

HOW DIVORCE CAN AFFECT YOUR WRS BENEFITS



Department of Employee Trust Funds
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GENERAL INFORMATION

For marriages that are legally terminated after 1981 by divorce, annulment or legal separation, the Department can divide a participant's Wisconsin Retirement System (WRS) account or annuity between the participant and an alternate payee (the former spouse) upon receipt of a Qualified Domestic Relations Order (QDRO). The Department must receive an original or certified copy of the QDRO; we cannot accept an uncertified photocopy. To assure that the QDRO meets all of the requirements in WRS law, we recommend using the QDRO forms that we provide; *Order to Divide Wisconsin Retirement System Benefits* (ET-4926) and *Foreign Jurisdiction Order to Divide Wisconsin Retirement System Benefits* (ET-4935) (used if the marriage is not terminated in a Wisconsin court).

A QDRO must divide the account or annuity by awarding a percentage to the alternate payee, rather than a specific dollar amount. The portion of the account or annuity awarded to the alternate payee cannot exceed 50% of the total value of the account or annuity as of the "decree date." The decree date is defined by statute as the first day of the month in which the marriage is legally terminated.

As a public retirement plan, the WRS is not subject to the Employee Retirement Income Security Act (ERISA) or the Retirement Equity Act. The provisions of those federal laws do not apply to the WRS. The effects of a QDRO on a participant's WRS account and the WRS benefits payable to an alternate payee differ based on whether the participant has an:

- **Active Account** - Currently employed in a position covered under the WRS, and/or
- **Inactive Account** - Terminated from covered WRS employment, but has not yet taken a benefit, and/or
- **Annuity** - Receiving monthly retirement or disability payments.

A QDRO applies only to the participant's account based on the service, earnings and contributions from his/her own WRS employment. If the participant is entitled to benefits as a beneficiary or alternate payee of another WRS participant's WRS account, the QDRO does not apply to that account or annuity.

If the participant is enrolled in the variable trust fund on the decree date, a portion of the alternate payee's account and/or annuity will automatically be included in the variable trust fund. The alternate payee can cancel variable participation for his/her share of the account, and may contact this Department for a variable cancellation form at any time. If the participant is not enrolled in the variable trust fund as of the decree date, both accounts and/or annuities will be in the fixed trust fund.

What Language Must Be Included In a Valid QDRO

- The participant's name, birthdate, current address and Social Security number.
- The alternate payee's name, birthdate, current address and Social Security number.
- The Wisconsin Retirement System must be specifically named.
- The QDRO must specify the decree date as the date to be used for valuing and dividing the account or annuity. Per Wisconsin Statutes, the decree date is the first day of the month in which the marriage is legally terminated.

Note: If the marriage was legally terminated between January 1, 1982 and April 27, 1990 and the participant is receiving a monthly annuity when the Department receives the QDRO, the annuity division will not apply to payments issued prior to the date that we receive the QDRO.

- The QDRO must award a percentage, not to exceed 50%, **of all parts of the participant's account as of the decree date** to the alternate payee. The percentage of the account may be specified up to two decimal places; for example, 33%, 33.3%, or 33.33% are all acceptable. If a QDRO specifies the percentage to more than two decimal places, the Department will round the percentage to two decimals.
- The QDRO must require the participant to certify all active military service on a form provided by this Department.

- The QDRO must require the participant's employer to submit a report to this Department of all service, earnings and contributions from the last reported data through the decree date.

What Happens When the Department Receives a QDRO

The Department reviews the QDRO to verify that it meets all of the statutory requirements for a valid QDRO. If the QDRO contains provisions that are prohibited by WRS law, does not meet all of the statutory requirements or is invalid for any other reason, it will be stamped "REJECTED" and returned to the party who submitted it, plus information about the necessary corrections. A corrected QDRO can subsequently be submitted to the Department.

If the participant is receiving a monthly annuity:

- The Department will divide the annuity into two separate life annuities, one payable to the participant and one to the alternate payee. The alternate payee does not need to apply for his/her share of the annuity; payments are made automatically to the alternate payee, retroactive to the effective date of the annuity division. Each person receives a notice of the amount of his/her annuity after the division.

If the participant has an active or inactive account:

- If the participant has an active or inactive account, the Department sends a certification of military service form to the participant. The participant must certify whether he/she has any active military service, have the certification form notarized and return the certification form to the Department. The participant must submit a copy of any applicable discharge papers with the certification form if the Department has not already received a copy.
- If the participant is actively employed in a covered WRS position, the Department will also send a form to his/her employer for certification of any unreported service, earnings and contributions through the decree date.
- After the Department has received the military service certification form and any applicable military discharge papers and/or employer certification of unreported service, the participant's account is split.

The participant's money balances and creditable service are divided and a separate account is created for the alternate payee. After the account is split, each party receives a *Statement of Account* which shows the respective account balances, total creditable service, etc. Subsequently, each party will receive annual *Statements of Benefits* showing the service and contribution balances in his/her own account.

PURCHASING SERVICE

If you purchase qualifying, forfeited or outside government (OGS) service as an active employee and your WRS account is later divided due to a QDRO, we also divide the purchased service. The alternate payee receives the same percentage of the purchased service and of your WRS creditable service. If you purchase service after a QDRO, we do not divide the purchased service and the total remains in your account.

Once the participant's account has been reduced by the portion transferred into the alternate payee's account, any actions taken by the alternate payee (e.g. a benefit withdrawal) have no further effect on the participant's account.

There are no provisions in WRS law which permit the participant to repay the contributions awarded to the alternate payee to his/her account, nor to purchase the years of creditable service lost through the QDRO. The contributions and years of service awarded to the alternate payee are permanently lost to the participant.

BENEFICIARY DESIGNATIONS

If a participant's account is divided per a QDRO or if there are remaining guaranteed payments for an annuity that is divided, the participant and alternate payee can each name beneficiaries to receive any death benefits payable upon his/her death from his/her account or annuity.

Death benefits are always paid based on the most recent beneficiary designation received by the Department prior to an individual's death. *An individual's designation of beneficiary does not change automatically when significant life events occur, such as a divorce or remarriage. For example, if the participant named a spouse as primary beneficiary and that marriage ends, the former spouse remains the named beneficiary unless the Department receives an updated designation form from the participant*

prior to the participant's death. The designation must be on the form approved by the Department.

If an individual has never filed a beneficiary designation form with the Department, death benefits are paid from that individual's account based on statutory standard sequence.

Forms are available by calling or writing our office or are on our web site.

EFFECTS ON ACTIVE/INACTIVE ACCOUNTS

How the Participant's Account is Affected

A QDRO awards the alternate payee a percentage of the participant's WRS account balances as of the decree date. The alternate payee receives a percentage of the money balances and creditable service (including purchased service) accrued as of that date. The appropriate monies and years of service are transferred from the participant's account into a new separate account created for the alternate payee. *Exception: If the marriage was terminated between January 1, 1982 and April 27, 1990 and the participant was not receiving an annuity as of the decree date but is an annuitant on the date the Department receives the QDRO, a separate annuity is created for the alternate payee, based on the share of the account (as of the decree date) awarded to the alternate payee. In this situation, the remainder of this section would not apply. Refer to the "Effects on Monthly Payments" section for information about annuity divisions.*

- Money Balances - The specified percentage of the dollar amounts in the participant's account on the decree date transfers to a separate account established for the alternate payee. The percentage applies to employee- and employer-required contributions and to voluntary additional contributions.
- Creditable Service - The specified percentage of the participant's creditable service on the decree date transfers to the alternate payee's account and is used to calculate formula retirement benefits for the alternate payee.

The participant's total creditable service is reduced by the years of service granted to the alternate payee, including any purchased service. The participant's remaining creditable service, plus any additional service earned by the participant after the decree date, is used to calculate the participant's formula retirement benefits.

The participant's future eligibility for benefit rights that are available only after earning a specified number of years of service is determined as though the participant's service was not reduced through a QDRO.

Example: A QDRO awards 50% of a participant's account to the alternate payee. The alternate payee receives 15 years of service and the participant retains 15 years of creditable service:

- > **Formula retirement benefit calculation:** The years of creditable service actually credited to the participant's and alternate payee's accounts are used to calculate their formula benefits. However, the total creditable service earned by the participant (the original 30 years plus any additional service accrued after the decree date) as of the dates that their respective annuities begin, is used to calculate any age reduction factor in their respective formula benefits.
- > **Continuation of health insurance/life insurance benefits:** The total years of service (as if the account had never been split) will be used to meet service eligibility requirements for continuation of the participant's insurances.
- **Military Service Credit** - If the participant has active military service, he/she will be required to submit a copy of the discharge papers to the Department if we have not already received copies. If the participant already has credit for the eligible active military service, the same percentage specified in the QDRO is deducted from his/her account and transferred to the alternate payee's account.

In most cases, a participant cannot receive credit for eligible active military service until retirement. However, at the time of a QDRO, part of the participant's years of active military service may be granted to the alternate payee based on the participant's creditable service on the decree date. The participant may be required to sign an affidavit verifying whether the military service will also be used toward certain federal benefits. The participant may later receive credit at retirement for the remaining years of military service and a second affidavit may be required at that time.

Additional information about eligibility for credit for active military service is provided in the brochure *Military Service Credit* (ET-4122), available from this Department.

- **Final Average Earnings (FAE)** - The participant's FAE is not affected by a QDRO. His/her formula retirement benefits are based on the actual

FAE at the time that the participant's benefit begins. The alternate payee's formula retirement benefits also are based on the participant's actual FAE at the time the alternate payee's retirement benefit begins.

BENEFITS AND OPTIONS AVAILABLE TO ALTERNATE PAYEE

The alternate payee can apply for a benefit at any time, regardless of whether the participant has terminated covered WRS employment. In order to receive a benefit, the alternate payee must request the appropriate application form from this Department.

**We Recommend That The Alternate Payee Carefully
Review This Section Of The Booklet For Important
Information About The Benefits That May Be Available.**

When a portion of a WRS participant's account is transferred to a separate account for an alternate payee, as explained above, the benefit rights available to the alternate payee are the same as they would be for a participant who terminated WRS employment on the decree date. Changes in the law effective after the decree date have no effect on the alternate payee's account; the account is considered an inactive account for benefit purposes.

If the alternate payee also has a WRS account based on his or her own WRS employment, **the alternate payee account will be separate.** The two accounts are **not** combined; benefits are calculated separately and require separate applications. An alternate payee who is still actively employed in a covered WRS position can apply for a benefit from his/her alternate payee account at any time, regardless of whether the alternate payee and/or participant have terminated WRS employment. However, the alternate payee cannot apply for a benefit from the WRS account based on his/her own employment before terminating covered employment.

When designating beneficiaries, a designation applies to all benefit plans and accounts administered by the Department, unless otherwise specified on the *Beneficiary Designation* form.

Alternate payee benefits are based on both the dollar amount in the alternate payee's account and the age, employment category, FAE and other benefit rights of the participant.

- Participant Under Age 55 (Age 50 if Protective Category Employee) - The alternate payee can apply for a separation benefit at any time until the participant reaches age 55, (50 if protective). A separation benefit includes employee-required and additional contributions plus accrued interest. Employer-required contributions and all associated service are forfeited.

The alternate payee should carefully consider the consequences of taking a separation benefit. He/she would forfeit all rights to a future retirement benefit based on the employee-required contributions plus at least a matching amount of employer contributions when the participant reaches age 55, (50 if protective).

- Participant Age 55 or Over (Age 50 if Protective Category Employee) - The alternate payee can apply for a retirement benefit from both employee- and employer-required contributions. WRS retirement benefits are calculated under both the formula and the money purchase methods. The alternate payee automatically receives the higher benefit amount. The alternate payee is not eligible to select a joint and survivor annuity payment option.

Exception: if the participant first became covered under the WRS after 1989 and either the participant's WRS termination date and/or the decree date are before April 24, 1998, the alternate payee does not meet the vesting requirement and is only eligible for a separation benefit regardless of the participant's age.

Detailed information about the formula and money purchase calculations is in the *Calculating Your Retirement Benefits (ET-4107)* brochure.

Formula Benefits: The formula benefit for the alternate payee is calculated using the following elements:

1. The participant's final average monthly earnings (FAE) at the time the alternate payee's retirement benefit begins.
2. The formula factor(s) based on the employment category(ies) of the creditable service granted to the alternate payee.
3. The years of creditable service granted to the alternate payee in the QDRO, including military service and purchased service.

4. An age reduction factor based on the alternate payee's age, if the alternate payee has not reached the normal retirement age for the participant's employment category(ies).

The age reduction factor is calculated based on the years of service the participant would have accrued at the time the alternate payee's benefit begins as though the participant's creditable service had never been reduced by a QDRO.

Money Purchase Benefits: The money purchase benefit is calculated based on the alternate payee's age when his/her annuity begins and the dollar amount(s) in the account.

If the *For Annuitant's Life Only* annuity using the formula or the money purchase calculation is \$140* or less per month, the alternate payee is restricted to a lump sum retirement benefit payment. If the annuity is greater than \$140,* and less than \$283* per month, the alternate payee can choose between a lump sum and a monthly lifetime annuity. If the annuity is at least \$283* per month, payment is restricted to a monthly lifetime annuity.

Annuities from voluntary additional contributions are always calculated under the money purchase method. More detailed information about the payment options for additional contributions is in the brochure *Additional Contributions* (ET-2123), available from this Department.

Application Procedures: The alternate payee should contact this Department for a benefit application. It can take 90 days or more to process a lump sum benefit application after the Department receives it.

If the alternate payee is eligible for a retirement benefit paid as lifetime monthly payments, the Department provides an estimated amount for all eligible annuity options* when sending the application. We recommend that you request annuity estimates several months before the anticipated annuity begin date. We include specific instructions for applying in the application packet.

Special Caution To Alternate Payees Who Are Eligible for Accelerated

* The \$140 and \$283 amounts apply to annuities beginning in 2004; these amounts are indexed upward annually.

Payment Options: As an alternate payee under age 62, you are eligible to select an Accelerated Payment option from an account under the WRS. Accelerated Payment options provide a higher monthly annuity until age 62, at which time the WRS annuity decreases by the approximate amount of the anticipated monthly Social Security benefit. The intent of Accelerated Payment options is for the to-age-62 WRS annuity to be approximately the same as the total after-age-62 income from Social Security and the WRS annuity combined.

As an alternate payee, the amount of the Social Security benefit used to estimate your Accelerated Payment options uses the participant's final average WRS earnings. We use tables which assume full career employment covered under Social Security. The assumed Social Security benefit amount from these tables could be substantially higher than the Social Security benefit you will actually receive. This could result in a substantial decrease in your total income at age 62.

To avoid a possible decrease in your total income at age 62, you may wish to contact the Social Security Administration office for a projection of your Social Security benefits at age 62. You should request that this benefit projection be based on your actual "stop working age." If you provide us with a copy of the projection and your "stop working age" is within one year of your WRS benefit effective date, we will use your Social Security benefit projection when calculating your accelerated payment options.

EFFECTS ON MONTHLY ANNUITY PAYMENTS

If the participant is a WRS annuitant on the decree date and also has an inactive account from which benefits are not being paid (such as an additional contribution account), the inactive account is divided as described in the section on Active/Inactive Accounts.

For marriages legally terminated after April 27, 1990: Upon receipt of a valid QDRO, a percentage of a participant's total WRS annuity in effect on the decree date can be paid directly to an alternate payee. The participant's annuity is divided into two separate life annuities, with a new annuity record established for the alternate payee.

For marriages legally terminated between January 1, 1982 and April 27,

** Alternate payees are not eligible to select a joint and survivor option.*

1990: Upon receipt of a valid QDRO, if the participant was not an annuitant on the decree date but is receiving an annuity when the Department receives the QDRO, the Department will divide the annuity prospectively and create a separate annuity for the alternate payee. The alternate payee's share of the annuity is calculated based on the percentage of the participant's account value as of the decree date that the QDRO awards to the alternate payee; the portion of the annuity based on service and contributions to the participant's account after the decree date are not divided.

Once the annuity is divided, both the participant and the alternate payee will receive notices explaining his/her annuity amounts, the options in effect, etc. The type of annuity and amounts for each party will be based on his/her age and the participant's original annuity option selection. The alternate payee does not need to file an application for benefits; when the annuity is divided, payments will automatically be made to the alternate payee.

Annual fixed and variable adjustments are applied to both parties' annuities. We send separate 1099-R tax reports to each annuitant every year, showing the taxable and non-taxable annuity amounts, annuity deductions, etc.

It is important to note that while the combined actuarial value of the two annuities remains the same as the actuarial value of the participant's original annuity, the **sum of the two separate gross annuities will usually be different than the participant's gross monthly annuity before the division.** This is due to the actuarial conversion of the annuity into two separate life annuities based on the respective life expectancies of the participant and alternate payee.

Annuity Options and Associated Death Benefits

The death benefits from the participant's and alternate payee's annuities are based on the original option selected by the participant:

Life With 60-Payments and 180-Payments Guaranteed Options:

The annuity is divided into two separate annuities, one paid to the participant for life and one to the alternate payee for life. If the guarantee period has not expired as of the effective date of the annuity division, each annuity provides the remainder of the original guarantee period as a potential death benefit. Whether a death benefit is payable

from an annuity depends on whether the guarantee period has expired at the time he or she dies. However, if the guarantee period had expired as of the effective date of the annuity division, there is no death benefit payable from either annuity.

The participant and the alternate payee can each name his/her own beneficiary(ies) to receive the death benefit from his/her annuity. Each can change beneficiary(ies) at any time. Once the guaranteed number of payments has been made, there is no death benefit from either annuity.

Joint and Survivor Options With Alternate Payee As Named Joint Survivor:

- Joint and Survivor Annuity with No Monthly Payments
Guaranteed: The annuity is divided into two annuities payable for the respective lifetimes of the participant and the alternate payee. There is no death benefit payable upon either death.
- Joint and Survivor Annuity with 180 Payments Guaranteed: The annuity is divided into two annuities payable for the respective lifetimes of the participant and the alternate payee. If fewer than 180 payments have been made since the participant's annuity began, the remaining guaranteed payments are available as a death benefit from each annuity.

The participant and the alternate payee can each name his/her own beneficiary(ies) to receive the death benefit from his/her annuity. Once the guaranteed payments have been made, there is no death benefit from either annuity.

Joint and Survivor Options with Someone other than Alternate Payee as Named Survivor:

- Joint and Survivor Annuity With No Monthly Payments Guaranteed: The annuity is divided into two separate annuities payable for the respective lifetimes of the participant and the alternate payee. The participant's annuity continues as a reduced joint and survivor annuity with the survivor originally named by the participant continuing as the named survivor. The alternate payee receives a life annuity that ends upon the alternate payee's death.
- Joint and Survivor Annuity Combined with 180 Payments

Guaranteed: The annuity is divided into two separate annuities payable for the respective lifetimes of the participant and the alternate payee. The participant's annuity continues as a reduced joint and survivor annuity with the survivor originally named by the participant continuing as the named survivor. If both the participant and the named survivor die before 180 payments have been made, the remaining guaranteed payments are payable to the secondary beneficiary(ies). The alternate payee receives a life annuity, and if the alternate payee dies before 180 total payments have been made since the participant's annuity began, the remaining guaranteed payments are payable to the alternate payee's beneficiary(ies).

Accelerated Payment Options:

Accelerated Payment options are available in all of the optional forms of payment previously listed above. Accelerated Payment annuities have two parts:

1. A temporary annuity paid until the participant dies or reaches age 62, whichever comes first; and,
2. A life annuity payable for the life of the participant.

When an accelerated payment option annuity is divided per a QDRO, the participant and alternate payee each receive a lifetime annuity calculated as previously described, plus a temporary annuity. It is payable to each person until that person reaches age 62 or dies, whichever occurs first. At age 62, each annuity decreases to that person's lifetime annuity amount.

The participant and alternate payee can each submit a projection of his/her estimated age-62 Social Security benefits. If this projection is based on his or her actual stop working age and is within one year of his or her WRS benefit effective date, it will be used to recalculate the before-and-after-age-62 annuity amounts. Otherwise, the Department uses actuarial tables for the temporary portion of the annuity.

There is no death benefit payable from the temporary annuities, so upon their respective deaths any death benefit payable is based on the life annuity amount only.

Annuity Certain Options (Available from employee additional contribu-

tions only):

The annuity certain is divided into two separate annuities paid to the participant and the alternate payee for the duration of the number of payments originally selected by the participant. Each person can name beneficiaries to receive any remaining payments available upon his/her death. He/she can change beneficiaries at any time.

FEDERAL WITHHOLDING TAX ON BENEFITS PAID TO ALTERNATE PAYEES

Federal law requires that the Department withhold 20% of the taxable portion of any lump sum benefit or any payments from an annuity certain of less than ten years as federal withholding tax, unless you elect to have your payment(s) directly rolled over into another qualified plan or an IRA.*

If you do not elect a direct rollover you can still (indirectly) roll over your payment(s) within 60 days after the date your check(s) is(are) issued. However, we must withhold 20% of the taxable amount of your payment; if you wish to roll over the entire taxable amount you must obtain the 20% amount withheld from another source.

The federal early distribution tax that normally applies to separation benefits does not apply to benefits paid to alternate payees.

* *Exception: Lump sum benefits of less than \$200 cannot be rolled over and the 20% mandatory withholding does not apply.*

If you need additional descriptions of the various annuity options available to WRS participants, review the Department's brochure, *Choosing an Annuity Option* (ET-4117).

The Department has made every effort to ensure that the information in this brochure is accurate. However, if the information in this brochure should conflict with the law, the law must be followed.



ALWAYS INCLUDE YOUR NAME, SOCIAL SECURITY NUMBER, AND DATE OF BIRTH ON ALL CORRESPONDENCE TO THIS DEPARTMENT.

The Department of Employee Trust Funds does not discriminate on the basis of disability in the provision of programs, services or employment. If you are speech, hearing or visually impaired and need assistance, call toll free 1-877-533-5020 or (608) 266-3285 (local Madison) or TTY (608) 267-0676. We will try to find another way to get the information to you in a usable form.

Contacting the Department of Employee Trust Funds

Self-Service Toll-Free Telephone Services

Available 24 hours a day, seven days a week. You must have a touch-tone telephone to use these systems.

SELF-SERVICE LINE: Call 1-877-383-1888 or (608) 266-2323 (local Madison) to request forms and brochures. Wisconsin Retirement System annuitants may also change their home mailing address or tax withholding election through this self-service line.

TELEPHONE MESSAGE CENTER: Call 1-800-991-5540 or (608) 264-6633 (local Madison) to hear detailed recorded messages covering a variety of Wisconsin Retirement System topics.

Note: *You will not be able to talk to a "live" person using these systems. To speak to a benefits specialist, call the telephone numbers listed below.*

To Visit our Internet Site

Access the Internet site at etf.wi.gov. A tremendous amount of information is on-line regarding the Wisconsin Retirement System and other benefit programs. You may e-mail the Department through this site.

To Call During Office Hours

Office Hours: 7:45 am to 4:30 pm, Monday through Friday
(except holidays)

Toll Free: 1-877-533-5020

Madison: Main Line: (608) 266-3285
To make an appointment: (608) 266-5717
TTY (Teletypewriter for hearing & speech impaired):
(608) 267-0676

Milwaukee: To make an appointment: (414) 227-4294

To Write Us

Department of Employee Trust Funds
P.O. Box 7931
Madison, WI 53707-7931

To Visit Us

(An appointment is recommended)

Madison: 801 West Badger Road

Milwaukee: 819 North Sixth Street, Room 550