

# PERS

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## General Information on Divorce and PERS Benefits

*This publication is not a legal reference and is not a complete statement of the laws or PERS administrative rules. In any conflict between this handbook and Oregon laws or administrative rules, the laws and administrative rules shall prevail.*

### Laws pertaining to divorce and PERS benefits

PERS can pay Chapter 238 Tier One or Tier Two, Oregon Public Service Retirement Plan (OPSRP), or Individual Account Plan (IAP) benefits to an alternate payee (spouse, former spouse, or registered domestic partner) according to Oregon Revised Statute (ORS) 238.465, which can be found at [https://www.oregonlegislature.gov/bills\\_laws/lawsstatutes/2013ors238.html](https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2013ors238.html). This statute allows PERS to pay to an alternate payee any pension, annuity, retirement allowance, disability retirement benefit, death benefit, or refund benefit that is due a member if and to the extent expressly provided for in the terms of any court order or court-approved property settlement agreement incident to any court order or decree of annulment, dissolution of marriage or registered domestic partnership, or separation. Additional direction is provided in Oregon Administrative Rules (OAR) Chapter 459-045, which can be found at <https://secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=2212>.

Before payments can be paid to an alternate payee, PERS must receive administrable copies of court documents, signed by a judge, with proof that the decree and required forms have been filed in court. PERS determines whether a court order is administrable for PERS purposes.

Note: PERS also administers the PERS Oregon Savings Growth Plan, but independent of pension benefits. Any divorce awards from this program must be mailed directly to:

Oregon Savings Growth Plan  
State Archives Building  
800 Summer Street, Suite 200  
Salem, OR 97310-1348

ORS 238.465 allows PERS to either:

- transfer an award made to an alternate payee by the court (at the time of divorce or at retirement) into a separate account in the name of the alternate payee, or
- divide benefits when they become due or payable to the member, or on behalf of the member.

Important note: There may be advantages and disadvantages to both methods.

### Requests for information, confidentiality, and subpoenas

Prior to divorcing, members and their legal representatives normally obtain information about PERS members' current and future retirement benefits. Information about what assets are available for division is used during divorce proceedings to determine the alternate payee award. Although the court may determine another method for dividing a PERS account, the court often makes an alternate payee award based on how much of a member's account was accrued during the marriage.

Pre-divorce estimates for divorce planning purposes can be obtained using the [online Benefit Estimate Calculator](#)

If a separate account has been established for an alternate payee, the Benefit Estimate Calculator can no longer be used, as it is not programmed to adjust for divorce. Once a divorce has been finalized, all requests for benefit estimates and other member information must be submitted in writing and a signed release from the member must be received by PERS. An exception is made only if PERS receives a subpoena. Subpoenas should be made out to the Oregon Public Employees Retirement System. The most appropriate staff member will respond. Subpoenas will not be accepted by fax and PERS requires at least three full business days to respond. PERS would prefer to provide written information in response to a subpoena as we have limited staff available to testify in a court setting. PERS can also provide testimony over the telephone.

## **Awards requiring PERS to establish a separate account in alternate payee's name**

### **General explanation (ORS 238.465)**

ORS 238.465 requires PERS to create rules on how to establish a separate account in the name of the alternate payee. The rules were updated in May 2010. There are different rules for the [PERS Chapter 238 Tier 1 and Tier 2 plan](#), the [Chapter 238A OPSRP plan](#), and the [IAP](#). The [divorce forms](#) detail the types of awards that are acceptable under each plan and designed to guide you through the award process. The forms are to be used to specify the divorce award and are to be submitted with the court order as referenced exhibits.

A separate account can be established at the time of divorce if specified in the court order. The court order and divorce forms must state that the award will be placed in a separate account in the alternate payee's name. The court order or forms must specify a percentage or dollar amount (not a combination) either directly or based on a clear formula resulting in a percentage or dollar amount, to be awarded to the alternate payee. The court order or forms must also provide the date of transfer (division date). If the order or forms do not specify a transfer date, PERS will use the date the order was signed by the court. Awards are applied against the last audited PERS member account balance on record (December 31) of the plan year preceding the award date.

## **PERS Chapter 238 Tier One and Tier Two**

### **Employer funds (pension money)**

The employer account (from which pension benefits are paid) is a part of the member's PERS entitlement, but is separate from the member's PERS account. Therefore, if employer funds are to be awarded to an alternate payee, it must be specifically stated in the court order or forms.

Note: employer funds are not paid until they become due or payable to the member. If the award does not include employer funds, that must also be stated in the court order or forms. If a person refunds or the member account is in Loss of Membership, no employer funds will be paid.

### **1. Time of establishment of separate account before retirement**

An account established in the alternate payee's name will earn interest until benefits are paid. The alternate payee can elect to begin receiving benefits when the member reaches earliest retirement age regardless of when the member actually retires. However, the alternate payee cannot elect a retirement date earlier than the first day of the month following the month in which he or she files an application with PERS (must be on or after the effective date of the court order). An alternate payee with a separate account cannot participate in the variable annuity program.

### **2. Time of establishment of separate account at retirement**

Decrees may allow for the alternate payee's award to be based upon a percentage or specified dollar amount (under a ratio method) based on a member's actual retirement. Under this method, the alternate payee receives payment at the same time the member retires under service retirement or disability retirement, as provided for in the court order or forms. A separate account will not be established in the name of the alternate payee until payout to the member occurs. Under this award, the court order or forms must include earliest eligibility language and that the alternate payee may have a separate account at retirement eligibility or at the time the benefits become due and payable to the member.

## **Alternate payee benefit options**

Alternate payees with separate accounts will be able to select one of five benefit payout options independently of the member's choice. The law does not allow joint and survivor annuity options for alternate payees. Benefits will be annuitized based on the age of the alternate payee to determine payment amounts and to establish reserves. An alternate payee's separate account benefit will be determined using the Money Match calculation method. Alternate payees are not allowed to cancel benefits after the first check is processed. The five alternate payee options available are listed below.

**Option One.** This is a straight life benefit. Monthly benefits are paid for the alternate payee's lifetime. No benefit of any kind is payable to anyone after the death of the alternate payee.

**Refund Annuity.** This benefit is paid for the alternate payee's lifetime. The existing account balance of the alternate payee at the time the alternate payee begins receiving benefits will be reduced each month by the amount of the "annuity" portion of the alternate payee's monthly benefit. Upon the death of the alternate payee, the alternate payee's designated beneficiary will receive a lump-sum payment of any remaining account balance. Under this option the alternate payee's beneficiary may be changed at any time. Usually, after nine to twelve years, no remaining account balance is available to pay to a beneficiary.

**15-Year Certain.** This benefit is payable for the alternate payee's lifetime. If the alternate payee dies before receiving 180 payments, the remainder of the 180 payments will be paid monthly to the alternate payee's beneficiary. Once 180 payments have been made, all beneficiary benefits will stop. Under this option the alternate payee's beneficiary designation may be changed at any time.

**Lump-Sum Option One.** Under this option the alternate payee's account balance can be paid in a lump sum in one payment or in up to five annual installments. The alternate payee may also receive a monthly pension check for employer funds if employer funds were awarded in the court order. A lump-sum payment may be rolled over to another qualified plan or an individual retirement account or annuity (IRA).

**Total Lump Sum.** A one-time payment of member dollars awarded to the alternate payee plus a matching amount from the employer. There is no monthly benefit under this option and no cost-of-living increases.

### **Administrative fee**

PERS will charge an administrative fee of no less than \$300 when required to set up a separate account for an alternate payee as of a specific date or if the court order allows for the alternate payee to elect to receive funds before the member receives funds. The fee will be divided between the member and the alternate payee based on the fraction or the percentage awarded by a court order made to the alternate payee and member at the date of divorce, separation, or annulment, or the percentage determined if the separate account is created at the time of the member's eligibility or retirement. The fee will be deducted from the first regular payment at the time benefits are paid. A separate administrative fee will be applied to each account from which funds are awarded.

### **Increases to benefits**

Increases to benefits such as cost-of-living adjustment (COLA), ad hoc increases, and tax remedy increases currently in effect are not due the alternate payee until they are due and payable to the member. If an increase never becomes due and payable to the ex-spouse member, then the alternate payee will never receive an increase.

## Awards of the Member's Benefit Payments (No Separate Account)

### General explanation

Decrees may allow for the alternate payee's award to be based on a percentage or specified dollar amount from the member's actual benefit payments. Under this method, the alternate payee receives payment at the same time the member receives refund, death, service retirement, or disability retirement benefits, as provided for in the court order. A separate account will not be established in the name of the alternate payee. Also, if an award to an alternate payee reverts to the member upon the alternate payee's death or at some other time, no separate account will be established. Benefits will be determined using the highest-paying calculation method.

A court can choose one of two methods to make the award:

**Set monthly dollar amount or set monthly percentage award.** A set dollar amount or set percentage of any benefit due is awarded to an alternate payee. The award is deducted from the member's monthly benefit at the time the member retires or goes into pay status and is paid to the alternate payee at the same time and in the same manner as it is to the member.

**Ratio method.** Under this method, an award is calculated by dividing a couple's married service time by the member's total creditable service time when benefits are due to determine the percentage of the retirement benefit that accrued during the marriage. The resulting fraction is multiplied by the percentage awarded by the court to the alternate payee. The resulting percentage is then applied against the member's retirement benefit. This amount is paid to the alternate payee monthly or in a lump sum, based on decree provisions.

### Chapter 238A OPSRP

As OPSRP retirement benefits are strictly employer dollar based, only awards of members' benefit payments can be made. The same rules apply as for PERS Tier One or Tier Two divided benefits.

### Chapter 238A IAP

The Individual Account Plan (IAP) is an account comprised of member contributions and earnings. A percentage or flat dollar amount of this account can be awarded to an alternate payee.

### Retirement benefit options

A member may select one of 13 retirement benefit options. The court may allow the member to select any option upon retirement or restrict the member to a specific option. Please refer to the PERS Member's Handbook for an explanation of the benefit options that are available and a description of how they work.

Regardless of whether the member is free to select any option or is restricted to a particular option, the alternate payee will receive a percent of the member's benefit for as long as it is paid out. If a member chooses a lump-sum option, the alternate payee will also receive a lump sum. If the member selects a monthly option, the alternate payee will also receive a monthly benefit payment.

### Beneficiary designations

The designation of primary beneficiary for joint and survivor annuity options is made at the time the member applies for retirement. The court may require the alternate payee to be named as the primary beneficiary, so the alternate payee will continue to receive his or her share for life. Any remaining share can go to the member's secondary beneficiary, such as a current spouse, but this payment will stop upon the death of the alternate payee.

When a member is free to name anyone as primary beneficiary and does not name the alternate payee, all payments to the alternate payee cease on the primary beneficiary's death.

## **Refunds and death benefits**

### **Refunds**

If a member takes a refund of his or her account balance, the alternate payee award is applied against the amount to be refunded. The alternate payee can leave his or her award in PERS and have a separate account created at this time if the court order specifically allows this provision. If the member terminates PERS-covered employment or is an inactive member at the time of divorce, an alternate payee with a separate account may withdraw the account balance regardless of whether or not the member does. The member has to be separated for a full calendar month after termination for PERS to make a refund to the alternate payee.

Alternate payees of active, contributing PERS members will not be able to withdraw or take a refund of their account balance.

A refund cancels all rights to employer funds even if they were awarded to the alternate payee in the court order.

### **Pre-retirement death benefits**

#### **PERS Chapter 238 Tier 1 and Tier 2**

If the member dies after the divorce is final but prior to retirement, the alternate payee's share will be paid as stated in the court order. If a member is eligible for a matching employer death benefit, the alternate payee could also receive a portion of this benefit if provided for in the court order.

The benefit share of an alternate payee who dies after the divorce is final but before the member retires may continue to be paid to the alternate payee's estate or beneficiary if the alternate payee was awarded a separate account.

The beneficiary of an alternate payee who dies before receiving benefits on the account established in his or her name will be eligible for employer matching death benefits if the member was eligible to receive them had the member died on the same day as the alternate payee. This point does not need to be negotiated or contained in the divorce decree. It is automatically provided by law in ORS 238.465 (4).

#### **Chapter 238A OPSRP**

A pre-retirement death benefit is only available on an OPSRP account if the member is currently married. A court order or divorce forms can award all or a portion of the pre-retirement death benefit to the alternate payee or surviving children, but this designation will be voided if the member is not married at the time of death.

### **IAP**

A court order or divorce forms can require the member to name the alternate payee or surviving children as beneficiaries on an unretired IAP.

#### **Post-retirement death benefits (all plans)**

Post-retirement death benefits will be paid in accordance with the benefit payout option selected by the member, the designation of the primary beneficiary, if any, and the terms contained in the court order regarding what is to happen upon the death of the member or the alternate payee.

The beneficiary of an alternate payee who was receiving benefits under a separate account will be eligible for death benefits based on the option selected by the alternate payee.

## **Refund and death benefits available to member**

There is no change in refund and death options available to the member due to divorce except for an adjustment to the member's account (reduction) because of funds awarded to the alternate payee.

## **Additional information**

### **Court orders**

PERS is a public pension plan and is not covered by the Employee Retirement Income Security Act of 1974 (ERISA). PERS will accept divorce decrees, property settlement agreements, and various types of Domestic Relations Orders which have been signed by a judge and filed with the court. A court-certified copy or confirmed copy showing the stamp of the court clerk must be received and approved by PERS before establishing a separate account or making payment to an alternate payee.

Any PERS divorce award must be detailed on the appropriate approved PERS divorce forms. The forms must be completed and referenced as exhibits on the court order.

Draft orders can be reviewed by PERS for compliance prior to submission to the court.

PERS will not make retroactive payments to an alternate payee for any period of time between the date of divorce and the date the court order is approved by PERS. It is the responsibility of the member, the alternate payee, or their legal representatives to see that the PERS Divorce Unit receives an administrable filed copy of the court order.

PERS does not sign court orders and will give approval or non-approval by separate letter.

Qualified Domestic Relations Orders (QDRO's) or Separate Domestic Relations Orders (DRO's) are not required if the Judgment of Dissolution or Property Settlement incident to any Judgment and pertinent exhibits expressly provides the alternate payee award details. However, if a court order says a QDRO or DRO is to follow or to be prepared, then PERS must receive the subsequent QDRO or DRO before an award can be processed.

### **Tax issues**

Members and alternate payees are responsible for their own taxes on individual awards received in a property settlement.

For tax reporting purposes, members and alternate payees will receive separate 1099R tax forms at the end of each year in which benefits are paid.

PERS recommends members and alternate payees refer all tax questions to the Internal Revenue Service, the Oregon Department of Revenue, or a qualified tax consultant.

### **Member cost/pre-tax dollars**

Prior to July 1, 1979, all members paid their own contributions from their monthly income. This after-tax contribution is referred to as member cost and is reported as employee contributions on tax Form 1099R. Member cost is allocated between the member and alternate payee based on the proportion of the entire benefit awarded to each.

### **Miscellaneous information**

The amendments to ORS 238.465 that allow a separate account to be established in the name of the alternate payee are retroactive to court orders received prior to implementation (1993) if: (1) the decree allows for the provisions or is silent, (2) applying the changes is not inconsistent with the decree language, and (3) neither the member nor the alternate payee

are receiving payments.

The court order on file with PERS will determine what benefits are available to the alternate payee. If the present court order conflicts with the new provisions of ORS 238.465, the parties will need to pursue an amended or modified decree if either party wishes to have the new statutory provisions apply.

PERS does not provide an actuarial valuation of retirement benefits (present value study). A private actuary will be able to provide this information.

PERS will not provide payroll or personnel records. The member's employer must be contacted for this information. Both members and alternate payees must keep PERS informed of their current mailing addresses at all times. Notifications must be signed and in writing.

PERS is exempt from the federal Employee Retirement Income Security Act (ERISA) of 1974 and the Retirement Equity Act of 1984.

A member's benefits cannot be garnished for past-due consumer credit bills or attorney fees under ORS 238.465. A member's account can be attached only for current and past-due child or spousal support pursuant to ORS 238.445. The Divorce Unit is not responsible for contacting the Oregon Savings Growth Plan or other public retirement plans. A separate court order must be sent to these entities, if applicable.

PERS statute (ORS 238.465) and Oregon Administrative Rule (OAR) 459-045 apply to divorce and garnishments and are available upon request.

### **PERS judge members**

ORS 238.505-238.585 governs PERS judge members. Retirement calculations for judges are different than calculations for other PERS members. Please contact the Divorce Unit in cases involving PERS judge members.