

Understanding the Impact of Divorce on Employee Benefits in Florida

By: Anna C. Fernandez of Legal Lotus, PA

When you're facing a divorce in Florida, it's not just your marital status that changes. Employee benefits like health insurance and retirement plans are also affected. Understanding the transformation of these benefits is essential for those going through this transition. This article takes a straightforward look at what happens to these benefits when there's no prenup or postnup guiding the process.

Health Insurance and Divorce:

A major concern during divorce is health insurance coverage. In Florida, a spouse covered under their partner's employer-sponsored health plan may lose this benefit upon divorce. Typically, one spouse's employer-sponsored plan covers the family. If you're on your spouse's policy, you'll need to consider alternative options post-divorce.

This can include:

1. **Employer-Sponsored Plan:** If employed, you may be eligible for your employer's health insurance plan. Divorce is recognized as a life-changing event, permitting enrollment outside the typical period.
2. **COBRA Coverage:** The Consolidated Omnibus Budget Reconciliation Act (COBRA) lets you keep your ex-spouse's employer-sponsored coverage for up to 36 months after divorce. However, you'll pay the full premium, which can be costly.
3. **Individual Policy:** The Health Insurance Marketplace offers plans with varying coverage levels. Divorce qualifies you for a Special Enrollment Period, giving you 60 days to enroll in a new plan.
4. **State Health Programs:** Depending on your income, you might qualify for programs like Medicaid.

The financial burden of health insurance deserves a spot in your divorce negotiations. Consider incorporating the cost of future premiums into the alimony or settlement discussions. For parents, securing children's health coverage is a non-negotiable aspect of the parenting plan. Florida's Child Support Guidelines Worksheet, which includes health insurance costs, assists in determining the appropriate child support figures.

So what does this look like? Imagine Jane, who's been under her husband John's insurance for the last decade. With their divorce finalizing, Jane's now diving into her employer's health plan. The kids, on the other hand, will stay on John's policy, with Jane chipping in half the cost. They've used mediation to work out these details, avoiding extra stress in an already tough time.

By staying informed and considering all your options, you can transition to a post-divorce life with the health coverage you need.

Retirement Plans and Divorce:

Divorce brings many changes, and figuring out how to handle retirement plans is one of the trickiest parts. In Florida, the law sees the money you put away for your golden years during your marriage as a shared pot. Splitting this pot fairly is more than just running numbers; it's about understanding the rules and finding a balance. As we explore this section, we'll break down how retirement assets are classified, the steps to divvy them up, and how to use this knowledge to your advantage in mediation. The aim is to protect your future finances and make sure both parties walk away with their fair share.

a. Marital v. Nonmarital Property:

In Florida, retirement assets accrued during the marriage are considered marital property and subject to equitable distribution. This can involve complex calculations and legal considerations. This means that any retirement assets both spouses contributed to during the marriage need to be divided fairly, though not necessarily equally.

Contributions to retirement plans made during the marriage are generally considered marital property. If a retirement plan was established prior to the marriage, only the portion of the benefits accrued during the marriage is subject to division.

b. Dividing Retirement Plans:

The division of an employee 401(k) or pension plan is governed by a Qualified Domestic Relations Order (QDRO), which specifies how retirement assets will be split. A QDRO is a legal order subsequent to a divorce or legal separation that splits and changes ownership of a retirement plan to give the divorced spouse their share of the asset. Without a QDRO, retirement plans covered by ERISA will not permit the distribution of benefits to anyone other than the plan holder.

Here's an example: John and Jane have been married for 20 years. John has a 401(k) account he's contributed to for 15 years during their marriage. John's account was opened during the marriage. Now that they're divorcing, Jane is entitled to a portion of that retirement account. To receive her share, they need a QDRO that instructs the plan administrator on how to divide and distribute the funds.

Crafting a QDRO requires attention to detail, ensuring that the order complies with both the retirement plan's guidelines and federal regulations. In Florida, the division of retirement assets must also align with state laws governing equitable distribution, as outlined in Florida Statute §61.075. The Statute mandates a fair division of marital assets, but "fair" doesn't always mean "equal." Factors such as the length of the marriage, contributions to the marriage by each spouse, and economic circumstances can affect the division.

c. Using Retirement Plans during Mediation Negotiations:

Retirement plans often represent a significant marital asset, and their division can become a focal point of negotiation. During mediation, both parties can discuss and reach a mutually agreeable settlement regarding the division of these assets. Mediation offers a flexible environment where you can explore creative solutions that might not be available in court, such as agreeing on a

specific percentage split, determining a fixed amount for one party, or even trading off retirement assets against other marital assets of equivalent value.

The key is to ensure that the division is equitable and reflective of both parties' long-term financial needs, which can be solidified in a marital settlement agreement. For example, one spouse might have a pension, while the other has a comparable 401(k) plan. In a balanced negotiation, they could agree that each retains their respective retirement accounts, considering their values equivalent for the purpose of asset division.

Alternatively, if one spouse has a substantial 401(k) and the other has little to no retirement savings, they could negotiate a percentage split. For example, they may agree that upon retirement, the spouse with the lesser amount receives 30% of the 401(k) distributions, providing for a more equitable long-term financial situation.

The bottom line is your post-divorce life deserves a secure financial foundation. And getting the retirement split right is a huge part of that.

Conclusion:

The impact of divorce on employee benefits in Florida requires careful consideration and understanding from both employees and employers. While employees navigate personal and financial shifts, employers must balance compliance with empathy. Adequate preparation, legal guidance, and clear communication are key to managing the complexities of divorce in the realm of employee benefits.

—

SOURCES:

1. [Florida Statute §61.13](#)
2. [Florida Statute §627.65615](#)
3. [Florida Statute §61.075](#)
4. [Florida Statute § 61.076](#)
5. [COBRA\):U.S. Department of Labor](#)
6. The Health Insurance Marketplace: [HealthCare.gov](#)
7. [Florida Department of Children and Families: Medicaid](#)