

Two Categories of Spousal Support

Pre-Judgment Spousal Support, sometimes called “temporary spousal support”

This category of spousal support is **paid while the case is pending** and is calculated with the DissoMaster computer program. Although some expenses (e.g., paid health insurance premiums) are input as deductions from income and other expenses (e.g., property taxes, mortgage interest) are input as income tax level factors, most living expenses (e.g., rent, food, utilities, mortgage principal) are irrelevant to this calculation. The level of pre-judgment spousal support is determined mostly by the spouses’ respective income levels. Under certain circumstances (e.g., if the judge believes a spouse *should be earning* additional income), a divorce judge has the discretion to “impute” into the program income that a spouse is not actually receiving. Pre-judgment spousal support is sometimes referred to as “guideline spousal support” or as “*pendente lite*” (Latin for “while litigation is pending”) spousal support. A divorce attorney can calculate this category of spousal support with some specificity.

Post-Judgment Spousal Support, sometimes called “permanent spousal support”

This category of spousal support **begins after the settlement or trial of the case** and is not calculated with the DissoMaster program. Instead, the judge is required to apply to each case the 14 factors listed in Family Code section 4320 (attached). Unlike with pre-judgment spousal support (see above discussion), the level of a spouse’s general living expenses can be considered in setting post-judgment spousal support – because “expenses” are included in the 14 factors. A trial judge determines the level of post-judgment spousal support with wide discretion. This is because an appellate court seldom overrules such a trial court determination. The subjective natures of the 14 factors makes this type of spousal support difficult for an attorney to predict.

Two appellate court cases have observed that post-judgment spousal support is “usually” lower than pre-judgment spousal support. A trial judge is not required to order a post-judgment spousal support level that is lower than pre-judgment spousal support level, however. Here are the cases:

In re Marriage Schulze (1997) 60 Cal.App.4th 519, 522 stated: “Temporary support, as most family lawyers know, usually is higher than permanent support because it is intended to maintain the status quo prior to the divorce.”

In re Marriage of Blazer (2009) 176 Cal.App.4th 1438, 1442 stated: “The trial court has statutory authority to order temporary spousal support while a marital action is pending. (§ 3600.) Temporary support ... usually is higher than permanent support because it is intended to maintain the status quo prior to the divorce.”

Family Code 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)** All documented evidence of any history of domestic violence, as defined in Section 6211, between the parties or perpetrated by either party against either party's child, including, but not limited to, consideration of:

 - (1)** A plea of nolo contendere.
 - (2)** Emotional distress resulting from domestic violence perpetrated against the supported party by the supporting party.
 - (3)** Any history of violence against the supporting party by the supported party.
 - (4)** Issuance of a protective order after a hearing pursuant to Section 6340.

(5) A finding by a court during the pendency of a divorce, separation, or child custody proceeding, or other proceeding under Division 10 (commencing with Section 6200), that the spouse has committed domestic violence.

(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 [at least 10 years between marriage and separation] as described in 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, Section 4336, and the circumstances of the parties.

(m) The criminal conviction of an abusive spouse shall be considered in making a reduction or elimination of a spousal support award in accordance with Section 4324.5 or 4325.

(n) Any other factors the court determines are just and equitable.