



How a Divorce May Impact Your OCERS Retirement

Your divorce may impact your retirement. Part of your retirement may be considered community property and divided by the Family Court.

Q: How will the Family Court divide my retirement?

A: Generally, California courts will divide your OCERS retirement by “the time rule.” Under this rule, the court takes the number of years you were married and earned OCERS service credit, divides this figure by your total service credit at retirement, then multiplies this amount by one-half to determine how much of your retirement allowance your former spouse will receive.

Under the time rule, if you earned 10 years of service credit while you were married but you retire with 20 years of service credit, your former spouse will receive 25% of your total retirement allowance. (10 years / 20 years x ½ = 25%)

There are exceptions to the time rule so you should consult with a qualified family law attorney to explore your options.

Q: Does OCERS set up separate retirement accounts for my former spouse and me?

A: No. The Government Code sections that allow for separate accounts have not been made operative in Orange County. If you are required to pay part of your retirement to your former spouse, his or her interest will be a percentage of your retirement allowance.

Q: I plan to retire in 5 years. Can my former spouse cash-out his or her share of my retirement before I actually retire?

A: No. OCERS does not allow your former spouse to cash-out part of your member contributions. If you terminate employment and ask for a return of contributions, a percent of these cashed out contributions may be payable to your former spouse. Also, should you wish to retire, your former spouse can only receive a direct payment from OCERS when you actually retire and not before.

Q: If my former spouse does receive part of my retirement, can OCERS make a direct payment to my former spouse?

A: Yes. If OCERS has a Joinder and a Domestic Relations Order, we can make a direct payment to your former spouse. Also, we will issue separate Form 1099s for both you and your former spouse.

Q: What is a Joinder?

A: A Joinder makes OCERS a party to your divorce case, but only for your retirement issues. The Joinder documents are available from your local family court and should be filed in the county where your divorce is filed.

Q: What is a Domestic Relations Order?

A: A Domestic Relations Order, or DRO, is a court order that will provide OCERS with instructions on how and when to pay your former spouse. For a copy of a sample DRO, please contact the OCERS Legal Division or go online at www.ocers.org under “Forms & Publications.”

Q: Can OCERS give me legal advice concerning my retirement benefit and my divorce?

A: OCERS’ Staff cannot give you legal advice concerning your divorce and community property issues. While we are available to provide information as to whether OCERS can process a request under a DRO, we strongly encourage you to obtain independent legal advice when dealing with a divorce and your retirement.

Q: My divorce judgment states that my retirement is my separate property. Do I need a DRO or Joinder?

A: Many times you do not need a DRO or Joinder if you were awarded your retirement as your separate property. But you should consult with a qualified attorney if you have any concerns over whether your pension is your separate property.

This brochure is intended to provide you with general information. This brochure does not constitute legal advice, and OCERS cannot provide legal advice to members. If there are any discrepancies between the information in this brochure and the law, the law will prevail. Should you have legal questions, you are advised to consult an attorney.

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