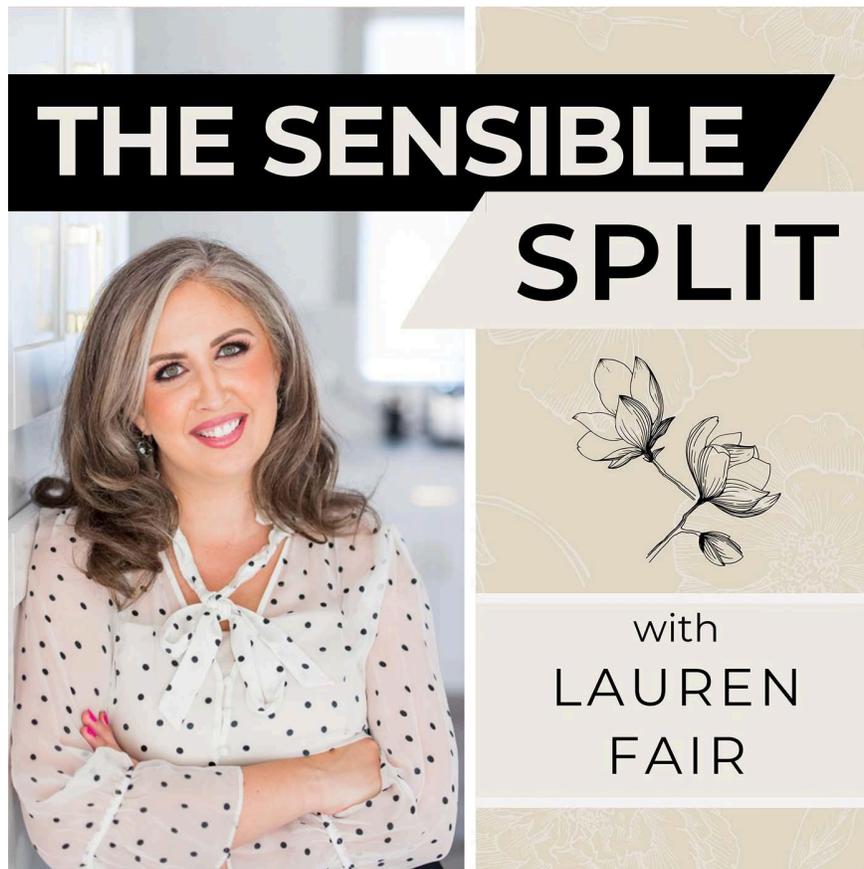


Ep #13: What You Need to Know about Spousal Support



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With Your Host

Lauren Fair

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You're listening to *The Sensible Split* podcast, Episode 13. Today I'm talking about spousal support and some key aspects for you to start thinking about.

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.

Hi ladies, welcome back to the podcast, it's good to be back here with you. I hope you're doing great. I've been having a fun month with birthdays in my house. My stepdaughter just turned 20. My son turned nine. So, we've been doing a lot of celebrating in our house this month. It's been really nice.

My mom also has been in town, from the East Coast, which is always a great time for everyone in my house when she's around. She's the type of person that's not a guest, even when she's a guest in your house. She's just like an addition to the house, a real help to us when she's in town. So, it's always enjoyable to have her around and for her to be able to spend time with her grandkids. And obviously, I enjoy spending time with her as well. So, it's been a good May for us, so far. I hope it's been going well for you, too.

Today, I want to talk to you about spousal support and some key things underneath the subject area umbrella that is spousal support for you to start thinking about. So, when I'm talking about spousal support, this is also known as "alimony." Okay? In California, it's called "spousal support". Where you are, it might be called "alimony" or "maintenance." But those are all just interchangeable terms for the same payment of support, or obligation to support a spouse.

Let me just give you a definition of what that includes. So, spousal support, which is also alimony or maintenance, is financial assistance provided by one spouse to the other after a divorce or separation. Or as part of that proceeding while that proceeding is pending. Sometimes there can be different types of spousal support, and I'll get into that in a moment.

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For example, there is spousal support in a form that is while the case is pending, that might have a different purpose than spousal support that would survive the entry of a judgment or a divorce decree; the document that ends the divorce and continues on into the future.

The primary purpose of spousal support is to help the lower earning or non-earning spouse to maintain a similar standard of living to that experienced during the marriage. And oh, boy, that's a big aspiration. You can't always get there. It's really hard to have two spouses now living in separate residences.

So, you've got two households, and one spouse foots the bill for both spouses to live how they did when they lived in a single residence. Especially here in Southern California with the rent being so astronomically high now, it's very difficult on a practical level for spousal support to meet the goal that it was designed for. Which is to allow both spouses to live as close to that, what we call "marital standard of living," the way you live during the marriage, as much as possible.

But that's what the goal is. It's just difficult to get there sometimes, just because there's, for most people, not enough money to go around to make that happen. Right? But that's what the purpose of it is.

The specifics of spousal support, including the amount and the duration, can vary wildly based on factors like how long you were married, the financial needs and resources of both spouses, their ages and their health, their contributions to the marriage, and other non-financial contributions too like, did a spouse stay home to take care of children, or to take care of a household? And did that spouse contribute in those ways to the attainment of a certain position in a company or in a career for now the higher earning spouse?

So, there can be many different types of factors that are considered in determining what an appropriate amount of spousal support is. That is going to vary a lot by state. This is something that's really important for you to get professional advice on in your particular state. Because how spousal support is determined, for example, in California, versus how it's determined in Texas, it's quite different.

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And the outcomes of a request for spousal support in those two jurisdictions, as just examples, would be very different. And so, this is an area I find where, in many jurisdictions, the court has a lot of discretion in determining what that amount of support should be. What I mean by that is, there is guidance in the law as to how the court is supposed to look at how to determine spousal support. But within that, the judge hearing the case has a lot of leeway in reaching conclusions about what the specific number would be.

Sometimes support, when that's the case, can be difficult to settle because the outcome that you get if you went to court is not always obvious from the get-go. So, spousal support can be temporary, it can be rehabilitative; which is like it's intended to support the recipient spouse while they gain skills or education to become self-sufficient. And it can be long term or permanent.

I hate the word “permanent,” because in most cases, it's really not permanent, right? When we say permanent, people think “forever” in that same amount. And that's usually not the case. Permanent is usually a poor replacement word for “long term.”

So, long term support is that support we're talking about that is what happens after a judgment is entered and continues long into the future sometimes. How long depends on how long the parties were married, what their agreement was, when the divorce was finalized, or what the court ordered.

The terms of the spousal support agreement are typically negotiated and agreed upon by the spouses, because, as we've talked about, about 95-ish% of cases end up settling. So, typically, there is, at some point, an agreement on what the support should be, or it's determined by the court if there is no agreement.

And if the support is going to continue beyond the end of the initial divorce case, then that kind of long-term support is going to be, in many situations, subject to change unless the parties have agreed otherwise.

Usually, how we see spousal support requests come up is when a separation has happened and there is a spouse who earns substantially less than the other spouse, or is not employed at all. Then, typically, they need some support in

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order to be able to, in the short term, have some stability in whatever their living arrangements are. And in the long term, to be able to have some support in living as close to the way that the parties did during the marriage as possible.

Spousal support is actually a legal duty of support owed by the spouses to each other. So, this is one of those things that when you get married and you're planning the really exciting wedding, the honeymoon, your life together and all of that, you're not really thinking about, typically, what are the legal rights and obligations that actually come from this marriage. One of them is a duty of spousal support between the spouses.

It actually goes both ways, that duty of support, but it really is a question at the time of divorce who is the spouse, if any, who is in actual need of support, and who has the ability to pay it. So, it's actually a reciprocal duty, but the facts bear out who pays who, if anyone pays anyone at the time of divorce. Spousal support can be a subject area of divorce that can have a lot of contention to it.

And as I said, sometimes it can be a little trickier to settle, because oftentimes the way the law reads is in a way that gives judges some leeway in determining what the amounts are. So, this is something that you want to get a good education on in your particular situation, and be able to really think through what you are willing to entertain in terms of a resolution on the spousal support issue.

This oftentimes requires some research and preparation on your part. So, you may be wondering how spousal support is determined? Again, that's going to vary a lot based on where you are. But oftentimes, what I see is some combination of the following. It is determined by, sometimes, a calculator. Certain types of support can be calculated using a calculator, other types cannot be.

The ones that cannot be, then are typically determined by factors that are found in the local laws that explain the different types of facts about the marriage that a judge would take into consideration. Like the ones we talked about earlier. Like the financial circumstances of both parties, the length of the marriage. Sometimes if there was domestic violence that was documented during the marriage.

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There are all different types of factual considerations that can go into determining support, as well. And then some findings as to, “Okay, in this marriage, this is what happened,” as it relates to these factors. And that, therefore, translates into, “This should be the amount of support.” Those two scenarios, a calculator or having there be some factual findings under certain factors that are in the law, are two different ways of how spousal support is looked at.

But we're always thinking, here on this podcast, about how we can, through alternative dispute resolution means, address the issue of resolving spousal support? If you're in a jurisdiction that uses a calculator it might be a little bit easier. If you're in one that applies a straight percentage...

Sometimes that's the case, where there can be a specific percentage of a payor's income that's applied. That might be the case in certain jurisdictions. It's not here in Southern California, but it might be where you are. That also can be a little bit easier.

But if you're in a situation where there are a lot of different factors that are considered, and maybe even two different judges would come to two different resolutions of this particular issue, then we've got to think a little bit outside the box. Like, okay, if there's not a clear answer to this, if I cannot be told by an attorney exactly what the resolution of this is going to be, then what? How do we approach resolving this issue in another way?

One of those ways is by looking at your budget. I don't know how you feel about the word “budget;” I don't like it. It has connotations for me that are negative. So, we could also call it a “cash flow” analysis for yourself; that hits a little better for me. I don't know about you. Well, you choose whatever label you want to put on it.

But essentially looking at, okay, what do I need now in order to meet my expenses? What am I going to need post-divorce in order to meet my new expenses? And that, at least, can be a starting point for really formulating some settlement scenarios. To be able to know what it is you actually need can be really useful on that front.

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And then, you can determine how much you want to invest in turning over every last stone and rock, and getting every last penny that's possible. Versus, looking at what is it that I actually really need? And am I getting close enough to that? Versus, how much am I spending on this process? So that you can really make a cost-benefit call throughout the process, as to how far you want to push the spousal support issue.

Really, what we're looking for, in terms of a first sub-issue of support to be determined here is, what is the amount? That's what everybody focuses on, which is, what is the amount of getting? What's the amount I'm going to pay? Because sometimes you're in the position of being the recipient of support, or you might be in the position of paying the support.

So, let's talk about that for a moment. If you're in the position of paying the support, that same analysis can be just as important. It's applicable to you as well. What do you need, reasonably? Right? And what's leftover at the end of the month? And you're probably thinking, "Well, not much. Nothing. How could I possibly pay what they're asking for?"

And then, if you're on the recipient's side, it's usually, "Whatever they're offering me isn't enough." That's pretty common for the payor to think it's too much, and the recipient to think it's too little. And so, that's where you've got to get into creative problem-solving mode about what can we realistically do here to come to a resolution on an amount that makes sense?

The second key issue to think about is, alright, here's what the amount is or what we're thinking the amount could be, how long is that going to be paid for? So, the duration of the payment of the support. What's reasonable to expect in that regard would have to do with what your local divorce laws provide for. Sometimes the length of the marriage is going to affect the likely result in court as to how long you'd get support, or how long you'd be paying support. So, it'll be key to know that.

But also, another way to look at it is, if you're the recipient, how long will I likely need this support at this level? Versus, what are my plans for the future? And

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the ability to bring in income to help me meet my expenses from other sources? And how long do I likely think that that will be going for?

So, there are a lot of different ways to approach looking at how long it should go for, how long should this payment endure? And that can be looked at in a strictly what would the law provide for, sense. Or you can also look at what just makes sense for us as a restructured family going forward? What is going to be really important for me as the recipient, or the payor? And how can we come to a resolution of this based on what is reasonable under the facts here?

Sometimes, there's a scenario where there's input that locally, where you are, based on the length of your marriage, it could be indefinite spousal support. People think that's forever, for the rest of their life. I'm here to tell you most of the time, it's not forever, for the rest of your life, in that same amount that was ordered at the beginning. But it varies by case.

It can sound good if you're the recipient. Okay, there's an open-ended amount of support, and when the judge signs the divorce judgment it's just going to be X number of dollars a month, and that's going to be for an unknown duration into the future. It can sound good, like it's going to go on forever. But typically, a payor of an indefinite amount of spousal support is not content to pay it forever. And they usually take steps at some point to try to modify or eliminate that obligation.

And so, there's always a question of, how long will that be from now? How many times will you be revisiting it? And what is the cost for you, legal fee wise, and also what's the emotional cost of continually revisiting the amount of support? So, you've got to think about that as it relates to what you would like, in terms of a resolution on the duration of the support. How does that play into the decision for you, as to what you're agreeable to on the duration of the support?

And that brings me to my next point. What is your expectation in terms of the amount that you're agreeing to? Maybe there's an amount on the table, what is your expectation as to how long that amount is going to continue to be paid, in that particular amount?

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Because sometimes we think, “Okay, the spousal support is \$2,000.” Then you think, “Okay, well, now I know the number, I can start to make decisions about my future based on that \$2,000 number.” And sometimes you make long term financial decisions, like maybe buying a new home, and you're factoring in that \$2,000 a month into your ability to pay for that home.

But what you're not thinking about, is the fact that that support may be modifiable. And what happens if the payor seeks to modify that amount? Are you able to rely on that full \$2,000 amount, and for how long into the future? That may be an unknown and something to think about.

Because spousal support oftentimes is modifiable, because look, things change, right? People get hit by buses; that's my favorite example. The payor could be perfectly capable of paying \$2,000 a month because they're gainfully employed, and then, tomorrow, they could get hit by a bus and be totally disabled, unable to work at all; something totally unexpected. And that affects their ability to pay the support.

So, there are a lot of things that can happen in the life of both the payor and the payee in the future that could impact how long that support gets paid for, and in what amount. If somebody no longer has the income that they had, when they were ordered to pay that specific amount of support, well, it's possible that amount might be changed. What is the impact on you as the recipient?

You've got to think about, what is my expectation here about the modifiability of this amount? Do I need it to be non-modifiable? Is that even something that my spouse, if they are the payor, would entertain? Or does it have to be modifiable? How does that impact the decisions that you're willing to make about a resolution of your case?

The other question to think about, what is likely to terminate the support that I'm getting, or I'm paying? Those could be things like death of either party. And it could be things like a remarriage of the person that is receiving the support. You need to determine, in your local jurisdiction, what are those things that terminate the ability to receive support, or the obligation to pay support?

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How does that play into what you're willing to entertain, in terms of a resolution of the spousal support issue? I mean, typically, the death of either party, as an example, would not be something that people would entertain or be able to predict exactly. But if you're thinking about getting remarried in two years, and if that would be an event that terminated your spousal support, how does that play into how much money you want to put into litigating the issue of spousal support, for example?

The next thing I want you to think about is, even though we typically focus on the payment of support and who's paying, who's receiving, in that moment, the actual payor, though, has rights to spousal support as well. And what's going to happen with those? Are the other spouses, the payors' spouses, right to support going to remain intact and reserved for the future? Or are they going to be eliminated in that initial divorce agreement?

That's something that sometimes you don't think about, because you're really focused on the recipients, right? But the payor typically also has some kind of write that needs to be addressed. What's going to happen with that?

A final factor to think about here, in thinking about all of the key points that we've just touched on, what that leaves me with is sometimes people thinking, "Well, what about if I just did a buyout of spousal support?" What that means is, instead of there being a monthly amount paid, we just come up with an agreement to get a lump sum instead. And then, there's no ongoing payment.

Whether that would make sense for you or not, or is even a possibility for you or not, would depend on where you are and what the laws are locally for you. But for some people, that is an option. There are pros, and there are cons to doing a spousal support buyout, but it is something that some people want to consider.

Some people want to think about, "What are the pros to not having that ongoing financial tie, into the future, with this person that I am divorcing?" Particularly if you don't have kids together, and you're looking for a really clean resolution to be done, and not have any need for ongoing communication or ties going forward, it can be appealing.

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And so, it may or may not be the right thing for you. But for some people, they want to at least consider that option. I offer it to you here, that sometimes that's something that could be a creative solution to these issues.

So, I hope that you have learned about spousal support in general, today and about some of the things that you need to start thinking about. This is one of the things that I help clients with all the time. Which is thinking through what is going to be most important for them, in terms of a resolution of the issues that they see as being ones that need to be addressed in their particular situation?

Where are the moving pieces to what they're willing to consider, in terms of a resolution? What is going to be most important to focus their legal resources, their financial resources, their time, emotional resources on? What parts of these are most critical for them? And what are the benefits and the costs of pursuing those things?

How can we structure a settlement proposal that seeks to achieve what their goals are, with respect to all of these issues, and one of them being spousal support? It can be a complex one, and an important one, to be able to make a transition into a post-divorce life that is as smooth as possible, and sets them up for success for the future.

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

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