

**IBEW LOCAL 332 PENSION PLAN PART A**  
**IBEW LOCAL 332 PENSION PLAN PART B**  
c/o United Administrative Services  
P.O. Box 5057  
San Jose, CA 95150-5057  
(408) 288-4559

**Rules And Procedures for Administering  
Qualified Domestic Relations Orders (QDROs)**

Federal law provides specific rules under which pension benefits can be paid to an "alternate payee" (a spouse, former spouse or dependent child) under a state court domestic relations order. The court order must be a Qualified Domestic Relations Order (QDRO) which meets certain requirements.

IBEW Pension Plan Part A (Part A) and IBEW Local 332 Pension Plan Part B (Part B) have the authority to determine whether a particular domestic relations order is in fact a QDRO. The Trustees of Part A and Part B have adopted these rules and procedures for administering QDROs. In the event that the information provided in these Rules and Procedures conflicts with the Part A Rules and/or the Part B Rules, the Part A and/or Part B Rules will control.

**A. QDRO REQUIREMENTS**

1. Required Provisions. For an order to be a QDRO it must clearly specify at least the following information:

- a. Name and last known mailing address of the participant and of each alternate payee covered by the Order;
- b. Correct name of the Plan: "IBEW Local 332 Pension Plan Part A" and/or IBEW Local 332 Pension Plan Part B";
- c. Alternate payee's amount or share (i.e. percentage or dollar amount) of the participant's interest in the Plan or a formula for determining such benefit.

2. Prohibited Provisions. The order will fail to be a QDRO if it does any of the following:

- a. Requires the Plan to provide any type or form of benefit, or any payment option, not otherwise provided under the Plan;
- b. Requires the Plan to provide increased benefits;

- c. Requires the payment of benefits to an alternate payee that are required to be paid to another alternate payee under a prior QDRO.

## **B. ADMINISTRATIVE HOLD ON PARTICIPANT'S BENEFITS**

Upon receipt of written notice from a participant, spouse, former spouse or attorney of a dissolution of marriage, or that there is a competing claim on the participant's benefits, the Plan(s) place an administrative hold on the participant's benefits and decline to make any benefit payment without further clarification. If a participant demands payment of his or her benefits because no QDRO is in effect, the Plan(s) normally will allow the proposed alternate payee a reasonable period to seek a court order preventing such distribution. The Trustees and their delegates have absolute discretion to delay paying benefits when either Plan is on notice of a dissolution action or similar proceeding.

It is the responsibility of the parties to keep the Plan(s) informed about the status of their property settlement and to resolve the matter without undue delay. Either Plan may terminate an administrative hold and pay benefits under normal plan rules if the parties fail to submit a final QDRO within a reasonable time.

## **C. EMPLOYEE/SPOUSE RESPONSIBILITY TO SEND COURT ORDER TO PLAN**

Under federal law, a former spouse has no enforceable right to benefits under either of these Plans until the Plan is served with a final order signed or stamped by the judge and filed with the Court Clerk, which meets the requirements described above. The former spouse's interest is not protected merely because the Plan has been joined, or because the Plan has been given notice of the spouse's claim, or because the Plan has approved a draft order.

The Plans have no duty to investigate whether a QDRO exists. As a reminder, the pension application includes questions about marital status and about prior court orders dividing the benefits. If the employee responds that there is no such order, the Plans will not inquire further unless it has received documents indicating that a QDRO exists.

## **D. PROCEDURE FOR HANDLING COURT ORDERS**

1. Review by Administrative Office. The Plan(s) reviews all court-approved marital property settlements and other court orders potentially affecting pension benefits to determine whether they meet the requirements in Section A for acceptance as a QDRO. The Plans professional plan administrator, in consultation with Plan Counsel if appropriate, determines whether an order meets the applicable requirements. This determination may be appealed to the Board of Trustees using the normal plan appeal procedure.

2. Notices to Participant and Alternate Payee. Within a reasonable period after receipt of a domestic relations order creating rights for an alternate payee, the Plans will notify the participant and alternate payee whether the order is a QDRO and, if not, the reason(s) why it fails to qualify.

3. Acceptance of Order as QDRO. If the order is accepted as a QDRO, the alternate

payee will be entitled to receive his or her share of the benefit in accordance with normal Plan rules. The Plans cannot pay benefits to an alternate payee until the participant has attained retirement age or otherwise becomes eligible for a distribution of benefits under Plan rules.

4. Rejection of Order. If either Plan rejects the order, the rejection notice will identify the defect(s) in the order. The participant or alternate payee may correct the defects and submit a revised order, or may appeal from the rejection decision using the Plan's appeal procedure. Any appeal must be submitted within sixty (60) days after the rejection notice. If the Plan does not receive a timely appeal or a revised court order, the Plan may pay benefits to the participant in accordance with the normal Plan rules, without notice to or consent by the former spouse.

5. Limited Purpose of Plan Review of Order. The Plan(s) do not review marital property settlements to determine whether they are fair or complete, or whether they comply with applicable state law. It is the responsibility of the parties to the divorce action and their attorneys, not the Plan(s), to ensure that community assets are identified and a fair division is accomplished under state law.

When presented with a final order, the Plan(s) looks only to see whether it contains language about retirement benefits which creates or recognizes the existence of an alternate payee's right to receive benefits payable by that Plan. Where such language is found, the Plan(s) has a legal duty to determine whether or not the order is a QDRO under federal law, and to provide the notices described above.

The Plan(s) has no duty whatsoever with respect to a marital property settlement unless the court order manifests an intent to divide benefits payable by that Plan. If there is no clear statement of such intent, the Plan(s) will assume that the parties chose not to divide the benefits payable by that Plan. In such circumstances the Plan(s) takes no action and sends no notices. Subsequent benefit payments to the participant will be made under the terms of the Plan(s), without notice to or consent by the former spouse. Examples of orders that will not trigger a notice to the former spouse or other potential alternate payee(s) are:

- a. Orders stating that the participant shall receive his or her entire account under the plan.
- b. Orders omitting all reference to retirement benefits;
- c. Orders describing the disposition of other pension benefits without mentioning the Plan(s);
- d. Orders stating that there is no community property to be divided;
- e. Orders dissolving marriage without a formal property settlement.

6. Escrow for Determination Period. During the period while the court order is being reviewed to determine if it is a QDRO, the Plan(s) must segregate the amounts that may be payable to the alternate payee in a separate account or in an escrow account. If the Plan determines that the order is not a QDRO or if eighteen (18) months have expired without a determination whether the order is qualified, benefits may be paid to the participant and his or

her beneficiary as provided in the Plan(s).

7. Trustee Discretion. The Trustees and/or their delegates have full discretion to determine whether either Plan should comply with a proposed or final order. For old orders entered prior to 1984, the Plan may accept orders that do not technically meet all of the requirements of a QDRO. To save the parties legal fees and costs and to avoid the time involved with obtaining a new order or noticing a court hearing, the Plan may allow the parties to mutually agree on the interpretation of an order that is ambiguous or uncertain.

The Plans' decision to accept an order as a QDRO is not binding upon the Internal Revenue Service. The IRS may independently determine that an order previously accepted by the Plan(s) is not a QDRO. If this occurs, payments made to an alternate payee pursuant to the order may be ineligible for favorable tax treatment.

8. Policy Prohibiting Plan Signature on Order. QDROs shall not be signed by any Plan representative. The purpose of this policy is to avoid any suggestion that the Plan(s) has evaluated or endorsed the division of benefits in any manner except the limited review described above.

9. Payments to Alternate Payee. If the participant or alternate payee is entitled to a benefit of \$5,000 or less, such distribution shall be in one lump sum. Payments to an alternate payee will not begin until the participant attains age 55, becomes disabled or dies, whichever occurs first. Payments may begin at that time whether or not the participant elects to begin receiving benefits.

10. Dissolution Revokes Designation of Spouse as Beneficiary. Under the Plan(s), dissolution of marriage automatically revokes any prior designation of the former spouse as the participant's beneficiary. If the participant wishes the former spouse to receive survivor benefits, he or she must complete a new beneficiary designation form after the date of the judgment dissolving the marriage.

11. Inadvertent Payments. In the event that the Plan(s) inadvertently or otherwise (a) pay to the alternate payee any benefits that are payable to the participant, or (b) pay to the participant any benefits that are payable to the alternate payee, the party wrongly receiving the payment ("Mistaken Recipient") shall be deemed a constructive trustee of said amounts for the benefit of the party that should have received the payment ("Rightful Recipient"). The Mistaken Recipient is responsible for paying such amounts to the Rightful Recipient. The Plan(s) and the Plan administrator shall be relieved of all liability and obligations with respect to such amounts.

Alternatively, the Mistaken Recipient may return the inadvertent payment to the Plan administrator. Upon receipt, the Plan administrator will issue to Mistaken Recipient an amended Form 1099, if necessary, so that he/she is not liable for any income taxes associated with the Rightful Recipient's benefits.

## **E. PROCEDURE FOR HANDLING PROPOSED ORDERS OR INQUIRIES**

Inquiries concerning the potential interest of a current or former spouse, child or other alternate payee should be made in writing. A participant may ask the Plan(s) for a determination of the

participant's interest as of the date of separation or dissolution. Individual benefit information cannot be released to anyone other than the participant without either the participant's written consent or a subpoena.

The Plan administrator or in some cases Plan Counsel will review proposed orders and inform the parties whether a draft order meets the requirements for a QDRO and, if not, how to correct it. Anyone seeking to obtain a QDRO is strongly encouraged to submit the proposed order for review before it is signed by the judge. This will avoid issuance of a non-qualified order with which the Plan(s) cannot comply.

## **F. SAMPLE QDRO**

The Plans have two sample QDROs. One is for the division of benefits when the participant has not yet started receiving benefits from the Plans. The other is for the division of benefits when the participant has already started receiving benefits from the Plans. Both of the samples use language that divides the community property portion of the benefits equally between both spouses. This sample language is provided as a courtesy. Please note that a 50-50 division is not legally required and does not necessarily accomplish the best result for either spouse.

It also should be noted that the formula used in both samples for dividing the benefits in Part A is the standard "Brown" formula developed by the California courts and specifically approved by the California Supreme Court in *Lehman v. Lehman*, 98 Daily Journal D.A.R. 5539 (1998). That formula does not take into account the possibility of different benefit accrual rates in different years. Employees participating in these Plans will often accrue a different benefit amount each year because of fluctuating employment in the construction industry and/or changes in the collectively-bargained contribution rate and/or changes in the applicable benefit formula.

The Sample QDROs also provide for calculation of the alternate payee's share under Part A at the time benefit payments begin. This approach does not allocate any share of subsequent, contingent benefit increases to the alternate payee. If the parties wish to treat such contingencies as community property and provide for their division in the order, they may do so.