Qualified Domestic Relations Order or QDRO

What is a QDRO?

A Qualified Domestic Relations Order, or QDRO, is a legal order associated with a divorce or legal separation, that divides and changes ownership of a retirement plan to give a divorced spouse their share of the asset or pension plan. QDROs may allow ownership in the participant's (employee's) pension plan to an alternate payee, who must be a spouse, former spouse, child, or some other dependent of the participant.

A QDRO may provide for marital or community property division between the participant and the alternate payee, or act as the payment of alimony or child support to the alternate payee.

Who is the alternate payee?

The alternate payee can be any of the following: spouse, former spouse, child, or other dependent of a participant who is recognized by a domestic relations order as having a right to receive all (or a portion of) the benefits payable under a plan.

What is a Domestic Relations Order?

A Domestic Relations Order is a judgment or order (including a property settlement agreement) that relates to the provision of child support, alimony payment, or marital property rights to a spouse, former spouse, child or other dependent.

What is a defined benefit pension plan?

A pension plan that provides a specific pre-determined amount of benefits to a participant at the individual's projected date of retirement. Typically, the benefits are based on a formula that considers the participant's projected years of service and final average compensations.

What's involved in filing a QDRO?

- A copy of the draft QDRO should be sent to the plan administrator to find out in writing if any changes are required.
- Revisions: If there are any revisions needed, notify your attorney and your attorney will take care of it.
- Signature page: You and your spouse sign the QDRO in the presence of your attorney. If you are not represented by attorneys, you must both sign the order in the presence of a public notary.

- Filing: You or your attorney will file the QDRO with the court after it has been approved by the plan, and signed by you and your ex-spouse. If you are not represented by an attorney, you must call the Clerk of the Court (in the county where the divorce took place) for instructions on obtaining the judge's signature so it can be filed with the court. Make sure you keep a copy for your records.
- Final step: After the QDRO is filed with the court, it is official. You or your attorney will then send it to the plan administrator who contacts the alternate payee, confirming that the QDRO is in place. This step completes the process.

What is a defined contribution plan?

A plan that provides for contributions directly to individual accounts established and maintained for each plan participant. The contributions may consist of contributions from employee, employer, or both. The participant is generally able to receive the account balance (together with any interest accrued and investment gains and/or losses) when the employee retires or terminates employment. There are several types of defined contribution plans, including profit sharing, thrift plans, 401(k), retirement savings, stock bonus plans, and employee stock ownership plans (ESOPs).

What is the participant's "accrued benefit" under the defined benefit pension plan?

Accrued benefit is associated with the amount of benefits a participant has earned under a defined benefits pension plan as of a particular date, and is usually stated in terms of a monthly pension annuity. It is usually based on the employee's years of tenure with the company, along with his/her final average compensation as of the calculation date.

What is a vested accrued benefit?

A vested accrued benefit is an entitlement to a lump sum of money or a monthly income stream. The term "vesting" describes the process by which ownership of a sum of money or asset is gradually transferred to another individual. The accrued benefit in which the participant is vested is based on the individual's years of vesting service with the company. Normally, a participant becomes fully vested in pension benefits after five years of service. However, some pension plans use a graded vesting schedule in which a participant's vesting percentage increases each year until it reaches 100%. Under existing law, a plan participant must be fully vested in the accrued benefit after no later than seven years of vesting service. The participant's vested accrued benefit refers to the portion of benefits the participant has a nonforfeitable right to receive under the plan.

What are matching employer contributions?

Contributions made to a defined contribution benefit plan, such as a 401(k), by the employer based on a certain percentage of the employee's own contribution. For example, an employer may contribute 1 dollar for every dollar which an employee contributes to the plan, up to a specified percentage of their base salary.

What is meant by the earliest retirement age?

The age at which a plan participant may first receive pension benefits under the provisions of the plan. Normally, benefits payable to someone before normal retirement age are actuarially reduced to reflect the earlier kick-off of benefits.

What is an actuarial equivalent?

An adjustment necessary to convert a participant's benefits into different forms and/or payment periods, so the total value of a participant's pension benefits remains equal (on an actuarial basis) regardless of the benefit type or commencement date.

How can I obtain information about a plan participant?

In order to obtain information regarding the status of a certain plan participant, you must provide the plan administrator with a written, signed release from the participant. A court subpoena is an additional way to gain information.

What is the earliest date which the alternate payee can begin to receive benefits under a QDRO?

In reference to a defined contribution plan, an alternate payee is entitled to commence their share of the benefits as soon as the date of approval by the plan administrator and upon completion of the required paperwork. Under a defined benefit pension plan, an alternate payee must wait until the participant attains the "earliest retirement age" before they can commence their share of the benefits. Additionally, depending on the age of the participant when the alternate payee elects to commence their share of the benefits, the alternate payee's benefits may be further reduced by any applicable early commencement reduction factor.

Are benefit payments to the Alternate Payee automatic once the QDRO is qualified?

No. Even if the QDRO includes a specific date when the alternate payee is to begin their share of the benefits, the alternate payee will not receive them until all required paperwork is properly completed. The alternate payee must contract the plan administrator to request the necessary distribution application forms. The forms must be properly completed and returned to the administrator before any distribution will occur.

Under a defined benefit pension plan, can an alternate payee's share of the benefits be given to a beneficiary or estate in the event of death?

Typically, no. If the alternate payee dies before they elect to commence benefits associated with the terms of the QDRO, no benefits may become payable to their beneficiary or estate. Even if the QDRO indicates for payments to be made to the beneficiary or estate of the alternate payee, it will be rejected by the plan administrator.

If the alternate payee dies after the benefit commencement date and they elected a form of benefit payment that provides for continued payments to a designated beneficiary, then payments will be made to a beneficiary following death.

Will the alternate payee be entitled to growth on his/her share of the benefits "automatically" under a defined contribution plan?

No. If the intent is to provide the alternate payee with interest and investment income or losses that are attributable to their share of the benefits, the QDRO must include specific language stating such. If the QDRO does not include a specific citation regarding investment growth, the alternate payee's share of the benefits may be frozen on the effective date of assignment.

How are interest and investment earnings/losses calculated on the alternate payee's share of the benefits?

Succeeding calculation of growth on the alternate payee's share of the account balance (from effective to the current date) will be applied with partial year adjustments for the first and final year of the calculation.

Growth from current date to date of distribution: If the alternate payee does not elect immediate distribution of their share of the benefits upon approval of the QDRO, benefits will be segregated and maintained in separate accounts in the name of the alternate payee. Once new accounts are established, the alternate payee's share of the benefits will grow with interest and investment income or losses in the same manner as the participant's benefits.

How will the alternate payee's share of the benefits be allocated among the participant's various accounts under a defined

contribution plan?

Your QDRO should include specific details regarding the amount of the alternate payee's benefits, and it should also include instructions regarding the allocation of benefits form the participant's accounts. You may include instructions in the QDRO that requires the plan administrator to input the alternate payee's share of the benefits on a "pro-rata" basis among all of the participant's accounts.

Can a QDRO provide the alternate payee with a portion of the participant's "future" benefits under the plan?

No. The QDRO must include an effective date of assignment that is on or before the date that such QDRO is submitted to the plan administrator. This is necessary due to loan and withdrawal provisions. A QDRO submitted on July 1 cannot include language that provides the alternate payee with, say 75%, of the participant's total account balance under the plan as of December 31. This would deprive the participant of contractual rights and entitlements.

Is it proper if a QDRO directs payments to someone other than the alternate payee?

In some cases, a QDRO may permit payments directly to someone other than the Alternate Payee. Historically, the QDRO provisions do not prevent the payment of amounts in pay status with respect to an alternate payee to a state agency (that acts as an agent of an alternate payee) or the payment of such amounts if the alternate payee consents to such payment (for example, aid to families with dependent children). In this scenario, payments to the agency does not result in disqualification of the order, and under normal principles, the alternate payee is treated as having received the amounts paid under the order.

Do QDROs apply to welfare benefit plans?

No. Welfare benefit plans, which include an employer's medical, dental, and disability plans, are exempt from the provisions relating to QDROs.

Can a QDRO designate all of the participant's accrued benefits be paid to the alternate payee?

Yes. It's a common misconception that an alternate payee is only entitled to half of the participant's vested accrued benefit under the plan. If a state domestic relations court decides that the alternate payee is entitled to 100% of the participant's pension benefits, the plan administrator will be obligated to follow the order (assuming the order meets all other qualifications).

Do the reporting and disclosure provisions apply to alternate payees receiving plan benefits under a QDRO?

Yes. An alternate payee has all the rights and privileges of a beneficiary under the plan, so they should receive summary plan descriptions, annual reports, and an explanation of rights.

Are alternate payees under a QDRO treated as beneficiaries under ERISA?

Yes. It is important to remember when drafting a QDRO that an alternate payee is treated with the same rights and privileges as a plan beneficiary.

Does the distribution of a portion of the plan participant's benefits under a plan constitute a garnishment of such participant's wages, as defined under federal or state law?

No. Benefit payments made to alternate payees under the terms of a QDRO do not constitute a garnishment for purposes of the Consumer Credit Protection Act.

What happens if the participant dies before the QDRO is approved by the plan administrator?

This issue would be a concern of the attorney representing a potential alternate payee under a QDRO. A QDRO is not official until a certified executed copy is received and approved by the administrator. If the participant dies before a certified copy of the QDRO has been reviewed and approved, the alternate payee will not be entitled to any portion of the participant's benefits, nor will the alternate payee be entitled to any pre-retirement survivor annuity benefits or post-retirement joint & survivor annuity benefits that may become payable. This holds true, even if the administrator has already pre-approved a draft order. In this regard, it's recommended to get your QDRO signed by the judge before submitting it to the plan administrator for review.