

Ep #11: Making a Plan for Vacations After Divorce



Full Episode Transcript

With Your Host

Lauren Fair

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You're listening to *The Sensible Split* podcast, Episode 11. Today, we're talking about how to plan for vacations with kids after a divorce. I'll highlight what to consider including in your parenting plan to prevent future conflicts and stress.

The Sensible Split is a podcast for smart but overwhelmed women in search of a roadmap to a successful separation and divorce. If you are looking for guidance in navigating the practical, legal, and emotional aspects of divorce with confidence, this is the show for you. Here's your host, Master Certified Life and Divorce Coach, Divorce Attorney, and Mediator, Lauren Fair.

Hello, ladies, how are you? I hope your week is off to a great start. My kids are on spring break this week. We usually travel over the breaks, but we're staying in town this spring break. Not all my kids have the same spring break. My step kids are on a different academic calendar than my two little ones, so that's super fun.

We decided to go to Disney over my older kids' spring break earlier this month. And so, we just did our trip at that point, and decided for the little ones' spring break to just stay in town. I have to say, I never thought I'd say this, but I'm a little Disney'd out. Is that wrong? Does anybody feel me about that?

I grew up going to Disney every year, being obsessed with it, and loving being immersed in the magic and everything. I don't know, the last few times I've been there, it's been a little different for me. I just need a break for a little bit. I never thought I'd say that, but here we are. So, not going again over the little ones' spring break.

We're just staying in town, here in San Diego, doing some activities around town. We've just been having a good time and kind of having more of a low-key Spring Break this year. But I've been thinking about how summer is almost here. It's less than two months now until my little ones are out of school. We've got some exciting travel planned for this summer that we're looking forward to.

That got me thinking about this topic for you today. What I want to talk to you about today, is planning for vacations with your kids after divorce, and what you want to consider now about what will go into your parenting plan, about

Ep #11: Making a Plan for Vacations After Divorce

vacations with the kids after the divorce has been finalised. Or even after you have some temporary agreement or order that allows for that while your case is still getting worked out.

Parenting plans range from being fairly vague to very detailed. I find that, depending on the case, there's just a lot of variation in that regard for different reasons. I'm a big advocate of at least thinking about and talking through what could potentially go into a parenting plan now to avoid unnecessary conflict down the road.

If you don't have details and a parenting plan, and it's more on that vague side, that works. So long as it works. Which means, so long as everyone's getting along. But when it doesn't work and you have a vague order, you have very little to fall back on in terms of enforceable language. And so, I think it's just something that's really important to think through.

How much detail do I want in this disagreement if we, down the road, don't see eye to eye on something, and we're not able to reach an agreement about how we're going to... say, for example... take vacation time with our children? And at that point, would I have wanted myself, during the divorce, to come up with some language that we would have as a default in the parenting plan if we don't agree?

Because the details in the parenting plan largely are that, it's a default in the event that you don't agree otherwise, right? If you and your co parent agree on something different, then typically that is your prerogative, as co parents, to do what you think is best for your family.

But if you don't have an agreement, if you don't have something specific written up, you may find yourself in a situation where you are planning to take a vacation and now you have disagreement over the details of it; whether you're allowed to take it, whether you give enough notice, etc. And you may be in a situation where you don't have a lot of good options to remedy the situation and still be able to take your vacation on time.

Ep #11: Making a Plan for Vacations After Divorce

So, if you end up with a last-minute conflict over vacation details that you haven't ironed out in advance, that really can lead to a situation where it's potentially too late for a court to resolve it in time for your vacation. And it may cause undue stress for you, undue stress for your children, and also cause damage to your co-parenting relationship.

Let's be mindful of some common issues that arise in vacation provisions of parenting plans, so you can think through those now and avoid unnecessary stress later. It doesn't mean you have to include all of the things that I'm going to call out for you, as potential things that you possibly could include. It's meant to bring some of these issues to your attention, so that you can think about what is best for you to include. What you think makes the most sense for your family.

Because you know your situation better than anyone else, and you are best situated to determine what level of detail is appropriate for you, what kind of conditions that you want or don't want, with respect to your vacation provision in your parenting plan, or your parenting plan in general.

One thing I'll say from past experience, is that judges tend to not like disputes over vacation time and holiday time. They tend to be somewhat complex in application; the split of the breaks, the vacation time allocation, whose holiday it is, how those different special times interact with each other when they overlap.

It's typically something that I see judges have the opinion, "Hey, these are things that you as co parents should be able to work out, and I really don't want to get involved in them." If you can't agree, of course, that's what the judges are there for. But usually, at least in my experience, they are not thrilled about getting into those types of details, and really want parents to be able to work these things out on their own for their family.

Again, you can be as vague or specific in parenting plans as you want to be, as maybe possible in your case. And, I like to go over the pros and cons of both of those options with my clients. That's definitely something that you would want to do with the professionals that you're working with in your case, so that you can make the best decision for you.

Ep #11: Making a Plan for Vacations After Divorce

In terms of being vague or specific in the language of a parenting plan, the same thing goes specifically for vacation provisions. The question is too, what constitutes vacation time? And so, when I'm mentioning vacation time today, I'm really thinking about uninterrupted parenting time with the child for travel and/or leisure purposes.

So, you might be travelling out of town, or like us this spring break, you might be staying in town and doing kind of a staycation. But you're wanting to have uninterrupted parenting time for the purposes of a vacation-like experience. Alright, I'm going to dive into a list of potential issues or conditions for you to think about. Whether you would want to include something like that in your parenting plan or not.

The first one is, how much time will each of you get in vacation time with the children every year? It oftentimes can be helpful to have an understanding, an agreement, in advance, about how much uninterrupted parenting time with a child for travel or leisure you're going to have each year. So, is that going to be, for example, seven days of uninterrupted parenting time that you're each going to have? Is it 14 days? Is it three weeks?

What makes sense for you, based upon the history of what you're used to doing with the kids on vacation? Or what you might want to do with the children differently, in terms of vacation in the future? And also, how old are your children?

Typically, for younger children, it can be more challenging to be away from a parent who has been an active participant in their life for a longer period of time. So, if you have very young children, you might want to consider how much time makes sense for them. Versus, a teenager can easily go a week, two weeks, three weeks away from a parent, and not be detrimental to that child.

So, think about "How much vacation time do I realistically think that I'm going to take every year with the kids," based on those factors; history, the future, the ages of the kids. And also, what's realistic for you, based on how much PTO you have every year? What is your availability to take those types of trips? And

Ep #11: Making a Plan for Vacations After Divorce

come up with a number that you think makes sense for you to propose be included for parenting time for the kids.

Whatever you're asking for, in terms of number of days, just be prepared for the likelihood that your co parent is going to want the same amount of days. So, if you have some concern about them having the same amount of days as you have, it's something to think about in advance. About how you're going to approach that, and what the likelihood of success is on that type of request.

It's certainly something to discuss with an attorney. "What's the likelihood of me getting a significantly different period of time for vacation time than my co parent?" Because more often than not, it ends up being the same amount of time allocated to each parent in typical situations.

Okay, so the second question then is: In that time that you are proposing that each of you have, in vacation time each year, be taken consecutively? Can the days be taken consecutively, or do they have to be broken down into shorter chunks of time?

For example, if you have a 14-day vacation period per parent with the kids each year, is the expectation that each parent will be able to take the entire 14 days in a single block? Usually during the summer, are they able to take that entire two weeks all at one time? Or is it the intention that you have up to 14 days per year, and that be taken in no longer than, say, a seven consecutive day block? So, your 14 days would get split up into two seven-day periods that you could use at different times of the year.

Again, there's no right or wrong here, it's just something to think about. Because if you don't specify that they can't be taken all together at once, consecutively, then the likelihood is they might be. So, think about, again, the ages of the children, and what you think is appropriate based on your particular circumstances in developing what your proposal is on this.

And you want to think about it too, for the third point, how much time can be tacked together from this vacation time onto your regular parenting time? For example, when we're talking about vacation time in this way, we're talking about

Ep #11: Making a Plan for Vacations After Divorce

this uninterrupted time that usually will overlap or take precedence over the other parent's parenting time.

So, let's say that you have a week on-week off schedule. Meaning, the kids are with one parent for one week, and they're with the other parent for the following week. They continue on that alternating week schedule. But Parent A decides, after their regular week with the children, they are going to then, during the other parent's week, take a seven-day vacation period. And then they're going to resume their normal parenting time.

What ends up happening then, is that week in between Parent A's normal parenting week, where the kids would be with Parent B, if the vacation time is taken by Parent A, now Parent A has three consecutive weeks with the children. And maybe that's totally fine. But sometimes I find that people don't think about that possibility, and it can cause some concern or conflict when it comes up.

And so, this is just something to think about up front. Are you okay with vacation time being tacked onto regular parenting time in an unlimited amount? Or is there some kind of limit to that? Such that you want to put a cap on how long the children are away from one parent versus the other?

Alright, the fourth point to consider is: How does a parent's right to a vacation period with their children interact with a specific holiday schedule or school break schedules? Oftentimes, coparents will have specific agreements about where the children are going to spend holidays, or school breaks or both.

So, what happens if, for example, Dad has Christmas Eve and Christmas Day with the kids this year, and then Mom notices Dad for a vacation over the Christmas holiday. What happens then? What's the result when that happens?

You want to make sure that that is thought about in advance, and addressed. Oftentimes, what I see parents agree to is having the vacation period not be permitted to interrupt another parent's specific holiday time with the kids. It doesn't have to be that result, but it's something to think about in advance and agree upon.

Ep #11: Making a Plan for Vacations After Divorce

Fifth point to consider: Is the other parent's missed regular parenting time going to be made up? So, the non-traveling parent, whose parenting time is being interrupted by the traveling parent's vacation time, right? Is the non-traveling parent going to have that time made up? Is there an expectation that that parent gets their days back at some other time during the month, and taken away from the traveling parent's perhaps regular parenting time?

If you have equal amounts of vacation time it might not make sense to do that, because you each are going to be taking some days away from the other in order to do the vacation. But I think, on this point, it's often just cleaner not to have the non-traveling parent's parenting days be made up later in the month. But that's something to determine, based on perhaps, among other things, the length of the time that the children have been away from that parent.

I mean, this is really, I think, a point of good co-parenting no matter what your order says. You've got to think about, "What makes sense for our kids here? If we, just for a moment, didn't have to follow the letter of this agreement to the tee, if the two of us agree to do something different, what would just make most sense for the kids here?"

So, if it's been three weeks since the kids have seen a parent, and they come back from vacation time and it's the traveling parent's regular parenting time again, they're able to tack that on... just consider, "Does it make sense here, even though I could keep the kids, because technically it's my time, they haven't seen their other parent in almost a month. Maybe I could arrange for them to spend that time with the other parent."

You have to think about, not just exactly how do these provisions read, which of course you do if you don't have an agreement otherwise, but you want to think about, "How can I be flexible as a co parent, and do what's best for the kids here? And also, to do what I would like to have done for me?"

Alright, sixth point: Does travel out of the county, the state, or the country require the other parent's consent? If you are just driving out of the county... So, for us, driving up to Disneyland, not that far away, an hour and a half away, does that require the other parent's consent for going out of the county? What about if

Ep #11: Making a Plan for Vacations After Divorce

we're traveling out of state, is that going to require the agreement of the other parent?

Or more commonly, if I'm going out of the country with the children, is that going to require the other parent's consent? So, you want to think about what is the least restrictive option here that makes sense, given any special concerns in your situation?

Obviously, if there are safety concerns, or any kind of child abduction concerns, as it relates to the other parent, you have to use your common sense and your legal advice to come to a conclusion about what's best for you. But absent special considerations, you want to think about, "What is the most flexible type of arrangement we could have here?" Because it's likely to apply to both parents.

Anytime that you're thinking about wanting to impose a condition or a requirement on your co parent, you have to assume that if you get that it's likely to apply to both of you. And so, you have to think about whether you want to be notifying, and potentially having to get consent from your co parent, just to travel an hour and a half out of the county; to Disneyland, for example?

The most common here is the situation where you want to travel outside the country with the children. That's the most common where consent is oftentimes required. Particularly if you have joint legal custody, which refers to decision making around the children's health, education, and welfare. In order to get a passport for the children both parents' consent and participation in that process is required.

And so, there's that consent piece baked into getting a passport, if the kids don't have one already, anyway, when you have a joint legal custody situation. But even if they already have passports, you have to think about, "If either of us want to travel outside the country, do we want there to be some consent from both parents required in order for that to happen? Or do we just want to respect each other as a co parent and trust that we're going to be given the requisite notification about the children traveling outside the country?"

Ep #11: Making a Plan for Vacations After Divorce

And some deference as to your judgment as a parent, in terms of where you're taking them and their safety, and all of that. The other thing to think about too, is that some countries that you travel to alone with a child, so with only one parent and a child, sometimes those countries have documentation requirements for the other parent anyway.

So, that's just a side note. If you are traveling to another country without your co parent but with your children, even though you may have their passports, you're going to want to check the State Department's website, with respect to the particular country that you're traveling to, to see what is the requirement that that particular country has in terms of documentation.

Because there are some countries that require a notarized letter from the non-traveling parent to indicate they're aware of and consent to that travel. So, just consider for yourself what kind of travel you anticipate doing in the future, and how much flexibility around that do you want for yourself. And what's necessary for the particular circumstances in your case, considering the safety of the children.

Seventh point: What if both parents want the same vacation dates? Who gets priority if both of you want the week of July 4th. Oftentimes, the parent who gives the notice first is going to have the priority on the date. But that really depends on your particular situation, your particular jurisdiction. It's important to have some awareness up front about how that would be treated.

Sometimes, something that people do is, they indicate which parent is going to have priority in terms of making that first request for vacation time in a particular year. So, Mom on even numbered years gets priority on vacation dates, if they're noticed by X date. Dad gets that same priority in odd numbered years, if he gives notice by X date. As always, I'm using "Mom" and "Dad" just for simplicity; it is absolutely no disrespect to same sex parents.

So, I think the best point here, with respect to priority, is to try to plan your vacations as far in advance as possible, and provide notice to the other parent as soon as you know what those dates are, just to try to avoid a situation where the dates that you wanted have been taken.

Ep #11: Making a Plan for Vacations After Divorce

For the next point: Is the other parent's approval of those dates required, or is it just notice that you are to provide? So, say you want that week over July 4th and you're going to communicate that to your co parent. Are you just required to say, "Hey, these are the vacation dates that I'm taking," and that's that. And so long as it doesn't interfere with their July 4th holiday, if it's their year to have July 4th under the plan, is that okay? Is that enough just to give them notice, or do they have to actually agree to those dates?

Sometimes there's some misunderstanding here. Oftentimes, it's just a notice. You're going to want to be very specific in your agreement as to what the requirements are in this regard. But oftentimes, it's a notice. It's something to think about, whether there's any situation in which approval would be something that would be expected.

On that note, when I have seen "approval" be part of language on vacation time, it sometimes involves if the vacation is interrupting school attendance. So, that is another point to consider. Can the vacation time interrupt the kid's school attendance?

Oftentimes, when we think of vacation, we're thinking about vacation time that happens in the summer, but it doesn't have to be. Or maybe your kids go to year-round school, such that they have school in the summer. Whenever that vacation time is, if school is happening during that time, is there any kind of restriction on a parent's ability to interrupt the school attendance for the vacation?

If so, if they're allowed to do that, are there conditions to being able to do that? Is it a requirement that if the children are going to miss school for a vacation that's agreed upon by both parents? Is it a requirement that the school personnel agree with that decision to take them on vacation during that time?

So, think about it, if you're expecting to take vacation at a time when it might interrupt the children's school, is that something that you're going to need to get agreement on? Or that you would want to have your agreement sought, if your co parent is the one asking to interrupt school attendance? And is there any kind

Ep #11: Making a Plan for Vacations After Divorce

of input from teachers or school personnel that you would want to be considered in determining whether that vacation over school time should happen or not?

When you're providing notice to the other parent about the vacation time that you're intending to take, what information do you have to give and how does that information need to be given? Some common pieces of information that would be included in this type of a notification would be the dates of travel, the destinations, the emergency phone number. Nowadays, it's just probably your cell phone, but you want to verify that. Where can you get in touch with the traveling parent, and the child if there's an emergency. And a flight itinerary.

Those things are usually given in writing; those are kind of the basics. Again, you would want to be specific in your order about what you're expecting to receive in terms of notice and the details about it, but those are ones that I commonly see.

Always having it be required to be provided in writing is prudent, just so that there's no misunderstanding about what was said verbally versus what wasn't. And how far in advance must notice be given?

So, is there a requirement that the traveling parent give 30-days' notice before an intended vacation? Do they have to give two weeks' notice? Do they have to give two months' notice? What is the required advance notice to be given in order for that vacation time to be valid?

And what happens if they don't abide by that? So, what if there's a 30-day notice period and the traveling parent gives 10 days' notice of an intended vacation? What happens at that particular point they've given notice, but it's not timely? What's the consequence of it not being timely?

I mean, there's going to be situations where you may not be able to give the full amount of notice. And you want to be aware of that, and considerate of the fact that, say for example, if they're traveling because there's been a death in the family out of state or something, they might not be able to give you 30 days' notice, right? So, you've got to be reasonable about what the circumstances are.

Ep #11: Making a Plan for Vacations After Divorce

But is there a notice period that you're expecting to have, so you can have some kind of advance notice about a vacation? When you're on vacation, what is your expectation about communication between the non-traveling parent and the child?

So, if you're taking a vacation that would mean, what is it going to look like for your child to communicate with the parent who is not traveling? And vice versa, when you're the one that's at home, and they're on a vacation with your co parent, then what is your expectation about how often you're going to hear from them, if at all? What is that communication going to look like?

If they're on a cruise ship or something, it might be more challenging or more costly for there to be really frequent communication, depending on the form of it. Versus if they're in a neighboring county, right? Or maybe they're camping, and they're not going to have cell service where they are. What is the expectation for that, in terms of frequency and form?

Or is it just not a concern at all? Is it like, "Hey, it's fine. When they're on vacation with the other parent, I don't expect to hear from them." But when you don't have clarity around what the expectation is about something like that... That is particularly one that stands out in my mind... about something that could create stress in the child; them feeling like they didn't meet some expectation about speaking to you while they were gone.

We want to do everything we can to reduce stress on the children about things like this. About details that come up when they are navigating between two homes and two parents who are not vacationing together.

An overarching consideration for you, in thinking about these vacation related concerns, is if you are inflexible, you're likely to get inflexibility back. So, even though with some of these things that we've talked about you could be very precise and very specific and very rigid about, what you include in your order, or what you require in terms of compliance with it from your co parent, etc., the goal isn't to be inflexible with this.

Ep #11: Making a Plan for Vacations After Divorce

The goal is just to think about these issues in advance, so that you can get clear on your own expectations about what you want to see come out of these issues, and be memorialized in terms of what you expect to happen going forward with your co parent. And that may also involve not being super specific on these things. Or being clear about them, and being clear that you're intending to be flexible with each other as much as possible.

Regardless of how specific and rigid or not you decide to be in the parenting plan, you have to remember that if you aren't flexible with your co parent, you're likely to get that back. Now, you can't guarantee that because you're flexible that you're necessarily going to get the same degree of flexibility back. That would be nice if that were the case, right?

But if you're inflexible, you're almost certainly going to get that back. You're definitely going to have a reduced likelihood of getting the same courtesy that you would like to expect. So, you want to always be thinking about, "How would I want to be treated in this situation?" And also, "How is it easiest for the kids? How is it most comfortable for the kids, for us to arrange whatever this particular part of the vacation aspect that we're trying to arrange? How could this just be easy for the kids, even if it's a little bit uncomfortable for me?"

For example, if you're traveling with your child and they want to bring the non-travelling parent a souvenir, or send them a postcard... Do people do that anymore? I feel like we used to do that a lot on vacation. I realize I don't get too many of those these days... But if they want to buy a souvenir, they want to send a postcard, they want to do something thoughtful for the other parent, support them in that, right?

Even if you don't particularly love the other parent that you're co-parenting with at that particular time, it's okay, it's not about them. It's about supporting your child in doing something that their little heart wants to do. Teaching them to be good little humans, and to be thoughtful and considerate in the way that they're proposing.

Even if you really aren't wanting to buy that souvenir for your co parent, or you're just really not feeling it to be real considerate of them on that particular day, it's

Ep #11: Making a Plan for Vacations After Divorce

totally normal, that stuff happens. But also, just try to think about what would be best for the child here.

As I mentioned earlier, good co-parenting really can sometimes involve letting the other parent see the children upon your return from vacation if you've been gone a long time. Think about what would you want to have done for you? And also, what would really just be best for the kids here.

So yeah, that concludes the list of the provisions that come to mind when I think about vacation time. I hope that they have been helpful for you to get you thinking about some of these details, and starting to brainstorm what would be important for you. And also, what's not important for you.

I am involved with a lot of families who are making this transition, who want to be very flexible with each other. They don't want really specific orders. I totally understand that and respect that. And it's just something to be mindful about, that works, so long as it works.

Sometimes it's helpful to at least think, "Do I want to be more detailed when things are good, we are on the same page about what's important for us, what's important for the children? And while we're in that cooperative spirit, do we want to at least talk through these issues? And decide ahead of time how we want to treat these issues, and each other, in future times that may be more challenging?"

If you set expectations with your co parent appropriately from the outset, it just reduces the chances of future conflict. If you've thought about it in advance, and you've made advanced decisions about what to do in these scenarios, then you are less likely to be in those last-minute scenarios without a solution.

Treat them how you want to be treated. You'll either get cooperation, or at minimum, you'll look good for court if you don't get cooperation, and you end up having to bring this type of an issue before the court. The more reasonable you look, the better position you are going in to make whatever requests it is that you're going to be asking for.

Ep #11: Making a Plan for Vacations After Divorce

As always, you're going to want to consult a lawyer in your jurisdiction about what can be included in your parenting plan. You are likely to get a much more detailed order by agreement than on a contested basis, I would say.

And so, something to think about when you are trying to reach a global resolution of your case by agreement is, "How can we do better here, together, than we might get for our family if we were to do this in court on a contested basis?" Because your kids deserve the best here. And, that's really what we're aiming to do.

That's all I have for you this week, my friends. Take care, and I'll see you next time.

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