

## ELIGIBLE DOMESTIC RELATIONS ORDERS REVIEW AND QUALIFICATION (DEFINED BENEFIT PLAN)

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### EDRO Defined

An Eligible Domestic Relations Order (“EDRO”) is a court order that is entered as part of a judgment of divorce in the State of Michigan. It is used to divide a state or municipal employee’s governmental pension prior to retirement. The EDRO tells the plan administrator how to calculate the division, what type or form of benefit to provide, and when to commence payment. An EDRO will generally give the participant’s ex-spouse, designated as the “alternate payee,” a specific share of the participant’s accrued benefit.

When MERS receives an EDRO directed to the defined benefit plan that meets the requirements of the law, MERS calculates the alternate payee’s share according to the EDRO, adjusts the participant’s retirement allowance downward to reflect the value of the benefit provided to the alternate payee, and pays the alternate payee a monthly lifetime annuity (lump sum payments are not an option). The remainder of the participant’s retirement allowance is unaffected by the EDRO.

### Requirements

To qualify as an EDRO under MERS, the order must meet the requirements of the Eligible Domestic Relations Order Act, 1991 PA 46, MCL 38.1701, *et seq.*, and be compatible with the MERS Plan Document. The EDRO **must** --

1. State the participant’s name, date of birth, last known address, and include an attachment that contains the participant’s social security number.
2. State the alternate payee’s name, date of birth, last known address, and include an attachment that contains the alternate payee’s social security number.
3. Specify the percentage or amount of the participant’s benefit to be assigned to the alternate payee (or the manner in which MERS is to determine the percentage or amount), and specify the type or form of payment under the plan
4. State that the order applies to MERS (or to a predecessor plan for which MERS has become successor trustee) and that the system will make payments to the alternate payee as required by the order and the EDRO Act.
5. Be entered by the court and filed with MERS before the participant’s retirement allowance effective date.

The EDRO **cannot** require MERS to provide:

1. A type or form of benefit that is not provided by the plan or the EDRO Act (e.g., a lump sum distribution).
2. An increased benefit determined on the basis of actuarial value.
3. The payment of a benefit to an alternate payee that is required to be paid to another alternate payee under a previously filed EDRO.
4. The payment of any other post-employment benefit such as retiree medical or life insurance.

The EDRO **may** provide:

1. That the alternate payee may commence receiving benefits prior to the participant's retirement. However, the EDRO may not allow the alternate payee to commence prior to the participant's earliest retirement date.
2. That a portion of current or future cost of living adjustments (COLAs) is to be provided to the alternate payee.
3. That a spouse under a judgment of separate maintenance or a former spouse is considered the spouse of a participant for the purpose of receiving a benefit as a surviving spouse under the retirement system.

After receiving a domestic relations order, it is MERS' responsibility to determine whether the order satisfies the requirements to be an EDRO. If MERS concludes that the order is not an EDRO, it will promptly notify the parties and explain why. The parties are then responsible for obtaining an amended order that qualifies as an EDRO.

As noted above, an EDRO is not effective unless it is approved and filed with the retirement system prior to the participant's retirement allowance effective date. Timing is therefore important. If the participant is already retired and receiving benefits, MERS cannot accept or administer an order as an EDRO.<sup>1</sup>

A MERS member (or spouse of a member) who is in the process of divorce should submit a written request to MERS for an estimate of the benefit accrued during marriage, and provide that information to their attorney. If an EDRO will be drafted, the parties should refer their attorneys to the MERS sample EDRO at [www.mersofmich.com](http://www.mersofmich.com). Use of the MERS sample EDRO is strongly encouraged although not mandatory, but will result in expedited review and approval.

MERS also encourages the parties to submit a draft copy of the proposed order to MERS prior to judicial entry. MERS will review the proposed order and advise the parties in writing whether it would be acceptable if entered, whether it requires revision, and how the proposed order, if entered, would affect payments of benefits from MERS.

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<sup>1</sup> The retiree's pension can still be divided pursuant to a domestic relations order that is not EDRO, but payment options are limited.

## **Important Terms and Explanations**

**Alternate Payee (AP)** – a spouse of a participant under a judgment of separate maintenance, a former spouse, child, or dependent of a participant who is named in an eligible domestic relations order.

**Benefit** – an annuity, a pension, a retirement allowance, or an optional benefit accrued or accruing to a participant under a retirement system or a post retirement subsidy payable to a participant under a retirement system.

**Domestic Relations Order (DRO)** – a judgment, decree, or order (including the approval of a property settlement) that is made pursuant to state domestic relations law (including community property law) and that relates to the provision of child support, alimony payments, or marital property rights for the benefit of the spouse, former spouse, child, or other dependent of a participant.

A domestic relations order is not an EDRO unless it is filed before the participant's retirement allowance effective date.

- If the retiree elected a joint and survivor form of benefits and designated the ex-spouse as beneficiary, a domestic relations order filed after the member's retirement allowance effective date can do one of two things:
  - a) assign the alternate payee a share of the retiree's monthly benefit and not change the beneficiary designation; or
  - b) remove the ex-spouse as survivor beneficiary and convert the retiree's benefit to a straight life annuity, and then assign the alternate payee a share of the retiree's monthly benefit.
- If the retiree elected the straight life form of benefits at retirement, a domestic relations order filed after the member's retirement allowance effective date can *only* assign a share of the retiree's monthly benefit.

See MERS model DRO at [www.mersofmich.com](http://www.mersofmich.com).

**Eligible Domestic Relations Order (EDRO)** – a domestic relations order that meets all of the requirements of the Eligible Domestic Relations Order Act, 1991 PA 46.

**Earliest Retirement Date** – the earliest date on which a participant meets all the requirements for retirement under the retirement system except for termination of employment.

The alternate payee's benefit will generally begin when the participant retires. However, if the EDRO provides, the alternate payee may have the option to begin receiving benefits any time on or after the date the participant first becomes *eligible* to retire. If the alternate payee elects to receive benefits after the participant's earliest eligibility date but before the participant actually retires, MERS will pay the alternate payee a single life annuity based on the alternate payee's life expectancy, and actuarially reduced based on the date the participant reaches normal retirement age. If the participant retires before age 60 with an unreduced benefit, MERS recalculates the alternate payee's benefit to reflect that benefit.

**Participant** – a member, deferred member, vested former member, deceased former member, or retiree under the retirement system.

**Post-Retirement Increases** – Unless the EDRO specifically excludes the alternate payee from receiving cost-of-living increases, MERS will pay the alternate payee a pro-rata share of any post-retirement increases that are payable to the participant on or after the participant's effective date of retirement.

**Pre-Retirement Survivor Benefits** – lifetime benefits payable to a beneficiary if the member dies prior to retirement. An EDRO can designate the alternate as the member's surviving spouse for this purpose.

**Post-Retirement Survivor Benefits** – lifetime benefits payable to a beneficiary if the member dies after retirement if the member elected to receive benefits in the form of a joint and surviving annuity (MERS Options II, IIA, III). An EDRO can designate the alternate as the member's surviving spouse for this purpose.

### **Forms of Payment**

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

**Single life annuity based on the Alternate Payee's lifetime** – This form of payment 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 date clause and the Alternate payee applies for payment to begin before the Participant retires. Payments will begin the month following the date the Alternate Payee notifies the retirement system in writing. 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 benefits.

If Alternate Payee elects earliest eligibility date and payments begin before the Participant retires, the Alternate Payee *must* receive payment in the form of a single life annuity.

**Single life annuity based on the Participant's lifetime** – This form of 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. This form of payment is almost never chosen.

**Joint and Survivor Option** – This form of payment is *only available when the Alternate Payee and the Participant begin receiving payments at the same time*. The total shared portion is reduced by a joint and survivor option factor based on their ages in order to provide monthly payments throughout the lives of both the Alternate Payee and Participant. The amount of this reduction will depend on the option selected and the ages of the Participant and the Alternate Payee at commencement. When a joint and 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.

The following are the Joint and Survivor Options that are available under MERS.

Option II (100% to Survivor) – Once payments begin, if the Participant dies, the Alternate Payee will receive 100% of the shared portion of the pension.

Option IIA (75% to Survivor) – Once payments begin, if the Participant dies, the Alternate Payee will receive 75% of the shared portion of the pension.

Option III (50% to Survivor) – Once payments begin, if the Participant dies, the Alternate Payee will receive 50% of the shared portion of the pension. *This is the most common option selected if the Joint and Survivor form of payment is used, because it provides the commonly used 50% share to the Alternate Payee.*

### **Member Contributions**

MERS will not refund member contributions to a Participant if such a refund would affect the benefits assigned to an Alternate Payee under an EDRO. When an EDRO is on file with the retirement system and the parties later decide that they want to receive a refund of contributions, they must have the EDRO vacated by the court and file a new court order with the retirement system. The new order must specify how the refund should be divided.

### **Fees**

MERS has developed sample EDROs and DROs for the convenience of Participants. These are available on the MERS website. If an EDRO or DRO is received that is based on the MERS sample, there is no administrative fee.

If an EDRO or DRO is received by MERS that is not based on the MERS sample, a \$100 nonrefundable administrative fee must be paid to MERS to offset the additional administrative and actuarial costs involved in reviewing, qualifying, and implementing non-standard orders. The \$100 fee must be paid by check(s) payable to MERS.