WHAT PROTECTION DO SPOUSES GET IN COMPANY PLANS?

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The federal ERISA law gives spouses of plan participants in ERISA-covered plans certain rights to the participant's account. There are two types of ERISA financial protection for spouses. Spouses of IRA owners usually don't have similar rights.

The first type of protection applies to all ERISA plans. Those plans must automatically treat a married participant's spouse as his beneficiary – unless the participant designates another beneficiary and the spouse gives written consent. (Spouses in community property states also receive this protection for IRAs established during marriage.)

An offshoot of this rule is the requirement that, without spousal consent, a surviving spouse of a married participant who dies before retirement must be paid in the form of a lifetime annuity. However, this annuity requirement doesn't apply to 401(k) plans that don't offer an annuity as an optional form of payment.

Example 1: Martina participates in a 401(k) plan that does not offer an annuity as a payment option. She has designated her brother Nicolas as her 401(k) beneficiary, but her husband Daniel has never consented to that designation. While participating in the plan and still married to Daniel, Martina dies. The plan must pay the death benefit to husband Daniel – not to Nicholas. However, the benefit to Daniel does not have to be paid in the form of a lifetime annuity. So, he can elect a lump sum payment.

The second type of spousal protection requires certain plans to pay a married participant's benefit in the form of a specific type of annuity – unless the participant elects another form of payment and the spouse consents. The required annuity pays a monthly benefit over the participant's lifetime and, if the surviving spouse outlives the participant, pays the spouse a monthly benefit over the spouse's remaining lifetime. The spousal benefit must be at least 50% of the participant's benefit.

This rule applies to all plans covered by ERISA, except for most ERISA-covered 401(k) plans. (It does apply if those plans offer an annuity as an optional form of payment, and the participant elects the annuity.)

Example 2: Michael is in an ERISA-covered pension plan. He is married to Hannah when he retires. He wants to receive an annuity from the plan that will pay him over his lifetime only, with no spousal benefit after he dies. The plan can only pay Michael this type of annuity if Hannah consents. If she doesn't consent, he can still receive an annuity over his lifetime. But if Hannah survives him, she must receive an annuity payment over her lifetime that is at least 50% of Michael's payment. Because of that spousal benefit, Michael's lifetime payment will be smaller than it would have been if there were no spousal benefit.