

WHAT YOU SHOULD KNOW ABOUT YOUR RETIREMENT



This publication has been developed by the U.S. Department of Labor, Employee Benefits Security Administration (EBSA).

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This booklet constitutes a small entity compliance guide for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996.

▶ CHAPTER 9: POTENTIAL CLAIMS AGAINST YOUR BENEFIT (DIVORCE)

In general, your retirement plan is safe from claims by other people. Creditors to whom you owe money cannot make a claim against funds that you have in a retirement plan. For example, if you leave your employer and transfer your **401(k)** account into an **individual retirement account (IRA)**, creditors generally cannot get access to those IRA funds even if you declare bankruptcy.

Federal law does make an exception for family support and the division of property at divorce. For many workers, retirement savings is one of their most significant assets. For this reason, whether and how to divide a participant's interest in a retirement plan are often important considerations in separation, divorce, and other domestic relations proceedings. While the division of marital property generally is governed by state domestic relations law, any assignments of retirement benefits also must comply with Federal law (ERISA and the Internal Revenue Code).

A state court can award part or all of a participant's retirement benefit to the spouse, former spouse, child, or other dependent. The recipient named in the order is called the alternate payee. The court issues a specific court order, called a domestic relations order, which can be in the form of a state court judgment, decree or order, or court approval of a property settlement agreement. The order must relate to child support, alimony, or marital property rights, and must be made under state domestic relations law.

The **plan administrator** determines if the order is a qualified domestic relations order (QDRO) under the plan's procedures and then notifies the participant and the alternate payee.

To be a QDRO, the order must contain the following information:

- ▶ The participant's name and last known mailing address;
- ▶ The name and last known mailing address of each alternate payee;
- ▶ The name of the plan;
- ▶ The amount, percentage, or method of determining the amount or percentage of the benefit to be paid to the alternate payee, and
- ▶ The number of payments or time period to which the order applies.

The specific content of the rest of the order will depend on the type of retirement plan, the nature of the participant's benefits, the purpose for issuing the order, and the intent of the parties drafting the order. A QDRO must provide for a type or form of benefit that the plan already allows. A QDRO cannot require the plan to provide increased benefits. In general, a QDRO may assign survivor benefits to a former spouse. Participants and alternate payees drafting a QDRO should read the plan's summary plan description and other plan documents to understand the survivor benefits available under the plan. A QDRO cannot require a plan to pay benefits to an alternate payee that, under a QDRO previously recognized by the plan, are required to be paid to another alternate payee.

If the participant is still employed, a QDRO can require payment to the alternate payee to begin on or after the participant's earliest possible retirement age available under the plan.

These rules apply to both **defined benefit** and **defined contribution plans**. For additional information, see EBSA's publication, **QDROs – The Division of Retirement Benefits Through Qualified Domestic Relations Orders**. To order a copy, contact EBSA electronically at www.askebsa.dol.gov or call toll free 1-866-444-3272.

ACTION ITEMS

- ▶ If you are involved in a divorce, you should discuss these issues with your plan administrator and your attorney.