

DIVORCE FINANCIAL ADVISING UPDATE

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Interaction of Social Security With Certain Government Pension Plans...Inherent Unfairness In Divorce

Employees covered by a public retirement system that meets certain federal standards do not pay into the retirement portion of the Federal Insurance Contributions Act (FICA). Therefore, those employees are not eligible for Social Security benefits once they retire. However, they may be eligible to receive some benefits if they obtained eligibility based on their spouses' record or their own earnings from private sector jobs.

There are two provisions that reduce the social security benefit the employee will receive.

Windfall Elimination Provision. This provision applies to the employee's own earnings record. For 2009, it reduces the social security benefits by 50% of the government monthly pension benefit to a maximum monthly reduction of \$372.

Government Pension Offset. An individual is entitled to receive 50% of his/her ex-spouse's social security benefit if the marriage lasted at least 10 years. This provision reduces those derivative benefits a widow or ex-spouse can receive. The government pension offset reduces the 50% derivative benefit by 66.7¢ for each \$1 of government pension received so the remaining social security benefits can be wiped out fairly easily.

Inherent unfairness in divorce settlements. Social security benefits are separate property and separate income. Government pensions are community property. Here's an example of what can, and does, frequently happen:

Jane - Teacher for entire career; will receive CALSTRS pension plan benefits and no social security; Government Pension Offset will reduce Jane's derivative benefits to \$0

John - Private sector employee; will receive social security benefits

John's benefits = 50% of Jane's STRS + his social security

Jane benefits = 50% of her STRS

Social Security Offset. This approach reduces the value of the government pension by a hypothetical amount of social security benefits the employee would have received. In essence, the pension is broken into two pieces – social security (separate property) and government pension (community property). Cases in other states have dealt with this issue, but I am not aware of any in California. **I'd love to hear your thoughts and your knowledge of any California cases addressing this issue.**

Have Questions? Need help? Call or e-mail me!

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