

Unifor Legal Services Plan

A SHORT COMMON LAW RELATIONSHIP CAN CHANGE PENSION RIGHTS

A defined benefit pension is a very valuable asset for many Detroit 3 auto workers. The pension interest grows over the course of employment and, by the time a worker has reached “30 and Out” can be worth several hundred thousand dollars, so control over the ultimate beneficiary is a major financial issue.

Do you know who will get your pension benefits when you die? That depends, in part, on whether you die before or after you are receiving your pension.

A. Pre-Retirement Death Benefit (PRDB)

If a member dies before reaching retirement, a lump sum called a Pre-Retirement Death Benefit (PRDB) must be paid by the pension plan. Who gets it depends on the law and sometimes on choices made by the pension member.

1. If the member has no spouse at the time of death, the PRDB is paid to the member’s estate or to beneficiaries who the member has named by signing a designation form.
2. If a member has a spouse at the time of death, the law requires the PRDB to be paid to the spouse, unless the spouse has waived their right to it.

A spouse can be a married spouse or a common law spouse.

What many members are not aware of is that the Unifor-Detroit Three collective agreements define a common law “spouse” as someone with whom the member has resided continuously for only one year. *[Note: This overrides the definition of a spouse which is found in the Pension Benefits Act, which requires a three year period of continuous cohabitation, unless there is a child born in a relationship of some permanence, in which case it can be a shorter period than 3 years].*

Therefore, whether your common law cohabitation is serious and enduring, or casual, **twelve months after living together, your common law spouse will be solely entitled to the PRDB**, even if you may have signed a designation form leaving the PRDB to your children or some other beneficiaries, **unless your common law spouse signs a waiver.**

IMPORTANT

If you want to leave the PDRB to someone other than your spouse, the safest way to do that is to have a domestic contract - either a cohabitation agreement (for common law spouses) or a marriage contract (for married spouses) - preferably before living together or marrying, stipulating that your “spouse”

- (a) waives the right to the PRDB,
- (b) agrees to sign the pension administrator’s waiver form (which can be revoked), and
- (c) agrees to never revoke the waiver.

B. Post-Retirement Survivor Benefit

The situation is different once a member has retired. The pension is now being paid monthly to the member, and if the member has a spouse at retirement, by law the pension must be a “Joint and Survivor “ pension.

If you are considering a new relationship shortly before retiring, you should seek legal advice about the implications for your pension benefits.

Having a Joint and Survivor pension means that if the member dies first, the spouse gets a lifetime pension amounting to two-thirds of the member’s monthly payment. The member’s pension payments will be reduced by 5%. Sometimes the employer agrees to convert the pension to a Joint and Survivor pension if the member acquires a spouse after retiring.

There will be no lump sum payment on death to anyone when a member dies and a pension is in pay.

IMPORTANT

If you do not want your “spouse” to get the survivor benefit, you should get legal advice before you apply for retirement about the possible options that are available.

If you have a question about how any of the above affects your personal situation, you should consult a family law lawyer through the Unifor Legal Services Plan.

The Brampton office can be reached at 905-790-6400.

