

STATE OF HAWAII
EMPLOYEES' RETIREMENT SYSTEM
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July 1, 2020

HAWAII DOMESTIC RELATIONS ORDERS

Guide for ERS Members, Former Members, Retirants, Spouses, and Former Spouses

BACKGROUND

The Hawaii Domestic Relations Orders or HiDRO law, Hawaii Revised Statutes §88-93.5 Distribution of property in a divorce action, effective July 1, 2020, allows the Employees' Retirement System (ERS) to make direct payments of all or part of an ERS retirement benefit to an alternate payee (spouse or former spouse). The HiDRO is a domestic relations order that has been entered or domesticated by a Hawaii court, and qualified by the ERS.

The information provided here is to help interested parties understand a HiDRO. It does not cover all the laws and procedures applicable to the HiDRO. General information about the ERS plan and options for members, former members, and retirants is available at the ERS website (<http://ers.ehawaii.gov>).

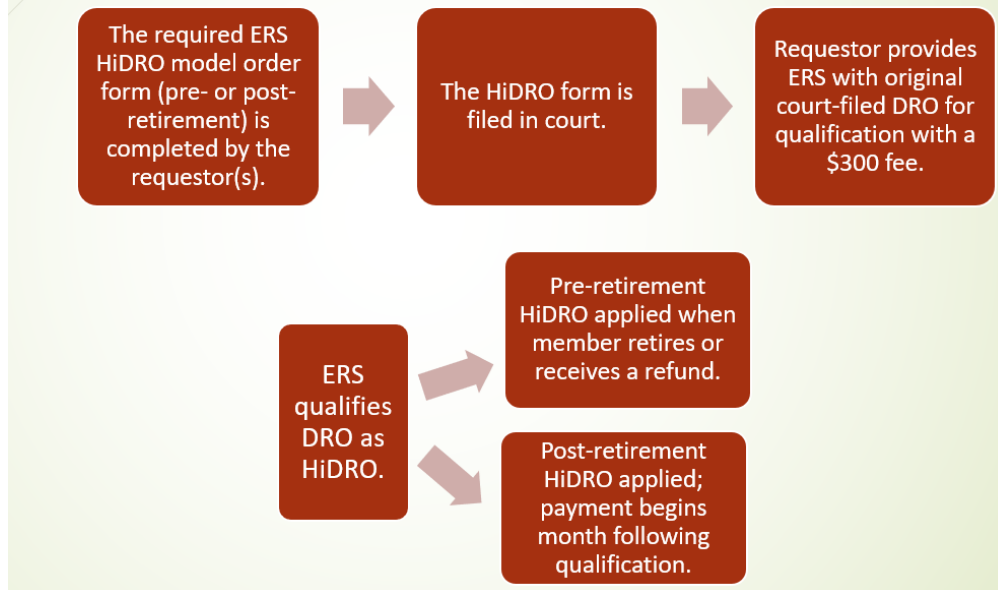
While the ERS can provide information about the benefits plan and procedures, it cannot provide legal advice. The information provided here should not be relied on as a determination of any legal issues under state law. You should consult an attorney to protect your interest in ERS benefits and determine your statutory rights under state law.

ABOUT HiDRO

A HiDRO can be applied to the ERS retirement benefits of a member, former member with vested status, or retirant (also known as the retiree). A HiDRO can be qualified by the ERS before retirement (pre-retirement) or after retirement (post-retirement). All HiDRO-related payments are subject to the ERS plan rules and regulations.

The ERS provides required model forms for pre- and post-retirement HiDROs. (See the flow chart on the next page.) The form must be completed by the requesting party or parties. The form must then be entered by a court. In Hawaii, it would be entered in Family Court; if entered by a foreign court, it must also be domesticated by a Hawaii court. A certified copy of the HiDRO model form (and domestication order, if applicable) may then be submitted to ERS for qualification as a HiDRO. A HiDRO can only be applied after it is qualified by the ERS. A Complaint for Divorce or Divorce Decree cannot be used as a HiDRO.

HiDRO qualification steps



Pre- and Post-Retirement HiDRO Model Forms

Both HiDRO model forms identify the member and the alternate payee (spouse or former spouse) and their mailing addresses. It also identifies the amount or percentage of a benefit to be paid to the alternate payee, or the manner in which the percentage is to be determined. A non-refundable fee of \$300 is required each time a HiDRO is submitted to the ERS for qualification.

A pre-retirement HiDRO model form (Form ERS-300) may be used if the ERS member is an active member or a former member with vested status who has not retired or has not withdrawn contributions. A qualified pre-retirement HiDRO will be applied at the time retirement benefits are eligible to be paid to the member. The pre-retirement HiDRO can be applied to a monthly pension and/or a refund if a member chooses a refund retirement option (Contributory and Hybrid plans only). It can also be applied to a refund of a member's accumulated contributions and/or hypothetical account balances prior to retirement (Contributory and Hybrid plans only). Active members are not allowed to withdraw from their accumulated contributions and/or hypothetical account balances. The ERS will not accept a pre-retirement HiDRO model form for qualification on or after the member or former member's retirement date.

A post-retirement HiDRO model form (Form ERS-301) may be used if the member is or has ever retired. It can be submitted anytime during the retirement. It can only be applied to a monthly pension and is not retroactive prior to the qualification. Payments are applied for the month after ERS qualifies the HiDRO. A post-retirement HiDRO model form will not be accepted before a member is retired.

It is important to know that HiDRO becomes void when the member, former member with vested status, retirant, or alternate payee dies. The HiDRO also does not allow for the election of a retirement option or the designation of a beneficiary, or the payment of a lump sum when a lump sum is not otherwise available to a member or retirant.

Review of Proposed HiDRO Model Forms

The ERS will not qualify as a HiDRO, any HiDRO model form prior to its entry by a court. However, the ERS permits the review of a “proposed” HiDRO model form, prior to being entered by a court, to determine if it would meet the requirements of a HiDRO. The fee for review of a “proposed” HiDRO model form is \$300 (non-refundable) with each submission. A determination that a “proposed” HiDRO model form meets the requirements of a HiDRO, is meant to save parties the potential time and cost associated with having to obtain multiple court orders, is not a qualification that it is a HiDRO or will be a HiDRO once entered by a court, and is not meant to replace the qualification process. To be qualified as a HiDRO, the “proposed” HiDRO model form will need to be entered by a court, and then submitted to the ERS for qualification with another \$300 fee for qualification.

Review of Court-Entered HiDRO Model Forms

A HiDRO model form that has been entered by a court will be reviewed for qualification by the ERS to determine if it meets the requirements of HiDRO. If it is qualified as a HiDRO, it will be applicable at the time retirement benefits are eligible to be paid to the member. If it is not qualified as a HiDRO, it will be returned with an explanation of the requirements that it doesn't meet.

Request for Information

Prior to completing a HiDRO model form, either of the parties in a divorce action can make a request for a member, former member with vested status or retirant's ERS retirement benefits-related information by submitting an ERS Request for Information form (Form ERS-303). A certified copy of the Complaint for Divorce or Divorce Decree is required if the requestor is not the member, former member or retirant. (See HRS 88-93.5). The ERS will not release any beneficiary information except to the member or retirant. The ERS will research and provide the information available at the time of the request and mail the information to the requestor. The information does not include any projected future benefits. The member, former member with vested status, or retirant will be notified when a request of information is made from a spouse or ex-spouse.

ERS Retirement Plan

The ERS provides a lifetime pension to members who meet retirement requirements. ERS members are required to be enrolled in a plan based on their occupation. The plans are Contributory, Noncontributory and Hybrid, but details of the plan vary depending on the member's occupation and the employee's start date. To learn more about the plans, go to

<http://ers.ehawaii.gov>. The basic calculation for a benefit, also known as the maximum allowance, is based on a formula using the years of service, the average highest-three or highest-five years of eligible compensation, and a benefit factor (percentage) based on the plan of the member. Some of the options available for retirement also take into consideration the age of the member and beneficiary, and the contributions. The ERS will not determine or project a monthly pension until the member is retired and their pension is finalized, or in the case of a refund before retirement, until the member's accumulated contributions and/or hypothetical account balances is finalized.

Payment to the Alternate Payee – Pre-retirement HiDRO

When the alternate payee is eligible to receive a payment, he or she will be notified by the ERS, and provided with the information and forms required to receive payment. For a pre-retirement HiDRO, eligibility to receive payment occurs when a member or former member with vested benefit status retires or receives a refund of accumulated contributions and/or hypothetical account balances.

The alternate payee's payment from a monthly retirement pension would be effective at the same time as the retirant. If the required forms are not received in time from the alternate payee, the initial payments will be held, including any option refunds. After a reasonable period of delay, however, the ERS will determine the retirant's due payments accordingly.

If a member or former member with vested status receives a refund of accumulated contributions and/or hypothetical account balances prior to retiring, the payment to the alternate payee would be available at the same time. The former member will no longer be eligible for a retirement benefit. The HiDRO cannot be applied to any refund already disbursed by the ERS.

For more information on ERS's retirement plans, go to <http://ers.ehawaii.gov>.

Payment to the Alternate Payee – Post-retirement HiDRO

When a HiDRO is qualified after the member or former member with vested status retires, and the alternate payee is eligible to receive a payment, he or she will be notified by the ERS, with the information and forms needed to receive payment. Payments will begin the month after ERS qualifies the HiDRO and receives the required forms for payment.

Estimated Initial Payment and Finalization of Benefits

It is important to note that initial payment of benefits is based on an estimated amount and adjusted after the pension or refund is reviewed and finalized by the ERS. Any adjustment is passed along to the member, former member with vested status, or retirant, as well as the alternate payee.

Post-retirement increase

For a monthly pension payment, the alternate payee will proportionately receive the same annual post-retirement increase as the retirant. For Contributory, Noncontributory and Hybrid retirants with membership dates prior to July 1, 2012, the increase is 2.5% of the base monthly benefit. For Contributory and Hybrid retirants with membership dates after June 30, 2012, the increase is 1.5% of the base monthly benefit. For a pre-retirement HiDRO, the first post-retirement increase would be effective July 1 in the year after the member's retirement. For a post-retirement HiDRO, previous increases, if any, are calculated into the benefit at the time of the first payment and future, proportionate increases will occur every July 1.

Death of retirant or alternate payee

The HiDRO becomes void upon the death of the retirant or alternate payee. If the retirant dies before the alternate payee, payment will be ceased to the alternate payee under the HiDRO, and survivor benefit payment will start for the beneficiary named by the retirant. If the alternate payee dies before the retirant, the amount paid to the alternate payee will be restored to the retirant starting the month after the date of death. If a named beneficiary dies before both the retirant and alternate payee, and the retirant is eligible for an increase in his or her monthly pension, the increase would also be passed along to the alternate payee.

It is important to report the death of a retirant, beneficiary, or alternate payee as soon as possible. Any overpayment to the retirant or alternate payee under a HiDRO resulting in amounts owed to the other party will not be recovered or paid by the ERS; such overpayment would need to be resolved between the parties themselves. Any overpayment resulting in amounts owed to ERS should be transmitted by the party that was overpaid to the ERS. (Hawaii Revised Statutes §88-93.5(r)).

References

Hawaii Revised Statutes, Chapter 88-93.5 Distribution of property in a divorce action, effective July 1, 2020

Hawaii Administrative Rules, Chapter 6-40 Hawaii Domestic Relations Orders, effective July 1, 2020

Hawaii Domestic Relations Orders Frequently Asked Questions, July 1, 2020

Contact ERS

If you have any questions, please contact us at (808) 586-1735 from 7:45 a.m. to 4:30 p.m., Monday through Friday, except on State Holidays. The phone numbers for the Neighbor Islands and continental United States are also listed.

Hawaii	974-4000 ext. 61735	Molokai/Lanai	1-800-468-4644 ext, 61735
Maui	984-2400 ext. 61735	Continental US	1-888-659-0708
Kauai	274-3141 ext. 61735		