

Understanding NYPD and FDNY Retirement Plans

They do not have to be as complicated as expected



David I. Gensler

Erica Bonet Guzman

It is no surprise to any mediator serving the New York metropolitan area that the retirement plans for New York City Police Officers and Firefighters are two of the most complicated and confusing retirement plans to understand. But, they don't have to be. This article will help you master the basics and understand the retirement benefits available to both members of the NYPD and FDNY by discussing the Do's and Don'ts for drafting an Agreement when one of their members is a mediation client.

To start, it is important to know that these two sectors have the same exact retirement benefits. All members are eligible for three distinct retirement plans. The first is the **Annuity Fund** sponsored by the member's union, the second is the **NYC Deferred Compensation Plan**, a voluntary plan, often referred to as the 457 DCP, and the third and final plan, which is the most comprehensive, is the traditional defined benefit **pension plan**.

The Annuity Fund

The easiest benefit to understand is the Annuity Fund. These plans are defined contribution in nature meaning that members have individual accounts that fluctuate up and down with the stock market and the assets are valued on a regular basis either daily, quarterly or annually. The specific annuity fund that the member is enrolled in depends on their position and rank. For example, police officers may be enrolled in the Patrolman's Benevolent Association Annuity Fund (PBA), the Detective's Endowment Association Annuity Fund (DEA), the Sergeant's Benevolent Association Annuity Fund (SBA), or the Superior Officers Council Annuity Fund (SOCA). Firefighters have both the Uniformed Firefighters Association Annuity Fund (UFA) and the Uniformed Fire Officers Association Annuity Fund (UFOA). All members

are enrolled in these plans when they are first appointed. The contributions to these plans are made by the City of New York and the member is not required to contribute. The assets are often transferred from one plan to another as members change positions and receive promotions. Since these plans are defined contribution plans the following should be addressed when drafting the Separation Agreement for any of the Annuity Funds listed above:

- List the exact name of the retirement plan
- Specify if the member was first enrolled in the plan prior to or after the date of marriage
- Always include a cutoff date such as the date of commencement or a specific date agreed upon by the parties. Never leave the date undefined.
- Include language to allow for the calculation of investment gains or losses from the cutoff date through the date assets are transferred to the Former Spouse. The recent volatility in the stock market illustrates the danger of failing to address investment experience from the cutoff date through the date of transfer. If investment gains or losses are not addressed in the Separation Agreement there will either be a disadvantage to the Former Spouse if the account had an investment gain, or a disadvantage to the member if the account had an investment loss.
- Avoid language that requires the Former Spouse to receive a cash withdrawal or requires them to transfer the assets to a specific IRA or another retirement plan. Upon approval of the Order, the plan will advise the Former Spouse of their distribution choices which includes transfer to an IRA, transfer to another plan, a cash distribution or a combination of the three.

- Understand that the Former Spouse is always responsible for the taxes attributable to their awarded benefit. The taxes cannot be paid by the member for an amount awarded to the Former Spouse unless the DRO is for past due child support.
- Always ask for all quarterly or annual account statements from the cutoff date through the most current date available since the majority of these retirement plans will not calculate the gains or losses.

NYC Deferred Compensation Plan

The next not so difficult plan to understand is the NYC Deferred Compensation Plan (“DCP”). This plan is also defined contribution in nature. The member has an individual account, assets fluctuate due to investment experience, and the account value can be determined on a daily basis. Unlike the Annuity Fund mentioned above this is a voluntary plan and requires the member to contribute. The city does not fund this plan. Therefore, it should never be assumed that the member entered the plan upon their date of hire or that they even participate in this plan at all. In addition, all NYC employees, not just police and fire, are given the opportunity to participate in this plan. If the member was employed by another sector of the NYC retirement system than they could have entered the DCP plan prior to their appointment date with the NYPD or FDNY. Loans and rollovers are allowed in this plan, so it is important to address these items if they exist. Following is a list of important items that should be addressed when drafting an Agreement for the NYC Deferred Compensation Plan:

- List the exact name of the retirement plan
- Specify if the member was first enrolled in the plan prior to or after the date of marriage
- Always include a cutoff date such as the date of commencement or a specific date agreed upon by the parties. Never leave the date undefined.
- Include language to allow for the calculation of investment gains or losses from the cutoff date through the date assets are transferred to the Former Spouse.
- Don’t forget to address loans and rollovers, when applicable. Should the outstanding loan balance as of the cutoff date be included or excluded from the total account balance when determining the Former Spouse’s benefit? Where

did the rollover transfer come from? Is the Former Spouse entitled to any portion of the rollover?

- Avoid language that requires the Former Spouse to receive a cash withdrawal or requires them to transfer the assets to a specific IRA or another retirement plan.
- Understand that the Former Spouse is always responsible for the taxes attributable to their awarded benefit. The taxes cannot be paid by the member for an amount awarded to the Former Spouse unless the Order is for past due child support.
- Ask for all quarterly account statements from the cutoff date or closest date possible through the most current date available as this plan will not calculate the investment gains or losses. The account statements should include all money sources and any outstanding loan balances. Members may have multiple money sources under their one plan such as a 457, 401(k), 401(a) or even a rollover.

Pension Plan

The third and most comprehensive retirement benefit is the pension plan. Unlike the Annuity Fund and the DCP, this is not a defined contribution plan in that the member does not have an individual account that fluctuates with investment experience and the value cannot be determined on a daily basis. The nature of the pension plan is to provide the member with a monthly benefit, payable upon retirement for the remainder of the member’s life. The benefit is a set formula based on the member’s final salary, years of service at the time of retirement, and actuarial assumptions such as interest rates and life expectancy. In addition to the monthly pension, a member who completes 20 years of service also has an interest in the **Variable Supplements Fund (VSF)** which is payable every December. When the member retires with a service pension they will start collecting this annual benefit, however if they continue to work beyond 20 years this benefit is deferred until the member actually retires. This is known as the VSF DROP (Deferred Retirement Option Plan). It’s important to know that neither the VSF nor the VSF DROP are payable if the member terminates with less than 20 years of service or retires due to disability. What makes this plan more complex is that a member can increase their monthly benefit through Increased Take Home Pay (ITHP) contributions and transferring or buying back

prior city, state or military service. In contrast a member can also reduce their monthly benefit by taking loans throughout their tenure and not repaying them in full or accepting a partial lump sum withdrawal upon retirement. The following is a list of Do's and Don'ts that should always be addressed when drafting an Agreement:

- Do list the exact name of the retirement plan
- Do address whether the member is retired or active. If retired, did the member retire with a service pension or a disability pension?
- Do specify a dollar amount, percentage, or formula to be used in calculating the Former Spouse's monthly benefit.
- If applicable, do address whether the Former Spouse should share in buyback or transferred service. Always request documentation from the member. Determine whether the prior service was accrued prior to or during the marriage and whether or not marital or partially marital funds were used to purchase the buyback.
- Don't forget to address loans. Should the Former Spouse's awarded benefit be reduced, or not reduced, by any outstanding loan balances at the time of retirement?
- Do include language regarding partial lump sum withdrawals available at retirement. Determine if the Former Spouse should receive a portion of the final withdrawal, if taken, or will the Former Spouse's monthly benefit be unaffected by a final lump sum withdrawal? Understand that the plan will only award the Former Spouse a monthly benefit. The plan does not pay out lump sums for the entire amount of the pension, and the partial lump sum can only be elected by the member. The Former Spouse can never choose a lump sum or partial lump sum option for their awarded benefit.
- Do address the date the Former Spouse should start collecting a benefit.
- Do address arrears or back payment to the Former Spouse if the member is retired and the DRO has not been implemented.
- Do address death benefits. What happens in the event the member dies before or after retirement?
- Do address the cost of the joint and survivorship option, if applicable. A joint and survivor annuity option is a more expensive

option than the normal single life annuity option. Who will be paying for this? Does the member pay the full cost, does the Former Spouse pay the full cost, or do the parties split the cost either equally or proportionally? Understand that the joint and survivor option cannot be elected if the member is already retired. Whatever option the member elected at their retirement is final and cannot be changed. A joint and survivor option with the Former Spouse as beneficiary can only be enforced for an active member who has not yet started to collect their pension.

- Do address early retirement subsidies and cost of living adjustments.
- Do address VSF and VSF DROP benefits. If they are not specifically listed in the DRO the Former Spouse will not share in this annual benefit which is generally \$12,000 per year. When reviewing the DRO for proper language the NYC Fire Department goes so far as requesting a copy of the executed Separation Agreement to ensure the parties did indeed agree to share this benefit. If the benefit is not specifically listed in the Separation Agreement for a NYC Fireman, but listed in the DRO, the Fire Department will deny the DRO.
- Do address disability. Does the Former Spouse share in just the service related pension or the whole pension including disability benefits?
- Don't use defined contribution language.
- Don't ever reference a separate interest DRO. These plans only allow a shared interest DRO.
- Don't state in the agreement that the Former Spouse can elect their own beneficiary. It's not allowed in the plan.
- Do understand that members hired after 2009, those classified as tier 3 and later, may face a social security offset at age 62 reducing their monthly pension and therefore reducing the Former Spouse's monthly benefit.
- Understand that the Former Spouse is always responsible for the taxes attributable to their awarded benefit. The taxes cannot be paid by the member for an amount awarded to the Former Spouse unless the DRO is for past due child support.
- Do always request the latest annual pension statement.

Clearly, putting the right language for the right plan into the separation agreement is of paramount importance. Please feel free to call or email our office for assistance with sample language for any of the aforementioned plans.

David I. Gensler
President
Pension Actuaries, Inc

Phone: (914) 712-4897 ext: 302
Email: davidg@paiqdro.net

David is the President of Pension Actuaries, Inc., an actuarial firm that specializes in the modeling of Qualified Domestic Relations Orders and pension valuations as well as the President of Madison Pension Services, Inc., another actuarial and employee benefits firm which specializes in custom designed plans for small and mid-sized companies.

Erica Bonet Guzman
Director of Operations
Pension Actuaries, Inc

Phone: (914) 712-4897 ext: 303
Email: ericag@paiqdro.net

Erica joined PAI in 2016 occupying two roles as a QDRO Consultant for PAI and a Senior Pension Consultant with Madison Pension. In 2017, she transitioned out of her role as Senior Pension Consultant for Madison Pension and proudly into the Director of Operations for PAI.