

Rules of
Retirement Systems
Division 40—Highway and Transportation
Employees and Highway Patrol Retirement System
Chapter 5—Assignment of Pension Benefits

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Title 16—RETIREMENT SYSTEMS
Division 40—Highway and
Transportation Employees and Highway
Patrol Retirement System
Chapter 5—Assignment of Pension
Benefits

16 CSR 40-5.010 General Rule—Nonassignment

PURPOSE: This rule establishes the general policy prohibiting assignment or alienation of benefits payable by the Highway and Transportation Employees and Highway Patrol Retirement System.

Except as provided in section 104.312, RSMo and 16 CSR 40-5.020, benefits payable from the Highway and Transportation Employees and Highway Patrol Retirement System (the retirement system) shall not be subject to execution, garnishment, attachment, writ of sequestration or any other process or claim, and shall be unassignable.

AUTHORITY: sections 104.210.2, RSMo Supp. 1988, 104.250.2 and 536.023.3, RSMo 1986 and 104.312, RSMo Supp. 1992. Original rule filed Feb. 5, 1993, effective Sept. 9, 1993.*

**Original authority: 104.210.2, RSMo 1955, amended 1983, 1988; 104.250.2, RSMo 1955, amended 1983; 104.312, RSMo 1992; and 536.023.3, RSMo 1975, amended 1976.*

16 CSR 40-5.020 Division of Pension Benefits in the Case of Dissolution of Marriage

PURPOSE: This rule establishes that the sole exception to the general rule of nonassignment of pension benefits shall be through an Assignment of Benefits Order which shall meet the requirements set forth in this rule.

(1) Assignment of Benefits Order—Requirements. Beginning August 28, 1992, a court of competent jurisdiction may issue an Assignment of Benefits Order (order) dividing the pension payable from the retirement system between the parties to any action for dissolution of marriage. For an order to be recognized as valid by the retirement system, it must—

(A) Be a judgment, decree, order or approval of a property settlement which divides pension benefits pursuant to a dissolution of marriage action under state law, beginning August 28, 1992;

(B) Specifically state that it applies to the Highway and Transportation Employees and Highway Patrol Retirement System;

(C) Specify a retirement system member by name, Social Security number and mailing address;

(D) Specify the name, Social Security number and mailing address of any former spouse to receive a portion of the member's benefits payable from the retirement system;

(E) Specify the portion of the member's benefit to be paid to the former spouse;

(F) Provide that benefits shall be paid to the former spouse as a percentage of the member's benefit, or a specified monthly dollar amount, to commence at the same time as the member's benefit, and to end at a date no later than the member's death; and

(G) Be consistent with any other assignment of benefit orders received by the retirement system with respect to that member.

(2) Other Terms and Conditions.

(A) Any subsequent benefit increases after the date of division specified in the Assignment of Benefits Order attributable to subsequent benefit formula increases, cost of living increases, additional years of service, increased average compensation or any other type of increase shall inure solely to the benefit of the member and the former spouse's right to benefits shall be fixed in amount as of the date of the order, unless a later court order affecting both parties specifically modifies the earlier order.

(B) Payments to the former spouse shall be made by the retirement system only at the same time and under the same conditions as payments of the balance of the benefits to the member. If the member dies prior to retirement, the former spouse shall have no right to receive any benefits from the retirement system. If the member dies after retirement, the former spouse's right to any benefit payments shall cease upon the member's death. If the former spouse dies before the member, whether before or after the member's retirement, the former spouse's right to benefit payments under the order shall cease at his/her death.

(C) The benefit subject to division shall be the member's normal annuity calculated as of the date of dissolution of the marriage.

(D) The order may not require—

1. The retirement system to provide any form or type of benefit not selected by the member;

2. The retirement system to provide increased benefits, determined on the basis of actuarial value; or

3. The payment of benefits to the former spouse which are required to be paid to another former spouse under another Assignment of Benefits Order.

(3) Discretionary Authority. The retirement system shall have the discretionary authority to accept or reject orders for the following reasons:

(A) The order does not clearly state the rights of the member and the former spouse;

(B) The order is inconsistent with any law governing the retirement system; or

(C) The order purports to divide the member's benefits in a manner determined by the retirement system's actuary to be actuarially unsound.

(4) Model Order. A model order is published with these rules. It is the preference of the retirement system that the model order be used to the extent possible. Other orders will be accepted if consistent with these rules.

ASSIGNMENT OF BENEFITS ORDER

WHEREAS, a decree of this court has been entered dissolving the marriage of the parties herein, and

WHEREAS, Respondent is presently employed and has accumulated vested pension benefits through his/her employment with the Missouri Highway and Transportation Department, and

WHEREAS, the parties acknowledge and agree that a portion of respondent's entitlement to pension benefits accrued and was accumulated during the marriage and constitutes marital property subject to division under Missouri's Dissolution of Marriage Act, and section 104.312, RSMo.

WHEREAS, this court has, by its Decree of Dissolution of marriage divided a portion of this pension benefits to the petitioner, _____ pursuant to the Missouri Dissolution of Marriage Act;

NOW, THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:

1. Definitions. For the purpose of this order, the following terms shall apply:

(a) The term member means the employee spouse, namely _____

(b) The term former spouse means the nonemployee spouse, namely _____

2. The following facts are relevant to the assignment of retirement benefits provided herein:

(a) The name and last known mailing address of the member is: _____



(b) The name and last known mailing address of the former spouse is: _____

(c) The retirement plan to which this order applies, along with the name and address of its executive director is: Highway and Transportation Employees' and Highway Patrol Retirement System, David DeWitt, Executive Director, P.O. Box 270, Jefferson City, MO 65102.

(d) The court's judgment, order and decree of dissolution of marriage provides that the executive director of the system shall pay directly to the former spouse, a portion of the benefits otherwise payable to the member from the system equal to: _____ percent of the member's accrued benefit as of the date of this order (can also be approved monthly dollar amount). Any subsequent benefit increases after that date attributable to statutory benefit formula increases, cost of living increases, or any other type of increase shall inure solely to the benefit of the member and the former spouse's right to benefits shall be fixed in amount as of the date of this court order, unless another court order affecting both parties specifically modifies this order.

(e) Payments to the former spouse shall be made by the system at the same time and under the same conditions as payments of the balance of benefits to the member. If the member dies prior to retirement, the former spouse shall have no right to receive any benefits from the system. If the member dies after retirement, the former spouse's right to any benefit payments shall cease upon the member's death. If the former spouse dies before the member, whether before or after the member's retirement, his/her right to benefit payments under this order shall cease at his/her death.

3. This order:

(a) Does not require the system to provide any type or form of benefit, or any option, not otherwise provided under the plan, and

(b) Does not require the system to provide increased benefits (determined on the basis of actuarial value), and

(c) Does not require the payment of benefits to the former spouse which are required to be paid to another former spouse under another order previously determined to be an Assignment of Benefits Order.

(d) The court retains jurisdiction to amend this order for purposes of establishing or maintaining its form as an Assignment of Benefits Order acceptable to the Highway and Transportation Employees' and Highway Patrol Retirement System.

(e) The court further retains jurisdiction to supervise the payment of retirement benefits, as provided here.

SO ORDERED.

AUTHORITY: sections 104.210.2, RSMo Supp. 1988, 104.312, RSMo, Supp. 1992 and 536.023.3, RSMo 1986. Original rule filed Feb. 5, 1993, effective Sept. 9, 1993.

**Original authority: 104.210, RSMo 1955, amended 1983, 1988; 104.312, RSMo 1992; and 536.023, RSMo 1975, amended 1976.*