

# Matthew Lundy Law

## QDRO Law

www.MLundyLaw.com

Toll Free: 1-855-QDRO-LAW (737-6529)

Info@MLundyLaw.com

### CHEAT SHEET FOR PLAN ADMINISTRATORS

#### Definitions:

- 1) **Alternate Payee:** The beneficiary of a QDRO or similar order; can be the spouse, former spouse, child or other dependent of the participant
- 2) **Alternate Recipient:** The beneficiary of a QMCSO; generally the legal child of a participant in a qualified health benefit plan
- 3) **Participant:** The employee/party who is enrolled in a qualified, employer-provided benefit plan, such as a retirement plan or group health insurance plan
- 4) **Plan Administrator:** The individual or entity specifically designated in the plan documents as the administrator of a qualified employee benefit plan, or in the absence of such a designation, the employer who maintains the plan
- 5) **Qualified Domestic Relations Order ("QDRO"):** technically an order used to divide an ERISA-based retirement plan, although the term is often used liberally to refer to any order used to direct a retirement plan administrator to pay all or a portion of a participant's benefits to an alternate payee
- 6) **Qualified Medical Child Support Order ("QMCSO"):** an order used to require health benefits to be provided to an alternate recipient (the child of a plan participant) under an employer-based, qualified group health benefit plan
- 7) **Third Party Administrator (or "TPA"):** person or entity retained by the plan administrator to carry out administrative functions, such as recordkeeping, preparing and filing tax forms, and processing claims

#### Plan Administrator Duties as to QDROs and QMCSOs:

What is the Plan Administrator's job when it comes to administering QDROs?

- 1) To provide appropriate information to a prospective alternate payee/recipient related to a participant's plan benefits, including but not limited to QDRO/QMCSO procedures, a model QDRO/QMCSO, a summary plan description, and statements of the participant's benefit
- 2) To establish and maintain appropriate procedures for the preparation and administration of QDROs/QMCSOs
- 3) To communicate with both parties to ensure the proper administration of any QDRO/QMCSO received by the Plan
- 4) To protect against any claims of negligence and/or wrongdoing that may harm the employer, the participant, the alternate payee, and/or the plan as a whole
- 5) To maintain records of any QDRO/QMCSO transaction in the event that a claim does arise, including but not limited to records of documents submitted, conversations with parties, and correspondence
- 6) To communicate concerns to participants and prospective alternate payees regarding the suitability of any QDRO/QMCSO submitted
- 7) To carry out all obligations in a timely manner

#### Legal Elements of a QDRO:

What are the legal elements of a QDRO?

- 1) The order must be a domestic relations order, meaning a court order, judgment and/or decree that is made pursuant to state domestic relations law and that relates to the provision of support or marital property rights for the benefit of a spouse, former spouse or child
- 2) The order must contain the name and last known mailing address of each participant and alternate payee, the name of each plan to which the order applies, the amount assigned (as a dollar amount, percentage, or cognizable formula for determining the same), and the number of payments or time period to which the order applies.
- 3) The Order cannot assign a benefit previously assigned to another alternate payee, nor provide a type or form of benefit to an alternate payee not otherwise available under the plan

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#### Types of Retirement Plans:

##### 1) **Defined Contribution Retirement Plans:**

- Generally, these plans are defined as retirement plans that provide an individual account for each participant, and benefits based solely on the amount contributed to the participant's account, along with any income, expenses, gains and losses, forfeitures of accounts of other participants, and employer matching contributions
- Common examples of defined contribution plans are 401(k)'s, retirement savings plans, employee stock ownership plans, and profit-sharing plans
- In addition to the basic legal elements of a QDRO mentioned above, a plan administrator must establish a written policy as to:
  - Valuation Date: the date on which the account is going to be valued; this date must be in accord with the plans rules and policies for valuation; generally, must be a weekday; not all plans provide daily valuations
  - Gains and Losses: refers to the market fluctuations, interest, and any other passive increase or decrease; QDRO guidelines should specify an exact definition for this term, and whether or not the third part administrator will calculate the same
  - Form and Timing of Payment: will the plan permit an immediate, lump sum payout, or will the plan require funds to remain in the plan until the participant terminates employment or until one party reaches a certain age
  - Effect of Loans on Participant's account: if the plan permits the participant to take loans, then any outstanding loan and its effect must be addressed in the QDRO
  - Vesting Status: only vested portions of accounts are transferrable, and therefore a QDRO generally cannot make a present-day assignment of an unvested benefit
  - Allocation of Benefits: a QDRO must clearly state the amount of the assignment; it is the plan administrator's right to establish a means for doing so, such as requiring that the order specify a dollar amount or percentage only, and not a formula
  - Processing Fees: defined contribution plans can and generally charge fees to the parties to administer QDROs

##### 2) **Defined Benefit Retirement Plans:** Sometimes the plan will provide valuations, and that is always the best place to start. This may require a subpoena. However, sometimes you will need independent valuation services, which we provide. You should also understand the following terms:

- Shared Interest: A valuation of the pension based on the life expectancy of the participant as of a date certain
- Separate Interest: A valuation of the pension based on the life expectancy of the alternate payee as of a date certain
- Present Value/Lump Sum Estimate: A valuation of a defined benefit pension plan reduced to a present-day dollar amount, typically based on the life expectancy of the participant, prevailing interest rates, and certain other pension factors

#### BEST PRACTICES FOR QDRO/QMCSO Administration

- 1) Establish and maintain written procedures and policies that are readily available to employees; this should generally include templates for interested parties to utilize
- 2) Confirm receipt of draft and executed orders, in writing, as soon as possible, and distribute detailed interpretation letters upon approval of any order that lays out the plan's understanding of the order
- 3) Make sure that an actual attorney is involved in the administration process, to avoid potential liability issues for the plan and to document the proceedings in each matter