

New Temporary Spousal Maintenance Standard

The passage of the [no-fault bill](#) was accompanied by two other significant changes to the divorce law in New York. One was a change in [how the allocation of attorney fees is decided](#), and the other was passage of a formula-based approach to temporary spousal maintenance, which is explained in this article.

Before this change, spousal maintenance or support, long ago called alimony, was determined on a number of factors on a case-by-case basis. This resulted in inconsistent amounts and it was often difficult to predict what a court might do in a given case. Now, in any matrimonial action where the parties have not agreed to a maintenance amount, a court must make an award of temporary maintenance based upon a formula approach.

This approach calculates support in two ways, and the lower result is used. The first method subtracts 20% of the income of the lower-earning spouse (payee) from 30% of the income of the higher income-earning spouse (payor). The second method takes 40% of the total combined income, then subtracts the payee’s income. If the number under this second approach is less than or equal to zero, then no support is to be paid.

Here is an example:

Payor's Income		Payee's Income	
\$90,000	Gross Income	\$23,000	
\$6,885	Less FICA & Medicare	\$1,756	
\$83,115	Income for Maintenance	\$21,241	
Calculation 1			
30% of Payor's Income	\$24,935		
20% of Payee's Income	\$4,248		
	\$20,686	Per Year	
	\$1,724	Per Month	
Calculation 2			
40% of Combined Income	\$41,742		
Payee's Income	<u>\$21,241</u>		
	\$20,502	Per Year	
	\$1,708	Per Month	
If calculation 2 is less than or equal to zero, then no maintenance is paid to the Payee. Otherwise, the lower of the two calculated amounts is paid to the Payee. In this example, \$20,502 per year or \$1,708 per month would be paid.			

The new statute provides that a court must use the number resulting from the formula unless the court concludes that the amount would be “unjust and inappropriate.” The law provides a list of 17 factors to be weighed in determining whether to depart from the strict application of the formula and apply a higher or lower temporary maintenance amount.

The statute addresses temporary maintenance, or maintenance **during the divorce action**. It does not make many changes to the law’s provisions regarding maintenance after the divorce, although it does establish a commission to study New York’s maintenance laws and report back in nine months. Without a formula-based approach to guide courts in establishing post-divorce maintenance, courts may continue the temporary maintenance award for a period of time, using the old multiple-factor basis to justify the amount.

This new statute removes much of the guesswork in estimating spousal maintenance and provides predictability to divorcing couples.

Please read my articles on other laws recently passed affecting divorce situations, including [new no-fault grounds for divorce](#), [attorney’s fees](#), and [child support](#).