Qualified Domestic Relations Order (QDRO)

Information for:
All Funds

A Domestic Relations Order (DRO) is a court order that is separate and apart from a Judgment of Divorce. A DRO provides for the equitable distribution of pension and related benefits upon the dissolution of a marriage or civil union. A DRO that has been reviewed and approved by the New Jersey Division of Pensions & Benefits (NJDPB) and signed by a judge is then deemed a Qualified Domestic Relations Order (QDRO).

While the New Jersey State-administered retirement systems are exempt from the Employee Retirement Income Security Act of 1974 (ERISA), the NJDPB will attempt to follow the provisions of ERISA as related to the Retirement Equity Act of 1985 (REACT), provided such mandates do not violate applicable New Jersey laws or administrative rules. Although your pension is normally exempt from any liens, the NJDPB will honor court orders for child support, alimony, or equitable distribution in cases of divorce or dissolution of a civil union.

REQUIREMENTS FOR A DRO TO BE DEEMED QUALIFIED

The language within a DRO must clearly impose an obligation upon the NJDPB to withhold a portion of a member's retirement benefits for payment to an alternate payee. The description of the member and the alternate payee must be clear and specific, i.e., full names as opposed to references to "spouse," "former spouse," etc. Other necessary information includes:

- Names, addresses, and Social Security numbers of both the member and the alternate payee;
- The specific name of the retirement system in which the member is enrolled. New Jersey State-administered systems include the:
  - Public Employees' Retirement System (PERS);
  - Teachers' Pension and Annuity Fund (TPAF);
  - Police and Firemen's Retirement System (PFRS);
  - State Police Retirement System (SPRS);
  - Judicial Retirement System (JRS);
  - Alternate Benefit Program (ABP);
  - Defined Contribution Retirement Program (DCRP);
  - New Jersey State Employees' Deferred Compensation Plan (NJSEDCP); and
  - Supplemental Annuity Collective Trust (SACT).

The DRO must state a specific amount to be withheld for payment to the alternate payee. See the "Sample Matrimonial Order" later in this fact sheet. Acceptable examples include:

- A specific dollar amount;
- A specific percentage of the member's benefit; or
- An amount to be determined through the application of a coverture fraction. This type of calculation utilizes a specific percentage of the member's gross monthly retirement allowance multiplied by a coverture fraction where the numerator is the total number of years and months that the parties were married/partnered while the member was a participant in the retirement system, and the denominator is the total number of years and months the member participated in the retirement system.

To ensure proper tax reporting, the DRO must indicate whether the withholdings are for alimony, support, or equitable distribution payments. The form of payment will determine how the payments are reported for tax purposes.

DRO EVALUATION AND GUIDELINES

Under the Retirement Equity Act, the NJDPB must review each DRO providing for the payment of benefits from a retirement system maintained by the NJDPB to someone other than the retiree to determine if the order is qualified.

Upon receipt of a DRO, the NJDPB will provide the participant, each alternate payee, and their legal representatives (interested parties) with written notice that the order was received.

DROs that have been reviewed by a judge can be sent to:

New Jersey Division of Pensions & Benefits
Attn: Wendy Wise-Whitfield
P.O. Box 295
Trenton, NJ 08625-0295

The NJDPB will classify the DRO as qualified if the evaluation items to follow are determined to be either "Yes" or "Not Applicable." If the answer to any of the items is determined to be "No," the NJDPB will classify the order as not qualified:

1. Is the order a DRO?

   A DRO may take the form of a judgment, decree, or court order (including a court approval of a property settlement agreement) made pursuant to a state domestic relations law (including community property laws). It must relate to the provision of child support, alimony, or material property rights to a spouse/partner (present or former), child, or other dependent of the Plan participant.

2. Does the order specify the plan or plans to which it applies?

   A DRO must clearly specify each plan to which it applies (see the "Requirements for a DRO to be Deemed Qualified" section). If multiple plans are specified, the order of payment should be included if appropriate.

3. Does the order specify the Plan participant by name and mailing address?

   A DRO must specify the name and mailing address of the participant. The last known mailing address for a current employee is sufficient.

4. Does the order specify an alternate payee by name and mailing address?

   An alternate payee is a spouse/partner, former spouse/partner, child, or other dependent of the participant. A DRO must clearly specify the name and address of each alternate payee.

5. Does the order create or recognize the alternate payee's right to all or part of the participant's benefits under the Plan?

   A DRO must create or recognize the existence of an alternate payee's right, or assign to an alternate payee the right, to receive all or a portion of the benefits payable with respect to a participant under a plan.

6. Does the order specify the amount or percentage of the participant's benefit to be paid by the Plan to each alternate payee (or clearly designate the manner to determine the amount or percentage)?

   A DRO must clearly specify the amount or percentage of the employee's benefits to be paid to each alternate payee, or the manner in which this can be determined.

7. Does the order state how benefits must be paid to each alternate payee?

   A DRO must clearly specify the number of payments from the Plan or period to which it applies.

8. Is the order consistent with all other DROs deemed qualified by the Plan with respect to the participant?

   A DRO cannot require benefits to be paid to an alternate payee that are required under a prior QDRO to be paid to another alternate payee.

9. Can the DRO require designation of beneficiary for group life insurance?

   Court orders may be filed that specifically designate the former spouse/partner to receive a life insurance benefit. For more information, see the *Divorce, Dissolution of a Civil Union, and Retirement Benefits* Fact Sheet.

10. Is the DRO free of any unnecessary conditions, obligations, or representations that would appear to bind the NJDPB if it approved the order?

    If the DRO is free of any other conditions or obligations and meets all of the other preceding requirements, the order can be considered qualified under the NJDPB's QDRO procedures.

The NJDPB will make a preliminary determination of whether the order is qualified, generally within 60 days of receipt, and will notify each interested party in writing of its decision. If the NJDPB determines that the order is not qualified, the interested party may obtain a modification of the order and resubmit it for review.

IMPLEMENTATION

QDROs are implemented only when the member retires and elects to receive a monthly benefit, or when the member terminates participation in his or her respective retirement system and applies for a withdrawal of his or her net personal contributions. If a DRO is received for a participant who has already retired, it can be implemented upon approval and *Order of the Court.*

It is the responsibility of the member to provide the NJDPB with copies of all court orders as well as to comply with the provisions of the court orders.

A DRO cannot direct the State to implement any provision that would conflict with Statute or regulation governing administration of the retirement systems, nor can the benefit(s) payable to alternate payee(s) exceed the net benefit available to the participant.

The former spouse/partner does not obtain all of the rights of a member under the provisions of a QDRO. However, if the DRO is deemed qualified, the former spouse/partner does receive the right to receive a portion of the member's monthly retirement benefits until either (a) he/she or the member dies, or (b) the NJDPB receives another court order that modifies or nullifies the previous QDRO. The former spouse/partner's right to receive a portion of the retiree's monthly retirement allowances cannot be assigned or bequeathed to anyone else or to the former spouse/partner's estate.

If the former spouse/partner predeceases the retiree, the withholdings under the QDRO will revert

back to the retiree. When the retiree dies, all withholdings will terminate. However, in those systems that permit the member to name survivor beneficiaries, the former spouse/partner could receive survivor benefits in such situations even though the withholdings under the QDRO will terminate; the member would have had to name the former spouse/partner as the beneficiary for the survivor pension benefits — either voluntarily or by court order — at the time of selection of a survivor's benefit on the retirement application.

Generally, the NJDPB will only implement QDROs on a prospective basis. Arrears or retroactive withholdings are not automatic; however, if a request for such arrears or retroactive withholdings is specifically required within the QDRO, such arrears or retroactive withholdings can be implemented. The QDRO must state the amount of the regular withholdings plus the additional amount of the arrears withholdings plus the balance of the outstanding arrears balance.

LIMITATIONS

The normal pension benefits to the member cannot be increased as a result of the provisions appearing within a QDRO. There are no lump-sum retirement benefits available to the member or the former spouse/partner under the provisions of a QDRO.

Retirement Survivor Benefits

PERS, TPAF, and JRS — If the member retires and designates his or her spouse/partner as the beneficiary under one of the various survivor options available, and is then divorced from that named beneficiary, the former spouse/partner will remain as the beneficiary for those survivor benefits.

PFRS and SPRS — A divorce will void the former spouse/partner's eligibility to receive monthly survivor benefits. The laws governing the PFRS and SPRS state that only the man or woman to whom the retiree is married or in a civil union on the date of his or her death is eligible to receive a monthly survivor benefit from the retirement system.

Group Life Insurance

In cases of divorce or dissolution, even if your retirement application indicates your former spouse/partner and/or relatives of your former spouse/partner as beneficiaries for life insurance, they cannot receive the benefit. The proceeds from your life insurance policy become payable upon your death to your remaining primary beneficiaries (if any), contingent beneficiaries (if any), or your estate. However, the following exceptions will be honored and considered valid:

- Court orders are filed that specifically designate your former spouse/partner to receive a life insurance benefit; or
- You file a *Designation of Beneficiary* form after the final date of judgment that names your former spouse/partner and/or relatives of your former spouse/partner as life insurance beneficiary.

The court order must specifically state that a member must designate the former spouse/partner for the group life insurance benefit offered by the employer, and this designation must be made after the date of the divorce. If there is no specificity as to the employer's group life insurance or the designation is not made after the divorce, the NJDPB cannot honor the designation.

For more information see the *Divorce, Dissolution of a Civil Union, and Retirement Benefits* Fact Sheet.

SPECIAL CONDITIONS FOR DEFINED CONTRIBUTIONS ACCOUNTS

The NJDPB administers the DCRP and the NJSEDCP.* Specific wording is required in the QDRO in order for the NJDPB to accept and implement it for these plans:

- In order to be acceptable for implementation, a DRO involving the DCRP or the NJSEDCP must state that "The New Jersey Division of Pensions & Benefits" is to withhold a specific dollar amount or a specific percentage of the balance within the participant's account as of the "end of a month" for either equitable distribution, alimony, or support payments to the alternate payee.
  - The wording concerning "The New Jersey Division of Pensions & Benefits" is necessary to create a clear obligation upon the NJDPB to implement the requested decision.
  - The wording concerning the percentage withholdings based on an "end of a month" is necessary because the value of the accounts is usually calculated at the end of a month.

After the NJDPB deems a DRO qualified, it will attempt to segregate the specific dollar amount or specific percentage requested within such QDRO within the participant's account as soon as practical thereafter. Once the segregation within the account is made, the former spouse will have total control over those funds as to investment decisions, allocations, etc. The participant will only have control over the remainder of the funds within that account.

** Local employers (i.e., municipalities, counties, boards of education, etc.) may offer deferred compensation plans to their employees, but the NJDPB is not part of the administration of such local plans. The laws and regulations governing these types of plans may differ from the laws and regulations governing the NJSEDCP, and their procedures for implementing QDROs may be different than those policies and procedures concerning the NJSEDCP.*

ADDITIONAL INFORMATION

For additional information about your benefits and divorce or dissolution of a civil union, see the *Divorce, Dissolution of a Civil Union, and Retirement Benefits* Fact Sheet.

This fact sheet has been produced and distributed by:

New Jersey Division of Pensions & Benefits
P.O. Box 295, Trenton, NJ 08625-0295

(609) 292-7524
For the hearing impaired: TRS 711 (609) 292-6683
www.nj.gov/treasury/pensions

NEW JERSEY DIVISION OF PENSIONS & BENEFITS
SAMPLE MATRIMONIAL ORDER

A. Where a SPECIFIC DOLLAR AMOUNT has been resolved:

The NJDPB is to withhold the amount of $412.18 [OR ANY OTHER STATED AMOUNT] from John Doe's gross monthly retirement allowances for [either: alimony, support, or equitable distribution – indicate only one] payments to Ms. Flossie Doe.

B. Where a SPECIFIC PERCENTAGE has been determined:

The NJDPB is to withhold 42 percent (42%) [OR ANY OTHER AGREED UPON PERCENTAGE] of John Doe's gross monthly retirement allowances for [either: alimony, support, or equitable distribution – indicate only one] payments to Ms. Flossie Doe.

C. Where a SPECIFIC PERCENTAGE has been determined but the member is still an active employee and the monthly retirement allowance cannot be determined at the present time:

The NJDPB is to withhold from John Doe's gross monthly retirement allowances for [either: alimony, support, or equitable distribution – indicate only one] payments to Ms. Flossie Doe an amount to be computed by multiplying the gross monthly retirement allowance by 42 percent (42%) [OR ANY OTHER AGREED UPON PERCENTAGE] and a coverture fraction in which the numerator will be the total number of years that the spouses were married while the member was a member of the retirement system [THAT SPECIFIC NUMBER OF YEARS AND MONTHS MUST BE STATED IN THE ORDER, such as 26 years and three months] and the denominator will be the total years of service credit accrued within the retirement system at the time of retirement [THIS ACTUAL FIGURE WILL BE UNKNOWN AT THE TIME OF THE PREPARATION OF THE COURT ORDER].

NOTES: The withholdings mentioned in such orders will be sent directly to the divorced spouse unless the order specifies another payee such as a probation department.

- Upon the death of EITHER the retirant or the divorced spouse, all withholdings mandated under such a court order will be terminated. In those retirement systems that permit the member to select a survivor's retirement option at the time of his or her retirement, the equitable distribution withholdings will still terminate upon the death of the retirant but, if the divorced spouse is designated as the beneficiary under the survivor's retirement option and survives the retirant, such divorced spouse who was designated as the survivor's option — either voluntarily by the member or by court order — can receive monthly survivor's benefits for the rest of his or her life after the death of the retirant. Those benefits do not arise from the equitable distribution court order but rather arise from the rights of a designated beneficiary under a survivor's retirement option.
- If another person receives monthly survivor's benefits subsequent to the death of the retirant under a retirement option selected by the retirant, the divorced spouse cannot receive continued equitable distributions from the monthly survivor's benefits payable to that other person.

SAMPLE