

Table of Contents

CHAPTER 1. INTRODUCTION TO BENEFITS LAW AND BENEFITS PLAN DESIGN

I. OVERVIEW OF BENEFITS LAW AND PLAN DESIGN

§ 1:1 Introduction to benefits law and plan design

II. OVERVIEW OF GOVERNING LAW

§ 1:2 Internal Revenue Code

§ 1:3 Internal Revenue Service

§ 1:4 Employee Retirement Income Security Act of 1974

§ 1:5 Additional employee benefits legislation and Executive Orders

§ 1:6 Preemption of state law by ERISA

§ 1:7 —District of Columbia law not preempted by ERISA

§ 1:8 The anti-alienation rule: The need for special QDRO rules

§ 1:9 —Case law

§ 1:10 Social Security Act

III. BENEFITS PLAN DESIGN

§ 1:11 Principles of plan design—Generally

§ 1:12 —Replacement of income

§ 1:13 —Protection of income

§ 1:14 —Accumulation of capital

§ 1:15 Changing benefit design over time

§ 1:16 Claims procedures for employee benefit plans

§ 1:17 COVID-19 changes affecting plan administration

CHAPTER 2. BASIC CONCEPTS OF QDROS

I. OVERVIEW OF QDROS

§ 2:1 Introduction to QDROs

II. EMPLOYEES

§ 2:2 Employee defined

§ 2:3 —Common-law employees

§ 2:4 —Statutory employees

§ 2:5 —Self-employed workers

§ 2:6 —Owner-employees

§ 2:7 —Leased employees

III. EMPLOYERS

§ 2:8 Employer defined

IV. COMPENSATION

- § 2:9 Compensation defined
- § 2:10 —Highly compensated employees
- § 2:11 —Special reductions in benefit payments

V. NONQUALIFIED DEFERRED COMPENSATION

- § 2:12 Nonqualified deferred compensation defined
- § 2:13 —Income tax consequences
- § 2:14 —Guidelines for deferred compensation
- § 2:15 —QDROs and nonqualified deferred compensation plans
- § 2:16 —Rabbi trusts
- § 2:17 —Secular trusts
- § 2:18 —Top-hat plans

VI. INTRODUCTION TO QUALIFIED PLANS

- § 2:19 Qualified plan defined
- § 2:20 —Defined contribution and defined benefit plans
- § 2:21 —Defined benefit plans and Pension Benefit Guaranty Corporation
- § 2:22 —Pension and profit-sharing plans
- § 2:23 — —Contribution plans defined
- § 2:24 — — —401(k) plans
- § 2:25 — — —Association retirement plans
- § 2:26 Contribution plans defined—SIMPLE 401(k) plans
- § 2:27 Qualified plan defined—Pension and profit-sharing plans—
Contribution plans defined—Employee stock ownership plans
- § 2:28 — — —Simplified employee pensions
- § 2:29 — — —403(b) plans
- § 2:30 — — —Blackout of investment periods

CHAPTER 3. REQUIREMENTS OF QUALIFIED PLANS

- § 3:1 Introduction to qualified plan requirements
- § 3:2 Basic requirements of qualified plans
- § 3:3 —Written plan and trust
- § 3:4 —Communications to employees
- § 3:5 — —Contents of summary plan description
- § 3:6 —Plan administrators
- § 3:7 Standardized and non-standardized plans
- § 3:8 Allocation of plan expenses
- § 3:9 “Stock-drop” cases

CHAPTER 4. PROCESS PRIOR TO DRAFTING QDROS

- § 4:1 Issues to be considered prior to drafting a QDRO
- § 4:2 The QDRO process

TABLE OF CONTENTS

§ 4:3 Basic underlying QDRO definitions

§ 4:4 Obtaining relevant information

CHAPTER 5. DISTRIBUTIONS FROM QUALIFIED PLANS

§ 5:1 Introduction to distributions from qualified plans

§ 5:2 Types of distributions from qualified plans—Annuities and lump sums

§ 5:3 —New annuity distribution options

§ 5:4 Timing and manner of distributions

§ 5:5 Survivor benefits upon distribution

§ 5:6 Special plan provisions for distributions—Loans and hardship withdrawals

§ 5:7 Treatment of alternate payees

§ 5:8 —Minimum distribution rules

§ 5:9 —Total distributions

§ 5:10 —Allocation of investment in contracts

§ 5:11 —Premature distribution penalty; Excess distribution tax

§ 5:12 —Distributions from other plans and individual retirement accounts

§ 5:13 —Use of IRA to avoid QDRO rules

§ 5:14 —Pensions subject to withholding

CHAPTER 6. QDRO RULES

§ 6:1 Rules surrounding QDROs

§ 6:2 QDRO definition—Name and address

§ 6:3 —Amount or percentage to be divided

§ 6:4 —Number of payments

§ 6:5 —Plans subject to QDROs

§ 6:6 Pre-separation benefit

§ 6:7 Former spouse treated as surviving spouse

§ 6:8 No alteration of “amount, form, etc.” of benefits

§ 6:9 Department of Labor regulations

§ 6:10 Waiver and “plan document rule”

§ 6:11 QDRO practice in a pandemic

CHAPTER 7. REGULATORY GUIDANCE

§ 7:1 Guidance provided as to QDROs

§ 7:2 QDRO language: IRS Notice 97-11

§ 7:3 —Separate interest approach

§ 7:4 —Shared payment approach

§ 7:5 —Survivor benefits

§ 7:6 QDRO language: IRS Notice 97-11—Sample language for QDROs

§ 7:7 Department of Labor guidance

§ 7:8 Regulatory initiatives

CHAPTER 8. QDRO PROCEDURES

§ 8:1 Introduction to QDRO procedures

- § 8:2 QDRO procedures
- § 8:3 —Determinations under procedures
- § 8:4 —Determination period
- § 8:5 —Payment of segregated amounts
- § 8:6 —Benefits payable after determination
- § 8:7 —Alternate payee not found
- § 8:8 —Insufficient trust assets
- § 8:9 Coordination of qualified plan treatment with other rules

CHAPTER 9. HEALTH INSURANCE

- § 9:1 QDROs and health insurance
- § 9:2 Basics of health insurance—Group health insurance
- § 9:3 —Patient Protection and Affordable Care Act
- § 9:4 —Consolidated Omnibus Budget Reconciliation Act of 1985
- § 9:5 — —Department of Labor compliance assistance guide
- § 9:6 —Types of health insurance
- § 9:7 — —Covered expenses
- § 9:8 —Health reimbursement arrangements
- § 9:9 Qualified medical child support orders (QMCSOs)
- § 9:10 —Medical child support order defined
- § 9:11 —Additional requirements and restrictions
- § 9:12 —Notice requirements
- § 9:13 —Obligations of plan administrator
- § 9:14 —Enforcement and regulation of medical child support orders
- § 9:15 Health care for spouses and former spouses
- § 9:16 Application of a QDRO to health care plans for spouses and former spouses

CHAPTER 10. LIFE INSURANCE AND DISABILITY COVERAGE

- § 10:1 QDROs, life insurance, and disability insurance
- § 10:2 QDRO rules apply to welfare plans
- § 10:3 Life insurance—Purposes of life insurance
- § 10:4 —Types of life insurance
- § 10:5 — —Term insurance
- § 10:6 — —Whole life insurance
- § 10:7 — —Universal life insurance
- § 10:8 —Life insurance as subject of QDRO
- § 10:9 —Life insurance planning and QDROs
- § 10:10 Disability coverage

CHAPTER 11. GOVERNMENTAL, CHURCH, FOREIGN AND OTHER PLANS

- § 11:1 QDROs and other types of plans
- § 11:2 Governmental plans
- § 11:3 Military orders
- § 11:4 Foreign plans

TABLE OF CONTENTS

- § 11:5 Church plans
- § 11:6 Section 457 plans

CHAPTER 12. CASE LAW AND SIGNIFICANT ISSUES

I. OVERVIEW OF QDRO CASE LAW

- § 12:1 Issues arising in QDRO litigation

II. PLAN SPONSOR ISSUES

- § 12:2 Plan sponsor fiduciary issues
- § 12:3 Plan administrator's role
- § 12:4 Interpleader and administrative process
- § 12:5 Beneficiary designation
- § 12:6 Release or waiver of rights
- § 12:7 Correcting improper payment of benefits
- § 12:8 Pension Benefit Guaranty Corporation duty
- § 12:9 Last-known mailing address
- § 12:10 Plan terms contradicted
- § 12:11 Same-sex marriages
- § 12:12 Capitalization of survivor benefits
- § 12:13 Plan disqualification
- § 12:14 Department of Labor fee disclosures

III. LEGAL ISSUES

- § 12:15 Definition of alternate payee
- § 12:16 Pre-Retirement Equity Act
- § 12:17 ERISA preemption
- § 12:18 Federal common law
- § 12:19 The coverture fraction and other equitable distribution calculations
- § 12:20 Community property division
- § 12:21 —Characterization of retirement benefits as community property
- § 12:22 Special issues in dividing defined benefit plan benefit
- § 12:23 Surviving spouse designation
- § 12:24 Sham divorces to obtain QDRO
- § 12:25 Order and timing of multiple QDROs
- § 12:26 Posthumous awards—Historical cases
- § 12:27 —Post-regulation cases
- § 12:28 Uniformed Services Former Spouses' Protection Act
- § 12:29 Other military service issues
- § 12:30 Railroad Retirement Act of 1974
- § 12:31 Taxation
- § 12:32 Bankruptcy
- § 12:33 Equitable remedies
- § 12:34 Validity of divorce

QUALIFIED DOMESTIC RELATIONS ORDERS

- § 12:35 Statute of limitations
- § 12:36 Vesting of qualified joint and survivor annuity still uncertain
- § 12:37 Individual retirement accounts
- § 12:38 Nonqualified deferred compensation
- § 12:39 Criminal action of participant
- § 12:40 Civil contempt, malicious prosecution and related matters
- § 12:41 Alimony
- § 12:42 QDROs and guardianship
- § 12:43 Standing
- § 12:44 Judicial immunity
- § 12:45 Interest award
- § 12:46 Res judicata
- § 12:47 Department of Labor penalties as a sword
- § 12:48 Delayed filing of QDRO

IV. TYPES OF BENEFITS

- § 12:49 Early retirement benefits
- § 12:50 Unvested benefits
- § 12:51 Enhanced retirement benefits
- § 12:52 Stock options
- § 12:53 Sick leave accounts
- § 12:54 Accumulated vacation and sick leave
- § 12:55 Life insurance
- § 12:56 Social Security
- § 12:57 Federal pensions; public retirement plans
- § 12:58 Workers' compensation as retirement benefits
- § 12:59 Changes in valuation of 401(k) plan assets
- § 12:60 Disability benefits
- § 12:61 Health insurance
- § 12:62 Qualified preretirement survivor annuity
- § 12:63 Mandatory distribution
- § 12:64 Use of QDRO in an employee stock ownership plan
- § 12:65 COLA instituted after QDRO

V. TYPES OF ORDERS

- § 12:66 Settlement agreement or divorce decree as QDRO
- § 12:67 —Settlement agreements must be unambiguous
- § 12:68 Oral agreements as QDRO
- § 12:69 Amended divorce decree is not QDRO
- § 12:70 QDRO approval by judicial approval
- § 12:71 Resettlements and modifications to QDROs
- § 12:72 QDRO for child or spousal support

VI. ATTORNEYS' ISSUES

- § 12:73 Malpractice and related issues

TABLE OF CONTENTS

§ 12:74 Attorney's fees

**QUALIFIED DOMESTIC RELATIONS ORDERS:
RESOURCES AND EXAMPLES**

Appendix A.	Internal Revenue Code § 414(p) (26 U.S.C.A. § 414(p))
Appendix B.	Employee Retirement Income Security Act of 1974 § 206(d) (29 U.S.C.A. § 1056(d))
Appendix C.	Explanation of Technical Corrections to the Tax Reform Act of 1984
Appendix D.	Remarks from House of Representatives—Qualified Domestic Relations Order Legislation
Appendix E.	Qualified Plan Compensation Limits: Effect of IRC § 415 on QDROs
Appendix F.	Qualified Domestic Relations Orders Procedure
Appendix G.	Qualified Domestic Relations Order Procedure—With Timeline Checklist and Notice of Determination of Status
Appendix H.	Handbook for Attorneys on Court-Ordered Retirement, Health Benefits and Life Insurance (Excerpts)
Appendix I.	Sample Qualified Domestic Relations Orders
Appendix J.	Court-ordered Benefits for Former Spouses
Appendix K.	IRS Sample Language for a QDRO
Appendix L.	IRS Sample Language for Spouse's Waiver to Qualified Joint and Survivor Annuity
Appendix M.	DOL Advisory Opinion No. 94-32A on Charging Fees Related to QDROs
Appendix N.	Field Assistance Bulletin 2003-3
Appendix O.	Notice to All Plan Participants Regarding Plan Payments
Appendix P.	PBGC Guidance on QDROs
Appendix Q.	Employee Retirement Income Security Act of 1974 § 609 (29 U.S.C.A. § 1169)
Appendix R.	Omnibus Budget Reconciliation Act of 1993, Pub L No. 103-66, Section 4301: Medical Child Support Orders, 107 Stat 633
Appendix S.	Omnibus Budget Reconciliation Act of 1993, House Report 103-213, August 4, 1993: Medical Child Support Orders
Appendix T.	Omnibus Budget Reconciliation Act of 1993, House Report 103-213, August 4, 1993: Enforcement of Health Insurance Support
Appendix U.	Sample Procedure for Determining the Qualified Status of Medical Child Support Orders
Appendix V.	Sample Qualified Medical Child Support Order

QUALIFIED DOMESTIC RELATIONS ORDERS

Appendix W.	National Medical Support Notice
Appendix X.	Qualified Medical Child Support Orders—Employee Benefits Security Administration
Appendix Y.	QDROs: The Division of Retirement Benefits Through Qualified Domestic Relations Orders
Appendix Z.	ERISA Procedure 76-1 For ERISA Advisory Opinions
Appendix AA.	Advisory Opinion 2004-02A
Appendix BB.	Advisory Opinion 2002-03A

Table of Laws and Rules

Table of Cases

Index