

Railroad Retirement Plans

Railroad Retirement Board Pension:

The Railroad Retirement Board pension is a non-qualified plan made up of Tier I, Tier II and sometimes a small supplement to the Tier II.

Tier I: The bulk of the Railroad Retirement Pension is paid under the Tier I portion. Tier I is the functional equivalent of Social Security, and cannot be divided by court order. The former spouse has an absolute right to Tier I payments under the same rules that apply to Social Security (marriage over 10 years, etc.). Like Social Security, no court order can give her more or less than her 50% entitlement, and the amount the employee receives is not affected by payments for the former spouse. The former spouse may commence benefits when she reaches retirement age, but, as with Social Security, her spousal share of the Tier I payments will be reduced by any Social Security or Tier I benefits she receives on her own.

Non Tier I: The non-Tier I benefits can be divided by court order. Previously, benefits to the former spouse could not start until the employee retired and entered pay status, and benefits would terminate on the first death. This has recently changed. In addition to the old method, benefits to the former spouse can now be made to commence when both the employee and the former spouse have reached age 62 (with other minor requirements). This is true even if the employee has not yet commenced benefits. Payments will be made for the former spouse's lifetime and will not be affected by the employee's death.

The assigned benefit can be expressed as a percentage of the benefits earned as of the date of divorce (or some other historical date), or as a percentage at retirement. Note, however, if the Assigned Benefit is expressed as a monthly dollar amount or a percentage or formula applicable to benefits as of a date other than the employee's retirement, the Railroad Retirement Board will not calculate cost of living adjustments on the assigned portion.

It is my understanding that Amtrak employees only have the Tier I and Non-Tier II benefits.

Metro North Defined Benefit Pension Plan

Metro North employees also have a pension called the Metro North Defined Benefit Pension Plan. Payments from this plan are offset by the Tier II benefits paid on the employee's behalf.

The MTA will not calculate benefits as of the date of divorce; the assignment must either be a percentage or formula applied to the benefit at retirement or a set dollar amount per month. Possible wording for the separation agreement could be, "the former spouse's share of the employee's monthly payments under the MTA pension will be determined as follows: $x\%$ times a fraction, the numerator of which is the number of months of benefits accrued by the employee from [choose either "the date of marriage" or "the date he first started earning benefits under the plan"] through the date of divorce, and the denominator of which is the total number of months of benefits accrued by the employee as of the date of his retirement. The parties understand that

unless the employee is ordered to elect a survivor benefit, payments will terminate upon the death of the employee or death of the former spouse, whichever occurs first.”

The Metro North pension will be paid for the employee’s life alone, unless the employee elects a survivor option. He can choose a survivor annuity or a guaranteed payment term. The survivor annuity would be based the entire pension at retirement, prior to reduction for any amount to be paid to the former spouse. Possible survivor options are a 25% survivor annuity; 50% survivor annuity, 75% survivor annuity and 100% survivor annuity. (The percentage is applied to the entire pension, prior to division by domestic relations order.) Another survivor option is a life annuity with guaranteed 5 year or 10 year term, meaning the employee will receive an annuity for his lifetime, but if he dies in less than 5 or 10 years, payments will be made to his named beneficiary for the remainder of the 5 or 10 year term. If the employee is remarried when he retires, his current spouse might be required to waive her rights to survivor benefits for the employee to be able to provide survivor benefits to a former spouse.

Metro North 401(k) or 457 Plan

Some Metro North Employees have a savings plan as well. The savings plan can be divided like any other 401(k) – the assignment can be a dollar amount or a percentage. The former spouse will receive her portion as soon as administratively feasible after the QDRO is accepted by the plan. Make sure to state whether the assignment is to be adjusted for investment gains or losses, and whether any outstanding loan balances should be deducted before determining the percentage assigned.

Elizabeth L. McMahon