can't afford my own medical insurance. What can I do?

A:

If you and your wife have been married for more than 20 years during her military service you will be eligible to stay on Tri-Care after you have divorced. This is known as the "20/20/20" rule. To qualify, your spouse must have served in the military for at least 20 years, you must have been married for at least 20 years, and 20 years of your marriage must overlap with her service. In other words, she must have served for 20 years during your marriage. If not, you may want to consider a legal separation which would allow you to remain on your wife's insurance policy.

Q: My wife and I are in the process of separating. We agree that the children should live with me, but if I get deployed then they will stay with her during my deployment. Will she be able to keep custody of our children when I return from deployment?

A:

Possibly. In order to prevent her from obtaining custody during your deployment, your divorce decree should state that your deployment is not a change of circumstances enabling her to modify the custody agreement.

Q: My children's father is in the military. How is his income determined for calculating child support?

A:

His income, along with housing allowance, is considered income for the purposes of child support. However, his food allowance is not. Additionally, his housing allowance is not taxable so it will be appear on his tax return. You will need to evaluate his leave and earning statement to get an accurate depiction of his income.

Q: My wife is medically retired from the military. Her only source of income is disability compensation. Can that be used as her income for determining child support?

A: That will depend in the law in your state. Generally, yes disability compensation is included as income for the purposes of calculating child support.

Tully Rinckey PLLC's military divorce team can represent military families in New York, Virginia and Washington, D.C., and we can advise family and matrimonial lawyers anywhere in the world on divorce, custody, and retirement matters. Call today to schedule a consultation

with one of our military divorce attorneys at 518-218-7100 or e-mail [info@1888law4life.com](mailto:info@1888law4life.com)

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