

# **Legal Assistance of Western New York, Inc. ®**

Spousal Support or

We provide free legal aid to people with civil legal problems in western New York.

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## **Spousal Support or Maintenance**

### **What is spousal support or maintenance?**

Spousal support is court ordered money paid to support a spouse. Maintenance or “temporary maintenance” is support ordered to be paid for an ex-spouse, or while a divorce case is pending in court. Since October 26, 2015, New York has had a presumptive formula to decide how much support or “temporary maintenance” should be paid. On January 25, 2016, a new law took effect setting presumptive amounts and length of time for maintenance after a divorce. These guidelines are presumed to be the correct amounts and time periods, but the court still has discretion to order different amounts if the court explains why.

Spousal support or maintenance used to be called alimony and this may still be used in some other states, but this has not been the legal term used in New York for many years.

### **Where are spousal support orders given?**

Spousal support orders are usually given in Family Court, although temporary maintenance payments can be ordered as part of a divorce in Supreme Court.

Maintenance is ordered by the Supreme Court in a divorce action. Usually the Family Court will have jurisdiction to modify or enforce that order, after the divorce is completed.

### **How is the amount of spousal support or maintenance determined?**

Under a new law passed in 2015, maintenance and support amounts are set by a math formula, based upon each spouse’s income. You can calculate it on the NYS court system's website at: <http://www.nycourts.gov/divorce/calculator.pdf>

### **Once a support order has been given, can it be changed?**

A support order can be changed if there is a substantial change in circumstances. The person asking for a change must file a modification petition explaining the change in circumstances. If the support was set by an agreement (which is a contract made by the spouses), then you will need more than just a "substantial change" to modify.

### **Are there any time limits on how long support payments can last?**

The judge can limit how long one must pay maintenance. As of January 2016 there is a formula for this. For a marriage lasting up to 15 years, maintenance is expected to last 15% to 30% of the length of the marriage. For marriages lasting 15 to 20 years, maintenance is expected to last 30% to 40% of the length of the marriage. For marriages lasting more than 20 years, maintenance is expected to last 35% to 50% of the length of the marriage.

If the recipient spouse remarries or either spouse dies, the payments will also end. The court cannot limit how long support is due for a current spouse.

### **Can spousal support payments be taxed?**

For orders made in cases started before December 31, 2018 the answer is Yes. Unlike child support, spousal support payments or maintenance are taxable income to the person who receives support. They are deductible from taxable income by the person who pays support. If child support and spousal support are not given separately, then the whole amount is considered spousal support for tax purposes.

Remember however, that you only will pay tax on income which exceeds the annual amounts allowed by the IRS for exemptions and deductions. If the recipient is very low income, there may be no tax due.

Under the 2017 Tax Reform Act this will change, but the new rules will only apply in cases started (or Separation Agreements signed) after December 31, 2018. For future agreements and divorces, payments are no longer deductible by the payor spouse. Further, the recipient spouse will not have to pay taxes on support payments received.

### **What about health care?**

The Family Court can also order health insurance coverage to be continued for a spouse. When a divorce case is filed, an "automatic order" is issued preventing either party from changing insurance coverage without getting permission from the court. After a divorce is granted, the former spouse usually cannot stay on the family policy, although more expensive COBRA coverage may be available for up to 18 months. The court could order your ex-spouse to help pay for this, if he or she can afford it.

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