

SEPARATE ACCOUNT DIVISIONS OF COMMUNITY PROPERTY INTEREST POLICY (UNDER CERL ARTICLE 8.4)

I. PURPOSE

The Board of Retirement (“Board”) of the Mendocino County Employees Retirement Association (MCERA) adopts this policy to explain and provide rules for the division of community property interests using separate accounts of MCERA retirement benefits pursuant to Article 8.4 of the County Employees Retirement Law of 1937 (“CERL”) (Government Code §§ 31685-31685.96).

MCERA will continue to administer “shared-benefit” divisions of retirement benefits that are not addressed in this policy. Under a shared-benefit division, a former spouse does not have a separate account established but receives a portion of each payment due the member; benefits to the former spouse are not guaranteed for the nonmember’s life.

II. AUTHORITY

The CERL provides for the establishment of separate accounts for members and nonmembers in the event of a divorce or legal separation. A “nonmember” is defined as the “the spouse¹ or former spouse, or child or other dependent as ordered by the court, of a member, who as a result of petitioning the court for the division of community property, has been awarded a distinct and separate account reflecting specific credited service and accumulated contributions.” (Gov. Code § 31685.1)

The Mendocino County Board of Supervisors, at the request and recommendation of the MCERA Board, resolved by majority vote on May 23, 2023 to make Article 8.4 applicable in the County of Mendocino as of that date. (Resolution 23-095).

¹ The term “spouse” as used in this policy includes state registered domestic partners. California law does not recognize common-law marriage. Therefore, common-law spouses will not be treated as spouses for the purposes of MCERA’s adoption of Article 8.4 and this policy.

III. POLICY

General Information

CERL Article 8.4 provides an optional method for the division of community property interests in a member's retirement account upon legal separation or dissolution of marriage. Article 8.4 allows a member's account to be divided into two separate accounts upon order of the court. One of the accounts remains in the name of the member. The other account is in the name of the nonmember. The nonmember's account is credited with the nonmember's share of community property interest in both the accumulated contributions and accrued service credit from the member's account.

This policy applies only to division of member accounts pursuant to Article 8.4. This policy and the adoption of Article 8.4 in the County of Mendocino shall have no retroactive effect and shall have no application to any Domestic Relations Order ("DRO") previously filed with the court and implemented by MCERA.

Article 8.4 and this policy are only applicable to member accounts when the member is an active or deferred member of MCERA at the time the DRO is filed with the court. Article 8.4 and this policy do not apply to members who are retired at the time the DRO is filed with the Court.

Provisions Optional

Adoption of Article 8.4 is intended to provide parties with additional flexibility in drafting DROs. Members are not required to use the method of community property division set forth in Article 8.4. Family Code § 2610 (a)(3) states the court may order division of the community property interest in the member's MCERA retirement account pursuant to Article 8.4 upon agreement of the nonemployee spouse.

Joinder Required

MCERA must be joined in all dissolution and legal separation cases where the court issues a DRO. MCERA is not bound by a DRO until the court obtains jurisdiction over MCERA through a joinder. (Family Code § 2060 (b))

Review and Approval of DRO Prior to Filing with Court

MCERA requires a member, nonmember or attorney submit a draft DRO to MCERA for review prior to filing the DRO with the court. If a DRO is filed with the court without MCERA's prior review and approval, MCERA may file a request to set aside or modify the DRO within 30 days of service of the DRO on MCERA (Family Code § 2073). The DRO will not be effective until the court has resolved any issues with the DRO. The court is prohibited from imposing a DRO on MCERA that would require the payment of benefits with an actuarial value in excess of the value of benefits that would be received by the member had the DRO not been issued (Family Code § 2610 (b)).

Confidentiality

Upon division of the member's account pursuant to the DRO, each party will have sole control over the party's own account. Unless specifically provided in the DRO or necessary for MCERA to administer the terms of the DRO, the member and nonmember accounts will be confidential with respect to inquiries from the other party. Information pertaining to member and nonmember accounts may be released upon MCERA's receipt of written authorization from the account holder or in response to a properly issued subpoena.

Vesting

A member who is vested at the time of the dissolution or legal separation will continue to be vested with MCERA even after the court ordered transfer of service credit to the nonmember. For the purpose of this policy, a member is vested when he or she has sufficient service credit to elect a deferred retirement under Government Code § 31700. This provision does not affect nonmember vesting as discussed below. Vesting in this policy does not equate to retirement eligibility.

Legal Representation

Neither the Board of Retirement nor MCERA staff can provide legal advice or assistance on this subject. The parties are advised to consult with a qualified attorney prior to entering into any agreement for the division of benefits under Article 8.4 or any other provision of law.

Scenarios and Outcomes

The following scenarios summarize possible events and the related impact on member and nonmember accounts. These scenarios are meant to address the majority of situations, but

they cannot anticipate every situation. In the event a case presents issues not covered in the following scenarios, MCERA staff will make a determination based on the facts of that individual case.

1. Member is vested in MCERA

- a. Member's account – Member's service credit, contributions and interest credited to the member's account are divided in accordance with the provisions of the DRO. The member remains vested in MCERA regardless of the amount of service credit remaining in the member's account after division. MCERA will request that the member designate one or more beneficiaries, and the member may elect any of the benefit options set forth in CERL Article 11 upon retirement. For member retirement eligibility requirements, see Section 5 below.
- b. Nonmember account – MCERA will establish a separate account for the nonmember with service credit, contributions and interest transferred from the member's account in accordance with the provisions of the DRO. MCERA will request that the nonmember designate one or more beneficiaries who will receive a lump sum payment of contributions and interest in the nonmember's account if the nonmember dies prior to the nonmember's retirement. The nonmember may request a refund of contributions and interest, commence receipt of a monthly retirement benefit if eligible under Government Code § 31685.5, or elect to defer retirement until such time as the nonmember elects either a refund of contributions and interest or becomes eligible to receive a monthly retirement benefit. The nonmember may only elect the unmodified benefit option² set forth in CERL Article 11. For nonmember retirement eligibility requirements, see Section 5.

2. Member is not vested in MCERA

- a. Member's account – Member's service credit, contributions and interest credited to the member's account are divided in accordance with the provisions of the DRO. The member will become vested in MCERA based on the combined service in both

² The nonmember is not eligible for the unmodified benefit with a survivor continuance under Gov. Code § 31760.1 because payment of the survivor continuance under the unmodified benefit may result in an increase in the amount of benefits available under the MCERA plan. (Gov. Code § 31685.95)

the member's and nonmember's accounts. MCERA will request that the member designate one or more beneficiaries, and the member may elect any of the benefit options set forth in CERL Article 11 upon retirement.

- b. Nonmember account – MCERA will establish a separate account for the nonmember with service credit, contributions and interest transferred from the member's account in accordance with the provisions of the DRO. The nonmember shall be paid a refund of the accumulated contributions and interest placed in the nonmember's account. (Government Code § 31685.2 (g)) The nonmember may rollover the refund as permitted by law.

3. Nonmember is paid a refund

- a. Member's account – MCERA will notify the member in writing that the member is eligible to redeposit contributions and interest refunded to the nonmember plus any interest accrued on the total amount refunded after the refund is paid to the nonmember. The MCERA Board will determine the manner and time period within which the redeposit of contributions and interest may be made. The interest rate will be the same as that charged by MCERA for other redeposits or service purchases.
- b. Nonmember's account – Whether required because the member is not vested or at the election of the nonmember, a refund to the nonmember is effective when MCERA deposits a warrant in the nonmember's favor in the U.S. mail or common carrier. Upon the effective date of the refund, the nonmember permanently waives all rights to any future retirement benefits from MCERA. Nonmember may not redeposit contributions and interest that have been withdrawn and may not rescind the refund after the effective date.

4. Nonmember is not paid a refund

- a. Member's Account – After division as shown in 1 a., there is no effect on the member's account if the nonmember does not refund. The member continues to accrue service credit in the member's account and retire based on accumulated service and contributions in the member's account when eligible.

- b. Nonmember's Account – Nonmember may elect a deferred retirement and contributions on deposit will be credited with interest semiannually. Nonmember may rescind the deferred retirement election and elect to receive a refund of contributions with interest. Nonmember may receive a service retirement allowance once eligibility requirements are met. The nonmember's service retirement allowance shall be based on the service retirement formula applicable to the service credited to the nonmember.

5. Eligibility for service retirement

- a. Member account – The member will be eligible for service retirement upon meeting age and service requirements. The service eligibility requirement is met using the member's combined service before division of the account plus service credit accrued after division of the account.
- b. Nonmember account – Either the member or the nonmember must reach the minimum age prescribed by the service retirement formula applicable to the member, and on the date of the nonmember's retirement, the member must have sufficient service to qualify for service retirement, including service awarded to the nonmember in the account division.

6. Member retires before nonmember

- a. Member account – The member's retirement benefit will be based on the age factor applicable to the member on the date of retirement, final average salary, and service credit (service credit remaining after division, service credit earned after the division, and any other eligible service credit purchased by the member). Member may elect any retirement option and designate beneficiaries according to general service retirement rules.
- b. Nonmember account – MCERA will provide written notice of the member's retirement to the nonmember at the last known address of the nonmember. Nonmember may elect to begin receiving retirement benefits or defer retirement until such time as the nonmember chooses to retire. Final compensation for the nonmember is set at the final average salary used to calculate the member's retirement benefit regardless of when the nonmember begins receipt of retirement

benefits. The retirement allowance of the nonmember shall be calculated pursuant to the benefit formula applicable to the member at the time of the service was accrued and the age factor applicable to the nonmember on the nonmember's retirement date. The nonmember may only elect the unmodified retirement allowance with no continuance.

7. Nonmember retires before member

- a. Member account – No effect on the member's account.
- b. Nonmember account – The nonmember's retirement benefit is calculated based on the member's final compensation calculated at the time of the nonmember's retirement, service credit received by the nonmember from the division of the member's account plus any additional eligible service credit purchased by the nonmember, and age factor based on the nonmember's age on the retirement effective date. The nonmember's retirement allowance shall be calculated pursuant to the benefit formula applicable to the member at the time the service credit was accrued.

The nonmember may only elect the unmodified retirement allowance with no continuance. The nonmember shall nominate a beneficiary or beneficiaries for receipt of a lump sum distribution of any remaining accumulated contributions in the nonmember's account at the time of the nonmember's death (Government Code § 31761).

8. Service credit purchases

- a. Member account – Member may purchase service eligible for purchase subject to any limitation set forth in the DRO. The member may also purchase the nonmember's community property share of any service credit eligible for purchase if the nonmember retires or dies without purchasing the service, or if the nonmember receives a refund pursuant to Government Code § 31685.2. If the DRO does not specify any limitations, the member may purchase any eligible service. Purchase of service credit must be completed prior to the member's retirement and is subject to MCERA's service purchase rules.

- b. Nonmember account – Nonmember may purchase the community property share of any eligible service credit subject to any limitations set forth in the DRO. Payment for service credit purchases must be by after-tax or pre-tax rollover lump sum and must be paid in full prior to the date of the nonmember’s retirement. If nonmember received a refund of contributions and interest of their nonmember account, the nonmember is not eligible to purchase service credit.

9. Redeposit of contributions withdrawn prior to DRO

- a. Member account – Member has the same options for service purchases as stated in number 8.a. above.
- b. Nonmember account – Nonmember has the same options for service purchases as stated in number 8.b. above.

10. Redeposit of contributions withdrawn after DRO

- a. Member account – Member may redeposit previously withdrawn contributions, plus applicable interest according to MCERA’s redeposit rules, to reinstate service credit. Member may also redeposit any contributions and interest withdrawn by nonmember if member elects to make such redeposit within five (5) years of receipt of notice from MCERA of nonmember’s withdrawal.
- b. Nonmember account – Nonmember may not redeposit the nonmember’s withdrawn contributions or redeposit contributions withdrawn by the member under any circumstances.

11. Member dies prior to retirement

- a. Member account – the member’s beneficiary will be eligible to apply for death benefits. Death benefits will be awarded based on the service and contribution in the member’s account at the time of the member’s death.
- b. Nonmember account – MCERA will provide written notice of the member’s death to the nonmember. Nonmember may apply for service retirement when eligible or withdrawal contributions and interest.

12. Vested member terminates service

- a. Member account – Member may retire for service if eligible, elect to receive a refund of member contributions and interest, or elect a deferred retirement. Unless reciprocity is established, final average salary is frozen at the member’s termination.
 - b. Nonmember account – Nonmember may retire for service if eligible, elect to receive a refund of member contributions and interest, or elect a deferred retirement. Unless reciprocity is established, final average salary is frozen at the member’s termination.
13. Member is granted a disability retirement but has not met age requirements for service retirement.
- a. Member account – Member receives disability retirement amount calculated according to the type of disability granted, service credit in the member’s account, and final average salary. The member’s disability benefit may be reduced at retirement or at a later date when the nonmember starts benefits. See paragraph C and Section IV.
 - b. Nonmember account – Nonmember is not eligible to receive a retirement benefit until either the member or nonmember reaches the minimum age prescribe by the service retirement formula applicable to the member while the member was in service. If the member is vested, the nonmember may withdraw the nonmember’s contributions plus interest, or defer retirement until age requirements are met.
 - c. Under no circumstances may the combined benefit payable to the member and nonmember exceed the disability benefit that would have been paid to the member alone had the DRO not been issued. See section IV below for details.
14. Member is granted a disability retirement and meets the age requirements for a service retirement.
- a. Member receives disability retirement amount calculated according to the type of disability granted, service credit in the member’s account, and final average salary. The member’s disability benefit may be reduced at retirement or at a later date when the nonmember starts benefits. See paragraph C and Section IV.

- b. Nonmember account – Nonmember may retire for service, elect to receive a refund of member contributions and interest, or elect a deferred retirement.

IV. ADJUSTMENT TO BENEFITS TO COMPLY WITH GOVERNMENT CODE §§ 31685.9, 31685.95

In accordance with Government Code §31685.95, MCERA will review the present values of the retirement allowances to ensure the combined present values do not exceed the present value of the undivided benefit based on the member’s age. Disability retirement allowances will be evaluated the combined total benefit requirement in Government Code §31685.9. If needed, a reduction to the nonmember’s retirement allowance will be made to comply with the requirements in Government Code §§ 31685.9 and 31685.95.

When the nonmember retires prior to the member, any adjustment to the nonmember’s benefit will be applied prospectively after the date of the member’s retirement and will not be adjusted to account for benefit payments issued prior to the member’s retirement date.

V. POLICY REVIEW

The Board shall review this policy at least every three years to ensure that it remains relevant and appropriate.

VI. POLICY HISTORY

This policy was adopted by the Board of Retirement on June 21, 2023.