§17059. Qualified domestic relations orders

1. Determination by chief executive officer. The chief executive officer or the chief executive officer's designee has exclusive authority to determine whether a domestic relations order is a qualified domestic relations order under this section. A determination by the chief executive officer or the chief executive officer's designee under this section may be appealed to the board as provided by section 17451.
[PL 1991, c. 746, §9 (NEW); PL 1991, c. 746, §10 (AFF); PL 2021, c. 548, §45 (REV).]

2. No jurisdiction over retirement system. The retirement system may not be made a party with respect to a divorce or other domestic relations action in which an alternate payee's right to receive all or a portion of the benefits payable to a member or retiree under the retirement system is created or established. A party to such an action who attempts to make the retirement system a party to the action contrary to this subsection is liable to the retirement system for its costs and attorney's fees.
[PL 1991, c. 746, §9 (NEW); PL 1991, c. 746, §10 (AFF).]

3. Benefits and withdrawal of contributions. For the purposes of this section, benefits payable with respect to a member or retiree under any of the programs of the retirement system include the types of benefits payable by the retirement system and a withdrawal of contributions from the retirement system.
[PL 2007, c. 491, §71 (AMD).]

4. Requirements. A domestic relations order is a qualified domestic relations order only if the order:

A. Clearly specifies the name, social security number and last known mailing address, if any, of the member or retiree and the name, social security number and mailing address of each alternate payee covered by the order; [PL 1991, c. 746, §9 (NEW); PL 1991, c. 746, §10 (AFF).]

B. Clearly specifies the amount or percentage of the member's or retiree's benefits to be paid by the retirement system to each alternate payee or the manner in which the amount or percentage is to be determined; [PL 1991, c. 746, §9 (NEW); PL 1991, c. 746, §10 (AFF).]

C. Clearly specifies the number of payments or the period to which the order applies; [PL 1991, c. 746, §9 (NEW); PL 1991, c. 746, §10 (AFF).]

D. Clearly specifies that the order applies to the retirement system; [PL 1991, c. 746, §9 (NEW); PL 1991, c. 746, §10 (AFF).]

E. Does not require the retirement system to provide a type or form of benefit or an option not otherwise provided by the retirement system; [PL 1991, c. 746, §9 (NEW); PL 1991, c. 746, §10 (AFF).]

F. Does not require the retirement system to provide increased benefits determined on the basis of actuarial value; [PL 1991, c. 746, §9 (NEW); PL 1991, c. 746, §10 (AFF).]

G. Does not require the payment of benefits to an alternate payee that are required to be paid to another alternate payee under another order previously determined to be a qualified domestic relations order; and [PL 1991, c. 746, §9 (NEW); PL 1991, c. 746, §10 (AFF).]

H. Does not require the payment of benefits to an alternate payee before the retirement of a member other than when the payee reaches the member's normal retirement age, the distribution of a withdrawal of contributions to a member or other distribution to a member required by law. [PL 2015, c. 322, §1 (AMD).]
[PL 2015, c. 322, §1 (AMD).]

5. Additional criteria. The board may also require by rule that a qualified domestic relations order meet one or more of the following requirements.

A. The order must provide for a proportional reduction of the amount awarded to an alternate payee in the event of the retirement of the member before normal retirement age. [PL 1991, c. 746, §9 (NEW); PL 1991, c. 746, §10 (AFF).]

B. The order may not purport to require the designation of a particular person as the recipient of benefits in the event of a member's or retiree's death. [PL 1991, c. 746, §9 (NEW); PL 1991, c. 746, §10 (AFF).]

C. The order may not purport to require the selection of a particular benefit payment plan or option. [PL 1991, c. 746, §9 (NEW); PL 1991, c. 746, §10 (AFF).]

D. The order must provide clearly for each possible benefit distribution under plan provisions. [PL 1991, c. 746, §9 (NEW); PL 1991, c. 746, §10 (AFF).]

E. The order may not 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. [PL 2015, c. 322, §2 (AMD).]

F. The order may not make the award of an interest contingent on any condition other than those conditions resulting in the liability of the retirement system for payments under its plan provisions. [PL 1991, c. 746, §9 (NEW); PL 1991, c. 746, §10 (AFF).]

G. The order may not purport to award any future benefit increases that are provided or required by the Legislature. [PL 1991, c. 746, §9 (NEW); PL 1991, c. 746, §10 (AFF).]

H. The order must provide for a proportional reduction of the amount awarded to an alternate payee in the event that benefits available to the retiree or member are reduced by law. [PL 1991, c. 746, §9 (NEW); PL 1991, c. 746, §10 (AFF).]

[PL 2015, c. 322, §2 (AMD).]

6. Determination. The chief executive officer or the chief executive officer's designee, upon receipt of a certified copy of a domestic relations order and written request for a determination, shall determine whether the order is a qualified domestic relations order and shall notify the member or retiree and each alternate payee of the determination.

A. If the order is determined to be a qualified domestic relations order, it is presumed to be in compliance with all requirements of this Part. The retirement system shall pay benefits in accordance with the order and shall give effect to the plain meaning of its terms notwithstanding any failure of the order to cite or reference statutory or rule provisions. A beneficiary or recipient of a right or benefit provided for or awarded in a qualified domestic relations order may not be deprived of that right or benefit, or any part of that right or benefit, by a subsequent act or omission of the member, another claimant or beneficiary or the retirement system, notwithstanding any provision of law to the contrary or any policy or procedure the retirement system employs in the implementation of this Part. [PL 2005, c. 560, §2 (AMD); PL 2005, c. 560, §5 (AFF).]

B. If the order is determined not to be a qualified domestic relations order, the member or retiree or any alternate payee named in the order may appeal the chief executive officer's determination in the manner specified in section 17451 or may petition the court that issued the order to amend the order so that it is qualified. Except as otherwise provided by law, the court that issued the order or that otherwise would have jurisdiction over the matter has jurisdiction to amend the order so that it will be qualified even though all other matters incident to the action or proceeding have been fully and finally adjudicated. [PL 1991, c. 746, §9 (NEW); PL 1991, c. 746, §10 (AFF); PL 2021, c. 548, §45 (REV).]

[PL 2005, c. 560, §2 (AMD); PL 2005, c. 560, §5 (AFF); PL 2021, c. 548, §45 (REV).]

7. Interim accounting. During any period in which the issue of whether a domestic relations order is a qualified domestic relations order is being determined by the chief executive officer, the chief executive officer's designee, the board, a court of competent jurisdiction or otherwise, the retirement system shall account separately for the amounts, in this section referred to as the "segregated amounts," that would have been payable to the alternate payee during that period if the order had been determined to be a qualified domestic relations order.
[PL 1991, c. 746, §9 (NEW); PL 1991, c. 746, §10 (AFF); PL 2021, c. 548, §45 (REV).]

8. Payment of segregated amounts. If a domestic relations order is determined to be a qualified domestic relations order, the retirement system shall pay the segregated amounts to the person or persons entitled to the segregated amounts and shall thereafter pay benefits pursuant to the order.
[PL 1991, c. 746, §9 (NEW); PL 1991, c. 746, §10 (AFF).]

9. Payments if determined not qualified or if no determination within 18 months. If a domestic relations order is determined not to be a qualified domestic relations order or if the issue as to whether a domestic relations order is a qualified domestic relations order is not resolved within 18 months of the date the order and written request for a determination are received by the retirement system, the retirement system shall pay the segregated amounts without interest, and shall thereafter pay benefits, to the person or persons who would have been entitled to such amounts if there had been no order. This subsection may not be construed to limit or otherwise affect any liability, responsibility or duty of a party with respect to any other party to the action from which the order arose.
[PL 1991, c. 746, §9 (NEW); PL 1991, c. 746, §10 (AFF).]

10. Determination after 18 months. Any determination that an order is a qualified domestic relations order that is made after the close of the 18-month period established in subsection 9 must be applied prospectively only.
[PL 1991, c. 746, §9 (NEW); PL 1991, c. 746, §10 (AFF).]

11. No liability. The retirement system, the board and officers and employees of the retirement system are not liable to any person for making payments of any benefits in accordance with a domestic relations order in a cause of action in which a member or a retiree was a party or for making payments in accordance with subsection 9.
[PL 1991, c. 746, §9 (NEW); PL 1991, c. 746, §10 (AFF).]

12. Information provided to spouse. Upon being furnished with an attested copy of a complaint for divorce, the retirement system shall provide the spouse of a member with the same information that would be provided to the member.
[PL 1991, c. 746, §9 (NEW); PL 1991, c. 746, §10 (AFF).]

13. Rules. The board may adopt rules to implement this section. The rules may provide for charging a reasonable fee for processing domestic relations orders.
[PL 1991, c. 746, §9 (NEW); PL 1991, c. 746, §10 (AFF).]

14. Application. This section applies to all domestic relations orders issued after March 27, 1992 and, with the mutual consent of the parties, to any domestic relations orders issued on or before March 27, 1992.
[RR 1997, c. 2, §20 (COR).]

SECTION HISTORY

PL 1991, c. 746, §9 (NEW). PL 1991, c. 746, §10 (AFF). RR 1997, c. 2, §20 (COR). PL 2005, c. 560, §2 (AMD). PL 2005, c. 560, §5 (AFF). PL 2007, c. 491, §71 (AMD). PL 2015, c. 322, §§1, 2 (AMD). PL 2021, c. 548, §45 (REV).

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