

How is Spousal Support Calculated?

In understanding how spousal support is calculated, it is important to first determine what kind of spousal support the court is ordering. There are two forms of spousal support; temporary spousal support and permanent spousal support. These two forms of support are not calculated in the same way because each form of support relies on different factors. A greater understanding of these factors will result in a greater understanding of how the court calculates spousal support.

Temporary Spousal Support

Temporary Spousal Support is support the court orders after the Petition of Dissolution (divorce) is filed but before the dissolution of marriage becomes final. In other words, it is a support order that is in place until the parties' final rights and obligations are determined in a final divorce judgment by way of trial or settlement. The main objective of a Temporary Spousal Support Order is to maintain status quo while the case proceeds forward to the point of a final judgment whether by trial or settlement agreement. It will often be about 10% or 20% more than a final Spousal Support Order because the temporary order is intended to help a spouse maintain status quo while the litigation is underway.

To expedite and simplify the calculation of temporary spousal support, the court uses a mathematical formula that is set forth by statute. Because the calculation is complex and includes incorporation of the parties' tax schedules, two different computer programs have been created by private companies and approved by the courts to calculate temporary spousal support. One program is DissoMaster™, and the other is Xspouse™.

The data that is input into these software programs is the same that is used for calculating child support. This is because child support (if any) is calculated first and then the remaining net disposable income of the parties is used to calculate temporary spousal support. Please refer to our article, *How is Child Support Calculated?* for more details.

The amount of temporary spousal support determined by the computer software is referred to as the *Guideline* amount. This is the presumptively correct amount of temporary spousal support and is in the vast majority of the cases, the amount that will be ordered. However, where there are unusual facts or circumstances, the court may exercise its discretion to deviate from the Guideline amount of support.

Permanent Spousal Support

Permanent Spousal Support is the support a court orders when a divorce is final. There are 14 factors specified by *Family Code §4320* that the court considers in determining Permanent Spousal Support and it is highly subjective. Thus, a dozen different judges given the same facts will likely come to a dozen different rulings on the amount of Permanent Spousal Support.

Although the court must consider each of the 14 factors, how much weight is actually placed upon an individual factor is left to the broad discretion of the court.

The factors that the court must consider in determining permanent spousal support are:

1. **Ability of the Parties to Maintain the Marital Standard of Living**
The court will examine the earning capacity of each of the parties. The court will also take into account periods of unemployment that were incurred during the marriage in order to concentrate on domestic duties.
2. **Supported Party's Contribution to the Education of the Supporting Party**
The court takes into account a spouse paying for the education or training of the other spouse that ultimately results in that spouse becoming a higher income earner. To illustrate this point consider the following scenario: Spouse #1 is working. Spouse #2 is attending graduate school. Spouse #1 is paying Spouse #2's tuition. If Spouse #2 ultimately earns a higher income than Spouse #1 due to the education that Spouse #1 financed then the court will consider that in calculating spousal support.
3. **Ability of the Supporting Party to Pay Spousal Support**
The court considers the party's *present ability* to pay. The court cannot speculate as to future earning capacity. In calculating the party's present ability to pay the court looks at the supporting party's earning capacity, earned and unearned income, assets, and standard of living.
4. **The Needs of Each Party Based on the Marital Standard of Living**
The court will take into account the marital standard of living during the marriage in order to determine the needs of the supported spouse.
5. **The Obligations and Assets including Separate Property of the Parties**
A sufficient separate property estate may preclude an award of spousal support to that party. Moreover, negligent management of assets that would have been sufficient for support may be grounds for denying or terminating support.
6. **The Duration of the Marriage**
With the exception of long-term marriages (i.e. marriages lasting 10 years or more) spousal support is typically ordered for a length of time equal to half the length of the marriage. The length of support for a long-term marriage is left to the discretion of the court.
7. **Ability of Supported Party to be Gainfully Employed without Interfering with the Interests of the Dependent Children in the Custody of the Party**
If the custodial parent is unable to find employment because it would interfere with the interests of the dependent children, spousal support may be ordered to allow the custodial parent to remain unemployed.

8. The Age and Health of the Parties

The age and health of the parties may warrant either an extension or elimination of spousal support. In addition, the court may order support continued where the supported spouse's age or health make self-support impossible.

9. Documented Evidence of a History of Domestic Violence against the Other Party or either Party's Child

A documented history of domestic violence against the other spouse or against either spouse's child or children may be grounds for the court to reduce or eliminate entirely an award of spousal support that would otherwise be ordered to benefit the abusive party.

10. The Immediate and Specific Tax Consequences to each Party

How the tax benefits and obligations that result from the payment of spousal support are distributed between the parties is factored into the court's support order.

11. The Balance of the Hardships to each Party

The court must consider and weigh all of the 14 factors listed under this section and identify the obligations, issues, and challenges each face.

12. The Goal that the Supported Spouse will be Self-Supporting within a Reasonable Period of Time

The court will consider how long it will take for the supported spouse to achieve a lifestyle near the standard of living that existed during the marriage, based upon his or her own earning capacity.

13. The Criminal Conviction of an Abusive Spouse

A criminal conviction for spousal abuse or child abuse will be considered and it may cause support to be reduced or completely eliminated.

14. Any other Factors the Court Determines are Just

This is a catch-all provision allowing the court to consider whatever additional information it determines is relevant to calculate spousal support.