

**Chapter 103: QUALIFIED DOMESTIC RELATIONS ORDERS**

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**SUMMARY:** This Chapter implements the provisions in the Maine Public Employees Retirement System statutes relating to qualified domestic relations orders (5 M.R.S. §§ 17059 to 17061) which provided the statutory authority for the retirement system to pay benefits to the alternate payee of a member or retiree when the right to such payment is established by a qualified domestic relations order. This Chapter provides the standards for such orders, procedures for their filing, and the procedures to be followed by the retirement system in reviewing and administering the statute.

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**SECTION 1. Definitions**

Terms used in this chapter, unless the context otherwise indicates, shall have the same definitions as in 5 M.R.S. § 17001.

1. **Benefits Payable With Respect to a Member or Retiree.** "Benefits payable with respect to a member or retiree" means any payment made or required to be made to a member, retiree or beneficiary under 5 M.R.S., chapter 423, subchapter 5, chapter 425, subchapter 5, or chapter 427 and withdrawal of accumulated contributions, but excluding benefits payable under:
  - A. Section 17953, subsection 4;
  - B. Section 18003, with relation to dependent children;
  - C. Section 18553, subsection 4; and
  - D. Section 18603, with relation to dependent children.

**SECTION 2. Information to Spouse**

Upon receipt of an attested copy of the complaint for divorce and a written request which identifies the member or retiree by name and social security number and which states the date of the marriage, the retirement system will provide the spouse or former spouse of a member or retiree with the same information that would be provided to the member or retiree on the member's or retiree's account or benefits which is relevant to the spouse's or former spouse's interest in the member's or retiree's account or benefits.

**SECTION 3. Payments by Maine Public Employees Retirement System**

1. The retirement system shall make payments of death or retirement benefits or of refunded contributions only as directed by statutes and rules or by a qualified domestic relations order.

2. If benefits are payable pursuant to a qualified domestic relations order that meets the requirement of a domestic relations order as defined in section 414(p) of the Internal Revenue Code, then the applicable requirements of section 414(p) of the Internal Revenue Code will be followed by the retirement system.

#### **SECTION 4. Submission of orders**

1. A person who wishes to have the retirement system review a domestic relations order to establish whether it meets the requirements for a qualified domestic relations order must submit to the retirement system a written request for review and a copy of the domestic relations order. The request may be made either before or after the order has been entered by the court. The order will be reviewed as provided by section 5. If the order has been entered, it must have been certified by the clerk of the court that entered the order.  
Digitally signed certification will only be accepted where it complies with Maine law.
2. Subject to review and approval by the Board, the Chief Executive Officer will establish and may revise from time to time a filing fee for the processing and review of orders. The fee will be based on the time required for processing and review of orders, will be reasonable, and will not be set at a level which requires the retirement system's members and employers as a whole to subsidize the cost of processing and review. The fee in effect at the time an order is first submitted, whether before or after entry by the court, must be paid before the order will be processed and reviewed.
3. If a domestic relations order is submitted for review after it has been entered by the court and is thereafter amended with the intention that it be a qualified domestic relations order, the member or retiree or the alternate payee must submit a certified copy of the amended order to the retirement system. The retirement system shall review any amended order that it receives according to the same rules applicable to all other orders. A filing fee is not required with the submission of an amended order if the fee was paid with the initial submission of the order. If the review period exceeds 18 months and the domestic relations order (either as originally submitted or as subsequently revised) has not yet been approved, an additional filing fee is required for any review to continue, unless the delay in approval was caused by the retirement system. Digitally signed certification will only be accepted where it complies with Maine law.

#### **SECTION 5. Review of Orders**

1. The Chief Executive Officer shall review the order for compliance with the requirements imposed by 5 M.R.S. §17059 and this chapter. Upon completion of the review, The Chief Executive Officer shall notify the member or retiree and each alternate payee in writing of the determination of whether the order is or is not a qualified domestic relations order. For any order that is determined not to be a qualified domestic relations order, the notification must identify the provisions of 5 M.R.S. §17059 or this chapter that the order does not meet.
2. During any period, not to exceed 18 months, in which a domestic relations order is under review to determine whether it is a qualified domestic relations order or a determination that an order is not qualified is on appeal to the Board or to court, the retirement system will, in the manner provided by 5 M.R.S. §17059, sub-§§ 7, 8, 9, and 10, identify and

hold amounts that would have been paid to the alternate payee if the order had been determined to be a qualified domestic relations order and will pay those amounts during or after the period as therein provided.

## **SECTION 6. Qualified Domestic Relations Order Standards**

The Chief Executive Officer will apply the requirements of 5 M.R.S. §17059 to determine whether an order is a qualified domestic relations order. The following provisions will also be used in making the determination:

1. The order must provide for all possible distributions of benefits by the retirement system for the member or retiree under plan provisions. This requirement shall be deemed to have been met by a provision that:
  - A. Awards to the alternate payee a specific or clearly determinable percentage, rather than an amount, of each distribution by the retirement system based on the member's account or retiree's benefit;
  - B. Awards a specific amount of a benefit, rather than a percentage, to an alternate payee as long as the determination that the order is a qualified domestic relations order is made subsequent to the member's retirement and the order also provides for a reduction of the amount awarded in the event that the benefits available to the retiree or member are reduced by law; or
  - C. Awards to the member or retiree, in accordance with plan provisions, all benefits payable with respect to a member or retiree not specifically awarded to the alternate payee.
2. The order must provide for reducing the amount awarded in the event of reduction of the benefit based on the age of the member, each reduction to be in proportion to the factors used to reduce the standard monthly benefit on the basis of the member's age below normal retirement age. This requirement shall be deemed to have been met if:
  - A. The order awards a percentage of whatever monthly benefit is payable after all elections have been made by the member, or in the event of death benefits, by the designated beneficiary;
  - B. The member or retiree has reached normal retirement age and, if a retiree, has retired without any reduction for early age retirement at the time of the determination as to whether the order is a qualified domestic relations order; or
  - C. The order reflects that the retiree is or will be receiving retirement benefits reduced for early age retirement and the award to the alternate payee has considered the reduced amount of the retiree's monthly benefit payments.
3. The order may not:
  - A. Purport to require the designation by the member or retiree of a particular person and the recipient of benefits in the event of a member's or retiree's death;

- B. Purport to require the selection of a particular benefit payment plan or option or to limit the benefit payment plans or options from which the member or beneficiary may select;
- C. Require any action on the part of the retirement system contrary to its governing laws or plan provisions other than the direct payment of the benefit awarded to an alternate payee or the direct payment of the benefit awarded to an alternate payee before the retirement of a member and when the payee reaches the member's normal retirement age;
- D. Make the award to the alternate payee an interest which is contingent on any condition other than those conditions resulting in the liability of the retirement system for payment under its plan provisions;
- E. Purport to give to someone other than a member or retiree the right to designate a beneficiary or to choose any retirement plan or option available from the retirement system;
- F. Attach a lien to any part of amounts payable with respect to a member or retiree;
- G. Award an alternate payee a portion of the benefits payable with respect to a member or retiree under the retirement system and purport to require the retirement system to make a lump sum payment of the awarded portion of the benefits to the alternate payee that are not payable in a lump sum; or
- H. Purport to require the retirement system, without action by the member, to terminate a member from membership or employment, to refund contributions, or to retire a member.

- 4. The retirement system will divide future benefit increases provided by statute or act of the Legislature between the member, retiree or beneficiary and the alternate payee in the same proportion that the benefits are divided.
- 5. An order shall specify the date of the marriage, if the alternate payee is the member's or retiree's spouse or former spouse.

## **SECTION 7. Payment Pursuant to Qualified Orders**

If the order is determined to be a qualified domestic relations order, the retirement system shall, subject to the limitations of applicable statutes and this chapter, pay benefits in accordance with the order at the time benefits become payable to or in the case of contributions, are withdrawn by the member. Any determination that an order is a qualified domestic relations order is voidable or subject to modification if the retirement system determines that the provisions of the order have been changed or that circumstances relevant to the determination have changed.

## **SECTION 8. Orders Not Qualified**

The Chief Executive Officer shall provide a written notice of any determination that an order is not a qualified domestic relations order, identifying the provisions of 5 M.R.S. §17059 or this chapter that the order does not meet.

## **SECTION 9. Appeal of Determination that Order is Not Qualified**

A determination by the Chief Executive Officer that an order is not a qualified domestic relations order is a decision that may be appealed to the Board of Trustees of the retirement system as provided by 5 M.R.S. §17451.

## **SECTION 10. Restoration to Service**

For the purpose of calculating earnings limitations for retirees or recipients of disability retirement benefits who have been restored to service, the retiree's or recipient's retirement benefit or disability benefit will be considered to be the amount that would have been paid if there had been no qualified domestic relations order.

## **SECTION 11. Amount of Disability Retirement Benefit Subject to Qualified Domestic Relations Order**

If the benefit of a recipient of a disability retirement benefit is reduced because of amounts received by the recipient as Workers Compensation ~~or Social Security~~ benefits, ~~or both~~, the amount of the benefit subject to a qualified domestic relations order is the amount of benefit remaining after reduction for the Workers Compensation ~~or the Social Security~~ benefits ~~or both~~.

## **SECTION 12. Reinstatement of Service Credit**

1. If a member terminates membership in the retirement system by withdrawal of contributions, the retirement system shall pay all or a portion of the amount withdrawn to any alternate payee as directed by a qualified domestic relations order. If the former member later resumes membership in the retirement system, the retirement system shall pay to an alternate payee no portion of any benefits payable to the member or retiree which result from the resumption of membership, even if those benefits result in part from reinstatement of service credit initially credited during the marriage.
2. In order to receive credit for all service represented by withdrawn or refunded contributions, a member who in reinstating service credit by repaying amounts previously withdrawn or refunded must repay the entire amount withdrawn or refunded, regardless of whether a portion or all of the amount was paid to an alternate payee. Repayment must be made in accordance with 5 M.R.S. §17703 or §18304 and service credit shall be granted in accordance with 5 M.R.S. §17757 or §18357.

## **SECTION 13. Payment to Alternate Payee; Service Retirement Benefits**

1. When the interest awarded to an alternate payee by a qualified domestic relations order is distributed as a portion of a service retirement benefit, the retirement 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 when:
  - A. the qualified domestic relations order arises in or because of divorce;
  - B. the qualified domestic relations order divides service retirement benefits between a member and the alternate payee; and
  - C. the determination that the order is a qualified domestic relations order is made prior to the member's retirement.
2. Payment under subsection 1 shall be determined as follows:
  - A. As of the date payment to the alternate payee is scheduled to begin, the retirement system shall determine the single life annuity value of the retirement benefit payable to the member.
    - (1) If the portion of the benefit awarded to the alternate payee by the order is not clearly stated as a percentage of full benefits, the retirement system shall determine the percentage of full benefits that is the equivalent to the benefit awarded to the alternate payee.
    - (2) The single life annuity value determined by the retirement system shall be multiplied by the percentage of full benefits awarded to the alternate payee. The result of this calculation shall be actuarially converted to a single life annuity payable to the alternate payee for the lifetime of the alternate payee.
  - B. The benefit payable to the member shall be reduced by an amount equivalent to the value of the benefit payable to the alternate payee. Payment by the retirement system of the alternate payee's interest as provided by this section has no effect on the right of a member to name a beneficiary or the right of a member to choose an optional method of payment upon retirement.
  - C. Payment of the alternate payee's interest under this subsection will be effective as of the same date benefit payments are effective for the member unless, effective September 1, 2024, the alternate payee is eligible under the terms of the qualified domestic relations order to receive benefit payments before the member's retirement.
  - D. If the alternate payee begins to receive benefit payments before the member's retirement and the calculation of the alternate payee's benefit payments depends on the member's entire membership period, the alternate payee's benefit payments will be recalculated when the member retires using the same actuarial factors used to calculate the alternate payee's initial benefit.
3. When the interest awarded to an alternate payee by a qualified domestic relations order is distributed as a portion of a service retirement benefit and the determination that the order

is a qualified domestic relations order is made subsequent to the member's retirement, the interest awarded the alternate payee by the qualified domestic relations order will be paid as a portion of the service retirement benefit the retiree is receiving.

- A. If the alternate payee is already a named beneficiary under any option elected by the retiree at retirement, the total monthly benefit to which the retiree is entitled without regard to the qualified domestic relations order, whether payable to the retiree only or as divided between the retiree and the alternate payee beneficiary, will be apportioned between the retiree and the alternate payee according to the terms of the qualified domestic relations order. Upon the death of either the retiree or the alternate payee beneficiary, the benefit amount to be paid to the survivor will be that required under the option elected by the retiree at retirement, as though no qualified domestic relations order had existed.
- B. If the alternate payee is not a named beneficiary under the option elected by the retiree at retirement, the benefit to which the retiree is entitled without regard to the qualified domestic relations order, will be apportioned between the retiree and the alternate payee according to the terms of the qualified domestic relations order. If the retiree predeceases the alternate payee, payments to the alternate payee will cease and payments to the retiree's named beneficiary or beneficiaries will be made as required under the option elected by the retiree at retirement, as though no qualified domestic relations order had existed. If the alternate payee predeceases the retiree, the benefit then being paid to the retiree will be increased by the amount of the benefit which was being paid to the alternate payee at time of death.
- C. Payment according to the terms of the qualified domestic relations order under this subsection will commence as of the first day of the month following the date upon which the order is determined to be qualified, unless the parties jointly direct that payment is to commence at a later date.

#### **SECTION 14. Death of an Alternate Payee**

- 1. When the retirement system has not yet begun to make payment to an alternate payee and is provided with proof of the death of the alternate payee, benefits payable to the member or retiree will be paid without regard to the qualified domestic relations order.
- 2. When the retirement system has begun to make payment to an alternate payee under subsection 13(1), benefits payable to the member or retiree will not increase or otherwise be affected because of the death of the alternate payee.
- 3. When the retirement system has begun to make payment to an alternate payee under subsection 13(3), and is provided with proof of the death of the alternate payee, further benefits payable to the member or retiree will be paid without regard to the qualified domestic relations order unless the order provides otherwise.

#### **SECTION 15. Payments Made in Error**

- 1. If a member or retiree, or the beneficiary or estate of either receives any amount of a distribution that has been awarded to an alternate payee, the recipient is designated a

constructive trustee for the amount received and shall immediately transmit such amount to the alternate payee.

2. If a alternate payee or the estate, heirs, or legatees of the alternate payee receives any amount of a distribution that should have been paid to a member or retiree, or the estate, heirs, or legatees of either, the recipient is designated a constructive trustee for the amount received and shall immediately transmit such amount to the member or retiree or other person to whom the amount should have been paid.
3. If a member, retiree, or the beneficiary, estate, heirs, or legatees of either receive any amount of a distribution that should not have been paid by the retirement system, the recipient is designated a constructive trustee for the amount received and shall immediately transmit such amount to the retirement system.

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**STATUTORY AUTHORITY:** 5 M.R.S.A. §§ 17103(4), 17059(13)

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