Qualified Domestic Relations Orders

PRESENTED BY

Elyse Eckart, Counsel

Background

State law sets out what constitutes a marriage, what is a marital asset and how marital assets are allocated at divorce

Employee Retirement Income Security Act of 1974 and the Internal Revenue Code set out rules for private company retirement plans

Anti-assignment/anti-alienation rule prohibits the assignment or alienation of an ERISA plan participant's retirement benefits (ERISA section 206(d)(1); IRC section 401(a)(13))

- ◦ Rule doesn't apply to individual retirement accounts, governmental plans and some church plans as well as some plans maintained by tax-exempt organizations

State court orders generally can not assign retirement benefits to a former spouse because ERISA preempts state law

What is a QDRO?

Start with a domestic relations order:

◦ A judgment, decree or order made pursuant to domestic relations law that relates to child support, alimony or marital property rights and assigns benefits to a spouse, former spouse, child or other dependent of a plan participant (alternate payee) (ERISA section 206(d)(3)(B)(ii); IRC section 414(p)(1)(B))

But to allow division or retirement plan assets so that a non-participant has rights to plan assets, order must be qualified

So how do I qualify a DRO?

Eight additional requirements:

- Creates or recognizes the existence of an alternate payee's right to receive or assigns to an alternate payee the right to receive all or a portion of the benefits payable with respect to a participant under a plan;

- Name and last known mailing address of the participant and each alternate payee

- Specifies the amount or percentage of the participant's benefits to be paid to each alternate payee or a formula to determine the amount or percentage

- The number of payments or period to which the order applies

- The name of the plan to which the order applies

- May not require a plan to provide a type or form of benefit not otherwise available under the plan

- May not require the plan to provide increased benefits

- May not require the payment of benefits to an alternate payee that are already required to be paid to another alternate payee

The QDRO process from a plan administrator's perspective

Contact the plan and notify the plan administrator that a QDRO is being sought

- Generally, plans will put a flag or restriction on the account

- Plans must have written QDRO procedures and will often provide a model QDRO that complies with their plan document

  - But be careful, the model may not accurately reflect the agreement between the parties

- Draft the QDRO using the plan and the model and, if available, submit the order for preapproval from the plan administrator

- Finalize QDRO with court and send final copy to plan administrator

Other considerations

- Separate interest vs shared interest
- Division of survivor benefits
- Beneficiary designation