



## MICHIGAN OFFICE OF RETIREMENT SERVICES

P.O. Box 30171 · Lansing, MI 48909-7671

[www.michigan.gov/ors](http://www.michigan.gov/ors)

Toll Free: 800-381-5111

Local: 517-284-4400

Fax: 517-284-4416

# Eligible Domestic Relations Orders

## Background and Instructions

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This document provides background information to those parties or their representatives who may wish to file an EDRO with one of the four retirement systems. While every attempt has been made to ensure the accuracy of this document, ORS is bound by the requirements of the EDRO Act and applicable retirement statutes. If any discrepancies occur, the provisions of the EDRO Act and retirement statutes will prevail.

The information in this booklet is not legal advice. The sharing of a pension under an EDRO involves the rights of two individual parties, typically a member of a public retirement system and the member's former spouse. EDROs have limitations and may not be the best answer to your particular situation. Individuals who are considering filing an EDRO should consult an experienced attorney.

Your divorce attorney will usually create an EDRO that complies with your Judgment of Divorce. If an attorney is not preparing your EDRO, you may wish to contact the State Bar of Michigan Lawyer Referral Service (<https://www.michbar.org/LRS/Intro/Lawyer-Referral-Service> or (800) 968-0738) for the names of attorneys or law firms to review the document. An additional resource for attorneys is *QDROs, EDROs & Division of Employee Benefits on Divorce, A Guide for Michigan Practitioners*, edited by Nancy Keppelman and the Institute of Continuing Legal Education.

# What is an EDRO?

When a retirement system member divorces and the parties agree that the pension will be divided, an Eligible Domestic Relations Order (EDRO) must be filed with the retirement system. An EDRO is a specific type of court order that covers *active* members of a public retirement system to provide directions for how to divide the pension at time of retirement. A judgment of divorce by itself is not sufficient; an EDRO must be filed with the retirement system. The best way to ensure a proper EDRO is to use the online EDRO. See Filing Requirements for details.

The Michigan Office of Retirement Services (ORS) implements EDROs under these four public retirement systems:

- Michigan Judges Retirement System
- Michigan Public School Employees Retirement System
- Michigan State Employees' Retirement System
- Michigan State Police Retirement System

Each EDRO must meet the requirements of both the EDRO Act (MCL 38.1701, *et seq*) and the applicable retirement statute before it can be implemented. It is necessary to ensure that the pension system fulfills the statutory requirement to not pay more in retirement benefits to the Alternate Payee and the Participant combined than it would have paid to just the Participant had there not been an EDRO. ORS uses a professional actuary to determine the values that will be paid based on the EDRO.

The EDRO Act does not apply to retired members who are already receiving a pension administered by ORS. It applies only to members who are not yet in receipt of a pension check. This includes active and deferred members. The EDRO must be filed before the member's retirement effective date. If a retiree wishes to divide a pension due to a divorce, the proper court order is a Domestic Relations Order. Refer to the ORS publication *Domestic Relations Order (R0323X)* located on our website. The EDRO Act also does not apply to retirement savings through a 401(k), 457 Plan, or other employer-sponsored investment program. For those programs, contact the Plan Administrator directly.

## Important Terms

**Alternate Payee:** A former spouse, child, or dependent of a Participant who is named in an EDRO, or a spouse of a Participant under a judgment of separate maintenance. In a court order, the Alternate Payee can be either the plaintiff or the defendant.

**Assigned Value:** The value of the Participant's pension assigned to the Alternate Payee. This is calculated using the dates specified in the EDRO and the final average compensation that would apply if the member terminated employment/retired on the end date specified in the EDRO (the shared portion) and multiplying the result by the percentage of pension awarded to the Alternate Payee in the EDRO. This is not necessarily the amount the Alternate Payee will receive nor the amount by which the Participant's retirement will be reduced. At the time the Alternate Payee applies to begin receiving benefits, this value is used by the actuary to determine the amount of the Alternate Payee's monthly payment.

**Earliest Retirement Date:** The earliest date that a Participant meets all eligibility requirements for retirement under the applicable retirement system, but *continues in employment*.

**Eligible Domestic Relations Order (EDRO):** A court order that divides retirement benefits in a state or local government retirement plan and meets the specific requirements of the EDRO Act.



## EDRO Background and Instructions

**Participant:** A member or former member of the retirement system. In a court order, the Participant can be either the plaintiff or the defendant.

**Post-Retirement Increases:** Any increase to a retirement allowance payable to a Participant. Some retirement systems administered by ORS pay post-retirement increases. These increases are either guaranteed or non-guaranteed. Examples of guaranteed increases include the annual increase provided under the State Employees' and State Police Retirement Systems, and under the Member Investment Plan for Public School Employees' Retirement System members. Non-guaranteed increases include extra pension payments that might be issued due to investment performance.

Post-retirement increases (either a percent or a dollar amount) are included in the division of the pension unless they are specifically excluded. The online EDRO has a box to check if you wish to *exclude* the increase.

**Recoupment:** The amount that is subtracted from the Participant's total monthly pension payment to fund the portion of the pension assigned to the Alternate Payee. Recoupment is especially important in cases where both the following occur:

- The Alternate Payee begins receiving payments under the earliest retirement date provision in the EDRO; and
- The Participant continues to work past age 60.

See Understanding Recoupment to understand the financial effect on the Participant's pension payments.

**Shared Portion:** The amount of pension value that will be shared between the Participant and the Alternate Payee. For example, a Participant may have 35 years of service credit, but only the first 12 years of value was specified in the EDRO to be shared by the parties. ORS determines how much service credit was earned during the period specified by the EDRO and the final average compensation for that same period. Using these numbers, ORS calculates the value of the pension for those 12 years only. The shared portion of the pension is used to calculate the assigned value.

**Survivor Benefits:** There are two kinds of survivor benefits payable under the retirement systems: pre- and post-retirement survivor benefits.

### *Pre-Retirement Survivor Benefits*

This provision guarantees the Alternate Payee a portion of any pre-retirement surviving spouse benefit payable under the applicable retirement statute if the Participant dies while in active employment and before the Alternate Payee begins to receive payment. Once the Alternate Payee begins receiving payments, she/he is not entitled to a pre-retirement survivor benefit.

If this provision is not included and the Participant predeceases the Alternate Payee's payments begin, the Alternate Payee receives nothing under the terms of the EDRO.

If the benefit specified for the Alternate Payee is less than the entire amount payable to a survivor, the retirement system will pay the remaining portion of the survivor benefit to the Participant's eligible beneficiary. If the Participant is not married at the time of death, the system will pay the remaining portion of the survivor benefit to the eligible beneficiary as determined by law.

### *Post-Retirement Survivor Benefits*

The EDRO may provide for payment to the Alternate Payee in the form of a joint survivor benefit. A joint survivor benefit can be paid only when the Participant and Alternate Payee begin receiving payments at the same time. The State Police Retirement System does not provide for a joint survivor option for members hired before July 1, 2006. See Forms of Payment for details.



# Filing Requirements

A valid EDRO is one that is signed by a judge, stamped a true copy, and filed with the retirement system before the Participant's retirement effective date. Once the Participant has retired, a *Domestic Relations Order (R0323X)* is required instead. Please see the Forms and Publications section of our website for the online form for post-retirement divorces. An EDRO filed after the Participant's death cannot be accepted by ORS.

ORS has developed the online EDRO to reduce errors and allow our customers to create EDROs that can be administered under the retirement statutes. This interactive PDF prevents errors by not allowing contradicting selections, by prefilling information, preventing typographical errors, and by offering pop-up help screens. ***This is the preferred document to file with the Office of Retirement Services.*** It is the fastest, most efficient way to complete your filing. Complete it online, print it, then take the printed copy to the court for the judge's signature.

The online EDRO includes an attachment containing the parties' social security numbers that should not be filed with the court but is required by statute to be filed with the retirement system. This attachment allows the retirement system to identify the Participant's account and to accurately set up a new account for the Alternate Payee. Be sure to include it when you forward the signed EDRO to ORS.

If for any reason you are unable to use the online EDRO and must create your own to fulfill the terms of your divorce settlement, the retirement system will determine whether your EDRO is valid. These require closer review, take longer to process, and will be returned for corrections, if any. If the retirement system determines that an EDRO is not valid, the retirement system will reject the order and notify the Participant and the Alternate Payee of the reasons why the order is legally non-compliant. It is the responsibility of the Participant and the Alternate Payee to obtain an amended order that meets the requirements of the EDRO Act and file the amended order with the retirement system before the Participant's retirement effective date. The retirement system cannot accept amended orders filed after the Participant's retirement effective date. In the rare situation where a unique EDRO must be drafted (in lieu of the online EDRO), the retirement system will review a draft EDRO to verify compliance before the order is presented in court.

# Refund of Contributions

ORS cannot refund member contributions to a Participant if such a refund would affect the benefits to an Alternate Payee under an EDRO. When an EDRO is on file and the parties later decide that they want to receive a refund of contributions, they must file an amended EDRO that vacates the original order and specifies the portion of the refund payable to the Alternate Payee.

# Form of Payment

The Alternate Payee may receive payments based on one of the following:

**Single life annuity based on the Alternate Payee's lifetime.** This provides the Alternate Payee with a lifetime monthly payment *based on the Alternate Payee's life expectancy*. Payments begin when the Participant retires, unless the EDRO contains the earliest retirement eligibility date provision and the Alternate Payee applies for payments to begin before the Participant retires. Payments stop at the Alternate Payee's death. Because this is an annuity, the reduction to the Participant's pension is permanent once the Alternate Payee begins receiving payments. If the Alternate Payee dies after payments begin, the Participant's benefit will not increase by the value of the Alternate Payee's benefit.

If the EDRO contains the earliest retirement eligibility date provision and the Alternate Payee applies for payments to begin before the Participant retires, the Alternate Payee ***must*** receive payment in the form of a



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single life annuity payable over the Alternate Payee's lifetime. The Alternate Payee will not be eligible to receive an additional survivor benefit or any benefit increase upon the Participant's death.

**Single life annuity based on the Participant's lifetime.** This payment provides the Alternate Payee with a monthly payment *based on the Participant's life expectancy*. Payments begin when the Participant retires and stop at the Participant's death. If the Alternate Payee predeceases the Participant, all benefits payable to the Alternate Payee revert to the Participant.

**Joint Survivor Option.** This payment option is *available only when the Alternate Payee and the Participant begin receiving payments at the same time*. The total shared portion is reduced by an option factor in order to provide monthly payments throughout the lives of both the Alternate Payee and the Participant. The amount of this reduction will depend on the option selected, and on the Alternate Payee and the Participant's ages at the time the benefit becomes payable. **Note:** To select the joint survivor option the pension division must be made under Option 6 (a) of the value assignment. Option 6 (b) will not be permitted.

When a joint survivor option is selected, the EDRO must specify the percentage of the shared pension the Alternate Payee is to receive while both parties are alive. This percentage does not have to be the same percentage as the joint survivor option.

If the Participant predeceases the Alternate Payee, payments continue until the Alternate Payee's death, but the payment amount will be based on the joint survivor option and may be different from the amount paid before the Participant died.

<b>Example 1</b>	If the Alternate Payee receives 50 percent of the shared portion of the pension under the terms of the EDRO, and the parties select a 50 percent joint survivor option at the time of the Participant's retirement, payments to the Alternate Payee will stay the same if the Participant predeceases the Alternate Payee.
<b>Example 2</b>	If the Alternate Payee is assigned 60 percent of the shared portion and the parties select a 50 percent joint survivor option at the time of the Participant's retirement, and the Participant predeceases the Alternate Payee, payments to the Alternate Payee will decrease. Similarly, if the assignment is 40 percent of the shared portion, at the Participant's death, payments to the Alternate Payee will increase.

With a joint survivor option, if the Alternate Payee predeceases the Participant, the Participant's payment will increase to the straight-life value. The following shows which joint survivor option(s), if any, are available under each retirement system.

### **Public School Employees Retirement System and State Employees' Retirement System**

- **100 percent Option.** Once payments begin, if the Participant dies, the Alternate Payee will receive the value of 100 percent of the shared portion of the pension.
- **75 percent Option.** Once payment begins, if the Participant dies, the Alternate Payee will receive the value of 75 percent of the shared portion of the pension.
- **50 percent Option.** Once payment begins, if the Participant dies, the Alternate Payee will receive the value of 50 percent of the shared portion of the pension.



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### Judges Retirement System

- **50 percent Option.** Once payment begins, if the Participant dies, the Alternate Payee will receive the value of 50 percent of the shared portion of the pension.

### State Police Retirement System

- Does not provide a joint survivor option for members hired before July 1, 2006.

## Date of Payments

Alternate Payees must begin receiving payments on the Participant's retirement effective date. Payment may begin earlier if the EDRO includes an *earliest retirement date* provision. Upon receiving the Participant's application for retirement, the retirement system will notify the Alternate Payee that the Participant is retiring and will provide the needed information for starting payments.

## The Earliest Retirement Date Provision

If the EDRO includes the *earliest retirement date* provision, the Alternate Payee may elect to receive payments on or after the earliest date that the Participant would be eligible to retire, but before the Participant actually retires. If the Alternate Payee chooses to begin payments before the Participant retires, the payment will be made in the form of a single life annuity based on the Alternate Payee's lifetime (see Forms of Payment for details). The Alternate Payee must file an application with the retirement system to begin receiving payment. Payments will begin the month following the date the retirement system receives a completed application.

**Note:** If the Alternate Payee begins receiving payments before the Participant retires under the earliest retirement date provision **and** the Participant works past age 60, the Participant's pension amount will be reduced further. Read Understanding Recoupment for details.

## Sample Benefit Illustrations

ORS often receives questions about how payments for either party are calculated. To help you understand this, we have provided the following examples. When reviewing the examples, it is important to know that an EDRO cannot require the retirement system to pay more money in total to both parties than the Participant is entitled to over his/her lifetime (projected by an actuary). This means that if a portion of the Participant's pension is paid to an Alternate Payee, the actuarial value of both benefits – the portion payable to the Participant plus the portion payable to the Alternate Payee – must equal the original actuarial value of the Participant's pension. Because of this, the monthly benefit actually paid to the Alternate Payee may be different than the amount by which the Participant's pension is reduced. This is typically due to the differences in the parties' life expectancies.

<b>Example 3</b>	<ul style="list-style-type: none"><li>• Participant is age 60; Alternate Payee is age 55.</li><li>• Payments begin when the Participant retires.</li><li>• The Alternate Payee chooses a single life annuity for his or her lifetime.</li><li>• The EDRO assigns 50 percent of the Participant's \$1,000 benefit to the Alternate Payee.</li></ul>
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In this example, the Alternate Payee is younger than the Participant and has a longer life expectancy, so the total value of the benefit will be spread over more years. This means that the actual amount paid per month will be less than \$500, perhaps \$450.



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*It is very common for the actual monthly amount to be less than the value assigned by the EDRO.* If the Alternate Payee is younger than the Participant and they begin receiving benefits at the same time, then the actual monthly amount will always be less than the amount assigned by the EDRO.

<b>Example 4</b>	<ul style="list-style-type: none"><li>• Participant is age 60; Alternate Payee is age 65.</li><li>• Payments begin when the Participant retires.</li><li>• The Alternate Payee chooses a single life annuity for his or her lifetime.</li><li>• The EDRO assigns 50 percent of the Participant's \$1,000 benefit to the Alternate Payee, so the Alternate Payee expects to receive \$500 per month.</li></ul>
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In this example, the Alternate Payee is older than the Participant and has a shorter life expectancy, so the total value of the benefit will be spread over fewer years. This means that the actual amount paid per month will be more than \$500, perhaps \$550. ***If the Alternate Payee is older than the Participant and they begin receiving benefits at the same time, then the actual monthly amount will always be more than the amount assigned by the EDRO.***

<b>Example 5</b>	<p>When the Alternate Payee Applies Under the <b>Earliest Retirement Date Provision</b></p> <ul style="list-style-type: none"><li>• Value of the Participant's pension assigned to the Alternate Payee = \$600 per month.</li><li>• The Alternate Payee begins payments on the earliest retirement eligibility date.</li><li>• The Alternate Payee (a woman) is 54 years old when she applies for payments to begin.</li><li>• The actuarial life expectancy for men is age 84; for women, age 86. Benefits are projected based on the Participant retiring at age 60.</li></ul>
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The total lifetime value of the Alternate Payee's portion of the pension is \$172,800. This calculation is based on the Participant's life expectancy as follows:

$$(\$600 \times 12 \text{ months}) \times (\text{Age } 84 - \text{Age } 60) = \$7,200 \times 24 \text{ years} = \$172,800$$

Since she begins payments at age 54 and is expected to live until age 86, this total amount needs to be paid over her expected lifetime as follows:

$$\$172,800 (\text{Age } 86 - \text{Age } 54) = \$172,800 \div 32 \text{ years} = \$5,400 \div 12 \text{ months} = \$450 \text{ per month}$$

In this situation, because the Alternate Payee is starting payments at such a young age, she will receive \$450 per month instead of the assigned value of \$600 per month.

To continue this example, if three years later the Participant retires at age 57 instead of age 60 (the Alternate Payee is now age 57), the retirement system will recalculate the Alternate Payee's payments because the total lifetime value of the pension is higher and the remaining number of years it will be paid over will be less:

$$\begin{aligned} & (\$600 \times 12 \text{ months}) \times (\text{Age } 84 - \text{Age } 57) = \$7,200 \times 27 \text{ years} = \$194,400 \text{ minus } (\$450 \times 36 = \$16, \\ & 200) \text{ benefit paid to AP as of member's retirement} = \$178,200 \text{ remaining for AP's lifetime} \\ & \$178,200 \div (\text{Age } 86 - \text{Age } 54) = \$178,200 \div 29 \text{ years} = \$6,144.83 \div 12 \text{ months} = \$512.07 \text{ per month} \end{aligned}$$

## Understanding Recoupment

When an EDRO assigns a portion of a pension to an Alternate Payee under an annuity for the lifetime of the Alternate Payee, the amount that is subtracted from the Participant's pension to fund the Alternate Payee's payment is called *recoupment*. The recoupment amount depends on the age of the parties when they begin



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drawing benefits. The reduction in the Participant's pension is *permanent*. This means that once the Alternate Payee begins receiving payments, the recoupment is in effect for the life of the Participant, regardless of when the Alternate Payee dies.

Here are three typical recoupment scenarios.

### **Scenario 1:** The Participant and the Alternate Payee retire at the same time.

In this scenario, the recoupment amount will be the same as the portion of the Participant's monthly benefit that is assigned to the Alternate Payee. For example, if \$500 of the Participant's \$1,000 accrued monthly benefit is assigned to an Alternate Payee and they begin drawing benefits at the same time, then the recoupment from the Participant will be \$500.

### **Scenario 2:** The Alternate Payee applies under the earliest retirement date provision (i.e., before the Participant retires).

In this scenario, the recoupment amount will be the same as the portion of the Participant's monthly benefit that is assigned to the Alternate Payee *if the Participant retires by age 60*.

### **Scenario 3:** The Alternate Payee applies under the earliest retirement date provision and the Participant retires *after age 60*.

In this scenario, the total benefit paid to the Participant over his/her lifetime is less than what was originally projected (remember, we assume a retirement age of 60). In this case, the reduction to the Participant's pension starts later and is for a shorter period of time so the recoupment is higher. This does not affect the amount the Alternate Payee receives; but it does mean that the Participant's retirement will be reduced by more than was originally projected. Participants who continue to work past 60 will have an increase in the recoupment amount for each year worked until age 65 when the recoupment amount is frozen. By age 65, you can expect the recoupment to be 50 percent higher than the amount assigned to the Alternate Payee under the terms of the EDRO.

Here is a detailed calculation using the same information used for Example 5. It shows how the Participant's pension is affected if they choose to work beyond age 60 and the Alternate Payee begins receiving benefits under the earliest eligibility provision of Example 3.

- Value of the Participant's pension assigned to the Alternate Payee = \$600 per month.
- The Participant (a man) retires at age 63 with an actuarial life expectancy of 84.
- The Alternate Payee (a woman) begins payments on the earliest retirement eligibility date when she is 54 years old with an actuarial life expectancy of 86.

The total lifetime value of the Participant's pension is \$432,000 as follows:

$$(\$1,500 \times 12 \text{ months}) \times (\text{Age } 84 - \text{Age } 60) = \$18,000 \times 24 \text{ years} = \$432,000$$

Amount needed from the Participant to fund the Alternate Payee's payments is \$172,800 as follows:

$$(\$600 \times 12 \text{ months}) \times 24 \text{ years} = \$172,800$$

Since the Participant retired at age 63 instead of 60, the Participant only has 21 years to cover the costs of the Alternate Payee's payments rather than the 24 projected by the actuary when the Alternate Payee applied for benefits:

$$\begin{aligned} \$172,800 \div 21 \text{ years} &= \$8,228.57 \text{ per year} \\ \$8,228.57 \div 12 \text{ months} &= \$685.71 \text{ per month} \end{aligned}$$



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In this situation, the Alternate Payee is actually receiving \$450 per month (see previous calculation), but the Participant's pension is reduced by \$685.71 per month.

To go one step further, let's say the Alternate Payee dies when the Participant is 70 years old. All payments to the Alternate Payee cease upon her death; they are not transferrable to her heirs or beneficiaries. *This has no effect on the reduction to the pension.* Because the values are calculated based on expectations by the actuary of what a whole group of people will do (some die young, others die old), this is a permanent reduction to the Participant's pension.

These calculations ensure that the pension system fulfills the statutory requirement to not pay more in retirement benefits to the Alternate Payee and the Participant combined than it would have paid to just the Participant had there not been an EDRO.

## **Links to EDRO Forms**

[Public School Employees Retirement System Eligible Domestic Relations Order \(R0259C\)](#)

[State Employees' Retirement System Eligible Domestic Relations Order \(R0259G\)](#)

[State Police Retirement System Eligible Domestic Relations Order \(R0259H\)](#)

[Judges Retirement System Eligible Domestic Relations Order \(R0259B\)](#)

