

What We Know

ARTICLES & INSIGHTS

ABOUT THE AUTHOR



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Alimony Amid the COVID-19 Pandemic

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The economic environment is typically a consideration when divorcing spouses are negotiating or litigating the issue of alimony. Economic factors such as the housing bubble and related debt crisis in 2008 can have a significant impact on alimony. A health crisis can also have economic implications and therefore affect alimony. Because of the nature of a health crisis, the health of the parties and not just their financial well-being can impact new, as well as preexisting, alimony obligations.

Under North Carolina law, entitlement to alimony and the amount are primarily a function of the parties' income and expenses. The income and reasonable expenses of a dependent spouse seeking alimony dictate the dependent spouse's need for spousal support. In contrast, the income and reasonable expenses of the supporting spouse dictate that spouse's ability to pay spousal support. The measure of the dependent spouse's need for support is ideally the amount that is required, in addition to any earnings he or she receives, to maintain the standard of living he or she experienced during the marriage. Regardless of the dependent spouse's needs, alimony is supposed to be set at an amount that is within the supporting spouse's ability to pay.

EFFECTS OF COVID-19 ON ESTABLISHING ALIMONY

The COVID-19 pandemic is causing uncertainty about the prospect of future earnings for many people, whether through furloughs, layoffs, or business closures. In all likelihood, the income analysis performed today for parties negotiating alimony looks nothing like it did a few short weeks ago. A decrease in income, or loss of it altogether, will increase the dependent spouse's need for alimony, exposing the supporting spouse to the prospect of paying more. On the other hand, reduced or lost earnings for the supporting spouse is going to leave the financial needs of some dependent spouses unfulfilled.

The physical, emotional, and mental health of the parties are among the factors considered in determining the amount and duration of alimony because these factors influence each spouse's ability to earn, level of related expenses, timetable for getting back into the workforce, and duration of remaining in the workforce. North Carolina law does not give any guidance about how to incorporate these factors into the determination of alimony. Despite the absence of any precise means of quantifying the physical health of each spouse, if either party contracts COVID-19, the physical health of

either or both parties has the potential to be a more significant factor on alimony than would otherwise.

EFFECTS OF COVID-19 ON MODIFYING AND TERMINATING ALIMONY

In North Carolina, orders for alimony are modifiable based on a change in circumstances related to the financial needs of the dependent spouse or the supporting spouse's ability to pay. However, North Carolina courts may not modify alimony awards based on a change in the parties' earnings alone. The change in earnings must be shown to be connected to a change in the supporting spouse's ability to pay or the dependent spouse's need for support. Therefore, once the amount is set, changes in income will not necessarily result in a modification of an alimony obligation, but the law provides a means to revisit the amount under appropriate circumstances. The full extent of COVID-19 is yet to be seen. Still, modification of alimony obligations will likely be necessary for some payors and recipients of alimony if the health or financial condition of either or both parties suffers. While access to North Carolina courts is presently unavailable due to the suspension of court proceedings until [June 1, 2020](#), parties can still file motions to modify alimony, though the timing of when the court will hear such motions remains uncertain.

Some negotiated agreements for alimony are contained in a contract between the parties instead of a court order. The parties select either a court order or contract depending on the advantages and disadvantages of each option under their particular circumstances. Alimony set out in a contract is generally less modifiable than alimony allegations contained in a court order. A court order for alimony is inherently modifiable, whereas a contract for alimony must contain modification provisions for any changes to occur. Some contracts for alimony establish a schedule by which alimony changes at certain points in time. In other instances, spouses agree for future changes in the earnings of either party to trigger changes in alimony. Therefore, whether COVID-19 impacts contractual obligations for alimony depends on the terms of each particular agreement.

Alimony is subject to termination as well as modification. The death of either spouse is among the terminating events. Therefore, COVID-19 will have an extreme effect on alimony if either party dies from it. Dependent spouses counting on the future stream of support will potentially be financially devastated. Negotiated agreements for alimony often include a requirement for the supporting spouse to maintain life insurance coverage, and sometimes disability insurance coverage, to replace lost or diminished alimony if the supporting spouse dies or becomes disabled. COVID-19 points out the importance of such safeguards.

EFFECTS OF COVID-19 ON THE TIMING OF ADDRESSING ALIMONY

COVID-19 will likely have critical implications for the timing for spouses to address the issue of alimony. The uncertainty surrounding the COVID-19 pandemic will likely cause many separated spouses whose health or earnings are impacted to postpone or suspend negotiations concerning alimony. For many spouses, alimony is a long-term source of income and a long term monthly financial commitment. Spouses should be

reluctant to make at least long-term decisions about alimony if uncertainty exists about earnings prospects, or health conditions, or both. The timing of COVID-19 might worsen the circumstances for dependent spouses who are receiving insufficient voluntary support from the other spouse or who are being completely deprived of it and are compelled to pursue spousal support in court. They face the prospect of sharing in any economic hardship experienced by the supporting spouse brought on by COVID-19 and its detrimental effects on the supporting spouse's earnings, health, or both. Conversely, a supporting spouse will have a potentially higher alimony obligation if the dependent spouse's earnings, health, or both are adversely affected by COVID-19.

Independent of the health and financial condition of the particular spouses for whom alimony is a consideration, COVID-19 is affecting when the parties can have alimony determined, even if they are healthy or have avoided financial adversity. With limited exceptions, none of which relate to spousal support, court proceedings are presently not being conducted in North Carolina due to COVID-19. Whenever court proceedings resume to any extent and for the foreseeable future afterward, the present restrictions, if not more strict ones, will remain in place for persons who are allowed to enter courthouses. Therefore, the timing of having spousal support claims adjudicated is uncertain even if either or both spouses want or need alimony to be decided by a court at this time.

EFFECTS OF COVID-19 ON ENFORCEMENT OF ALIMONY

Enforcement of alimony will tend to be impacted by COVID-19. A genuine inability to pay alimony can be a valid defense to certain types of enforcement proceedings arising from the supporting spouse's failure to pay alimony as required by the parties' agreement or court order. For the same reasons that COVID-19 might impact an alimony obligation when it is established, the actual payment of alimony might be in jeopardy in the context of the current health crisis. A supporting spouse might legitimately not have the means to comply with his or her alimony obligation due to health reasons or reduced earnings. The alimony obligation of such a supporting spouse is not removed, but rather the obligation is not presently enforceable. A supporting spouse in this situation should consider whether a motion to modify his or her obligation, as described earlier, is appropriate. Regardless of the need to enforce an alimony obligation in court, alimony enforcement proceedings are not an exception to the present suspension of court proceedings in North Carolina.

LOOKING AHEAD

The effects of the COVID-19 pandemic as a consideration in alimony will be relatively short-lived if the spread is curtailed and the economy can recover in the near term. If the spread of COVID-19 persists, then establishing alimony will be even more challenging than it already is. Please contact our family law team for information and advice about how COVID-19 might affect present or prospective alimony in your particular situation. Our [law firm is open](#), and we are able to safely conduct confidential meetings through teleconferencing or video conferencing.

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