



THE ALIMONY REFORM ACT OF 2011

Why it Matters

The Alimony Reform Act of 2011 will control future alimony awards, and likely impacts existing alimony awards.

Enactment of G. L. c. 208, §§ 48- 55

The “Alimony Reform Act of 2011” will become law in Massachusetts on March 1, 2012, dramatically altering the spousal support/alimony landscape.

Previously, Massachusetts law did not provide Courts, parties, or practitioners with any solid framework for setting alimony awards. As a result, alimony awards were unpredictable, and varied on a case-by-case basis. Payors were often left with an indefinite term of payment that exceeded retirement.

With the enactment of the Alimony Reform Act, existing alimony awards may be subject to modification. Future alimony awards will be based on the guidelines set forth below.

Setting Alimony in Context of Divorce: Types of Alimony

There are four types of alimony that may be awarded in a pending divorce case: General Term, Rehabilitative, Reimbursement, and Transitional Alimony.

In determining which type of alimony to award, the Court may consider: length of marriage; age, health, and income of the parties; employment and employability; economic and non-economic contributions to marriage; marital lifestyle; ability of each party to maintain the marital lifestyle after divorce; and lost economic opportunity as a result of the marriage.

If you are considering filing for divorce, the timing may impact the type and duration of an alimony award. With limited exception, the length of a marriage is now defined as from the date of marriage, to service of a complaint for divorce.

General Term Alimony is awarded to a spouse unable to financially support him or herself. It is paid according to the following durational limits:

Length of Marriage	Potential Duration of Alimony
5 years or less:	No greater than 50% of the number of months of the marriage.
More than 5 years, up to 10 years:	No greater than 60% of the number of months of the marriage.
More than 10 years, up to 15 years:	No greater than 70% of the number of months of the marriage.
More than 15 years, up to 20 years:	No greater than 80% of the number of months of the marriage.
Greater than 20 years:	Possibly indefinite.

General term alimony may be suspended, reduced, or terminated if the payor spouse demonstrates that the recipient spouse has maintained a “common household” with another for a period of at least three months. It will terminate if the recipient spouse remarries, or either party dies. General Term Alimony may also terminate upon the payor attaining full retirement age.

Rehabilitative Alimony is awarded to a former spouse who is expected to become economically self-sufficient within a set period of time not longer than five years. However, it may be extended if unforeseen events prevent the recipient spouse from becoming self-sufficient, notwithstanding his or her efforts. Rehabilitative alimony also terminates upon the remarriage of the recipient.

Reimbursement Alimony is an unmodifiable amount of money awarded to a spouse after a marriage that lasted not more than five years. The purpose of reimbursement alimony is to compensate a spouse for his or her contributions to the marriage, such as enabling the payor to complete education or training. It allows the recipient to complete education or employment training. Payment may be made in one lump sum, or periodically, and is terminable only upon the death of the recipient spouse.

Transitional Alimony is awarded in a marriage lasting not more than five years. The purpose of transitional alimony is to assist the recipient spouse with adjusting his or her lifestyle or location after a divorce. Transitional alimony terminates no more than three years after the parties' divorce. It is not modifiable, extendable, and may not be replaced by a different form of alimony after the term.

Amount of Alimony and Incomes of the Parties

Generally, the amount of an alimony award should not exceed the needs of the recipient, or 30-35% of the difference of the gross incomes of the parties. It is important to note, however, that these income suggestions do not apply to cases where Reimbursement Alimony is awarded, or where there are other circumstances warranting a deviation.

In determining income, the Court excludes capital gain income and dividend and interest income earned from assets divided by the parties in the divorce. Concurrent payment of child support is also taken into consideration.

Modification of Existing Orders

The enactment of the Alimony Reform Act alone is not a material change of circumstance that would provide grounds for modification of an existing alimony order. However, where an existing order exceeds the durational limits available under General Term Alimony, the award is modifiable. There are specific dates when parties affected by the new durational limits may start filing for modification, the earliest of which is March 1, 2013.

Modifications based on retirement of the payor may be considered on or after March 1, 2013. There may be instances, based upon cohabitation of a recipient spouse, where a modification may be filed earlier.

An award of alimony that the parties previously agreed is not modifiable (or "survived" the judgment) remains subject to a high standard for modification. This is true even if the terms exceed the durational limits set for General Term Alimony.

When determining a payor's income in modification proceedings, the Court may not consider the income or assets of his or her spouse. Income from a second job or overtime employment is also not considered if: (1) the payor works more than a single full-time equivalent position; and (2) the second job/overtime commenced after entry of the initial alimony order.

Payment of Alimony and Child Support

The Alimony Reform Act takes into account payment of child support. When the Court orders a payor to pay alimony concurrently with child support, it excludes income already allocated for child support (generally the first \$250,000.00) in determining available income to pay alimony. After child support has ended, the combined duration of payment of child support and alimony should not exceed the longer of the alimony duration available at divorce; or up to five years with payment of Rehabilitative Alimony.

Security for Payment

The Court may order the payor to obtain life insurance or another form of security during the term of payment. This obligation is modifiable.

Conclusion

The Alimony Reform Act of 2011 has widespread effects on previous divorce cases, and future cases. Existing alimony awards should be reviewed by an attorney to determine whether they are impacted by this change in law.

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