

# THE NATIONAL LAW REVIEW

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## Military Disability Benefit Entitlements During the Dissolution of Marriage

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When researching about the different rights that the spouses of veterans are entitled to, military disability benefits can prove to be challenging to understand. While the way a service member's retirement pay is divided in the case of divorce has been recently revised, the disability benefits pay division requires the understanding of the basics.

### Waiving Retirement for Disability Benefits

The Department of Veterans Affairs provides help to the individuals that have suffered any disability during their years of service. This help is offered in the form of disability benefits pay. Veteran affairs give the injury or disability a rating according to which the disability benefit is then determined. For veterans with a disability that holds a rating below 50%, the veteran is required to waive retirement to become eligible for receiving a disability benefit. There is no difference that a particular military individual's rank can play when the benefit is being determined. This means that all the service members have the same benefit; however, the number of dependents is taken into account during such a calculation.

Waiving retired pay in exchange for disability benefits can, in turn, affect the former spouse of the veteran. This is because while retired pay is considered to be divisible in the case of a divorce, the disability benefits aren't. Not only do certain veterans choose to waive their retired pay for disability benefits due to them being tax exempt but also because they are not accounted for in cases pertaining to family law.

### Assets vs. Disability Benefits

However, this only means that the Federal Law does not allow the disability benefit to be regarded as an asset at the time of the dissolution of a marriage. But, when it comes to calculating the income of the veteran to determine the child or spousal support, the benefit is considered. This is because the disability benefits are considered to be a way in which the VA compensates the military personnel for their injuries that have significantly limited their earning capacity. It is, therefore, no surprise that the number of dependents is taken into account when calculating the amount a veteran is entitled to in disability benefits.

Hence, while the benefit payout might be exempt from taxation, it will be made a part of the income when support is being calculated. This is because for the child and spousal support all sources are taken into consideration. Thus, some part of the benefits is said to go towards supporting the dependents, and it would be incorrect to assume that the payout belongs to the veteran only.

### Disability Benefits Agreement

To protect their rights, spouses can enter into an agreement to avoid such circumstances from arising in case of a divorce. An agreement that requires the veteran to pay a monthly amount as a result of exchanging the retired



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pay for disability benefits protects the right of the spouse. In the absence of such an agreement, [the spouses cannot ask the service member to indemnify them.](#)

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