

EXAMPLES OF UNACCEPTABLE PROVISIONS FOR MASSACHUSETTS PUBLIC PENSION PLANS*

Some provisions that are common in private sector Qualified Domestic Relations Orders (QDROs) are inappropriate to be used to divide an interest in a public pension established under G.L. c. 32. Private plans are subject to ERISA (Employment Retirement Income Security Act of 1974). ERISA deals with QDROs, but most of the ERISA provisions are inapplicable to governmental plans.

Examples of unacceptable provisions include:

- Immediate distribution of all or part of an active member's account -

A member's annuity account can only be distributed as a return of contributions upon termination of employment and membership or as a part of a monthly retirement allowance paid upon retirement. A DRO cannot order any distribution or benefit payment while the member remains an active member of a Massachusetts Public Pension System.

- Establishment of a separate account for the Alternate Payee -

An account cannot be established in the name of or for the benefit of anyone other than a member of the Retirement System. [*Early v. Early*, 413 Mass. 720(1992)]

- Creation of a right to elect a benefit by someone other than the member -

No one other than the member or an eligible beneficiary or survivor can elect a benefit or select a benefit payment option. If an Alternate Payee receives a benefit while the member is alive, that benefit is by way of an attachment of the member's allowance. If the member doesn't receive an allowance there would be no allowance to attach and no payment can be made to an Alternate Payee (i.e. if there is forfeiture or a suspension as the result of excess earnings or a waiver due to return to active service).

- Designation of the Alternate Payee as a "survivor"-

An Alternate Payee can only become a survivor beneficiary in a manner consistent with G.L. c. 32. A DRO cannot designate the former spouse as the "survivor for all purposes"

A former spouse who has remarried cannot be named as the Option C beneficiary

A former spouse who is unremarried can be named as the Option C or Option D beneficiary, but must be unremarried at the member's retirement (Option C) and must be unremarried at the member's death if such occurs prior to retirement (Option D).

A former spouse cannot be the beneficiary of an accidental death benefit under G.L. c. 32 § 9 or § 100. The eligible beneficiary is identified in the statute.

A former spouse cannot be an Option D beneficiary if the member dies in service and leaves an eligible spouse who elects to receive the Option D benefit.

** Adapted from materials provided by Barbara Phillips, Esq., General Counsel, Public Employee Retirement Administration Commission, Boston 8/3/2001*