

How An Employee's Divorce Can Impact Your Practice Retirement Plan

The benefits accumulated for an employee in your practice qualified retirement plan may not be "assigned or alienated." This means that benefits cannot be obtained by anyone other than the employee-participant (such as the employee's creditors). Qualified Domestic Relations Orders ("QDROs") are an exception to this general rule. Retirement plans must provide for the payment of benefits in accordance with a valid QDRO.

QDROs are typically multi-page court documents by which a divorce judge orders the retirement plan to pay or set aside all or a portion of an employee's account or accrued benefit for the benefit of an "alternate payee." Usually the QDRO specifically instructs the "plan administrator" to take various steps in handling the employee's funds. Since the plan administrator is usually the employer (i.e., the practice), it behooves you to have a basic understanding of this area of retirement plan law.

On a basic level, the plan administrator who receives a domestic relations order must determine if it is "qualified." A domestic relations order is any judgment, decree or order (including approval of a property settlement agreement) which relates to the provision of child support, alimony payments or marital property rights to an alternate payee (i.e., a spouse, former spouse, child, or other dependent of a participant) and is made pursuant to a state domestic relations law.

QDROs are typically used to divide retirement plan assets among former spouses as a result of a divorce. But they may also be used to satisfy spousal and child support obligations. Distributions to a participant's spouse or former spouse under a QDRO are taxable to the recipient spouse, not to the employee-participant. QDRO plan distributions for child support remain taxable to the plan participant.

Upon receipt of an order requiring that a participant's benefits be paid to an alternate payee, the plan administrator must promptly notify the participant and any alternate payee of the receipt of the order and of the plan's procedures for determining whether or not the order is qualified. The required notices are to be sent to the addresses specified in the order or, if the order fails to specify an address, to the last address of the participant or alternate payee known to the plan administrator. The failure of a plan administrator to communicate the plan's procedures for determining the qualified status of an order to an ex-spouse constitutes a breach of fiduciary duty. Such a failure could thus empower the ex-spouse with the ability to bring suit against the plan administrator.

The plan administrator must then actually determine the "qualified" status of a domestic relations order, and subsequently administer distributions under the qualified order, pursuant to reasonable plan procedures.

In making this determination, a plan administrator looks to whether the order relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of the participant, and whether it is made pursuant to a state domestic relations law by a state authority with jurisdiction. However, a plan administrator is not required to review the determination by a state court as to matters which are subjects of state law (e.g., whether someone is a spouse or child of the employee-participant, or whether the parties are legally divorced).

Plans may not charge individual participants or beneficiaries for costs incurred in the determination and administration of a QDRO, even though such expenses may affect the amount of plan assets that are available to be allocated to all plan participants. While the qualified status of the order is being determined, the plan administrator must separately account for the benefits that would otherwise be payable during that period.

Although most domestic relations orders are straightforward enough, it is wise to seek the assistance of a retirement plan attorney or your plan's third party administrator in the event the plan receives such an order.

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