

PERSONAL FINANCE

Cost of Divorce Just Went Up—in Your 401(k)

U.S. Policy Change Permits Employers to Bill Expenses Of Retirement-Plan Splits

By JENNIFER SARANOW

It is getting more expensive to get a divorce—and the extra bite is coming out of couples' retirement plans.

A little-noticed change in federal policy means that a growing number of divorcing couples are being billed by employers for the legal and accounting costs associated with splitting up a retirement plan. That charge can reach as much as tens of thousands of dollars—and in a period of low investment returns and high legal expenses for divorce, it is an unwelcome additional cost.

People are just starting to feel the impact of the barely noticed Labor Department policy change, which lets employers withdraw certain legal fees required for dividing up defined-contribution retirement plans such as 401(k)s from a divorcing employee's account. Previously, employers could choose between paying those costs themselves and splitting them among all plan participants.

The fees surround a legal document called a qualified domestic relations order, or QDRO (pronounced QUA-dro), that a divorcing couple must submit to a plan sponsor in order to split retirement accounts and retain tax benefits. QDROs contain basic information about how the money should be divided.

Under federal law, a QDRO doesn't technically become "qualified" until an employer makes sure it fits certain requirements of the tax code, processing that can run from hundreds to thousands of dollars, depending on how much legal advice a company needs.

The Labor Department had long protected divorcees from having these costs taken solely out of their accounts. The thinking was since employers are responsible for administering QDROs under the Employee Retirement Income Security Act of 1974 (known as ERISA), fees associated with that requirement shouldn't be charged to one individual.

But a "field assistance bulletin" the Labor Department quietly issued in May 2002 changed that. In the note, the department's Employee Benefits Security Administration reversed a decade-old opin-

How the Fees Can Add Up

On top of what you pay your lawyer during a divorce to help you set up a domestic relations order, you may now have to add what your employer pays to process it. Here's a look at how these expenses can add up:

What you pay your own lawyer to set up the order

(ranges from a hundred to thousands of dollars depending on your case)



What your company pays to process it

(runs from hundreds to thousands of dollars depending on your case, how many times your employer has you redo the document and if your employer's processing company has a two-tier system in place)



A more expensive divorce

Source: WSJ Research

ion, saying nothing in Erisa precludes charging certain expenses such as QDRO-processing fees to the accounts of individual participants of defined-contribution plans. The change doesn't affect defined-benefit plans, such as pensions.

While the bulletin came out more than a year ago, employers have only recently begun passing along the new costs. "It took awhile for plans to catch on to this," says Anne Moss, a lawyer in Washington who specializes in splitting retirement benefits. "I've just started seeing some of these fees showing up in the last few months."

Many companies were reluctant to alter plans without guidance from the Internal Revenue Service. That finally came in January, when the IRS said it didn't find any tax code issues in the bulletin. Before passing along the fees, companies also had to amend their summary plan descriptions to disclose the changes.

Fidelity Investments says it received its first request from an employer wanting to charge QDRO fees to individual accounts in late 2003. Since then, Fidelity says, 40 employers of the 200 it administers QDROs for have incorporated the new charges.

Another QDRO-processing company, **QDRO Consultants** in Medina, Ohio, says its first client incorporated the new policy about six months ago. Now, the company estimates about 10% of the 200 or so companies it works with have amended or plan to amend their plans.

The new charges are the latest example of companies passing the costs of managing defined-contribution retirement accounts to employees.

Take Art Friedman. After beginning the QDRO process six months ago to split his retirement accounts at a former employer, the 54-year-old teacher in Mountain View, Calif., was surprised when his

who aren't getting divorced. "We want the employer to have the choice to put it on the participant," says David Wray, president of the Profit Sharing/401(k) Council of America in Chicago, which lobbied against the Labor Department's original opinion issued in 1994.

So far, retirement lawyers say it is primarily bigger companies that have amended their plans. "They frankly have the resources to hire people who let them know when these things occur," says Ian Kopelman, chairman of the employee-benefit and executive-compensation group at Piper Rudnick LLP.

US Airways Group Inc., which recently outsourced QDRO processing to Fidelity, began charging individual accounts in June—\$300 if employees use one of Fidelity's Web-based QDROs and more if they don't.

To be sure, such charges may barely be noticeable, considering what divorces in the U.S. cost today. But QDRO fees can get very high if employers don't have set charges. For example, processing can run up to \$10,000 if an employee repeatedly sends in an incorrect QDRO or up to \$30,000 if disputes arise between employees and employers over how plans can be split, lawyers say.

lawyer informed him last month that \$300 had been deducted from his portion of the account (not his wife's) to handle the company's QDRO-processing costs. That's on top of the \$1,000 he paid his own QDRO lawyer.

"I felt annoyed," he says. "What I would have expected first of all is to have been told ahead of time and also to have the options of paying for it out of current income if I chose to and of negotiating the sharing of the cost with my spouse."

Employers argue that passing on the QDRO fees is more fair to employees