



PREVENTIVE LAW SERIES
**CALIFORNIA
SPOUSAL SUPPORT**



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TEMPORARY SPOUSAL SUPPORT:

When a couple separates or divorces, the Court may order one spouse to pay the other a certain amount of money each month. The Court may order EITHER spouse to pay any amount necessary for the support of the other spouse during a pending dissolution or separation action or during a pending child custody, visitation and support action, according to California Family Code, Section 3600. There does NOT need to be a pending dissolution action or legal separation. When spouses are living separately and apart and one spouse is in need of spousal support, as long as the spouses have not agreed to waive support, the spouse who needs temporary support may file an action in the Family Court to obtain a spousal support order. An action is pending from the time that the petition is filed until the action's final judgment on appeal or until the time for appeal is passed. The amount of temporary spousal support usually takes into consideration two basic factors: (1) the need of the spouse seeking support and (2) the other spouse's ability to pay support. Temporary spousal support may be sought by filing an action for dissolution or separation, followed by the filing of an Order to Show Cause. Please see our Order to Show Cause (Handout 52) for more information.

In evaluating the parties' respective needs and abilities to pay, the court cannot engage in speculation. A spousal support order must reflect the present facts and circumstances, based on evidence and inferences reasonably drawn at the time of the hearing.

LONG-TERM SPOUSAL SUPPORT:

The Court may issue a long term spousal support order in a judgment of dissolution or legal separation or in a Marital Separation Agreement (MSA) that is incorporated into a judgment for dissolution or legal separation. The Court has wide discretion to issue a spousal support order for a period of time and an amount that is just and reasonable. In determining a period of time and an amount that is just and reasonable the Court MUST apply the factors listed in California Family Code, Section 4320, which is set forth below in its entirety.

Section 4320 - Circumstances to be considered in ordering spousal support

In ordering spousal support under this part, the court shall consider all of the following circumstances:

(a) The extent to which the earning capacity of each party is sufficient to maintain the standard of living established during the marriage, taking into account all of the following:

(1) The marketable skills of the supported party; the job market for those skills; the time and expenses required for the supported party to acquire the appropriate education or training to develop those skills; and the possible need for retraining or education to acquire other, more marketable skills or employment.

(2) The extent to which the supported party's present or future earning capacity is impaired by periods of unemployment that were incurred during the marriage to permit the supported party to devote time to domestic duties.

(b) The extent to which the supported party contributed to the attainment of an education, training, a career position, or a license by the supporting party.

- (c) The ability of the supporting party to pay spousal support, taking into account the supporting party's earning capacity, earned and unearned income, assets, and standard of living
- (d) The needs of each party based on the standard of living established during the marriage.
- (e) The obligations and assets, including the separate property, of each party.
- (f) The duration of the marriage.
- (g) The ability of the supported party to engage in gainful employment without unduly interfering with the interests of dependent children in the custody of the party.
- h) The age and health of the parties.
- (i) Documented evidence of any history of domestic violence, as defined in California Family Code Section 6211, between the parties, including, but not limited to, consideration of emotional distress resulting from domestic violence perpetrated against the supported party by the supporting party, and consideration of any history of violence against the supporting party by the supported party.
- (j) The immediate and specific tax consequences to each party.
- (k) The balance of the hardships to each party.
- (l) The goal that the supported party shall be self-supporting within a reasonable period of time. Except in the case of a marriage of long duration as described in California Family Code Section 4336, a "reasonable period of time" for purposes of this section generally shall be one-half the length of the marriage. However, nothing in this section is intended to limit the court's discretion to order support for a greater or lesser length of time, based on any of the other factors listed in this section, California Family Code Section 4336, and the circumstances of the parties.
- (m) The criminal conviction of an abusive spouse and the elimination of the award in accordance with California Family Code Section 4325.
- (n) Any other factors the court determines are just and equitable.

California has taken the position that a supported spouse who is reasonably healthy, relatively young, educated, and/or employable must take steps to become gainfully employed. This type of warning is usually issued to the spouse who is the recipient of a spousal support order. Generally speaking, spousal support orders may be modified by the court. If a long term support order is issued, **generally** it terminates on the remarriage or cohabitation of the supported spouse, or at a date selected by the court or the parties. However, if both spouses agree in writing then spousal support may be made non-modifiable.

Check the following link to find cost to file a spousal support action:

http://www.sdcourt.ca.gov/portal/page?_pageid=55,1524419&_dad=portal&_schema=PORTAL

LEGAL ASSISTANCE SERVICES

A legal assistance attorney is available by appointment Monday through Thursday from 0800 - 1030 and 1300 - 1500, and Friday from 0900 - 1100. Powers of attorney and notaries are available Monday through Friday at the same times. For more information, please contact the Legal Assistance Office, located in Building 56, 32nd Street Naval Station, San Diego, CA, by telephone at (619) 556-2211, or our office at Naval Air Station North Island – Coronado, Building 318 – Second Deck, above the Fleet and Family Support Center, Saufley Road, by telephone at (619) 545-6437.

RESOURCES

California Courts Self-Help: www.courtinfo.ca.gov/selfhelp
California Family Code §§ 3000–3204; 4300–4360 (2013)