

MAINE PUBLIC EMPLOYEES RETIREMENT SYSTEM (MainePERS)

**MODEL DOMESTIC RELATIONS ORDER DIVIDING RETIREMENT SYSTEM
BENEFITS**

ISSUED OCTOBER 1992 - REVISED 02/07

Note: This model will be updated periodically to reflect changes in the law relating to the Maine Public Employees Retirement System and the experience of MainePERS in administering court orders based on this model. If the revised date given above indicates that this model is more than one year old or if new legislation affecting MainePERS has been enacted since the issue date, please contact the MainePERS before using the model to determine whether a newer version exists. Also, please refer to the accompanying explanation when using this model. **Note that if the MainePERS member or retiree has had more than one divorce affecting MainePERS benefits, you should not use this model. Contact MainePERS for additional information.**

MainePERS has no legal obligation to promulgate a model order and reserves the right to withdraw or discontinue the use of this model if doing so is in the best interest of MainePERS members or retirees. Further, you are not required to use this model order as the basis of an order dividing MainePERS benefits. You may modify provisions to reflect the agreement of parties or decision of the court with regard to specific issues. However, MainePERS has the statutory duty and authority to determine whether any domestic relation order submitted to MainePERS, including one based on this model, is a qualified domestic relations order under 5 MRSA § 17059 and Chapter 103, MainePERS rules.

The accompanying explanation provides information on MainePERS procedures, MainePERS benefits, and how the model order divides benefits payable by MainePERS. It attempts to answer many questions commonly asked by parties or their attorneys when MainePERS benefits are part of the property division in a divorce. It also provides examples of how the model order will work in different payment situations, such as retirement or refund situations. Both attorneys and their clients should find the information helpful, though clients may wish to discuss some of the technical legal points with their attorneys.

STATE OF _____ [NAME OF STATE]

[DISTRICT COURT]

District _____

Division of _____

Docket No. _____

_____[NAME],)
Plaintiff)

v.)

_____[NAME],)
Defendant)

DOMESTIC RELATIONS ORDER
DIVIDING MAINE PUBLIC
EMPLOYEES RETIREMENT
SYSTEM BENEFITS

Any preliminary statement on hearing, representation, jurisdiction, etc. that the court or the parties find necessary:

This Order is intended to meet the requirements for a "qualified domestic relations order" relating to the Maine Public Employees Retirement System, hereinafter called "MainePERS," or "System," as set forth in 5 MRSA § 17059, and in Chapter 103, MainePERS rules. This Order is an integral part of the Decree of Divorce signed on _____ (DATE OF DIVORCE DECREE). In compliance with those requirements, the following is specified:

1. This Order assigns a portion of the benefits or amounts payable under the System's governing laws and rules to _____ (NAME OF ALTERNATE PAYEE) in recognition of his or her marital rights in _____ (NAME OF MEMBER)'s benefits or amounts payable under the System's governing laws and rules.

2. Member in the System is _____ (**NAME OF MEMBER**),
whose last known mailing address is _____ (**ADDRESS**), and
whose Social Security number is _____ (**NUMBER**) and whose Date
of Birth is _____ (**DATE OF BIRTH**).
3. Alternate Payee is _____ (**NAME OF ALTERNATE PAYEE**), whose
last known mailing address is _____ (**ALTERNATE
PAYEE'S ADDRESS**), whose Social Security number is _____ (**NUMBER**)
and whose Date of Birth is _____ (**DATE OF BIRTH**).
4. Member and Alternate Payee were married on _____ (**DATE OF MARRIAGE**).
5. As part of a just and right division of the estate of the parties, Alternate Payee is awarded and shall receive from the System a portion of each distribution of service or disability retirement benefits (whether payable to member or a beneficiary) and death or survivor benefits (including distribution of the remaining balance of member's accumulated contributions paid as a death benefit) if, as, and when such distributions are made as provided by the System's governing laws and rules based on member's membership in, credit with, or contributions to the System. Alternatively, in lieu of these benefits, Alternate Payee is awarded and shall receive from the System a portion of the distribution of member's total accumulated contributions to the System if, as, and when such distribution is made as provided by the System's governing laws and rules. The term "accumulated contributions" as used in this Order is defined by 5 MRSA § 17001, sub-§ 1, or its successor statute.
- The portion of the distribution of benefits or total accumulated contributions that is awarded and that is to be paid to Alternate Payee shall be determined by multiplying the distribution by a fraction, which will be determined as set forth below:

Multiply _____ (E.G. ONE-HALF or OTHER FRACTIONAL MARITAL PROPERTY INTEREST) by a fraction, the numerator of which is the amount of a full benefits service retirement benefit unreduced for early retirement calculated under the retirement law and rules in effect on _____ (DATE OF DIVORCE) but using only service and salary credit that MainePERS determines has been acquired by member between _____ (E.G. DATE OF MARRIAGE) and _____ (E.G. DATE OF DIVORCE) and maintained with the System as of _____ (DATE OF DIVORCE), even if member had not, as of then, reached normal retirement age, the service credit is less than the minimum required to be eligible to receive a service retirement benefit and the average salary must be calculated with fewer salary years than specified by applicable laws and rules and the denominator of which is, for distributions made after retirement, the amount of a full benefits service retirement benefit unreduced for early retirement calculated under the laws and rules in effect at the time of member's latest effective date of retirement and based on member's membership in, credit with, or contributions to the System as of member's latest effective date of retirement. For distributions made prior to retirement, the denominator is the amount of a full benefits service retirement benefit, unreduced for early retirement, which would have been used to calculate the service retirement benefit payable if member had retired at the end of the month in which the distribution is authorized to be made. For the purpose of determining the amount of a full benefits service retirement benefit at time of retirement which would have been used to calculate the benefit payable if member had retired, the System will calculate the benefit by using the service credit acquired and maintained by member, even if it is less than the minimum required to be eligible to receive a service retirement benefit, and by using an average salary, even if it must be calculated with fewer salary years than specified by applicable laws and rules. For the purpose of calculating the denominator, a distribution made

after the member has retired but later has resumed membership in the System and has not yet re-retired is considered to be a distribution made prior to retirement. The term "full benefits service retirement benefit" as used in this Order refers to the benefit provided by 5 MRSA § 17804, sub-§ 1 or § 18404, sub-§ 1.

Additionally, Alternate Payee is awarded and shall receive from the System a portion of a distribution of a special refund, if, as, and when such a distribution is made as provided by the Systems governing laws and rules. For the purpose of this Order, a special refund is a return of contributions that should not have been made to MainePERS or that were based on salary that cannot be used in the calculation of MainePERS benefits and that are refundable under MainePERS laws and rules.

Alternate Payee is awarded and shall receive _____ (E.G. ONE-HALF or OTHER FRACTIONAL MARITAL INTEREST) of a special refund of contributions that were made to and maintained with MainePERS between: _____ (E.G. DATE OF MARRIAGE) and _____ (E.G. DATE OF DIVORCE) and _____ (E.G. ONE-HALF or OTHER FRACTIONAL MARITAL INTEREST) of any interest, if credited, that MainePERS determines is attributable to these contributions.

6. The Maine Public Employees Retirement System is directed to disburse to Alternate Payee the portion of distributions assigned under Paragraph No. 5 of this Order, if, as, and when such distributions are made as provided by the System's governing laws and rules based on member's membership in, credit with, or accumulated contributions to the System, subject to the following provisions:

(a) This Order shall not be interpreted in any way to require the System to provide any type or form of benefit or any option not otherwise provided under the System's governing laws and rules.

(b) This Order shall not be interpreted in any way to require the System to provide increased benefits determined on the basis of actuarial value.

(c) This Order shall not be interpreted in any way to require the System to pay any benefits to an alternate payee named in this Order, which are required to be paid to another alternate payee under another order previously determined to be a qualified domestic relations order.

(d) This Order shall not be interpreted in any way to require the payment of benefits to Alternate Payee before the retirement of member, the distribution of a withdrawal of contributions to member as authorized by the System's governing laws and rules, or any other distribution required by law.

(e) If the System's governing laws and rules provides for a reduced benefit upon "early retirement," this Order shall be interpreted to require that, in the event of member's retirement before normal retirement age, the benefits payable to Alternate Payee shall be reduced proportionately.

(f) This Order shall not be interpreted to require the designation of a particular person as the recipient of benefits in the event of member's death or to require the selection of a particular benefit payment plan or option. However, notwithstanding the provisions of this Order, if Alternate Payee is designated as a beneficiary for any benefits payable by MainePERS upon the death of member, then Alternate Payee shall receive such payment to which he/she is entitled by law as beneficiary. If Alternate Payee is a joint beneficiary for a benefit which becomes payable prior to the member's retirement he/she will receive the greater of the fractional amount of that benefit awarded under Paragraph No. 5 above to him/her as Alternate Payee or the amount of the benefit to which he/she is entitled as joint beneficiary, but not both. If Alternate Payee is not designated as a beneficiary for such benefits, Alternate Payee shall receive the portion specified in Paragraph No. 5 above applied to the benefits payable to the specified beneficiary(ies).

(g) In the event that, after distribution of a benefit to member or a beneficiary has begun, the amount of the distribution is increased or reduced by law, then the amount payable to Alternate Payee shall be increased or reduced proportionately by applying the fraction described in Paragraph No. 5 above to the increased or reduced distribution that is payable by MainePERS to member or a beneficiary.

(h) The Board of Trustees of the System has provided by rule that when the interest awarded to an Alternate Payee by a qualified domestic relations order in effect prior to the member's retirement is distributed as a portion of a service retirement benefit, the System will pay the Alternate Payee an amount that is the actuarial equivalent of that interest in the form of an annuity payable in equal monthly installments for the life of the Alternate Payee. The System is thereby directed to and will make payment in this form instead of in the manner otherwise described in this Order.

(i) The interest of Alternate Payee is governed by 5 MRSA § 17059 ET SEQ., or its successor statute.

7. Any amounts payable by MainePERS, other than those payable under Paragraph No. 5 above to Alternate Payee, shall be payable directly to member, member's beneficiary, or the estate, heirs,

- or legatees of either, in accordance with the MainePERS laws and rules. If member, member's beneficiary, or the estate of either receives any amount of a distribution that has been awarded to Alternate Payee, the recipient is designated a constructive trustee for the amount received, shall immediately transmit such amount to Alternate Payee and shall so advise the System.
8. If Alternate Payee or the estate, heirs, or legatees of Alternate Payee receive any amount of a distribution that should have been paid to a member, member's beneficiary, or the estate, heirs, or legatees of either, the recipient is designated a constructive trustee for the amount received, shall immediately transmit such amount to the member or other person to whom the amount should have been paid and shall so advise the System.
 9. If a member, Alternate Payee, or the estate, heirs, or legatees of either receive any amount of a distribution that should not have been paid by the System, the recipient is designated a constructive trustee for the amount received and shall immediately transmit such amount to the System.
 10. Alternate Payee is ORDERED to report any payments received on any applicable income tax return in accordance with Internal Revenue Code provisions or regulations in effect at the time any payments are issued by MainePERS. The System is authorized to issue a Form 1099R, or other applicable form on any direct payment made to Alternate Payee. The member and Alternate Payee shall allocate member's investment in contract in the manner established by the Internal Revenue Code and any applicable regulations.
 11. Alternate Payee is ORDERED to provide the System prompt written notification of any changes in Alternate Payee's mailing address. MainePERS shall not be liable for failing to make payments to Alternate Payee if MainePERS does not have a current mailing address for Alternate Payee at time of payment.

12. Member or Alternate Payee shall furnish an original certified copy of this Order to MainePERS.

The Order is not a qualified Domestic Relations Order until an original certified copy is received by MainePERS and is thereafter so deemed.

13. The Court retains jurisdiction to amend this Order so that it will constitute a qualified domestic relations order under the System's governing laws and rules even though all other matters incident to this action or proceeding have been fully and finally adjudicated. If the System determines at any time that changes in the law, the administration of the System, or any other circumstances make it impossible to calculate the portion of a distribution awarded to Alternate Payee by this Order and so notifies the parties, either or both parties shall immediately petition the Court for reformation of the Order.

SIGNED this ____ day of _____, 20____.

CMO/JUDGE PRESIDING