

# DIVORCE & MILITARY BENEFITS



prepared by  
MOUNTAIN HOME AFB  
GUNFIGHTER LEGAL OFFICE



## INTRODUCTION

Divorces involving a military member or retired military member create issues not found in typical divorces. Members and their spouses often have questions about division of retired pay, commissary and exchange privileges for former spouses, and medical care for former spouses. This handout addresses 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 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.

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. The definition of "equitable" will be 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 an 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 the payment directly from the military pay center. 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 former spouse were married for at least ten 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. The court is not limited to awarding fifty percent, but any portion of an award exceeding fifty percent must be paid by the military member.

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

## COMMISSARY & EXCHANGE

Former spouses are entitled to commissary and exchange privileges only if they meet the following requirements of the 20/20/20 rule:

- The former spouse and military member must have been married for 20 years.
- The member must have performed at least 20 years of retirement-creditable service.
- At least 20 years of the marriage must have overlapped with 20 years of retirement-creditable service.

Furthermore, exchange and commissary privileges terminate, regardless of whether the 20/20/20 rule is met, if the former spouse remarries. The privileges can, however, be regained upon dissolution of the disqualifying marriage.

## MEDICAL BENEFITS

Former spouses are eligible for space available medical care if they meet the following requirements:

- They must remain unmarried;
- They must not have medical coverage under an employer sponsored health plan; and
- They must meet the requirements of the 20/20/20 rule outlined above. (If you were divorced prior to 1 April 1985, check with an attorney to see whether the 20/20/15 rule applies to you).

**\*This handout is general in nature. It is not a substitute for legal advice from an attorney regarding individual situations. (August 2021)**

For additional information on this and other legal topics, see the Air Force Legal Assistance Website: <https://aflegalassistance.law.af.mil>