

Alimony: How to Navigate the Financial Challenges of Divorce

Results achieved in prior matters are not meant to be a guarantee of success as the facts and legal circumstances vary from matter to matter.

Alimony is the financial support that a spouse may pay or receive once a divorce is finalized. Alimony is gender neutral, meaning that a husband may have to pay his ex-wife and vice versa. It is also generally tax-deductible for the spouse making the payments and taxable income to the spouse receiving the payments. The spouse that receives the alimony payment is typically the individual that was financially dependent on his or her spouse throughout the course of the marriage. The purpose of alimony is to provide the dependent spouse with a level of support that will allow him or her to live a lifestyle reasonably comparable to that enjoyed during the marriage. As a result, alimony is oftentimes a contentious and difficult aspect of the divorce process.

There are five types of alimony:

1. **Pendente Lite Alimony:** This is paid to the dependent spouse during the divorce litigation as a temporary financial arrangement to maintain the *status quo* pending final judgment of divorce.
2. **Open Durational Alimony:** This is generally reserved for marriages lasting over twenty years and a former spouse has an unequal present or future earning capacity in comparison to the other spouse. Open durational alimony is not permanent, as it may be terminated, for example, upon the payor reaching full retirement age.
3. **Limited Duration Alimony:** This is typically awarded in shorter-term marriages (less than twenty years) and is paid for a fixed period of time not to exceed the length of the marriage. The amount of the alimony payments may be modified if a change in circumstances occurs. However, the term is typically unable to be modified absent unusual circumstances.
4. **Rehabilitative Alimony:** This allows a financially dependent former spouse to receive alimony payments while undergoing training or education that will allow him or her to become more competitive in the job market. This alimony is paid for an amount of time that the Court decides the dependent spouse needs to become fully employable so that he or she is no longer in need of such support. This type of alimony may include paying the cost of a training or educational program such as a new degree and may be awarded alongside other types of alimony.
5. **Reimbursement Alimony:** This is generally reserved for cases involving short marriages, where the dependent spouse contributed to the other spouse's obtaining of a professional degree or furthering of his or her career, but there are little or no assets available for equitable distribution. The theory is to compensate the dependent spouse who fostered and promoted the other spouse's career. Reimbursement alimony may not be modified.

All types of alimony awards aside from reimbursement alimony are generally subject to modification after a divorce upon showing a substantial change in circumstances. Payments may be modified if a substantial change in circumstances occurs, including:

- Remarriage
- Cohabitation
- Disability
- Retirement

New Jersey Law: Under the statute, N.J.S.A. 2A:34-23(b), in determining the amount and type of alimony to award, a Court will consider, among other things:

- The needs of the dependent spouse for alimony.
- The ability of the supporting spouse to pay alimony.
- The respective age and health of the parties.
- The lifestyle that the parties enjoyed during the marriage and the potential for each party to maintain such a lifestyle following divorce.
- The earning capacity and employability of each party, including a consideration of the parties' respective educational and professional backgrounds and the time and cost that may be necessary to pursue further education or training.
- Whether, why, and for how long either party has been absent from the workforce.
- The roles of each party as a parent to any children of the relationship.
- The financial and non-financial contributions that each party has made to the marital enterprise, including an interruption of one's career to care for the children.
- The division of marital assets and debts inequitable distribution; the respective incomes of the parties.
- The ability of either party to receive income from investments.
- The respective tax consequences that alimony will have on the payor and on the receipt.
- Whether and how much *pendente lite* alimony has been paid in the case.

New Jersey Alimony Laws: N.J.S.A. 2A:34-23(b)

Pursuant to N.J.S.A. 2A:34-23(b), there are fourteen statutory factors the Court must consider when determining spousal support:

1. The actual need and ability of the parties to pay

The Court must consider the current financial circumstances of the parties when determining what type if any, spousal support is appropriate. Actual income will be analyzed unless those figures are not available, in which case the Court may impute income to a party. It is important to note that the ability of the parties to earn is what guides the analysis in determining support obligations. In addition, the needs of the receiving spouse are of utmost importance and will be looked at in light of both the lifestyle of the parties as well as the actual budget found on the case information statement.

2. The duration of the marriage or civil union

Pursuant to N.J.S.A. 2A:34-23(b), the term of alimony payments shall not exceed the length of the marriage. Therefore, the duration of the marriage is an important factor when determining the term. The marriage is said to begin on the date of the ceremony. However, the marriage end date is not always clear as couples are often separated for a period of time before filing for divorce.

3. The age, physical, and emotional health of the parties

These are important in determining the employability and earning potential of each spouse. For example, if a former spouse is 70 years old and in poor health, it is more likely a Court will view that spouse as financially dependent on the other spouse, as opposed to a 35-year-old in good health who could more easily secure employment.

4. The standard of living

The standard of living of the spouses during the marriage will be considered by examining the income and expenses of both parties. Courts have typically characterized the standard of living as modest, average, or lavish and discussed the standard in conjunction with the parties spending habits or desire to save. As such,

alimony may be used to ensure that both parties may continue to live in the same manner to which he or she grew accustomed during the marriage.

5. Earning capacities, educational levels, vocational skills, and employability of the parties

In assessing the financial circumstances of the parties, the ability to pay alimony, and the financial need to receive alimony, the overall employability and earning potential of each party is key. Because the Courts look at the ability of either spouse to pay rather than his or her actual earnings, the Court may determine that one spouse may still be responsible for supporting the other spouse if that spouse has an increased earning capacity but is voluntarily unemployed or underemployed. For example, individuals who have advanced degrees and strong employment histories will be seen as having high earning capacities.

6. Length of absence from the job market

In cases where one spouse may not have worked for an extended period of time (e.g. as a result of lack of financial necessity, child rearing, disability, or other potential reasons), the length of absence from the job market is a significant consideration. In these cases, the Court may determine that alimony is vital to ensure that the dependent spouse can re-enter the workforce absent undergoing extreme financial hardship.

7. Parental responsibilities

The parental responsibilities of each spouse are considered in light of the impact that child-rearing can have on a spouse's time and ability to work.

8. Time and expense necessary to acquire sufficient education

This factor is important in cases where 1) one spouse acquired an advanced degree during the course of the marriage, or 2) one spouse desires to attend an academic institution or program to increase his or her employability. In the first case, if one spouse was enrolled in an academic program during the marriage for which the supporting spouse contributed in some way, then that spouse may be entitled to Reimbursement Alimony. Next, if a spouse needs or desires to increase his or her skills in order to acquire sufficient employment, the Court will look at the nature and extent of the program to determine the proper alimony award should the other spouse need to support that spouse during that time.

9. History of financial or non-financial contributions to the marriage

Contributions to the marriage such as homemaking, parental responsibilities, or significant sacrifices so that one spouse could attain his or her current income level, are relevant to the calculation of alimony.

10. Equitable distribution of property

There is a close interdependent relationship between support awards and equitable distribution of property. Courts may look at the financial opportunities that one spouse may have acquired as a result of the equitable distribution of property when determining whether or not alimony is appropriate. In some cases, alimony may not be warranted when the needs of a dependent spouse are satisfied through property distribution.

11. Income available to either party through investment of any assets

For purposes of calculating alimony, any income-producing assets, such as investments, is relevant. The gross needs of the parties, as well as their ability to pay, are analyzed under the totality of the circumstances and not solely reliant on either spouse's salary.

12. Tax treatment and consequences to both parties of any alimony award

Alimony is tax-deductible to the paying spouse, but taxable income to the receiving spouse. As a result, the Courts will look at the tax impact that alimony has on the financial circumstances of both spouses.

13. The nature, amount, and length of *pendente lite* support paid, if any

If a *pendente lite* order has been issued, then the interim support payments are important in determining the final alimony award. Courts may consider whether or not such awards were sufficient or insufficient. In addition, such applications may also provide further evidence of the economic circumstances of the parties.

14. Any other factor which the Court may deem relevant

The Court may also consider any other factor important to determining spousal support. One factor the Court has considered not statutorily defined is the desire to prevent a financially dependent spouse from becoming reliant on public assistance, if this can be avoided through alimony.

Wilentz Family Lawyers

As knowledgeable and experienced family law attorneys, we may help you and/or a Court craft an appropriate, workable alimony award, as we understand not only the laws governing alimony but the multitude of practical financial issues that both spouses must consider in the context of a divorce. We also understand that life changes after a divorce, often unexpectedly, and, as a result, a Court may revisit the original alimony award made at divorce.

Ready to get started?

Contact one of our family lawyers today using the Consultation Request form or phone Joe Russell, our Family Law team Chair.

To speak with an attorney about your legal options, please call: 732-352-9871.