Executive Compensation
In Ohio Divorces

A
White Paper
Presented By

ZACHARY D. SMITH, LLC
STRATEGIC ADVOCACY
zdslaw.com

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Divorce is a complex and emotionally charged process. For executives and their spouses, parting ways can be particularly complicated, especially when it comes to the valuation and division of executive benefits.

Executives and company officers are typically compensated in a unique way that adds yet another layer of complexity to property division. It's crucial to understand how these vested and unvested assets are treated in divorce. Their division impacts not only the immediate financial standing of both parties but also their future economic security.

Below, we will explore the nuances of executive compensation in Ohio divorces, providing insights that reveal strategies that may permit you to retain a larger portion of these valuable assets than initially anticipated. However, you should always consult with legal counsel for guidance on your individual situation.

Property Division In Ohio: Understanding Equitable Distribution

Ohio law mandates an equitable distribution of marital property during a divorce. It's important to note that "equitable" does not necessarily mean equal but is presumed to be just that.

Property is categorized into two types for purposes of divorce:

• **Marital property** includes all assets and debts owned by either spouse during the marriage – except for that property that is determined to be separate property. Marital property is subject to division according to principles of equitable distribution.

• **Separate property** is that which belongs to one spouse alone. Absent certain extraordinary circumstances, these assets are generally not subject to division. Separate property includes inheritances, gifts received by one spouse and assets acquired before the marriage, provided they are separately identifiable at the time of divorce.

Prenuptial and postnuptial agreements can also impact the division of property. These agreements are often structured to protect assets in the event of a divorce. They can define which assets are marital versus separate and set specific terms for the division of assets.

Types Of Executive Compensation That May Be Subject To Division In Divorce

Executive compensation extends beyond just a salary and 401(k). It often includes a variety of complex assets that can significantly impact the equitable distribution of marital property.

Each type of compensation comes with its own set of considerations for valuation and division upon divorce. The timing of when the compensation was awarded, when it vests and the purposes for which it was granted are all critical factors in this determination. Understanding these details will provide clearer insights into what can be a very complex aspect of divorce cases involving executives.

Retirement Plans: Qualified Vs. Nonqualified

Retirement plans are a significant component of executive compensation. They can be categorized into two types, qualified and nonqualified, which differ as follows:

- **Qualified retirement plans**, such as 401(k)s and 403(b)s, are governed by a federal statute, the Employee Retirement Income Security Act (ERISA). They offer tax benefits to both employers and employees. Contributions to these plans are typically tax-deferred until withdrawal. These plans must adhere to specific Internal Revenue Service (IRS) regulations regarding contribution limits, minimum distribution age, mandatory distributions at certain ages and other requirements. These plans are also protected in the event that the company sponsoring the plan becomes insolvent.

• **Nonqualified retirement plans,** such as supplemental executive retirement plans and individual retirement accounts (IRAs), are not subject to ERISA. These plans offer more flexibility in terms of contributions and distributions but critically do not provide the same protections as qualified plans.

Executives often have both types of plans. Read on for more details about the most common types.

Defined Benefit Plans

Defined benefit plans, commonly known as pension plans, provide employees with a guaranteed payout upon retirement. The payouts are based on a formula that typically considers factors such as salary history and length of employment. These plans are funded by employer contributions and, sometimes, employee contributions, with the investment risk borne by the employer.

In divorce proceedings, defined benefit plans are generally treated as marital property if they're accrued during the marriage, making them subject to division as marital property. The valuation of these plans for divorce purposes is complex, requiring financial expertise to determine the present value of the future benefits. This calculation considers factors such as the age of retirement, life expectancy and the terms of the plan.

Dividing a defined benefit plan in a divorce typically requires a qualified domestic relations order (QDRO), which is a court order that directs the plan administrator on how to distribute the pension benefits. This approach ensures that the nonemployee spouse receives their equitable share directly from the pension plan when the benefits are paid out.

Cash Balance Plans

Cash balance plans are a type of defined benefit pension plan. They have become increasingly popular among employers seeking to offer robust retirement benefits for executives, often as a replacement for the aforementioned defined benefit plans. Unlike traditional pension plans, cash balance plans provide employees with an individual account that grows annually through employer contributions and an interest credit rate. This type of plan can be transferred into a separate account and controlled by the employee after they separate from the sponsoring employer.

In the context of divorce, cash balance plans are treated as marital property if contributions and accruals were made during the marriage. Dividing a cash balance plan in a divorce can be done in several ways, depending on the preferences of the

parties and the specifics of the plan. One common method is through a QDRO. The division could be a lump-sum payment or continued allocation of benefits, depending on the plan's terms and conditions.

Profit-Sharing Plans (PSPs)

PSPs are another type of deferred compensation. They allocate a portion of the company's profits or a portion of the individual employee's incentive compensation to a separate pretax account. These contributions are typically based on annual earnings with parameters for vesting and other requirements set by the employer.

In the context of a divorce, PSPs are considered marital assets if contributions were made during the marriage or were earned during the marriage with contributions promised at a later date. The division of these plans requires a careful assessment of their current value and an understanding of the specific rules governing their disbursement. PSPs, unless they are a part of an employer-sponsored defined contribution plan, such as a 401(k) or 403(b), are nonqualified plans under ERISA. Dividing these nonqualified benefits in a divorce requires consideration of the present value of the benefits as well as when and how the payments will be received.

Supplemental Executive Retirement Plans (SERPs)

SERPs are designed to provide retirement benefits that are over and above those of standard retirement plans, such as 401(k)s. They are typically considered marital property if they're accrued during the marriage.

In the context of divorce, SERPs often present unique challenges. Their distribution can be complicated due to their deferred nature and potential tax implications. Unlike more straightforward retirement assets, SERPs do not typically qualify for division. This is because SERPs are nonqualified plans, meaning that they do not have the same protections and treatment under ERISA as qualified plans do. Instead, they might need to be held in a constructive trust, with the executive spouse managing the benefits and agreeing to pay the nonexecutive spouse their share upon distribution. Another option is offsetting the value of the SERP with other assets, but this approach is dangerous given the volatility of SERPs.

The division of SERPs in a divorce requires careful consideration of several factors. First, it is important to determine the exact nature of the SERP and whether it was intended as a reward for past performance, compensation for future services or a retention tool. This understanding can influence whether the SERP is considered marital property and thus subject to division. Additionally, the timing of when the benefits are due to be paid out must be considered, as this can affect both the valuation of the SERP and the strategy for division.

Legal professionals often need to involve financial experts to accurately value these plans. The valuation should take into account their deferred nature and the tax implications of early withdrawal or division. Negotiations in these scenarios can become complex, as both

parties may have differing views on the present value of future benefits, especially if the payout is contingent on the executive remaining with the company for a certain period.

Long-Term Incentives

Long-term incentives are a staple in executive compensation packages. They are designed to retain key executives by offering compensation that vests over time or that is contingent on the executive staying with the company for a certain period. Common forms of long-term incentives include deferred compensation plans, restricted stock units (RSUs), stock options and long-term incentive unit awards.

Long-term incentive plans (LTIPs), for instance, may be structured in a deferred manner so that an executive receives a specific bonus that vests over several years. For example, a $75,000 bonus granted in year one might vest over five years at $15,000 per year. A $30,000 bonus granted in year two might vest over five additional years at $6,000
per year. Subsequent bonuses in following years could similarly vest over set periods, resulting in the executive receiving layered, accruing benefits over the course of many years. These stacking benefits can be the promise of huge future payouts.

When it comes to divorce proceedings, these long-term incentives and other types of deferred compensation may be subject to division if they are considered marital property. This determination typically hinges on whether the incentives were

awarded during the marriage, regardless of when they are paid out. The complexity of these assets often requires detailed financial analysis to establish their current value and project their future worth, taking into account vesting schedules, potential market variations, tax considerations and disbursement rules.

For instance, with stock options, an executive might be granted the option to purchase 100,000 shares at a set price, but they may not be entitled to exercise these options for another five years. If the executive leaves the company before this period, they will forfeit the options. This presents a challenge in the divorce context, as these options cannot be valued because of the uncertainty of payout. As such, a constructive trust is often relied upon as a tool to equitably divide these benefits. The use of a constructive trust typically adds a layer of complexity to the determination of their value and divisibility in a divorce context.

Given that these incentives can constitute a significant portion of an executive's compensation – sometimes up to 50% – it's essential to work with a lawyer who has a deep understanding of how these assets are structured and their potential impact on the equitable distribution of property.

Golden Parachutes

Golden parachutes are a type of

severance package commonly built into executive employment agreements. They provide substantial benefits in the event of involuntary job loss, such as through mergers or acquisitions. These packages typically include a combination of cash bonuses, stock options and other benefits intended to provide financial security post-employment.

In the context of a divorce, determining whether and how to divide golden parachutes depends on the unique circumstances involved. In Ohio, as in many jurisdictions, whether a golden parachute is considered marital property depends on what triggers the rights to the severance.

Evaluating a golden parachute in divorce proceedings requires careful analysis. Since these packages are not paid out until specific conditions are met, their current value must be estimated based on future happenings, many of which cannot be determined. This evaluation can be complex and typically requires the expertise of financial professionals who can project the expected value of cash payments, stock options and other benefits under various scenarios to address the future benefit at the time of the divorce.

The division of golden parachutes also involves negotiating how and when each party receives their share, considering that the package might not be realized until long after the divorce is finalized. This could involve creating a constructive trust or using other financial arrangements to ensure that both parties receive their equitable post-tax share.

Restricted Stock Units (RSUs) And Stock Options (SOs)

RSUs and SOs are common forms of equity compensation used to incentivize and retain key employees, especially in corporate and technology sectors. Both are forms of LTIPs, but they differ in their structure and vesting processes. SOs give holders the right to purchase company stock at a set price, while RSUs are company shares given at no cost after meeting certain conditions, typically continued employment.

RSUs are company shares given to an employee as part of their compensation, but these shares are not fully owned by the employee until they "vest" after a certain period of time or upon meeting specific performance goals. SOs provide the employee with the right to purchase company stock at a predetermined strike price after the passage of a certain amount of time.

When it comes to divorce, the division of RSUs and SOs can be particularly complex. Their division typically depends on when the options or units were granted and the vesting schedule. This requires examining when the employee received the grant and whether its purpose was to reward past performance or retain future services. Generally, if these equity compensations were granted and vested during the marriage, then they are considered marital property and subject to division. However, if they vest after the separation, then it may require a detailed analysis to determine what portion, if any, is marital property.

The actual division process of RSUs and SOs in a divorce can also be complex. It's essential to accurately value these assets, taking into consideration the potential for appreciation, tax implications upon vesting or exercise, and the specific terms of the stock grant.

Partner With An Award-Winning Divorce Lawyer And Family Law Specialist

As you can see, the treatment of executive compensation in divorce involves nuanced considerations from both legal and financial perspectives. It is crucial to work with a trusted lawyer who has substantial experience handling high-asset divorce cases for executives.

Attorney Zachary D. Smith brings a unique blend of experience, skill and credentials to the practice of family law, making him a powerful advocate for individuals navigating the complexities of an executive divorce. Zach's qualifications as a certified specialist in family relations law through the Ohio State Bar Association and a fellow of the American Academy of Matrimonial Lawyers speak volumes about his dedication to maintaining high standards in family law practice. His ability to engage in complex problem-solving, generate innovative solutions and parse out the nuanced technical aspects of the law equip him to overcome challenges in divorce cases. Whether through mediation, collaboration or litigation, Zach and his team are ideally positioned to handle the intricate financial and personal dynamics of executive divorces.

About Attorney Zachary D. Smith

Founding Partner - Zachary D. Smith, LLC
Super Lawyers, 2015-2025

Zachary Smith is the founder of Zachary D. Smith, LLC, a family law firm based in Cincinnati. A certified family relations law specialist, he has been selected for inclusion in Ohio Rising Stars and Ohio Super Lawyers for nearly 10 straight years. He is also a family law mediator and fellow of the American Academy of Matrimonial Lawyers, a prestigious distinction that further demonstrates expertise in family law.

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