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ARCHIVES DIVISION
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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 459
OREGON PUBLIC EMPLOYEES RETIREMENT SYSTEM

FILED

05/28/2025 5:30 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Update to divorce rules

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 06/27/2025 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

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Filed By:
Joel Mellor
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 06/24/2025

TIME: 2:00 PM - 3:00 PM

OFFICER: Joel Mellor

IN-PERSON HEARING DETAILS

ADDRESS: OAR PERS Headquarters Boardroom, 11410 SW 68th Parkway, Tigard, OR 97223

REMOTE HEARING DETAILS

PHONE NUMBER: 971-300-4342

CONFERENCE ID: 455189009

SPECIAL INSTRUCTIONS:

Microsoft Teams

Meeting ID: 247 233 936 754 1

Passcode: Nq7qL7n7

NEED FOR THE RULE(S)

Update and clarify rules pertaining to court-ordered divorce awards that are administered for members and alternate payees.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

ORS 238.465, 238.650, 238A.353, 238A.450

ORS can be found online.

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

Adoption of the rule will not affect racial equity.

FISCAL AND ECONOMIC IMPACT:

There are no discrete costs attributable to the rules.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

None.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

The rules do not affect small businesses and therefore small businesses were not involved in the development of the rules.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

A public hearing will be held and the PERS Board solicits input on rules from any interested or affected parties.

RULES PROPOSED:

459-045-0010, 459-045-0012, 459-045-0014, 459-045-0020

AMEND: 459-045-0010

RULE SUMMARY: Update and clarify rules pertaining to court-ordered divorce awards that are administered for members and alternate payees.

CHANGES TO RULE:

459-045-0010

Tier One/Tier Two Division of Benefits ¶¶

(1) A final court order that provides for a division of benefits must use a method described in this rule.¶¶

(a) The method must be identified on PERS divorce forms.¶¶

(b) The PERS divorce forms must be attached as exhibits to the court order, and incorporated by reference in the court order.¶¶

(2) Award of Alternate Payee Account (Non-Retired Member). If a final court order provides an award of an alternate payee account, the court order must provide:¶¶

(a) The date of annulment, separation, divorce, or property settlement. If no date is provided, PERS will use the date the judge signed the court order. The separate account will be established as of December 31 of the calendar year before this date unless:¶¶

(A) A prior year is provided in the court order; or¶¶

(B) The date is December 31.¶¶

(b) That a separate account be established in an alternate payee's name.¶¶

(c) The method by which the award is to be calculated. One of the following methods must be used:¶¶

(A) A percentage, expressed with up to two decimal points; or¶¶

(B) A dollar amount.¶¶

(d) Whether an alternate payee is awarded matching employer dollars.¶¶

(e) That an alternate payee may elect to receive the award at any time after the member's earliest retirement eligibility.¶¶

(3) Award of Payment from Member's Benefit (Non-Retired Member). If a final court order awards an alternate payee a reduction or deduction amount from the service or disability retirement benefit that shall be paid in the

future to the member, the court order must provide:¶

- (a) The date of annulment, separation, divorce, or property settlement. If no date is provided, PERS will use the date the judge signed the court order.¶
 - (b) Whether the award is a reduction or deduction from the member's benefit. If the award is a reduction, the court order must provide whether the alternate payee is eligible to elect a separate benefit option at any time after the member reaches earliest retirement eligibility.¶
 - (c) The benefit division calculation method that is applied to both the monthly, and if applicable, lump sum award. One of the following calculation methods must be used:¶
 - (A) A percentage, expressed with up to two decimal points;¶
 - (B) A dollar amount; or¶
 - (C) A percentage of the married time ratio. The court order must provide:¶
 - (i) The percentage, expressed with up to two decimal points; and¶
 - (ii) The years and months of creditable service time accrued by the member during a specified period or while married to the alternate payee.¶
 - (d) If there is a specific end date or dollar amount limit to the award, and what that date or limit is.¶
 - (e) Whether the award applies to service retirement benefits, disability retirement benefits, or withdrawal benefits.¶
 - (f) Whether the member is restricted from withdrawing as a member under ORS 238.265.¶
 - (g) Whether the member must select a specific benefit payment option at retirement.¶
 - (h) Whether the member is required to designate the alternate payee as a beneficiary:¶
 - (A) Before retirement; or¶
 - (B) At retirement.¶
 - (i) Whether an alternate payee award continues after the death of:¶
 - (A) The member; or¶
 - (B) The alternate payee.¶
- (4) Award of Benefit (Retired Member). If a final court order awards an alternate payee an amount payable from a retired member's service or disability retirement benefit, the court order must provide:¶
- (a) The date of annulment, separation, divorce, or property settlement. If no date is provided, PERS will use the date the judge signed the court order.¶
 - (b) Whether an alternate payee award is a reduction or deduction from the member's monthly benefit, and if applicable, lump sum.¶
 - (c) The benefit division calculation method that is applied to both the monthly, and if applicable, lump sum award. One of the following calculation methods must be used:¶
 - (A) A percentage, expressed with up to two decimal points; or¶
 - (B) A dollar amount.¶
 - (d) If there is a specific end date or dollar amount limit to the award, and what that date or limit is.¶
 - (e) Whether the member may or must change their beneficiary designation. If the member's beneficiary designation is changed, the member's monthly benefit must be recalculated.¶
 - (f) Whether a member who elected Option 2A or 3A under ORS 238.305(1) is allowed to receive the Option 1 benefit under ORS 238.305(6).¶
 - (g) Whether an alternate payee award continues after the death of:¶
 - (A) The member; or¶
 - (B) The alternate payee.

Statutory/Other Authority: ORS 238.465, 238.650

Statutes/Other Implemented: ORS 238.465

RULE SUMMARY: Update and clarify rules pertaining to court-ordered divorce awards that are administered for members and alternate payees.

CHANGES TO RULE:

459-045-0012

OPSRP Pension Program Division of Benefits ¶¶

- (1) A final court order that provides for a division of pension benefits or disability benefits must use a method described in this rule.¶¶
- (a) The method must be identified on PERS divorce forms.¶¶
- (b) The PERS divorce forms must be attached as exhibits to the court order, and incorporated by reference in the court order.¶¶
- (2) Award of Pension Benefits (Non-Retired Member). If a final court order awards an alternate payee a reduction or deduction amount from the monthly pension benefit that shall be paid in the future to the member, a court order must provide:¶¶
- (a) The date of annulment, separation, divorce, or property settlement. If no date is provided, PERS will use the date the judge signed the court order.¶¶
- (b) Whether the award is a reduction or deduction from the member's monthly pension. If the award is a reduction, the court order must provide whether the alternate payee is eligible to elect a separate benefit option at any time after the member reaches earliest retirement eligibility.¶¶
- (c) The method by which the monthly award is to be calculated. One of the following methods must be used:¶¶
- (A) A percentage, expressed with up to two decimal points; or¶¶
- (B) A dollar amount; or¶¶
- (C) A percentage of the married time ratio. If this method is used, the court order must provide:¶¶
- (i) The percentage, expressed with up to two decimal points; and¶¶
- (ii) The years and months of retirement credit accrued by the member during a specified period or while married to the alternate payee.¶¶
- (d) If there is a specific end date or dollar amount limit to the award, and what that date or limit is.¶¶
- (e) Whether the member must select a specific benefit payment option at retirement.¶¶
- (f) Whether the member must designate the alternate payee as beneficiary.¶¶
- (g) Whether the alternate payee and any minor children are awarded a percentage of any pre-retirement death benefit pursuant to ORS 238A.230.¶¶
- (h) Whether a member may withdraw from the Individual Account Program pursuant to ORS 238A.375, thereby cancelling the member's membership in the Public Employees Retirement System under ORS 238A.120 and forfeiting any and all accrued pension benefits for both member and alternate payee. If a decree administered under this paragraph (2) is silent on a member's ability to withdraw from the Individual Account Program (IAP) pursuant to ORS 238A.375, the member will not be permitted to withdraw their IAP.¶¶
- (i) Whether the alternate payee award continues or ends after the member retires if:¶¶
- (A) The member dies before the alternate payee and the member's beneficiary is not the alternate payee.¶¶
- (B) If the alternate payee dies before the member.¶¶
- (3) Award of Pension Benefits (Retired Member). If a final court order awards an alternate payee an amount to be paid from a retired member's monthly pension, the court order must provide:¶¶
- (a) The date of annulment, separation, divorce, or property settlement. If no date is provided, PERS will use the date the judge signed the court order.¶¶
- (b) Whether the award is a reduction or deduction from the member's monthly pension.¶¶
- (c) The method by which the monthly award is to be calculated. One of the following methods must be used:¶¶
- (A) A percentage, expressed with up to two decimal points; or¶¶
- (B) A dollar amount.¶¶
- (d) If there is a specific end date or dollar amount limit to the award, and what that date or limit is.¶¶
- (e) Whether the member may or must change the beneficiary designation. If the member's beneficiary is changed, the member's pension must be recalculated.¶¶
- (f) Whether a member, who elected to receive their pension under ORS 238A.190(1)(b) or (d), is allowed to receive the higher pension benefit under ORS 238A.190(2)(b).¶¶
- (g) Whether the alternate payee will be the sole beneficiary or any remaining share not awarded to the alternate payee shall be paid to the member's secondary beneficiary if the member dies before the alternate payee and the alternate payee was the member's beneficiary.¶¶
- (h) Whether an alternate payee award continues or ends if:¶¶

- (A) The member dies before the alternate payee and the member's beneficiary is not the alternate payee.¶
- (B) The alternate payee dies before the member.¶
- (4) Award of Disability Benefits. If a final court order awards an alternate payee an amount to be paid from the monthly disability benefit that is being paid or may be paid in the future to the member, the court order must provide:¶
 - (a) The date of annulment, separation, divorce, or property settlement. If no date is provided, PERS will use the date the judge signed the court order.¶
 - (b) Whether the award is a reduction or deduction from the member's monthly disability benefit.¶
 - (c) A percentage, expressed with up to two decimal points, of the member's monthly disability benefit that is awarded to the alternate payee.

Statutory/Other Authority: ORS 238.465, ORS 238.650, ORS 238A.450

Statutes/Other Implemented: ORS 238.465

AMEND: 459-045-0014

RULE SUMMARY: Update and clarify rules pertaining to court-ordered divorce awards that are administered for members and alternate payees.

CHANGES TO RULE:

459-045-0014

Individual Account Program (IAP) Division of Benefits ¶

(1) A final court order that provides for a division of benefits must use a method described in this rule. The PERS divorce forms provide all available benefit division options, conditions, and restrictions and may not be altered.¶

(a) The method must be ~~identified~~ provided on PERS divorce forms. Directions to PERS not included on existing forms will not be accepted as administrable.¶

(b) The PERS divorce forms must be attached as labeled exhibits to the court order, and incorporated by reference in the court order.¶

(2) Award of IAP Alternate Payee Account (Non-Retired Member). If a final court order provides an award of an alternate payee account to be established from the account balance of a member, the court order must provide:¶

(a) The date of annulment, separation, divorce, or property settlement. If no date is provided, PERS will use the date the judge signed the court order.¶

(A) The separate account will be established from the member's account balance as of December 31 of the calendar year before this date unless:¶

(i) A prior year is provided in the court order; or¶

(ii) The date is December 31.¶

(B) If the date in subsection (a) of this section is other than December 31, contributions made during that calendar year will not be included in the calculation of the alternate payee's award.¶

(b) That the separate account be established in an alternate payee's name.¶

(c) The method by which the award is to be calculated. One of the following methods must be used:¶

(A) A percentage, expressed with up to two decimal points; or¶

(B) A dollar amount.¶

~~(d) Whether the member may change their pre-retirement beneficiary designation, if the alternate payee was named as beneficiary.~~¶

(3) Award of IAP Alternate Payee Account (Retired Member). If a final court order provides an award of an alternate payee account to be established from the remaining account balance of a retired member receiving installment payments, to be effective on the date that PERS establishes the alternate payee account, the court order must provide:¶

(a) The date of annulment, separation, divorce, or property settlement. If no date is provided, PERS will use the date the judge signed the court order.¶

(b) That a separate account be established in an alternate payee's name.¶

(A) The effective date of the alternate payee account shall be as soon as administratively feasible after PERS receives and approves a final court order as administrable.¶

(B) The alternate payee will be notified when the account has been established.¶

(C) The alternate payee account shall be distributed in a lump sum payment.¶

(D) Any installment payments paid to the member before the alternate payee account is established will not be included in the award.¶

(c) The award as a percentage, expressed with up to two decimal points.¶

~~(d) Whether the member may or must change their beneficiary designation.~~¶

(4) Employee Pension Stability Accounts (EPSA) are accounts under the IAP and are not independently awardable in a divorce proceeding. If any EPSA excess, as defined in 459-005-0001, becomes payable, PERS will determine what will be paid to the member, beneficiary, and/or alternate payee in the same proportion as the IAP division of benefits based on the IAP award in the court order.

Statutory/Other Authority: ORS 238.465, ORS 238.650, ORS 238A.353, ORS 238A.450

Statutes/Other Implemented: ORS 238.465

AMEND: 459-045-0020

RULE SUMMARY: Update and clarify rules pertaining to court-ordered divorce awards that are administered for members and alternate payees.

CHANGES TO RULE:

459-045-0020

Court Orders ¶

(1) A final court order must be received by PERS and approved by PERS staff as administrable before an alternate payee award can be established.¶

(a) ~~PERS shall provide a written response as to whether a court order, a final court order is administrable to the member, the alternate payee, and their attorneys, and~~ Current PERS divorce forms must be attached as labeled exhibits to the court order, a final court order is administrable to the member, the alternate payee, and their attorneys, and incorporated by reference in the court order for all members except judge members under ORS 238.500.¶

(b) The PERS divorce forms provide all available benefit division options, conditions, and restrictions and may not be altered.¶

(b2) ~~Award information~~ Responses to court orders. ~~PERS shall be provided to attorneys or other representatives of a member or an alternate payee only if a member release or an alternate payee release has been received by PERS~~ PERS shall be provided to attorneys or other representatives of a member or an alternate payee only if a member release or an alternate payee release has been received by PERS ~~a written response as to whether a final court order is administrable to the member, the attorney(s) that submitted the court order, former spouses, registered domestic partners, and the alternate payee if a current address can be identified.¶~~

(23) In the absence of a final court order, a restraining order or stay must be filed with PERS to prevent the distribution of any funds to a member.¶

(34) PERS shall establish an alternate payee award from a retired member's monthly benefit as soon as administratively feasible on a prospective basis only. Court orders that purport to award retroactive benefits or benefits to be paid before the final court order ~~was received~~ is processed by PERS ~~cannot be~~ will be rejected as unadministrable.¶

(45) If a final court order is received by PERS after a member has withdrawn from PERS under ORS 238.265, 238.545, 238A.120 or 238A.375, the final court order will be rejected as unadministrable.

Statutory/Other Authority: ORS 238.465, 238.650, 238A.450

Statutes/Other Implemented: ORS 238.465