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QDRO Administration: A Practical Guide for Employers and Plan Administrators

Requirements, Best Practices, and Common Pitfalls

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If your company sponsors a retirement plan, chances are you will encounter a Qualified Domestic Relations Order —commonly known as a QDRO—at some point.

A QDRO is a court order that assigns a portion of a participant's retirement benefits to an alternate payee, such as a spouse, former spouse, or child, as part of a divorce or other domestic relations proceeding. The US Department of Labor (DOL) has published detailed FAQs and other guidance outlining how plan administrators should handle these orders.

This post is intended to serve as a general roadmap for what **plan administrators *must* do, *should consider* doing, and *do not*** have to worry about when administering the QDRO process in accordance with fiduciary duties. Nothing in this post is intended to be relied upon, nor taken as legal advice. If you have a specific question regarding QDRO administration, please contact an attorney familiar with employee benefits.

What Plan Administrators *Must* Do

The DOL guidance makes clear that several obligations are required to meet fiduciary duty requirements.

1. Written Procedures

Every qualified retirement plan must have written procedures in place for determining whether a domestic relations order qualifies as a QDRO. Those procedures must:

- Be in a written format;
- Be reasonable (they must not unduly inhibit or hamper the QDRO determination process);

- Provide that upon receipt of a domestic relations order, each party specified in the order received by the plan will be notified (at the address specified in the domestic relations order) of the plan's procedures for making QDRO determinations; and
- Permit an alternate payee to designate a representative for receipt of notices and plan information that are sent to the alternate payee with respect to a domestic relations order.

2. Segregate the Alternate Payee's Share

Beginning when a plan administrator receives a document claiming to be a domestic relations order, the plan administrator must separately account for the amounts that would be payable to the alternate payee under the order—sometimes called **"segregated amounts"**—and take steps to ensure that those funds are not distributed to the participant or any other person.

ERISA provides an 18-month window for this segregation and protection, beginning on the first date a payment would be required under the order after the plan receives it. The 18-month window cannot begin before a purported QDRO is received.

- If the order **is determined** to be a QDRO, the proper portion of the segregated amounts must be paid to the alternate payee.
- If the order **is *not* determined** to be a QDRO, or if the status is unresolved at the end of 18 months, the segregation of the amounts should end. To be clear, if the 18-month window expires, a QDRO can still be entered; however, it is no longer the plan administrator's duty to segregate amounts for the alternate payee.

The segregation requirement is especially important when the participant is currently eligible for distributions under a plan, such as when the participant is in pay status under a defined benefit plan or if a defined contribution plan allows for in-service distributions or loans.

3. No Form Requirements

The administrator must honor any domestic relations order that satisfies the QDRO requirements, regardless of its format. A plan may not condition qualification on the use of a particular form, like a particular model QDRO form it approves.

4. Alternate Payee ERISA Document Request

Like Participants in a plan, an alternate payee under a QDRO must be furnished, upon making a written request that meets the statutory requirements, with copies of a variety of documents, including the latest summary plan description, the Form 5500, and the trust agreement.

What Plan Administrators *May* Do—Best Practices

Beyond the mandatory requirements, there are several best practices that plan administrators can adopt to streamline the process and reduce administrative costs to the plan.

1. Model QDROs

Plan administrators may develop and make available model QDRO forms to help parties prepare compliant orders. Model QDROs make review much more standardized and quicker for the plan administrator and set forth clear expectations for participants and alternate payees.

2. Proactively Provide Useful Information to Facilitate the Process

Administrators may also be proactive in providing alternate payees with all of the information that they need to draft a QDRO, including the plan's governing documents, the written QDRO procedures, and the model QDRO.

3. Pre-Approval

The DOL suggests that administrators consider establishing a preliminary or interim review process, allowing parties to determine whether their draft order complies with the plan's unique language before having it entered in court.

This gives the parties an opportunity to correct defects in an order before a final determination and entry in court, which can reduce conflicting claims or orders for the plan administrator.

4. Detailed Rejection Letter

While a plan administrator must provide written notice of its determination as to whether or not the order is actually a QDRO, the requirements concerning the contents of the notice are less explicit. The DOL recommends that the rejection notice:

- Clearly explain the reasons for rejection,
- Reference the relevant plan provisions,
- Describe applicable time limits, and
- Identify the specific changes or information needed to bring the order into compliance. The goal is to help parties fix problems efficiently and minimize repeat submissions.

We recommend that plan administrators add text permitting both the participant and the alternate payee to file an ERISA administrative appeal to contest the determination, thereby providing a formal process for the resolution of disputes.

What Plan Administrators *Do Not* Need to Do

The DOL guidance also identifies certain limits on an employer's responsibilities. A plan administrator is generally not required to determine the validity of a domestic relations order under state law. This means the administrator, as a general rule, ***does not*** need to:

- Determine whether the issuing court has jurisdiction,
- Evaluate whether state law was correctly applied,
- Determine whether service of process was proper, and
- Determine whether an individual identified as an alternate payee is properly characterized as a spouse, former spouse, child, or dependent under state law.

That said, if something on the face of the order seems amiss, the plan administrator should make due inquiry of the participant and the alternate payee. For example, if an order purporting to be a QDRO attempts to assign retirement benefits to a person or entity that is clearly not a spouse, former spouse, or child directly (such as an attorney, law firm, or business), it will not meet ERISA qualification standards and should be denied.

The Bottom Line

- QDRO administration can be tedious, but having clear procedures you can rely on helps ease the administration and can protect against claims of breach of fiduciary duty.
- A plan administrator should be aware of their mandatory obligations and adopt best practices that fit each individual plan and its administration.
- Employers who invest in clear written procedures, engage in open communication with participants and alternate payees, and provide timely determinations will be well-positioned to meet their fiduciary responsibilities and keep the process running smoothly.

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