

1989 Assembly Bill 107

Date of enactment: April 12, 1990
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1989 Wisconsin Act 218

(Vetoed in Part)

AN ACT to amend 40.26 (2) (b); and to create 40.02 (2m), 40.02 (18f), 40.02 (48m), 40.06 (7), 40.08 (1m) and 40.08 (13) of the statutes, relating to division of a participant's rights and benefits under the Wisconsin retirement system pursuant to a qualified domestic relations order and making an appropriation.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 2. 40.02 (2m) of the statutes is created to read:

40.02 (2m) "Alternate payee" means a former spouse of a participant who is named in a qualified domestic relations order as having a right to receive a portion of the benefits of the participant.

SECTION 3. 40.02 (18f) of the statutes is created to read:

40.02 (18f) "Decree date" means the first day of the month in which a participant's marriage is terminated by a court under a final judgment, decree or order.

SECTION 4. 40.02 (48m) of the statutes is created to read:

40.02 (48m) "Qualified domestic relations order" means a judgment, decree or order issued by a court pursuant to a domestic relations law of any state or territory of the United States, that meets all of the following criteria:

(a) The name, date of birth, social security number and last-known mailing address of the participant and the alternate payee are specified.

(b) The Wisconsin retirement system is specified by name.

(c) The decree date is specified as the date to be used for valuing and dividing the participant's account.

(d) The alternate payee share is specified as a single percentage, not to exceed 50% of the value of the participant's account on the decree date, to be applied to all parts of the participant's account.

(e) The determination of the alternate payee share does not require that benefits be paid to the alternate payee if those benefits are also required to be paid to another alternate payee or to the internal revenue service under a lien placed on the participant's account under 26 USC 64.

(f) The judgment, decree or order requires the participant to certify, in a form prescribed by the department, all of the participant's active military service, as described in sub. (15) (a).

(g) The judgment, decree or order does not require payment of benefits exceeding in value those benefits to which the participant is entitled on the decree date.

(h) The judgment, decree or order does not assign any form of joint ownership of a participant's account or benefits payable from the account.

(i) The judgment, decree or order does not require a division of the participant's account in a manner contrary to s. 40.08 (1m).

(j) The judgment, decree or order requires the participant's employer to submit to the department a report of all earnings, service and contributions of the participant as provided in s. 40.06 (7).

(k) The judgment, decree or order does not require the department to enforce or otherwise monitor the benefits assigned to the alternate payee under s. 40.08 (1m).

SECTION 5. 40.06 (7) of the statutes is created to read:

40.06 (7) Within 30 days after receipt of a qualified domestic relations order or of a written request from the department pursuant to a qualified domestic relations order, a participating employer shall submit to the department a report, in the form specified by the department, of the earnings, service and contributions of the participant named in the order. The report shall include all earnings, service and contributions of the participant through the decree date that have not previously been reported to the department.

SECTION 6. 40.08 (1m) of the statutes is created to read:

40.08 (1m) DIVISION OF BENEFITS. (a) Notwithstanding sub. (1), a participant's accumulated rights and benefits under the Wisconsin retirement system shall be divided pursuant to a qualified domestic relations order only if the order provides for a division as specified in this subsection.

(b) The creditable service and the value of the participant's account that are subject to division on the decree date shall be equal to one of the following:

1. The creditable service and the dollar amounts credited to all parts of the participant's account on the decree date, if the participant is not an annuitant on the decree date.

2. The present value of the annuity being paid if the participant is an annuitant.

(c) The present value of the annuity specified in par. (b) 2 shall be computed in accordance with the actuarial tables then in effect and shall consider the number

of remaining guaranteed payments, if any. If the participant is an annuitant who is not receiving an annuity from all parts of the participant's accounts, then par. (b) 1 applies to those parts of the account from which the annuity is not being received.

(d) The amount computed under par. (b) shall be divided between the participant and the alternate payee in the percentages specified in the qualified domestic relations order. The participant shall have no further right, interest or claim on that portion of the participant's creditable service and account balances or annuity amount allocated to the alternate payee.

(e) The alternate payee share of the amount computed under par. (b) shall be distributed to the alternate payee or, in the case of an individual adjudged mentally incompetent, to a named guardian under sub. (9), as follows:

1. The creditable service and amounts computed under par. (b) 1 shall be transferred to a separate account in the name of the alternate payee.

2. Except as provided in subd. 3, the control and ownership rights of the alternate payee over his or her share of the account shall be the same as if the alternate payee were a participant who had ceased to be a participating employe but had not applied for a benefit under s. 40.23 or 40.25 on the decree date or the date that the participant terminated covered employment, whichever is earlier.

3. If par. (b) 1 applies and the effective date of the alternate payee's benefit is after the date that the participant would have met the age requirement for a retirement annuity under s. 40.23, the benefits for the alternate payee shall be determined under s. 40.23. The alternate payee's benefits shall be computed using the participant's final average earnings on the first day of the annual earnings period in which the alternate payee's annuity is effective. If the effective date of the alternate payee's benefit is before the date that the participant would have met the age requirement for a retirement annuity under s. 40.23, the alternate payee's benefits shall be determined under s. 40.25 (2).

(f) After division of the participant's account under par. (b), the account and any benefits payable shall be adjusted as follows:

1. If the participant is not an annuitant on the decree date, an amount equal to the total of the alternate payee share distributed under par. (e), including creditable service, shall be subtracted from the participant's account.

2. If the participant is an annuitant on the decree date, the annuity shall be recomputed using the total value of the participant's account determined under par. (b) reduced by the total of the alternate payee share transferred under par. (e) 1, in accordance with the actuarial tables in effect and using the participant's age on the decree date. The decree date shall be the effective date of recomputation. If the optional annuity form before division of the participant's

account under par. (b) was not a joint and survivor annuity with the alternate payee as the named survivor, the same annuity option with no change in the guarantee period, if any, shall be continued upon recomputation to both the participant and the alternate payee. If the optional annuity form before division of the participant's account under par. (b) was a joint and survivor annuity with the alternate payee as the named survivor, the present value of the annuity after division shall be paid to both the participant and the alternate payee as a straight life annuity based upon their respective ages on the decree date. If the participant's account is reestablished under s. 40.26 (2) after the decree date, the memorandum account created under s. 40.26 (2) (b) shall be adjusted by the total of the alternate payee share computed under this subdivision. If the participant's account is reestablished under s. 40.63 (10) after the decree date, the amounts and creditable service reestablished shall be reduced by an amount equal to the percentage of the alternate payee share computed under this subdivision.

(g) If par. (b) 1 applies, eligibility for benefit rights that are available only after attainment of a specified length of service shall be determined based on the service that would have been credited, if the account had not been divided under this subsection, to the participant's account on the effective date of the participant's benefit and on the effective date of the alternate payee's benefit for purposes of determining the participant's and alternate payee's benefit rights, respectively. However, no creditable service may be added to the alternate payee's account under this paragraph, and the participant shall not receive creditable service under this paragraph, for any service that has been transferred to the alternate payee's account. This paragraph applies only if all eligibility requirements, other than length-of-service requirements, for the benefit rights being established have been met.

(h) Notwithstanding pars. (b) to (g), if the participant is both an annuitant and is receiving a benefit under s. 40.65 that is effective on or before the decree date, the adjustments specified in s. 40.65 (5) (b) 4 shall be computed as though the participant's account had not been divided.

(i) The department, its employes, the fund and the board are immune from any liability for any act or omission under this subsection in accordance with a qualified domestic relations order and may not be required to take any action or make any notification as part of the exercise of ownership rights granted under this subsection.

(j) This subsection applies to qualified domestic relations orders issued on or after the effective date of this paragraph [revisor inserts date], that provide for divisions of the accumulated rights and benefits of participants whose marriages have been terminated by a court on or after the effective date of this paragraph [revisor inserts date].

SECTION 7. 40.08 (13) of the statutes is created to read:

40.08 (13) **BENEFICIARY DESIGNATION.** The department may not be required by a court order, or by any other action or proceeding, to enforce or otherwise monitor the beneficiary designation specified in a qualified domestic relations order.

SECTION 8. 40.26 (2) (b) of the statutes, as affected by 1989 Wisconsin Act 13, is amended to read:

40.26 (2) (b) The amount of the annuity payments, excluding any portion originally provided by additional contributions, which would have been paid under the terminated annuity, if the annuity had been a straight life annuity, prior to the participant's normal retirement date or prior to the annuity termination date, whichever would first occur, shall be credited to a memorandum account which is subject to s. 40.04 (4) (a) 2 and 2m and (c). If the annuity was recomputed under s. 40.08 (1m) because of a qualified domestic relations order, the memorandum account established under this paragraph shall be adjusted as provided under s. 40.08 (1m) (f) 2.

SECTION 9. **Appropriation changes; employe trust funds.** The dollar amounts in the schedule under sec-

tion 20.005 (3) of the statutes for the appropriation to the department of employe trust funds under section 20.515 (1) (w) of the statutes, as affected by the acts of 1989, are increased by \$43,300 for fiscal year 1989-90 and by \$132,400 for fiscal year 1990-91 to increase the authorized FTE positions for the department by 3.0 SEG 13-month project positions on the effective date of this SECTION to provide computer analysis and computer programming services required for the performance of the responsibilities of the department under this act, by 0.6 SEG position on the effective date of this SECTION to assist in the performance of the responsibilities of the department under this act, and by 1.0 SEG position on the first day of the 4th month beginning after the effective date of this SECTION to assist in the performance of the responsibilities of the department under this act.

**Vetoed
in Part**

~~SECTION 10. **Effective dates.** This act takes effect on the first day of the 4th month beginning after publication, except as follows:~~

**Vetoed
in Part**

~~(1) The treatment of section 40.08 (1m) (j) of the statutes takes effect on the day after publication.~~

~~(2) SECTION 9 of this act takes effect on the day after publication or March 1, 1990, whichever is later.~~