



CALIFORNIA  
FAMILY  
LAW

# SPOUSAL SUPPORT

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# SPOUSAL/PARTNER SUPPORT

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## HOW IT STARTS

In order for spousal support to become legally established and begin, there must be an official court case.

There are various types of cases that can lead to spousal support such as:

- Divorce, legal separation, or annulment; or
- A domestic violence restraining order

### Temporary Spousal Support

You can ask for a temporary support order to be paid while the case is still underway.

### Permanent (Long-Term) Spousal Support

This is ordered once the divorce or legal separation is finalized.

# CALCULATING SPOUSAL OR PARTNER SUPPORT

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In the case of a temporary spousal support order, judges will typically use a formula to calculate the amount of payment. In different counties the factors used in the formula vary slightly. In local rules there is information on how temporary support is calculated.

Courts in different counties may use slightly different factors in calculating temporary support. Your court's local rules should explain how temporary support is calculated in your county. Check your court's local rules for the temporary support guideline.

# CALCULATING SPOUSAL OR PARTNER SUPPORT (CONTINUED)

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When calculating permanent spousal support, a judge will not use a formula but instead make a decision based on the following factors:

- The length of the marriage or domestic partnership;
- What each person needs based on the standard of living they had during the marriage or domestic partnership;
- What each person pays or can pay (including earnings and earning capacity) to keep the standard of living they had during the marriage or domestic partnership;
- Whether having a job would make it too hard to take care of the children;
- The age and health of both people;
- Debts and property;
- Whether one spouse or domestic partner helped the other get an education, training, career, or professional license;
- Whether there was domestic violence in the marriage or domestic partnership
- Whether one spouse's, or domestic partner's, career was affected by unemployment or by taking care of the children at home; and
- The tax impact of spousal support.

# FACTORS CONSIDERED WHILE DETERMINING SPOUSAL SUPPORT

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## PART ONE

Earning Capacity and Standard of Living During the Marriage. A judge must consider what each spouse or partner can earn to keep a standard of living close to what they each had during the marriage or partnership.

In determining this a judge must consider the following:

- Marketable skills of the spouse or partner getting support;
- Job market for those skills;
- Time and expense the spouse or partner who gets the support will need to get the education or training to develop more marketable skills or to get a job;
- Extent that the earning capacity (the ability to earn income) of the spouse or partner who gets support was impaired by periods of unemployment during the marriage/partnership when he or she was devoted to domestic duties

# FACTORS CONSIDERED WHILE DETERMINING SPOUSAL SUPPORT

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## PART TWO

### Length of the Marriage or Domestic Partnership.

The length of a marriage or domestic partnership is closely related to the duration of a permanent spousal support order. The goal of spousal support order is for the person receiving support to be able to support himself or herself within a reasonable period of time. The law says that generally, a “reasonable amount of time” is one-half the length of the marriage or domestic partnership.

Domestic Violence. When deciding the level of spousal support payments, the judge must take into account any documented evidence of any history of domestic violence between the parties. When the abuser is the spouse paying support, the judge will consider any emotional distress resulting from the history of violence.

# FALLING BEHIND IN SPOUSAL OR PARTNER SUPPORT PAYMENTS

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Once a court orders a spouse or partner to pay support to the other, this court order must be followed until the court changes or ends it, or, if the support has an end date, until then. If a spouse falls behind in payments, there is a 10% interest rate added per year on the balance due.

Additionally, if that spouse owes arrears (past-due spousal or partner support), it is possible for his or her court order, or wage garnishment, to include an amount over the monthly spousal or partner support. Not paying court ordered spousal or partner support can lead to very serious consequences. If the court finds a spouse or partner to be willfully not paying support while having the ability to do so, they may be decided to be in “contempt of the court”. Being in contempt of the court can lead to potential jail time if all other options have been exhausted.



# MODIFYING SPOUSAL OR PARTNER SUPPORT

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Depending on the situation, either spouse or domestic partner might need to change the amount of spousal or partner support being paid. In order to alter the payment amounts, there must first be a “change in circumstance”. This means that there has been something significant changed since the court order was established. For example, a spouse or partner may not need the assistance anymore, or the spouse or partner paying support may have experienced a notable reduction in income and can no longer afford the payment.

# ENDING SPOUSAL OR PARTNER SUPPORT

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Spousal and domestic partner support orders usually end when:

- A court order or judgment says it ends;
- One of the spouses or domestic partners dies; or
- The person getting the support remarries or registers a new domestic partnership

Keep in mind that if you owe any past spousal or partner support, you will have to continue making payments, with interest, until you pay it off.

# SPOUSAL OR PARTNER SUPPORT TAX DEDUCTIONS

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## PART ONE

Any person paying spousal support under an order or judgement executed before December 31, 2018, can deduct the payment amount from their annual gross income. Additionally, the spouse receiving support payments must pay federal and state income tax on the support payments they are receiving.

Conversely, for any person paying spousal support under an order or judgment executed after December 31, 2018 cannot deduct the payment from their federal income taxes. Furthermore, the person receiving support payments no longer is required to pay federal income taxes on the payments.

# SPOUSAL OR PARTNER SUPPORT TAX DEDUCTIONS

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## PART TWO

Although the federal income tax laws have been modified, the original tax deduction laws remain in place for state income taxes in California.

Tax laws are more complicated regarding domestic partner support. Under California law, support payments between registered domestic partners are treated the same as spousal support.

Federal tax law mentions spousal but not partner support payments, so it is important to speak with a lawyer or accountant who is knowledgeable in this area such as the family law attorneys at Drury Pullen, APLC.