



Rights of Surviving Spouses

As a widow or widower, you may have the right to part of your spouse's pension. The money you are entitled to receive is called a survivor's benefit.

Whether or not you are eligible to receive a survivor's pension depends on each of these factors:

- Where your spouse worked,
- When your spouse retired,
- When your spouse died, and
- Whether you signed a written statement giving up or waiving your survivor's benefits.

The following information should help clarify many of your pension rights as a surviving spouse:

Where did your spouse work?

If your spouse worked for a private employer and he was a member of a pension plan there, the laws discussed here may apply to you. Employees who are not members of private pension plans include:

- Federal, state, and local government employees, such as teachers or firefighters
- Members of the military
- Employees of churches and church-related agencies, such as religious schools or hospitals

When did your spouse die?

The federal pension law, the Employee Retirement Income Security Act (ERISA), requires private pension plans to provide benefits to surviving spouses. However, until the Retirement Equity Act (REA) was signed on August 23, 1984, employees could choose not to receive the joint and survivor annuity without notifying the spouse. If your spouse died before this date, the spouse may have chosen a benefit that would be paid only while he or she was alive, and there would be no survivor benefit. If your spouse was working and died on or after August 23, 1984 but before January 1, 1985, you may have a right to a special survivor benefit.

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When did your spouse retire?

Before 1985: Generally, the REA's survivor's benefit waiver provisions do not apply to plan years starting before December 31, 1984. In 1985 or after: Generally, an employee could no longer give up or "waive" his or her spouse's rights to survivor's benefits unless the spouse agreed by signing a written form.

Did you give up your rights to a survivor's benefit?

The law provides that an employee may give up or "waive" survivor's benefits, but only if the spouse agrees to this in writing. The pension plan administrator must provide the employee with a special form, called a "spousal consent," that explains in clear language the effect of the waiver. The waiver form may be challenged if the survivor misunderstood the form because it was not clear, or if it was signed under pressure.

A spouse's consent is not required if the employee has a court order that confirms the spouse cannot be located, the employee is legally separated or has been abandoned by the spouse or the spouse is legally incompetent and his or her guardian consents.

What if the couple is divorced at the time of the employee's death?

A divorced spouse may receive survivor's benefits as part of the divorce settlement. Once you are divorced, you will probably lose whatever survivor's pension protection you may have had while married, unless your special court order, a Qualified Domestic Relations Order (QDRO), specifically provides for a survivor's pension.

One way for the court order to provide a survivor's pension is for the order to say that the former spouse is to be treated as a surviving spouse. This would mean that you would receive the same survivor's pension that you would have received had you remained married – typically an amount equal to fifty percent of the benefits your husband or wife was receiving.

Frequently Asked Questions

What is a survivor's benefit/widow's pension?

The federal pension law, the Employee Retirement Income Security Act (ERISA), requires private pension plans to provide a pension to a worker's surviving spouse if the employee earned a benefit. Since Congress passed the Retirement Equity Act in 1984, the spouse's survivor pension can only be given up with their written permission.

Where did your spouse work?

ERISA, the private pension law, only applies to pension plans for employees of private employers. If your spouse worked for a state or local government, then you must find out what that state's law requires. If your spouse worked for the federal government, then you must find out the special rules that apply to federal workers. If your spouse worked for a church employer, then you must find out the special rules that apply to church workers.

When did your spouse retire?

The rules on survivor pensions apply to an employee who is entitled to a pension benefit and was working under a private pension plan in 1985 or after. Generally, as long as your spouse was working after the law went into effect, he or she would need your signature to give up or "waive" survivor's benefits without your permission. If your spouse retired or died before 1985, he could have waived your survivor's benefits without your permission. What is "spousal consent"?

If you decide that you will give up your survivor's benefit, you must sign a clearly written spousal consent form provided by the pension plan stating that you do not want the surviving spouse pension.

When will you receive your survivor's benefit?

If your spouse dies after retirement, you should start receiving benefit payments immediately.

If your spouse dies before retirement, you have a choice. You can choose for the plan to start making payments on the date your spouse would have reached early retirement age and receive a smaller benefit. Or, you can choose to wait until the date your spouse would have reached the plan's definition of normal retirement age in order to receive a full retirement benefit.

What happens in case of divorce?

If you are a divorced spouse, you may receive survivor rights if that is provided for as part of the division of pension benefits during the divorce proceedings.