

## Does your Spouse have a Pension Plan?

12/18/18

If you or your spouse are employed or were previously employed, you may own a pension that is subject to equitable distribution in your divorce. Many employees receive the benefit of a pension when they retire as a result of their employment. A pension is a type of savings plan for the employer to help prepare the employee for financial security when he or she is no longer working. However, pension plans did not always exist. Pensions became increasingly popular after World War II as a result of labor unions negotiating for them as a part of their collective bargaining agreements.

Congress passed the Employee Retirement Income Security Act (ERISA) in 1974, which is a federal statute that established minimum standards for pension plans in private industry.

There are different types of pensions. The most widely known plans are the defined benefit plan and the defined contribution plan. The defined benefit plan is a pension plan that is set by an employer's promise to pay the employee a set amount of money when the employee retires. This distribution or payment to the employee can be paid in a lump sum, monthly payments or a mixture of both.

ERISA does not apply to all pension plans. Government pension plans, church plans, plans for workers compensation or unemployment, plans maintained outside of the United States for the benefit of non-residence aliens and excess benefit plans are specifically excluded from ERISA. A pension is subject to equitable distribution in New York and New Jersey when parties divorce.

The defined contribution pension plan is established by contributions from the employer and employee throughout the employment of the employee. When the employee retires, he can receive the whole pension plan and can submit the entire account to be converted to cash. The amount a spouse is entitled to can be calculated and determined and thus distributed upon the event of divorce.

As part of equitable distribution, a pension can be distributed. This is accomplished with a QDRO - qualified domestic relations order. The Department of Labor defines a QDRO as "a domestic relations order that creates or recognizes the existence of an alternate payee's right to receive, or assigns to an alternate payee the right to receive, all or a portion of the benefits payable with respect to a participant under a retirement plan, and that includes certain information and meets certain other requirements."

The Department of Labor previously managed QDRO's, but this was turned over to the Internal Revenue Service by President Carter in 1978. The QDRO must meet specific requirements set forth in the Retirement Equity Act (REA), which was an amendment to ERISA by Congress in 1984. Your attorney will know how to get a QDRO established so that you can share in your spouse's retirement benefits as a result of your divorce. Contact one of our attorneys to discuss your pension entitlements as a part of your divorce.

If you have a question or wish to discuss this topic with one of our family lawyers, please give Joe a call at **(732) 352-9871**.

Originally Posted 7/13/2017

### Attorney

- Joseph J. Russell, Jr.

## Practice

- Family Law