

California Spousal Support Information

A spousal support award is not mandatory in dissolution or legal separation proceedings in California. Quite the contrary, courts have discretion (within statutory parameters) to deny spousal support altogether or to limit it in an amount and duration that reflects the ability of both parties to provide for their own needs.

The propriety of a California alimony award (whether to order it and, if so, its terms) is judged broadly by the parties' "circumstances" in reference to the standard of living established during their marriage and their respective needs and abilities to pay. [CA Fam §§ 4320, 4330(a)]

The court is bound to consider 14 statutory factors in making a California spousal support order (CA Fam § 4320(a)-(n)). But so long as the statutory factors are considered and weighed (as applicable in a given case), the ultimate decision--as to amount, duration and whether to retain spousal support jurisdiction--rests within the court's broad discretion.

Whereas child support awards facilitate a uniform purpose (significantly, that children share in their parents' standard of living, spousal support necessarily serves varying functions, depending on the parties and the underlying facts and circumstances. For that reason, the Legislature has not codified any particular purpose of the award.

In evaluating the parties' respective needs and abilities to pay, the court cannot engage in speculation. Its order must reflect the present facts and circumstances, based on evidence in the record and inferences reasonably drawn therefrom at the time of the hearing. "[A]n order for spousal support must be based on the facts and circumstances existing at the time the order is made." [Marriage of Tydlaska (2003) 114 Cal.App.4th 572, 575, 7 Cal.Rptr.3d 594, 595]

Relevant Factors In Making California Spousal Support Orders:

In exercising their broad discretion on the question of spousal support, trial courts must consider and weigh several factors prescribed by CA Fam § 4320.

"Permanent" spousal support orders that do not reflect an independent consideration and weighing of all of the statutory circumstances (as applicable to the particular case) are reversible for abuse of discretion.

Note: These principles do not apply with regard to temporary orders issued at the outset of the action because temporary orders do not have the same purpose as permanent orders.

Because the factual and equitable circumstances in each case are unique, the § 4320 factors necessarily cannot be given equal weight from case to case. Determining the weight to be given each of the statutory factors in a particular case, in order to arrive at a "just and reasonable" support award (CA Fam § 4330(a)), is "extraordinarily difficult." It is a matter committed to the trial court's sound discretion.

In approaching the weighing process, courts must begin with the general premise that the decision to award spousal support and, if so, the amount and duration, must be based on the standard of living established during the marriage. [CA Fam § 4330(a)]

Additional specific circumstances courts must consider in the spousal support weighing process are prescribed by CA Fam § 4320, as developed in the sections below. [See CA Fam § 4320--"In ordering spousal support . . . , the court shall consider all of the following circumstances . . .":

1. Ability to maintain marital standard of living in light of earning capacities:

The extent to which the parties' respective earning capacities are sufficient to maintain the standard of living established during the marriage (CA Fam § 4320(a)).

2. Contributions to other spouse's education, training, etc.:

The extent to which the supported spouse contributed to the other spouse's attainment of an education, training, career position or license. [CA Fam § 4320(b)] Section 4320(b) is a companion to Ca Fam § 2641, which creates a right of reimbursement for community contributions to one spouse's education or training that "substantially enhances" the spouse's earning capacity.

3. Supporting spouse's ability to pay:

The supporting spouse's ability to pay spousal support, taking into account his or her earning capacity, earned and unearned income, assets, and standard of living. [CA Fam § 4320(c)]

Note: A spousal support order must be consistent with the supporting spouse's ability to pay as determined by his or her circumstances at the time of the support

hearing--i.e., the obligor's present (not past or future) circumstances (current income/cash flow, assets, earning capacity, etc.) control.

4. "Needs" in light of marital standard of living:

The needs of each party based on the standard of living established during the marriage. [CA Fam § 4320(d)] "Need" includes more than "bare necessities of life." But § 4320(d) expressly codifies well-established case law consensus that "need" must also be judged in terms of the parties' station in life during marriage and before separation.

5. Parties' assets and debts:

The parties' respective assets and obligations, including the separate property of each. [CA Fam § 4320(e)] Thus, spouse's separate estate (including assets allocated to each as a result of the community property division)--and the reasonable income potential therefrom--may require the "withholding" of support altogether or a termination of previously-awarded support. [CA Fam § 4321(a)]

6. Duration of marriage.

[CA Fam § 4320(f)] The length of the parties' marriage bears both on the "need" for support (whether it should be ordered) and on the amount and duration. The longer a spouse has been out of the job market on account of the marriage, the stronger the case for granting support; by the same token, a relatively short marriage can, depending on the other § 4320 factors and the "totality of the circumstances," offset alleged "need" and justify a lower level of support and/or a shorter support term.

7. Employability of custodial spouse vs. impact on children:

The ability of the supported spouse to engage in gainful employment without interfering with the interests of dependent children in his or her custody. [CA Fam § 4320(g)] Section 4320(g) recognizes the overriding public policy concern for the welfare of the parties' minor children. Theoretically, e.g., weighing all relevant circumstances, the needs of young children may justify indefinite spousal support to a custodial parent even after a relatively short marriage.

8. Age and health of the parties.

[CA Fam § 4320(h)] On balance and after weighing all of the § 4320 factors, age and health may warrant either an extension or withholding of support. Age and

health considerations are also particularly relevant to the question of duration of support.

9. History of domestic violence:

Documented evidence of any history of domestic violence (as defined in CA Fam § 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. [CA Fam § 4320(i)]

10. Tax consequences:

The immediate and specific tax consequences of spousal support to each party (e.g., who pays the taxes, who gets the deduction, what effect on net income). [CA Fam § 4320(j)]

11. Relative hardships:

"The balance of hardships to each party." [CA Fam § 4320(k)] This factor seems to underscore the court's obligation to consider and weigh all of the § 4320 circumstances in determining the appropriate amount and duration of spousal support.

12. Goal of self-support:

"The goal that the supported party shall be self-supporting within a reasonable period of time." [CA Fam § 4320(l) (e)] Except in marriages of long duration (as described in CA Fam § 4336, a "reasonable period of time" within which to achieve the goal of self-support "generally shall be one-half the length of the marriage." [CA Fam § 4320(l)]

13. Spousal abuse conviction (mandatory factor for support reduction/termination):

The criminal conviction of an abusive spouse is a mandatory factor to be considered in making a reduction or termination of spousal support in accordance with CA Fam § 4325. [Ca Fam § 4320(m)]

14. Other "just and equitable" factors:

"Any other factors the court determines are just and equitable." [CA Fam § 4320(n)] This final factor is a "catch-all," clarifying the court's authority to consider any other circumstances, although not expressly codified, bearing on the propriety of awarding support and, if so, its amount and duration.

Modification Of Spousal Support Orders

If the supported party is no longer in need, or a detrimental change in the obligor party's needs or ability to pay outweighs the other's need for support, proceedings to terminate (or reduce) support can be brought on the basis of "changed circumstances".

Further, provided the obligee was aware of an expectation that he or she become self-supporting (or reasonably endeavor to contribute to his or her support), support might be terminated on the basis of the obligee's failure to make good faith efforts toward self-sufficiency within a reasonable period of time. [See CA Fam §§ 4320(l), 4330(b)]

Moreover, in some cases, a modification order terminating open-ended support may even be warranted where, after considering and weighing the then-applicable Ca Fam § 4320 factors, the court deems it "just and equitable" to do so despite the absence of factually changed circumstances. [Marriage of Baker (1992) 3 Cal.App.4th 491, 494, 4 Cal.Rptr.2d 553, 554]

Termination Of Spousal Support Orders

a. Fixed-term orders:

Spousal support orders for a fixed duration terminate at the end of the period specified in the order unless the court retained jurisdiction in its most recent order to extend the obligation. [CA Fam § 4335]

However, except upon the parties' written agreement to the contrary or a court order terminating support, the court retains spousal support jurisdiction indefinitely where the marriage has been of "long duration."

b. Contingent orders:

An obligation to pay spousal support for a contingent period of time terminates on the happening of the specified contingency. [CA Fam § 4334(a)]

c. Remarriage/death:

Unless the parties have "otherwise agreed" in writing, a court-ordered spousal support obligation terminates upon either party's death or the supported party's remarriage. [CA Fam § 4337]

California Spousal Support Procedure:

The parties may - and are encouraged to - enter into a written stipulation (agreement) on spousal support issues.

If the parties cannot agree, visitation orders may be made at any time after the filing of an underlying divorce, paternity, or domestic violence action and may be modified at any time until the child(ren) turn eighteen. In contested cases, they are most commonly made:

1. At the time of the filing of the initial documents in a "Temporary Restraining Order"
2. Within a few weeks of the filing at a hearing on application for "Order To Show Cause"
3. At the time of trial