

Sample Child Support Enforcement Order (ODRO) - Garnishment of Monthly Pension Payments

The following explanation is designed to assist a child support enforcement officer in understanding the benefits provided by the Western Metal Industry Pension Plan and how a delinquent child support obligation can be collected from such plan.

Since the Western Metal Industry Pension Plan is an ERISA-regulated retirement plan, a special type of court order called a "qualified domestic relations order" ("QDRO") is needed to garnish funds from the Plan to collect delinquent child support.

Retirement Plan: Monthly Retirement Payment for a Retiree

The Western Metal Industry Pension Plan is a defined benefit pension plan. It provides monthly pension benefits for a retiree over his or her lifetime. For pension benefits to be payable, a Participant must actually retire. Lump-sum benefits are not generally available from the Western Metal Industry Pension Plan.

The enclosed sample QDRO can be used to collect child support from each of the Participant's monthly pension benefit payments from the Plan. This is called a "split-payment" QDRO, in that benefits otherwise payable to the Participant are instead diverted and applied toward the delinquent support obligation.

Certain payment options include a 60-month minimum payment guarantee, so collections via a QDRO can continue (in some circumstances) after the Participant's death.

Tax Issues: Identifying the Correct Alternate Payee

Properly identifying the Alternate Payee in a child support enforcement QDRO is a key issue because it has significant tax consequences.

Taxes are due on any amounts paid from the Western Metal Industry Pension Plan. Whether the Participant or the Alternate Payee is responsible for the taxes depends on who is formally named as the Alternate Payee under the QDRO. See Code Section 402(e). The fact that the underlying obligation is a child support payment does not matter; the tax code focuses on who is named as the Alternate Payee in the QDRO when evaluating payouts from a pension plan.

Where the Alternate Payee is the Participant's child, then the Participant is responsible for the related income tax liability (much like the normal child support tax rules). In contrast, where the Alternate Payee is a spouse or former spouse, then the spouse or former spouse is responsible for the related income tax liability (much like the normal alimony payment rules).

Questions Regarding Child Support Enforcement Options and Related Contact Information for the Trust Office

The Trust Office regularly works with support enforcement officers, and answers related questions regarding the Plan's QDRO procedures. The Trust Office also regularly responds to subpoenas requesting benefit estimates or other relevant information.

As a courtesy, the Plan's legal counsel will also review draft support enforcement QDROs to confirm that they align with the Plan's benefit payment obligations and can be implemented by the Plan. Submitting a draft QDRO avoids multiple submissions to the court, allows the Trust Office to place an administrative hold on benefit payments (so that they are not paid out while the QDRO is pending), and generally allows any issues to be resolved before the final order is entered.

You can get more information about the Plan, by contacting the Trust Office at:

Western Metal Industry Pension Plan
PO Box 34203
Seattle, WA 98124-1203
Phone: (206) 664-7300 or (800) 426-7132
Fax: (206) 695-0984

1 **SAMPLE CHILD SUPPORT ENFORCEMENT QDRO-**
2 **GARNISHMENT OF MONTHLY PENSION**
3 **WESTERN METAL INDUSTRY PENSION FUND**

6 SUPERIOR COURT OF THE STATE OF [STATE]
7 IN AND FOR THE COUNTY OF [COUNTY]

8 INRE:

9 *[PETITIONER'S NAME],*

10 Petitioner,

11 and

12 *[RESPONDENT'S NAME],*

13 Respondent.

NO. _____

QUALIFIED DOMESTIC
RELATIONS ORDER TO ENFORCE
CHILD SUPPORT OBLIGATION
(Western Metal Industry Pension Plan)

14 WHEREAS, the Court has jurisdiction over all parties and over the subject matter
15 in this child support enforcement action; and

16 WHEREAS, the Court intends this Order to be a Qualified Domestic Relations Order
17 (hereinafter referred to as "Order" or "QDRO") as that term is used in the Retirement Equity
18 Act of 1984, as amended, and interpreted in accordance with that Act; and

19 WHEREAS, the *[Parent]* is now delinquent on a child support obligation, and this
20 QDRO is being secured to collect amounts owed and past due, NOW, THEREFORE,

21 IT IS HEREBY ORDERED by the Court as follows:

22 1. **Definitions.** The following are the definitions used in this Order:

23 1.1 "Participant": *[Obligor Parent's Name]*

Street Address: *[Address]*

City/State/ZIP Code: *[City, State, ZIP]*

QUALIFIED DOMESTIC RELATIONS
ORDER

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1.2 "Alternate Payee": *[Child's Name]*
Relationship to Participant: Street Child
Address: *[Address]*
City/State/ZIP Code: *[City, State ZIP Code]*

1.3 "Retirement Plan": Western Metal Industry Pension Plan

1.4 "Plan Administrator": Board of Trustees
Western Metal Industry Pension Plan
Address: PO Box 34203
Seattle, WA 98124-1203

2. **Collection of Child Support.** This Order hereby creates and recognizes the existences of the Alternate Payee's rights to receive a portion of the Participant's benefits under the Retirement Plan.

3. **Participant's Retirement Status (select one).**

D Participant is presently retired, and elected a _____
(describe form of payment selected); or

D Participant is not presently retired, but this QDRO shall become effective when the Participant retires and becomes entitled to benefit payments from the Retirement Plan.

4. **Payments to Alternate Payee.**

4.1 **Garnishment of Pension Benefits Payable During Participant's Lifetime.**

Effective with benefits payable for (select one):

D _____ (specify a month and a year), or

D the month following the later of (a) receipt of this Order and its approval as a QDRO; or (b) the month that the Participant is first entitled to receive a monthly early, normal, or disability

pension benefit payment from the Plan;

the Alternate Payee is awarded _____ (specify either a percentage or a dollar amount) of each of the Participants monthly benefit payment from the Plan. Alternate Payee's benefits shall be paid directly to the Alternate Payee by the Plan.

1 The Alternate Payee understands that in the event the Participant returns to work after
2 retirement, the Participant's benefits may be suspended. In such e v e n t ,
3 the Alternate Payee's benefits shall also be suspended.

4 4.2 Death Benefit Provisions

5 (a) **Post-Retirement Death Benefits Provisions for a Participant**
6 **Who Elected a Single Life Annuity with 60 Months**
7 **Guaranteed.** If the Participant retired and elected a single life
8 annuity with a minimum number of monthly payments
9 guaranteed, the Alternate Payee's benefits will cease at the
10 earliest of the Participant's death or the Alternate Payee's death,
11 provided that if the Participant dies prior to payment of such
12 guaranteed payments by the Plan, and the Alternate Payee
13 survives the Participant, payments shall continue to the
14 Alternate Payee until the earlier of payment of the balance of
15 such guaranteed monthly payments or the Alternate Payee's
16 death. If the Alternate Payee predeceases the Participant, the
17 benefit awarded under this QDRO shall lapse and be paid in
18 accordance with the terms of the Plan.

19 (b) **Post-Retirement Death Benefit Provisions for a Participant**
20 **Who Elected a Joint and Survivor Annuity.** If the Participant
21 retired and elected a joint and survivor annuity, the Alternate
22 Payee's benefits cease at the earliest of the Participant's death or
23 the Alternate Payee's death. The survivor benefits provided under
the **Plan** are not payable to the Participant, and therefore will not
be garnished to collect this delinquent support obligation. If the
Alternate Payee predeceases the Participant, the benefit awarded
under this QDRO shall lapse and be paid in accordance with the
terms of the Plan.

5. **Limitations on Order.** Nothing contained in this Order shall be construed to
require the Plans:

5.1 To provide **for** any type or form of benefits, or any option, not
otherwise provided under the Plan at the time benefits commence to the Alternate Payee;

5.2 To provide increased benefits (determined on the basis of actuarial value) not
available to the Participant;

5.3 To provide benefits to the Alternate Payee which are required to be
paid to another Alternate Payee under another order previously determined to be a QDRO; or

1 5.4 To provide the payment to the Alternate Payee of benefits forfeited by
2 the Participant.

3 **6. Action to Be Taken.**

4 6.1 The Plan Administrator shall be provided with a copy of the Order by
5 the Alternate Payee or Participant [**or the Child Support Service Agency**].

6 6.2 Pending determination of a proposed Order's status as a QDRO, the Plan
7 Administrator shall separately account within the Plan for the amount ("segregated
8 amounts") which would have been payable to the Alternate Payee (if this Order is established
9 to be a QDRO) during the determination period, as defined in Internal Revenue Code Section
10 414(p)(7). No segregation is necessary if benefits are not payable during the determination
11 period.

12 **7. Tax Issues.** The Alternate Payee is a Child of the Participant. Therefore,
13 payments under this Order (while the Participant is alive) are taxable to the Participant.

14 Nothing in this QDRO shall be deemed to supersede the Plan's tax withholding obligation,
15 and the amounts awarded to the Alternate Payee under Section 4.1 of this QDRO
16 may be reduced so that they do not exceed the entire monthly benefit payable to the
17 Participant, less the applicable tax withholding.

18 **8. Continuing Jurisdiction.** The Court retains jurisdiction over this matter to
19 amend this Order to establish or maintain its status as a QDRO under the Retirement Equity
20 Act of 1984, as amended.

21 DONE IN OPEN COURT this ___ day of _____, 20__.

22 _____
23 JUDGE/COURT COMMISSIONER

Presented by:

Prosecutor/Family Support Division

By: _____

[NAME OF ATTORNEY]

[Title]

1 Copy Received, Approved for Entry,
2 Notice of Presentment Waived:

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4 *[NAME OF PARTICIPANT]*, Pro Se
Participant

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QUALIFIED DOMESTIC RELATIONS
ORDER