**QDRO Timeline**

**ERISA covered plans**

1. Obtain as much information as possible from your client. This will vary depending on whether you are representing the participant or spouse. Neither party may know some or all of this information but may be able to obtain it. Any information you obtain will help identify the plan. Other sources of information may include, participant’s union or employer or prior counsel if you have been consulted after the divorce. If you can identify the plan or sponsor, search for the plan’s online. Many plans have a website that provides public access to information.
   1. Name of plan or plan and name of employer.
   2. Copies of any plan documents or correspondence. (Documents/correspondence will provide name of plan.)
   3. Any information about the plan—type, whether the plan has an account or provides a lifetime benefit, whether the plan is a single employer plan or collectively bargained plan.
   4. Whether the participant has retired.
   5. If participant has retired, whether spouse is entitled to survivor benefits.
2. If the parties have not yet divorced—
   1. Include as much information about the award to the spouse/alternate payee as possible in any order. The order or a property settlement agreement might qualify as a QDRO.
   2. Maker certain ALL plans are identified. (Sometimes Ps fail to disclose the existence of plans.)
   3. If possible, include an obligation for the P to assist or authorize plan or plans to provide plan documents and benefit information to spouse BEFORE there is a QDRO.
3. If parties have divorced—
   1. Obtain file including divorce decree/property settlement to determine what, if any, provisions have been included regarding pension benefits awarded to AP. Look for information described in 2. Above.
   2. How long ago was the divorce? If divorce decree does not award benefits to spouse, P may have withdrawn account or commenced benefit payments.
   3. If either party had counsel in the divorce, counsel might have information about the plan.
4. For each plan, obtain plan documents including QDRO Procedures, formal plan, Summary Plan Description, Model QDRO.
   1. Some of this information may be publicly available on the plan’s website. The plan’s website is a treasure trove of information.
   2. Contact the Plan or third-party administrator to request information. The statute provides that plans are required to provide QDRO procedures in response to receipt of a DRO but many plans will provide upon request.
   3. Plan’s are not required to provide plan documents until the AP is treated as a beneficiary pursuant to a QDRO (see ERISA 206(d)(3)(J)) but many will do so.
   4. DOL states its view in FAQs that plans should provide documents and information to assist AP to prepare a DRO.
   5. If plan is not helpful and if divorce decree or property settlement agreement that has been incorporated has any information about benefits awarded to spouse, consider submitting it to plan as a DRO (depending on whether and how much plan may charge.) Plan must process a DRO and provide plan procedures in response. If plan has been incorrectly identified, plan will likely respond that purported participant does not participate in that plan.
5. Obtain participant specific information.
   1. Accrued benefit for DB plan; account balance for individual account plan. This value will change with time.
   2. Unless ordered by a court, spouse is not entitled to this information until spouse is an AP under a QDRO (signed order approved by plan). Even then ERISA provides that AP is treated as a beneficiary which might not entitle AP to participant’s specific benefit information.
6. Review whatever plan information you have obtained and determine the following to the extent possible. Add any questions not determined to list of information you need.
   1. What type of plan is this? DB or DC; single employer or multiemployer; ERISA covered.
   2. How is the accrued benefit determined? DB formula or balance of individual account.
   3. How are benefits paid to P (and AP if separate interest)? Benefit options, are any DB options subsidized, when are they paid, are there eligibility requirements specific to any benefit options. Are there distribution options for DC plan?
   4. Are P’s benefits forfeitable upon P’s death? Specifically, does the plan provide that an APs separate interest is forfeited upon the death of the P if the AP’s benefit has not commenced?
   5. What does the plan require for the APs benefit to commence once the DRO has been determined to be a QDRO.?
   6. Will the plan pay benefits if the P applies? Will the plan freeze the P’s benefit pursuant to a court order? If so, for how long?
   7. Will the plan pre-approve a draft DRO?
   8. Will the plan notify the AP, if the P applies for benefits after the divorce but before the DRO is finalized and submitted?
   9. Will the plan consider an appeal of its determination that a DRO is not a QDRO?
7. Formulate a list of questions to clarify information you have learned or to provide information you need. See above.
8. If possible, talk to the plan about how the plan is structured and what the process is to submit a DRO, obtain approval, file an application to commence the AP’s benefits. Clarify information as discussed above. Plans can be helpful or adversarial. Avoid being adversarial if at all possible.
9. Draft the DRO. Use the plan’s model order if available. Discuss with plan if you do not understand language of the model.
10. Promptly submit the draft DRO to the plan for pre-approval if the plan will do this. This is not required by ERISA and provides no protection to the AP’s benefits unless plan procedures so state.
11. Submit the draft DRO to Court for processing.
12. Submit s copy of the court approved DRO to the plan.
13. Plan reviews DRO and determines if it is a QDRO.
14. Plan sends notice to P and AP of plan’s determination whether DRO is a QDRO. If plan does not send information to the AP regarding how to commence benefits follow up with plan.
15. If the plan determines that the DRO is not a QDRO, the plan should provide an explanation re the reasons for its determination which often will provide a roadmap for correcting the order. If the reasons for the determination are not explained, contact the plan. If the reasons for the determination are not clear or appear to be incorrect (under federal law), submit an appeal if the plan’s procedures make this available. If not, write anyway. If these efforts are not successful, the AP may seek a federal court determination.
16. Familiarize yourself with the escrow provisions in ERISA 206(d)(3) and in plan procedures. Benefits are only escrowed while the qualified status of a DRO is “being determined” by the plan or court but no longer than 18 months. If a plan determines the DRO is not a QDRO and there is no follow up from the AP that there will be further proceedings, the plan may distribute any benefits held in escrow to the P.