



Surviving Spouse Pension Benefits

As a widow or widower, federal law may entitle you to receive a surviving spouse pension benefit resulting from your spouse's work for a private employer. Federal law began regulating the pension plans of private employers with the enactment of the Employee Retirement Income Security Act of 1974 (ERISA).

Before ERISA was amended in 1984, many employees chose to receive a single life annuity without consulting their spouses. Single life annuities generally pay a higher monthly benefit than a joint and survivor annuity which guarantees payments over the lifetimes of both spouses. If an employee opted to receive a greater amount each month as a single life annuitant, the surviving spouse was not entitled to a pension benefit after the employee's death.

In 1984, Congress passed the Retirement Equity Act (REA) giving spouses important rights in private pensions. REA required most private pension plans to provide a retirement benefit as a joint and survivor annuity unless the employee's spouse specifically gave up all rights to the pension by signing a waiver. No longer did the married employee have complete control over the form of pension benefit received. Unfortunately, REA did not extend this right retroactively.

The right to receive part of your spouse's pension depends on several factors including:

- ❖ Where your spouse worked,
- ❖ When your spouse retired,
- ❖ When your spouse died,
- ❖ Whether you signed a written statement waiving your survivor's benefit, and
- ❖ Whether you and your spouse divorced.

Did your spouse work for a private employer?

If yes, and he or she was a member of a pension plan, you may be entitled to a benefit.

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If your spouse was employed by the military or the federal, state, or local government, he or she was not a member of a private pension plan. The terms of public pension plans are set by the laws of the government offering the benefit.

ERISA requirements may not cover pension plans offered by churches or church-related agencies. If your spouse worked for such an employer, check with the pension plan to find out if it has chosen to follow ERISA guidelines.

Did your spouse retire before 1985?

Before 1985, your spouse could choose to waive your survivor's pension benefit without your consent. REA's surviving spouse waiver provisions, generally, did not apply to plan years starting before December 31, 1984.

After 1985, your spouse could not receive a pension paid only over his or her lifetime unless both you and your spouse waived the survivor's benefit. Federal law now required private pension plans to provide an employee with a "spousal consent" form which explains in clear language the effects of the waiver.

Did your spouse retire on or after August 23, 1984, but before January 1, 1985?

On August 23, 1984, the President signed the Retirement Equity Act. Survivors could no longer choose to receive a single life annuity, instead of a joint and survivor annuity, without spousal consent. Most provisions of the REA did not go into effect until January 1, 1985.

However, if your spouse retired on or after August 23, 1984, but before January 1, 1985, you may be entitled to a special survivor benefit under the REA.

Did you sign a waiver form that was unclear, or were you forced to sign under pressure?

Waiver forms may sometimes be challenged if the spouse signed the form under pressure or if the form did not clearly warn the spouse about the consequences of signing the document.

Did you and your spouse divorce?

Generally, once you are divorced, you are no longer eligible to receive a survivor's benefit unless your Judgment of Divorce specifically states that you are

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to receive this part of your former spouse's pension and you get a special court order called a Qualified Domestic Relations Order (QDRO).

THIS FACT SHEET IS INTENDED TO PROVIDE ONLY GENERAL INFORMATION AND SHOULD NOT BE RELIED ON AS A LEGAL OPINION. SEEK INDIVIDUAL LEGAL ADVICE BEFORE MAKING ANY DECISION ABOUT YOUR RIGHTS. CALL THE MID-AMERICA PENSION RIGHTS PROJECT (866) 735-7737 TO GET ADVICE AND INFORMATION ABOUT PRIVATE AND PUBLIC PENSIONS.

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