



MONTANA TEACHERS' RETIREMENT SYSTEM

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INFORMATION AND GUIDELINES FOR CRAFTING FAMILY LAW ORDERS

What is a Family Law Order (FLO) and what law governs FLOs for purposes of the Montana Teachers' Retirement System (TRS)?

A FLO is a specific type of court order required under Montana law to direct payment of some portion of the retirement benefit owed to a participant (member or retiree) of a public retirement system to the participant's former spouse (alternate payee) in circumstances of divorce. To be effective with TRS, a certified copy of a FLO that meets all requirements set forth in these guidelines must be filed with TRS. For TRS' purposes, FLOs are governed by §19-20-305, MCA, and Rules 2.44.522 and 2.44.523, ARMs. While similar legal provisions apply to FLOs that distribute benefits from other public retirement systems in Montana, **these guidelines, instructions, and examples are pertinent only to TRS and the above-cited statutes and rules.** Please contact the Montana Public Employees' Retirement Administration for FLO information pertaining to any other Montana public pension plan. (<http://mpera.mt.gov/default.asp>)

These guidelines are intended to provide a better understanding of the legal requirements for distribution of TRS benefits in circumstances of a divorce. They are intended to be used by judges and/or attorneys in determining how best to describe and structure a distribution of retirement benefits where one or both parties are participants of TRS and the division of the marital estate cannot be equitably obtained without dividing future TRS benefits. These guidelines are not intended to be and are not provided as legal advice to participants of TRS or their spouses. If you are a TRS participant or spouse, TRS strongly recommends that you seek competent legal advice regarding the division of retirement benefits in circumstances of divorce.

Is a FLO the same as a Qualified Domestic Relations Order (QDRO), and will TRS accept a QDRO?

No. While a FLO and a QDRO may be used for the same reason – to designate the distribution of retirement benefits in circumstances of a marital dissolution – a QDRO is a type of order created by federal law (29 USC §1056(d), Section 206(d) of the Employee Retirement Income Security Act (ERISA)) that applies only to employee benefits provided by employers governed under ERISA. As a public retirement plan, TRS is not governed by ERISA. Further, the requirements for a FLO may be significantly more

restrictive than a QDRO. Therefore, TRS will not accept a QDRO as an effective order of distribution of TRS retirement benefits.

What DEFINITIONS are important to understanding these guidelines?

“Alternate payee” means the former spouse of a TRS participant who is entitled to a portion of the participant's benefit.

“Actuarially equivalent amount” means the portion of the participant's benefit transferred to the alternate payee, and actuarially adjusted to provide a monthly benefit payable to the alternate payee for the alternate payee’s lifetime.

“Benefit recipient” means the participant, joint annuitant, or the designated beneficiary, the participant entitled to a benefit under an optional allowance or a period certain and life election pursuant to §19-20-702.

“Fixed amount” means a portion of the participant's monthly benefit payable to the alternate payee as a specified dollar amount to be paid for a specified period of time.

"Joint annuitant" means the one designated beneficiary under an optional allowance.

“Participant” means the member or retiree of the retirement system whose retirement benefits are being distributed pursuant to a FLO.

What do I need to know about TRS retirement benefits in order to draft a FLO?

Because a FLO is concerned with "dividing" the retirement benefit of a participant, it is important to know the basics about when and how retirement benefits are paid to TRS participants in order to understand how a FLO may distribute benefits to an alternate payee.

When retirement benefits are available to a participant and how they're calculated:

A retirement benefit is paid to a participant only when the participant has satisfied all eligibility criteria to retire and has filed an application to receive a retirement benefit with TRS.

TRS is a defined benefit retirement plan that is intended to provide a retirement benefit, to be paid monthly, for the lifetime of the participant. The highest monthly benefit that may be paid to a participant is the benefit calculated by application of the formula set forth in §19-20-804, MCA, unreduced for early retirement and unadjusted for election of an optional allowance or election of a period certain and life allowance – also referred to as the normal form benefit.

Normal Form Benefit

The normal form benefit owed to a participant is calculated by dividing the participant's average final compensation (AFC) by 60, and multiplying that sum by the number of years of creditable service (CS) of the participant ($AFC \div 60 \times$ the number of years of CS). The resulting annual benefit amount is divided by 12 to determine the monthly benefit amount. For example, if a participant's average final compensation is \$50,000, and the participant has 25 years of creditable service, the participant's retirement benefit is calculated as follows:

$\$50,000 \div 60 \times 25 = \$20,833.33$ annually, and $\$1,736.11$ monthly

Service Retirement

Service retirement is the typical way in which a participant becomes eligible for a monthly retirement benefit. A participant is eligible for service retirement when: the participant has terminated employment, has at least 5 full years of creditable service, and has attained the age of 60; or, the participant has terminated employment, and has creditable service in 25 or more years, regardless of age.

If a participant is eligible for service retirement, the normal form benefit is calculated and is paid monthly for the lifetime of the participant only, or may be actuarially adjusted and paid pursuant to election of an optional allowance or a period certain and life allowance.

Early Retirement

A participant who is not eligible for service retirement is eligible for early retirement when the participant has terminated employment, has at least 5 years of creditable service, and has attained the age of 50.

If a participant elects early retirement, the early retirement benefit is determined by calculating the normal form, then reducing the normal form benefit based on the lesser of the number of months by which the actual retirement date precedes the date on which the participant would have turned 60, or the date on which the participant would have had attained 25 years of creditable service. Again, an early retirement benefit is paid monthly for the lifetime of the participant only, or may be actuarially adjusted and paid pursuant to election of an optional allowance or a period certain and life allowance.

Disability Retirement

A participant is eligible for disability retirement when: the participant has terminated employment; has at least 5 years of creditable service; became disabled while actively contributing to the TRS; and the TRS Board finds the participant to be physically or mentally incapacitated from the further performance of their duties, and that the incapacity is likely to be permanent.

If a participant qualifies for a disability retirement, the disability retirement benefit is the greater of: the normal form service retirement benefit; or, one-fourth of the participant's average final compensation. A disability retirement benefit is paid monthly for the lifetime of the participant only, or may be actuarially adjusted and paid pursuant to election of an optional allowance or a period certain and life allowance.

If a disability retirement benefit is subsequently canceled pursuant to §19-20-903 or §19-20-905, MCA, the alternate payee's monthly benefit is also terminated. When the participant again qualifies for a retirement benefit, the amount payable to the alternate payee must be recalculated pursuant to the original FLO.

A participant may elect to have retirement benefits paid in a manner that may provide a benefit to a joint annuitant.

Optional Allowances

Optional allowances are elections for distributions of a monthly benefit in lieu of the normal form amount, which will be paid during the participant's lifetime and, following the death of the participant, to the beneficiary designated at the time of retirement for the lifetime of the beneficiary - typically to the participant's surviving spouse. The beneficiary under an optional allowance is also referred to as a "joint annuitant." Because the benefits paid under an optional allowance vary from the normal form benefit in that they are calculated based on two lives, the benefit to be paid to each benefit recipient will be actuarially adjusted to maintain actuarial integrity. Therefore, the benefit paid, both during the lifetime of the participant and during the lifetime of the joint annuitant, will be less than the normal form benefit.

There are three optional allowances that provide for different percentages of the participant's benefit to be paid to the joint annuitant.

- Option A – a monthly benefit is payable to the participant for the participant's lifetime and, upon the participant's death, the same benefit amount is payable to the joint annuitant for the lifetime of the joint annuitant.
- Option B – a monthly benefit is payable to the participant for the participant's lifetime and, upon the participant's death, one half of the benefit is payable to the joint annuitant for the lifetime of the joint annuitant.
- Option C – a monthly benefit is payable to the participant for the participant's lifetime and, upon the participant's death, two-thirds of the benefit is payable to the joint annuitant for the lifetime of the joint annuitant.

An optional allowance may be elected for service retirement, early retirement, or disability retirement. Under the optional allowances, if the beneficiary precedes the participant in death, the participant's monthly benefit will "pop-up" to the full normal form amount for the remainder of their life.

Under optional allowances A, B, and C, the beneficiary designation at the time of retirement may not be revoked except in certain, very limited circumstances.

Period Certain and Life

The benefit to be paid under a period certain and life election varies from the normal form benefit in that it may continue to be paid after the death of the participant; the benefit will be actuarially adjusted to maintain actuarial integrity, and will be less than the normal form benefit. Under a period certain and life election, benefits are paid for the participant's lifetime or for a certain period of time, whichever is greater. If the participant dies within the period selected, benefits will continue to be paid to the designated beneficiary for the remainder of the time period selected:

- 10-Year Certain & Life if the participant is 75 years of age or younger at the time of retirement
- 20-Year Certain & Life if the participant is 65 years of age or younger at the time of retirement

A period certain and life benefit is only available to participants who are 75 years of age or younger at the time of retirement, and may be elected for service retirement, early retirement, or disability retirement.

The designated beneficiary(ies) can be changed at any time by the participant.

The beneficiary(ies) of a participant who dies prior to retirement may receive a lump-sum refund of the participant's accumulated contributions, or monthly survivor benefit:

Death/Survivor Benefit

The designated beneficiary(ies) of a participant who dies prior to retirement is entitled to a lump-sum refund of the participant's accumulated contribution on deposit. In lieu of a lump-sum refund, the designated beneficiary(ies) may elect to receive a monthly survivor's benefit if the member has at least 5 full years of membership service at the time of their death.

If a participant who elected the normal form benefit dies after retirement but before retirement benefits paid to the participant equal the amount of the participant's accumulated contributions before retirement, the difference between the total amount of retirement benefits paid and the amount of the accumulated contributions will be paid to the designated beneficiary(ies) or the participant's estate.

In addition to any other benefits available upon the death of a participant, the minor children of the participant will receive a minor child benefit of \$200 per month until the child reaches 18 years of age if the participant had at least 5 full years of creditable service.

A participant may elect to withdraw their accumulated contributions and forego any future retirement benefits from the retirement system:

Withdrawal

A vested or non-vested participant who has terminated all employment that is reportable to TRS and has not applied for and begun receiving retirement benefits may withdraw their accumulated contributions. A withdrawal terminates any further obligation of TRS to pay retirement benefits to the participant (including to any beneficiary or alternate payee). A participant's accumulated contributions means only those monies contributed directly by the participant plus interest, and does not include any contributions made by the participant's employer(s), investment earnings of the retirement system, etc.

How may a FLO direct payment of benefits to an alternate payee, and what conditions apply?

The purpose of a FLO is to direct that some portion of the retirement benefit owed to a participant be paid, instead, to an alternate payee. The total amount of benefits paid to the alternate payee may not exceed the amount of the monthly benefit to which the participant is entitled. The amount to be distributed to an alternate payee must be explicitly stated in the FLO, or must be readily susceptible to calculation based on criteria explicitly stated in the FLO.

A FLO may direct payment of benefits to an alternate payee in two ways:

Actuarially Equivalent Amount / How It's Calculated / Limitations

A FLO may direct that a portion of the participant's retirement benefit be paid to the alternate payee as an actuarially equivalent amount. A FLO's award of an actuarially equivalent amount means that a percentage share of the participant's benefit is "transferred" to the alternate payee, actuarially adjusted, and paid to the alternate payee as a monthly benefit for the life of the alternate payee. The award of an actuarially equivalent amount is the only way a FLO can provide for a lifetime benefit to an alternate payee. Any benefit amount paid to an alternate payee will terminate upon the alternate payee's death.

Most family law jurisdictions, including Montana, have adopted a general mathematical formula for determining a divorced spouse's percentage share of a retirement benefit wherein the number of years of creditable service earned during the term of the marriage is divided by the total number of years of creditable service used to calculate the participant's retirement benefit, which sum is then multiplied by the percentage share the alternate payee is entitled to receive (usually 50%). *Formula: X (years of creditable service earned during the marriage) ÷ Y (total number of years of creditable service) x Z (percentage share alternate payee is entitled to receive) = A (percentage amount of the participant's benefit to be paid to the alternate payee).*

For example: If 15 years worth of creditable service was earned during the term of a marriage and the participant has earned a total of 25 years of creditable service at the time of retirement, and the alternate payee is entitled to 50% of the benefit earned during the marriage, the amount owed to the alternate payee would be calculated as follows: $15 \div 25 \times 50\% = 30\%$

The FLO must specify the number of years of creditable service earned by the participant during the marriage, and the percentage of the benefit earned during that time to which the alternate payee is entitled. The total number of years of creditable service used to calculate the benefit cannot be determined until the participant actually terminates employment and must be inserted by TRS at the time of retirement.

Of course, this formula is not mandatory for TRS purposes, and any other formula the court determines to be appropriate may be used as long as the benefit payable to the alternate payee is readily determinable from the FLO and does not exceed the total benefit earned by the participant.

The actuarially equivalent benefit to be paid to an alternate payee may not, under any circumstances, be paid for a period exceeding the life of the alternate payee, and such benefits may not be assigned, devised, or transferred in any manner. As well, the actuarially equivalent amount paid to the alternate payee is totally unrelated to the life of the participant, the amount paid to the participant, or the optional allowance elected by the participant at the time of retirement.

Fixed Amount / Limitations

A FLO may direct that a specific amount of money is to be paid to the alternate payee over a definite period of time, i.e. fixed amount. If a FLO provides for the payment of a fixed amount, the FLO may also provide for the right of the alternate payee to designate a beneficiary who would continue to receive any remaining fixed amount payments due upon the death of the alternate payee. If the FLO does not provide for a beneficiary for the alternate payee, any remaining payments due on the fixed amount distribution will revert to the participant upon the death of the alternate payee.

A fixed amount ordered to be paid to an alternate payee may only be paid as a deduction from the benefit amount payable to a benefit recipient or from the remainder of the accumulated contribution account, if any, upon the death of all benefit recipients. Therefore, the amount to be paid to the alternate payee in any month cannot exceed the monthly benefit payable on behalf of the participant and the total fixed amount to be paid to the alternate payee may not be greater than the accumulated contributions account (employee contributions plus interest) of the participant in order to ensure that the amount owed to the alternate payee can be paid if all benefit recipients die before the fixed amount is paid in full.

A FLO may not require a type or form of benefit or payment not available to the participant or a payment amount greater than that available to the participant.

A FLO may not direct any distributions to an alternate payee except as distributions are due and payable on behalf of the participant.

Payments to an alternate payee may not begin until all criteria for receipt of benefits have been met by the participant:

- The participant terminates all employment that is reportable to TRS; submits a valid and complete application for a retirement benefit allowance or withdrawal of accumulated contributions; and the monthly retirement benefit or withdrawn amount has become due and payable to the participant; or
- The participant dies prior to retirement.

A FLO may not direct a lump-sum distribution to an alternate payee except as a result of a withdrawal or death of the participant prior to retirement.

A TRS participant has no right or ability to receive a lump sum distribution from TRS unless the participant qualifies and applies for withdrawal of their accumulated contributions prior to retirement. A lump-sum distribution may also be made in the event of the participant's death prior to retirement. Therefore, a FLO may not direct a lump-sum distribution to an alternate payee except as a consequence of the participant's election to withdraw their accumulated contributions in lieu of a monthly benefit or as a consequence of the participant's death prior to retirement.

A FLO may not require a participant to make a particular benefit election; require a participant to designate the alternate payee as a joint annuitant or beneficiary; or prohibit a participant from withdrawing their accumulated contributions.

If the participant is not yet retired at the time the FLO is filed with TRS, the portion of the participant's retirement benefit owed to an alternate payee will be deducted from the normal form benefit calculated at the time of retirement, without regard for any optional benefit election the participant may be entitled to make. In the case of an actuarially equivalent amount, the portion of the normal form benefit owed to the alternate payee will be "transferred" to the alternate payee. In all cases, a benefit amount awarded to an alternate payee will be paid prior to any distribution to a joint annuitant or designated beneficiary. Therefore, it is neither necessary nor allowed for a FLO to require that a participant make a particular benefit election or designate the alternate payee as a joint annuitant or beneficiary. Nor may a FLO require that the participant withdraw their accumulated contributions in order to make a lump-sum distribution to the alternate payee.

A FLO must provide for all potential distributions to the alternate payee if filed with TRS before the participant retires.

If the participant has not yet retired at the time that a FLO is filed with TRS, the FLO must specify appropriate distributions to the alternate payee with respect to all of the following potential circumstances of distribution:

- * Service/early retirement of the participant
- * Disability retirement of the participant
- * Death of the participant prior to retirement
- * Withdrawal by the participant upon termination of employment

If the FLO is filed with TRS after the participant has retired, a FLO may only provide for payment of benefits to an alternate payee that is consistent with the benefit elections made by the participant.

Benefit elections made by participants at the time of retirement are irrevocable, and may not be modified by the terms of a FLO. Therefore, if the participant is already retired at the time a FLO is filed with TRS, the required distribution of benefits under the FLO will have to be in keeping with the benefit election made by the participant, as follows:

If the alternate payee is the joint annuitant under an optional allowance...

If the participant is already a retired member at the time the FLO is filed with TRS, and the participant elected an optional retirement allowance (A, B, or C) and designated the alternate payee as the joint annuitant, the FLO may only provide for the distribution to the alternate payee of a portion of the current benefit payable during the life of the participant (so may not order payment of the benefit as an actuarially equivalent amount). The distribution of benefits to the alternate payee following the death of the participant will be in conformity with the optional election made at the time of retirement.

If the participant elected the normal form benefit or someone other than the alternate payee is the joint annuitant under an optional allowance...

If the participant is already a retired member at the time the FLO is filed with TRS, and the participant either elected the normal form benefit or designated someone other than the alternate payee as the joint annuitant under an optional allowance, the FLO may provide for the payment of either an actuarially equivalent amount or a fixed amount to the alternate payee. However, a fixed amount must not exceed the monthly benefit amount payable to any benefit recipient under the optional election and would terminate upon the death of all benefit recipients under the optional allowance election.

If the participant elected a period certain and life...

If the participant is already a retired member at the time the FLO is filed with TRS, and the participant elected either the 10 or 20 year certain and life benefit, the benefit payable to the alternate payee must be limited to the life of the participant or the period certain, whichever is greater. An actuarial equivalent benefit payable for the life of the alternate

payee may not be awarded under a family law order if the TRS member elected one of the period certain and life options at the time of retirement.

When will a FLO be effective; can a FLO be applied retroactively?

A FLO will be effective for TRS' purposes on the first day of the month following receipt and acceptance of the FLO by TRS. If the participant is not yet retired when the FLO is received and accepted by TRS, the FLO will be given effect at the time that the participant retires or benefits otherwise become payable on behalf of the participant.

If the participant is already retired when the FLO is received and accepted by TRS, the FLO will be given effect on the first day of the month following receipt and acceptance. Benefits are processed on the last business day of each month. Tax withholding and bank deposit forms will have to be completed by the alternate payee in order for benefits payments to the alternate payee to be processed.

A FLO will not be accepted by TRS until it meets all legal requirements to be given effect by TRS. A letter will be sent to all parties to a FLO to verify acceptance by TRS.

TRS cannot retroactively adjust or pay benefits pursuant to a FLO.

Important Notes:

- Because each FLO is subject to review and approval by the TRS Board, it is imperative that a draft of any proposed FLO be sent to TRS prior to signing by the Court. Such submission will allow the TRS Board to verify that the FLO meets all legal requirements to be given effect by TRS, or to identify any ambiguities, conflicts, or other defects in the formation of the FLO that will prevent distribution as ordered by the Court, and will prevent unnecessary expenditure of time and the Court's resources.
- TRS cannot give effect to any FLO that is not filed with TRS or that does not meet all applicable legal requirements. It is imperative that a certified copy of a FLO be filed with TRS as soon as it is issued by the court. TRS will accept a FLO from either party or directly from the court. Failure to timely file a FLO could result in distributions of benefits made by TRS in good faith that are not in keeping with the FLO.
- The TRS board may assess a participant or an alternate payee for all costs of reviewing and administering a family law order, including reasonable attorney fees.

Can the monthly benefits being paid to an alternate payee be terminated or suspended once they begin, and might an alternate payee ever be required to repay monthly benefits to TRS?

Yes. If TRS determines at any point following the retirement of a participant that the participant was not eligible to retire, thereby voiding the retirement of the participant, TRS will terminate payment of all monthly benefits on behalf of the participant, and require repayment of monthly benefits paid to which the participant was not entitled, plus interest, from any persons who have received such benefits.

If a participant who retires under a disability retirement is later determined to be no longer disabled, TRS will terminate payment of all monthly benefits on behalf of the participant, and require repayment of all benefits paid after the point in time that the participant was no longer disabled, plus interest, from any persons who received such benefits.

What specific provisions must a FLO contain?

In a much-summarized form, a FLO must incorporate the following information:

1. Name, address, phone number, and Social Security Number (or federal ID number) of the TRS participant (active member, inactive member, or retiree) and the alternate payee designated in the FLO.
2. A statement regarding the type of disposition (i.e., marital property or spousal maintenance) must be included in the FLO. If a distribution of marital property, both participant and alternate payee will receive a tax Form 1099-R reporting the amount they received during the tax year.
3. If the participant is not yet retired at the time the FLO is filed with TRS, a description of the alternate payee's right to monetary payments upon the participant's receipt of benefits under any of the following circumstances:
 - A. Service/Early Retirement
 - B. Disability Retirement
 - C. Death of the TRS participant prior to retirement (survivor benefit)
 - D. Withdrawal of the participant's accumulated contributions
4. A statement that the FLO is subject to review and approval by the TRS Board prior to its becoming final and effective.
5. A statement that the FLO may be modified only by a subsequent FLO amending the previous order.

6. The effective date of the FLO if intended to be later than the first day of the month following receipt and acceptance by TRS.
7. A statement that the FLO is to be construed pursuant to all legal terms and conditions pertaining to the distribution of TRS benefits, whether expressly stated in the FLO or not.
8. A statement that The Teachers' Retirement System may receive from and disclose to either or both the participant and alternate payee any information necessary and appropriate to give effect to the FLO, including, but not limited to, providing information to the alternate payee regarding an estimated monthly benefit.
9. A statement that the alternate payee will have the primary responsibility to maintain current contact information with the Teachers' Retirement System, and that at the time of application for retirement benefits, the participant will provide the alternate payee's current contact information, if known.