
From: Finnegan, Leslie [mailto:lfinnegan@nheh.com]
Sent: Tuesday, May 22, 2007 6:20 PM
To: Wartenberg, Yolanda - EBSA
Subject: Qualified Domestic Relations Order Interim Final Rule - Comment

Dear Ms. Wartenberg - I would like to see the following scenario addressed in the final regulations. My hypothetical assumes that the husband is the employee/participant in the ERISA employee benefit plan.

1. Employee marries Wife #1. They divorce. Wife #1 never obtains a QDRO.
2. Employee marries Wife #2.
3. Employee dies prior to retirement. The only benefit payable by Employee's defined benefit plan is a qualified pre-retirement subsidy ("QPSA" or "spousal pension"). Because Employee is married to Wife #2 at the time of his death, the plan begins paying Wife #2 100% of the QPSA.
4. Wife #1 obtains a court order which awards her a portion of the QPSA that is already being paid to Wife #2.

The last example in the Interim Rule (Example (3)) discusses "previously assigned benefits." It makes clear that if Former Spouse #2's order assigns to her the same benefit already being paid to Former Spouse #1 pursuant to an earlier QDRO, Former Spouse's order fails to be a QDRO under section 206(d)(3)(D)(iii). **Does this same rule apply if the spouse in pay status for the QPSA is the employee's current surviving spouse?**

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