

## **NEW ALIMONY LAW**

Massachusetts General Laws chapter 208, section 34

### Alimony and Assignment of Property

Upon divorce or upon a complaint in an action brought at any time after a divorce, whether such a divorce has been adjudged in this commonwealth or another jurisdiction, the court of the commonwealth, provided there is personal jurisdiction over both parties, may make a judgment for either of the parties to pay alimony to the other **under sections 48 to 55, inclusive.**

In addition to or in lieu of a judgment to pay alimony, the court may assign to either husband or wife all or any part of the estate of the other, including but not limited to, all vested and nonvested benefits, rights and funds accrued during the marriage and which shall include, but not be limited to, retirement benefits, military retirement benefits if qualified under and to the extent provided by federal law, pension, profit-sharing, annuity, deferred compensation and insurance.

Note: this language was stricken:

~~In determining the amount of alimony, if any, to be paid, or in fixing the nature and value of the property, if any, to be so assigned, the court, after hearing the witnesses, if any, of each party, shall consider the length of the marriage, the conduct of the parties during the marriage, the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities and needs of each of the parties and the opportunity of each for future acquisition of capital assets and income.~~

It was replaced by the following:

**In fixing the nature and value of the property, if any, to be so assigned, the court, after hearing the witnesses, if any, of each of the parties, shall consider the length of the marriage, the conduct of the parties during the marriage, the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities and needs of each of the parties, the opportunity of each for future acquisition of capital assets and income, and the amount and duration of alimony, if any, awarded under sections 48 to 55, inclusive.**

In fixing the nature and value of the property to be so assigned, the court shall also consider the present and future needs of the dependent children of the marriage. The court may also consider the contribution of each of the parties in the acquisition, preservation or appreciation in value of their respective estates and the contribution of each of the parties as a homemaker to the family unit. When the court makes an order for alimony on behalf of a spouse, said court shall determine whether the obligor under such order has health insurance or other health coverage available to him through an employer or organization or has health insurance or

other health coverage available to him at reasonable cost that may be extended to cover the spouse for whom support is ordered. When said court has determined that the obligor has such insurance or coverage available to him, said court shall include in the support order a requirement that the obligor do one of the following: exercise the option of additional coverage in favor of the spouse, obtain coverage for the spouse, or reimburse the spouse for the cost of health insurance. In no event shall the order for alimony be reduced as a result of the obligor's cost for health insurance coverage for the spouse.

**§ 48.**

**As used in sections 49 to 55, inclusive, the following words shall, unless the context requires otherwise, have the following meanings:-**

**"Alimony", the payment of support from one spouse to another for a reasonable length of time, pursuant to a court order and for the purpose of providing a spouse in need of support periodic payments from a spouse who has the ability to pay it.**

**"General term alimony", the periodic payment of support to a recipient spouse who is economically dependent.**

**"Rehabilitative alimony", the periodic payment of support to a recipient spouse who is expected to become economically self-sufficient by a predicted time, such as, without limitation, reemployment; completion of job training; or receipt of a sum due from the payor spouse pursuant to a judgment.**

**"Reimbursement alimony", the periodic or one-time payment of support to a recipient spouse after a marriage of not more than 5 years and for the purpose of compensating the recipient for economic or noneconomic contribution to the financial resources of the payor spouse, such as enabling the payor spouse to complete an education or job training.**

**"Transitional alimony", the periodic or one-time payment of support to a recipient spouse after a marriage of not more than 5 years and for the purpose of transitioning the recipient to an adjusted lifestyle or location as a result of the divorce.**

**"Duration of marriage", the number of months from the date of legal marriage to the date of service of a complaint or petition for divorce or separate support duly filed in a court of the commonwealth or another court with jurisdiction to terminate the marriage. The court shall have discretion to increase the duration of marriage where there is evidence that the parties' economic marital partnership began during their cohabitation period prior to the marriage.**

**"Full retirement age", the payor's usual or ordinary retirement age for United States old-age social security benefits. It shall not mean "early retirement age" if early retirement is available to the payor or "maximum benefit retirement age" if additional benefits are available as a result of delayed retirement.**

**§ 49.**

**(a) General term alimony shall terminate upon the remarriage of the recipient or the death of either spouse; provided, however, that the court may require the payor spouse to provide life insurance or another form of reasonable security for payment of sums due to the recipient in the event of the payor's death during the alimony term.**

**(b) Except upon a court finding that deviation beyond the time limits of this section are required in the interests of justice, where the duration of marriage is 20 years or less, general term alimony shall terminate no later than a date certain in accordance with durational limits set forth below:**

**(1) If the duration of marriage is 5 years or less, general term alimony shall be no greater than one-half the number of months of the marriage.**

**(2) If the duration of marriage is 10 years or less, but more than 5 years, general term alimony shall be no greater than 60 per cent of the number of months of the marriage.**

**(3) If the duration of marriage is 15 years or less, but more than 10 years, general term alimony shall be no greater than 70 per cent of the number of months of the marriage.**

**(4) If the duration of marriage is 20 years or less, but more than 15 years, general term alimony shall be no greater than 80 per cent of the number of months of the marriage.**

**(c) The court shall have discretion to order alimony for an indefinite length of time for marriages longer than 20 years.**

**(d) General term alimony shall be suspended, reduced or terminated upon the cohabitation of the recipient spouse when the payor shows that the recipient has maintained a common household, as defined below, with another person for a continuous period of at least 3 months.**

**(1) Persons are deemed to maintain a common household when they share a primary residence together with or without others. In determining whether the recipient is maintaining a common household, the court may consider any of the following factors:**

**(i) oral or written statements or representations made to third parties regarding the relationship of the cohabitants;**

**(ii) the economic interdependence of the couple or economic dependence of 1 party on the other;**

**(iii) the common household couple engaging in conduct and collaborative roles in furtherance of their life together;**

**(iv) the benefit in the life of either or both of the common household parties from their relationship;**

**(v) the community reputation of the parties as a couple; or**

**(vi) other relevant and material factors.**

**(2) An alimony obligation suspended, reduced or terminated under this provision may be reinstated upon termination of the recipient's common household relationship; but, if reinstated, it shall not extend beyond the termination date of the original order.**

**(e) Unless the payor and recipient agree otherwise, general term alimony may be modified in duration or amount upon a material change of circumstances warranting modification. Modification may be permanent, indefinite, or for a finite duration, as may be appropriate under the circumstances before the court. Nothing in this section shall be construed to permit alimony reinstatement after the recipient's remarriage, except by the parties' express written agreement.**

**(f) Once issued, general term alimony orders shall terminate upon the payor attaining the full retirement age when he or she is eligible for the old-age retirement benefit under the United States Old-Age, Disability, and Survivors Insurance Act, 42 U.S.C. 416, as amended and as may be amended in the future. The payor's ability to work beyond said age shall not be a reason to extend alimony, provided that:**

**(1) When the court enters an initial alimony judgment, the court may set a different alimony termination date for good cause shown. In granting deviation, the court shall enter written findings of the reasons for deviation.**

**(2) The court may grant a recipient an extension of an existing alimony order for good cause shown. In granting an extension, the court shall enter written findings of:**

**(i) a material change of circumstance that occurred after entry of the alimony judgment; and**

**(ii) reasons for the extension that are supported by clear and convincing evidence.**

## **§ 50**

**(a) Rehabilitative alimony shall terminate upon the remarriage of the recipient, or the occurrence of a specific event in the future, or the death of either spouse; provided, however, that the court may require the payor to provide reasonable security for payment of sums due to the recipient in the event of the payor's death during the alimony term.**

**(b) The alimony term for rehabilitative alimony shall be no more than 5 years. Unless the recipient has remarried, the rehabilitative alimony may be extended on a complaint for modification upon a showing of compelling circumstances in the event that:**

**(1) unforeseen events prevent the recipient spouse from being self-supporting at the end of the term with due consideration to the length of the marriage;**

**(2) the court finds that the recipient endeavored to become self-supporting; and**

**(3) the payor has continuing ability to pay and no undue burden.**

**(c) The court shall have discretion to modify the amount of periodic rehabilitative alimony based upon material change of circumstance within the rehabilitative period.**

## **§ 51**

**(a) Reimbursement alimony shall terminate upon the death of the recipient or a date certain.**

**(b) Reimbursement alimony may not be modified by either party.**

**(c) Income guidelines set forth in subsection (b) of section 53 shall not apply to reimbursement alimony.**

## **§ 52**

**(a) Transitional alimony shall terminate upon the death of the recipient or a date certain that is not longer than 3 years from the date of the parties' divorce; provided, however, that the court may require the payor to provide reasonable security for payment of sums due to the recipient in the event of the payor's death during the alimony term.**

**(b) Transitional alimony may not be modified, extended or replaced by another form of alimony.**

## **§ 53**

**(a) In determining the appropriate form of alimony and in setting the amount and duration of support, a court shall consider: the length of the marriage; age of the parties; health of the parties; both parties' income, employment and employability, including employability through reasonable diligence and additional training, if necessary; economic and non-economic contribution to the marriage; marital lifestyle; ability of each party to maintain the marital lifestyle; lost economic opportunity as a result of the marriage; and such other factors as the court may deem relevant and material.**

**(b) Except for reimbursement alimony or circumstances warranting deviation for other forms of alimony, the amount of alimony should generally not exceed the recipient's need or 30 per cent to 35 per cent of the difference between the parties' gross incomes established at the time of the order being issued. Subject to subsection (c), income shall be defined as set forth in the Massachusetts child support guidelines, as they may be amended from time-to-time.**

**(c) For purposes of setting an alimony order, the court shall exclude from its income calculation:**

**(1) capital gain income and dividend and interest income which derives from assets equitably divided between the parties under section 34; and**

**(2) gross income which the court has already considered for setting a child support order whether pursuant to the Massachusetts child support guidelines or otherwise; provided, however, that nothing in this section shall limit the court's discretion to cast a presumptive child support order under the child support guidelines in terms of unallocated or undifferentiated alimony and child support.**

**(d) In setting an initial alimony order, or in modifying an existing order, the court may deviate from duration and amount limits for general term alimony and rehabilitative alimony upon written findings that deviation is necessary. Grounds for deviation may include:**

**(1) advanced age; chronic illness; or unusual health circumstances of either party;**

**(2) tax considerations applicable to the parties;**

**(3) whether the payor spouse is providing health insurance and the cost of health insurance for the recipient spouse;**

**(4) whether the payor spouse has been ordered to secure life insurance for the benefit of the recipient spouse and the cost of such insurance;**

**(5) sources and amounts of unearned income, including capital gains, interest and dividends, annuity and investment income from assets that were not allocated in the parties divorce;**

**(6) significant premarital cohabitation that included economic partnership or marital separation of significant duration, each of which the court may consider in determining the length of the marriage;**

**(7) a party's inability to provide for his or her own support by reason of physical or mental abuse by the payor;**

**(8) a party's inability to provide for his or her own support by reason of a party's deficiency of property, maintenance or employment opportunity; and**

**(9) upon written findings, any other factor that the court deems relevant and material.**

**(e) In determining the incomes of parties with respect to the issue of alimony, the court may attribute income to a party who is unemployed or underemployed.**

**(f) Where the court orders alimony concurrent with or subsequent to a child support order, the combined duration of alimony and child support shall not exceed the longer of: (i) the alimony duration available at the time of divorce; or (ii) rehabilitative alimony commencing upon the termination of child support.**

#### **§ 54**

**(a) Sections 48 to 55, inclusive, shall not be deemed a material change of circumstance that warrants modification of the amount of existing alimony judgments; provided, however, that existing alimony judgments that exceed the durational limits set forth in section 49 shall be deemed a material change of circumstance that warrant modification. Existing alimony awards shall be deemed general term alimony, and shall be modified upon a complaint for modification without additional material change of circumstance, unless the court finds that deviation from the durational limits is warranted.**

**(b) Under no circumstances shall sections 48 to 55, inclusive, provide a right to seek or receive modification of an existing alimony judgment in which the parties have agreed that their alimony judgment is not**

**modifiable, or in which the parties have expressed their intention that their agreed alimony provisions survive the judgment and therefore are not modifiable.**

**(c) In the event of the payor's remarriage, income and assets of the payor's spouse shall not be considered in a redetermination of alimony in a modification action.**

**(d) Income from a second job or overtime work shall be presumed immaterial to alimony modification if:**

**(1) a party works more than a single full-time equivalent position;  
and**

**(2) the second job or overtime commenced after entry of the initial order.**

## **§ 55**

**(a) The court may require reasonable security for alimony in the event of the payor's death during the alimony period. Security may include, but not be limited to, maintenance of life insurance.**

**(b) Orders to maintain life insurance shall be based upon due consideration of the following factors: age and insurability of the payor; cost of insurance; amount of the judgment; policies carried during the marriage; duration of the alimony order; prevailing interest rates at the time of the order and other obligations of the payor.**

**(c) Orders to maintain security shall be modifiable upon a material change of circumstance.**

**SECTION 5. Section 49 of chapter 208 of the General Laws shall be prospective, such that alimony judgments entered before March 1, 2012 shall terminate only as set forth in subsection (b) of said section 49.**

**SECTION 6. Any complaint for modification filed by a payor pursuant to section 54 of chapter 208 of the General Laws solely because the existing alimony judgment exceeds the durational limits set forth in section 49 of said chapter 208, may only be filed pursuant to the following:**

**(1) Payors who were married to the alimony recipient 5 years or less, may file a modification action on or after March 1, 2013.**

**(2) Payors who were married to the alimony recipient 10 years or less, but more than 5 years, may file a modification action on or after March 1, 2014**

**(3) Payors who were married to the alimony recipient 15 years or less, but more than 10 years, may file a modification action on or after March 1, 2015.**

**(4) Payors who were married to the alimony recipient 20 years or less, but more than 15 years, may file a modification action on or after September 1, 2015.**

**SECTION 7. Notwithstanding the provisions of clauses (1) to (4) of section 6 of this act, any payor who is eligible for the full old-age benefit under the United States Old Age, Disability, and Survivor Insurance Act, 42 U.S.C. 416, or who will become eligible for said benefit on or before March 1, 2015 may file a complaint for modification on or after March 1, 2013.**

**SECTION 8. Sections 1 to 7, inclusive, shall take effect on March 1, 2012.**