

An Employer's Guide to  
**QUALIFIED DOMESTIC RELATIONS  
ORDER ADMINISTRATION**

# GENERAL QDRO INFORMATION FOR EMPLOYERS

## As an employer, why should I care about qualified domestic relations orders?

If you are an employer with a retirement plan for your employees, you may need to determine whether a domestic relations order ("DRO") qualifies as a qualified domestic relations order ("QDRO").

In general, the Employee Retirement Income Security Act of 1974 ("ERISA") and the Internal Revenue Code ("IRC") do not permit a participant to assign or alienate the participant's interest in a retirement plan to another person. These "anti-assignment and alienation" rules are meant to ensure that a participant's retirement benefits are actually available to provide financial support during the participant's retirement years. A limited exception to the anti-assignment and alienation rules is provided for assignments of retirement benefits through qualified domestic relations orders ("QDROs").

Under the QDRO exception, a DRO may assign some or all of a participant's retirement benefits to a spouse, former spouse, child, or other dependent to satisfy family support or marital property obligations if and only if the order is a QDRO. ERISA requires that each retirement plan pay benefits in accordance with the applicable requirements of any QDRO that has been submitted to the plan administrator. Thus, a plan administrator's determination on whether a DRO constitutes a QDRO has significant implications for both the parties to a domestic relations proceeding and the retirement plan.

## What is a qualified domestic relations order (QDRO)?

A QDRO is:

- A DRO;
- That 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 retirement plan; and

- That includes certain information and meets certain other requirements, as established by the Department of Labor.

To be recognized as a QDRO, an order must be a DRO. A DRO is:

- A judgment, decree, or order (including the approval of a property settlement);
- That is made pursuant to state domestic relations law (including community property law); and that relates to the provision of child support, alimony payments, or marital property rights for the benefit of a spouse, former spouse, child, or other dependent of a participant.

A DRO can only be a QDRO if it 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 part of a participant's benefits.

For purposes of the QDRO provisions, an alternate payee cannot be anyone other than a spouse, former spouse, child, or other dependent of a participant.



## What specific information is required for a DRO to be deemed a QDRO?

QDROs must contain all of the following information:

- The name and last known mailing address of the participant and each alternate payee;
- The name of each plan to which the order applies;
- The dollar amount or percentage (or the method of determining the amount or percentage) of the benefit to be paid to the alternate payee; and
- The number of payments or time period to which the order applies.

# QUALIFIED DOMESTIC RELATIONS ORDER ADMINISTRATION

## What is a qualified domestic relations order (QDRO)?

The Plan Administrator—usually the employer—is responsible for determining whether a DRO is a QDRO. In many instances, employers have their employee benefits attorney prepare an opinion letter determining whether or not a proposed DRO constitutes a QDRO.

Plan administrators have specific responsibilities and duties with respect to determining whether a domestic relations order is a QDRO. Plan administrators—as plan fiduciaries—are required to discharge their duties prudently and solely in the interest of plan participants and beneficiaries. Plan Administrators must establish reasonable procedures to determine the qualified status of domestic relations orders and to administer distributions pursuant to qualified orders. Plan Administrators are required to follow the plan's procedures for making QDRO determinations.

In addition, Plan Administrators are required to furnish notice to participants and alternate payees of the receipt of a domestic relations order and to provide a copy of the plan's procedures for determining the qualified status of such orders.

In many cases, legal counsel prepares QDRO Policies and Procedures for the Plan Administrator to follow, as well as Sample QDROs to provide for plan participants and their attorneys.

## Who is the Plan Administrator?

The "Plan Administrator" of an employee benefit plan is the individual or entity specifically designated in the plan documents as the administrator. If the plan documents do not designate an administrator, the administrator is the employer maintaining the plan.



## What are the duties of a Plan Administrator upon receipt of a DRO by the plan?

Upon receipt of a DRO, the Plan Administrator is required to promptly notify the affected participant and each alternate payee named in the order of the receipt of the order and to provide a copy of the plan's procedures for determining whether a domestic relations order is a QDRO. Notification should be sent to the address included in the domestic relations order.

The Plan Administrator is required to determine whether the order is a QDRO within a reasonable period of time after receipt of the DRO and to promptly notify the participant and each alternate payee of such determination.





# QDRO POLICIES AND PROCEDURES

## Is a plan required to have **procedures** for determining whether a **DRO is a QDRO**?

Yes. Every retirement plan is required to establish written procedures for determining whether DROs are QDROs and for administering distributions under QDROs.

## What requirements must a plan's QDRO procedures meet?

The QDRO procedures must:

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



## Should additional items be addressed in a plan's QDRO procedures?

Yes. The DOL has made clear that a plan's QDRO procedures should be designed to ensure that QDRO

determinations are made in a timely, efficient, and cost-effective manner, consistent with the Plan Administrator's fiduciary duties under ERISA. Specifically, there must be a clear explanation of the plan's determination process, including:

- An explanation of the information about the plan and benefits that are available to assist prospective alternate payees in preparing QDROs, such as summary plan descriptions, plan documents, individual benefit, and account statements, and
- any model QDROs developed for use by the plan;
- A description of any time limits set by the plan administrator for making determinations;

A description of the steps the administrator will take to protect and preserve retirement assets or benefits upon receipt of a domestic relations order (for example, a description of when and under what circumstances plan assets will be segregated or benefit payments will be delayed or suspended); and

A description of the process provided under the plan for obtaining a review of the administrator's determination as to whether an order is a QDRO.

The DOL takes the position that the Plan Administrator's adoption and use of clear QDRO procedures, coupled with the Plan Administrator's provision of information about the plan and benefits upon request, will significantly reduce the difficulty and expense of obtaining and administering QDROs by minimizing confusion and uncertainty about the process.

## May a Plan Administrator charge a participant or alternate payee for determining the qualified status of a DRO?

Yes—but only in the context of a defined contribution plan. Specifically, a Plan Administrator may assess reasonable expenses attributable to a QDRO determination against the individual account of the participant who is a party to the DRO. The documents of the plan should be reviewed to determine how plan expenses are allocated.



# QDRO POLICIES AND PROCEDURES

## May a Plan Administrator provide parties with a model form or forms to assist in the preparation of a QDRO?

Yes. While a Plan Administrator is not required to provide model QDRO forms, such forms can be very helpful for the parties and may reduce the time and/or expenses associated with a Plan Administrator's determination of the qualified status of an order.

A Plan Administrator is required to honor any DRO that satisfies the requirements of a QDRO. Thus, a plan may not condition its determinations of QDRO status on the use of any particular form.

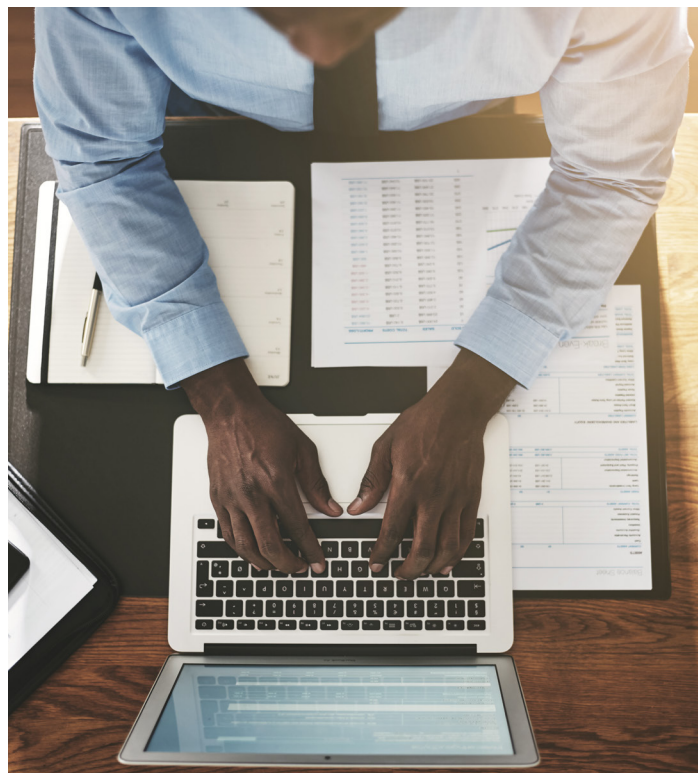
## How long may a Plan Administrator take to determine whether a DRO is a QDRO?

In general, a Plan Administrator must determine whether a DRO is a QDRO within a reasonable period of time after receiving the order. What is a reasonable period will depend on the specific circumstances. For instance, a DRO that is clear and complete when submitted should require less time to review than an order that is incomplete or unclear.

## What type of notice must a Plan Administrator provide following a QDRO determination?

The Plan Administrator is required to notify the participant and each alternate payee of the Plan Administrator's determination as to whether the DRO constitutes a QDRO. The notice should be in writing and furnished promptly following a determination.

In the case of a determination that a DRO is not a QDRO, the notice should include the reasons for the rejection. In most instances where there has been a reasonable good faith effort to prepare a QDRO, the parties should try to correct any deficiencies in the order and resubmit a corrected order for the Plan Administrator to review.



The notice of the Plan Administrator's determination should be written in a manner that can be understood by the parties and clearly state:

- The reasons why the order is not a QDRO; References to the plan provisions on which the Plan Administrator's determination is based;
- An explanation of any time limits that apply to rights available to the parties under the plan (such as the duration of any protective actions the plan administrator will take); and
- A description of any additional material, information, or modifications necessary for the order to be a QDRO and an explanation of why such material, information, or modifications are necessary.

# KEY CONSIDERATIONS FOR PLAN ADMINISTRATORS

## What are the key points a Plan Administrator should keep in mind with regard to QDROs?

- A QDRO is a DRO that creates or recognizes the existence of an alternate payee's right to receive or assigns to an alternate payee the right to receive, certain benefits payable with respect to a participant under a retirement plan.
- DROs must contain specific provisions to be deemed QDROs.



- A Plan Administrator is not required to provide model QDRO forms; however, such forms can be very helpful for the parties and may reduce the time and/or expenses associated with a Plan Administrator's determination of the qualified status of an order.
- The Plan Administrator is required to notify the participant and each alternate payee in writing of the Plan Administrator's determination as to whether the DRO constitutes a QDRO.
- Plan Administrators should consult with an employee benefits attorney as needed to:
  - Establish QDRO policies and procedures;
  - Draft model QDRO forms; and
  - Assist with the QDRO determination process by providing opinion letters regarding the same.

## Contact Us.

Fraser Stryker has years of experience counseling a wide array of employers on every facet of employee benefits law.

Emily Langdon focuses her practice on employee benefits and ERISA, assisting clients with matters related to health and welfare benefits, executive compensation, pension and retirement plans, wellness plans, and health care reform.



Contact Emily at [elangdon@fraserstryker.com](mailto:elangdon@fraserstryker.com) or (402) 978-5386 for assistance with QDRO plan administration.