



Oregon

Tina Kotek, Governor

Public Employees Retirement System

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February 16, 2023

TO: Senate Committee on Rules

FROM: Kevin Olineck, Director, PERS

SUBJECT: HB 2032 Written Testimony, February 16, 2023

When enacted in 2007, the Family Fairness Act (FFA) recognized that the Legislature cannot bestow the status of marriage on partners in a domestic partnership, that numerous distinctions will exist between these two legally recognized relationships, and that the legal recognition of domestic partnerships under Oregon law may not be effective beyond the borders of the state and cannot impact restrictions contained in federal law.

As a qualified governmental retirement plan, the Oregon Public Employees Retirement System must comply with specific provisions of federal law to maintain its tax qualified status. While the FFA extends all the same rights and privileges of a spouse to a registered domestic partner (RDP), federal law does not recognize domestic partnerships, only marriage. Therefore, many provisions and benefits under the plan that are available only to a spouse, would not be available to an RDP. A few specific examples include:

- An RDP cannot elect to delay payment of a pre-retirement death benefit until the member would have been 70,
- An RDP cannot roll over a death benefit payment to a spousal IRA,
- An RDP that is more than ten years younger than the member cannot receive 100% survivor benefit; the member's benefit will be adjust accordingly,
- IRC section 415 limits the amount of benefits that can be paid from the pension fund; if the member elects a joint and survivor benefit and named their spouse as their beneficiary, the benefit will be tested based on the joint and survivor benefit amount; if the beneficiary is an RDP, the benefit will be tested on a single life annuity (typically, a higher benefit amount),
- PERS retiree health insurance is available to an RDP of a retired member only if they are a dependent of the retiree.

Under federal law, retirement benefits are generally non-assignable; divorce situations are the one exception. An individual awarded a portion of a participant's retirement account or benefit is known as an alternate payee. Only a spouse, a former spouse, a child, or other dependent can be an alternate payee. Under the federal definition, a former RDP cannot be an alternate payee; therefore, retirement benefits cannot be divided in a dissolution of a domestic partnership like they can in a divorce. This affects both the member and the RDP:

- An RDP cannot be awarded a portion of a member's retirement account or benefits unless they are a dependent of the member,



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- A member can elect a survivorship retirement option that allows the member to change their option to a single life benefit if the survivor beneficiary is the member's spouse and they subsequently divorce; if the survivor beneficiary is an RDP, the member will not be eligible to change to a single life benefit in the event the domestic partnership is dissolved,
- If a member has named their RDP as a survivor beneficiary at retirement, they will not be able to change their survivor beneficiary upon dissolution of the domestic partnership,
- A member who has an RDP will not be subject to a default retirement option,
- An RDP of a member will not be required to consent to the benefit option selection of the member.

To be clear, these are issues that have existed with between PERS and the Family Fairness Act since its passage in 2007. Prior testimony indicated that the number of registered domestic partnerships has decreased, however, HB 2032 extends these to a greater population of Oregon PERS members by allowing all individuals to enter into domestic partnerships instead of just opposite sex individuals, so the number of RDPs is likely to increase. Extending spousal rights under state law to individuals who cannot be considered spouses under federal law adds complexity to an already complex retirement plan and increases the risk of making an error in administration. The different treatment of RDPs under federal law vs. state law is nuanced and on the plan level will not likely be a large impact; however, it can be very impactful to the individual members and their RDPs who will be affected. It is difficult to quantify this impact because we do not know how many individuals will enter into domestic partnerships as a result of this bill. In our experience, most members do not consider their retirement benefits until they are approaching retirement and beneficiaries are even less familiar with the plan provisions. Even with disclaimers and publications available, many will likely expect to receive the same benefits and treatment as a spouse and PERS will not be able to meet these expectations.

PERS anticipates an increase in appeals in the future as members and their RDPs are impacted by the different treatment necessary to comply with federal law.

Sincerely,

Kevin Olineck
PERS Director