

Part II REAL AND PERSONAL PROPERTY AND DOMESTIC RELATIONS

Title III DOMESTIC RELATIONS

Chapter 208 DIVORCE

Section 53 DETERMINATION OF FORM, AMOUNT AND DURATION OF ALIMONY; MAXIMUM AMOUNT; INCOME CALCULATION; DEVIATIONS; CONCURRENT CHILD SUPPORT ORDERS

Section 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; income, employment and employability of both parties, including employability through reasonable diligence and additional training, if necessary; economic and non-economic contribution of both parties 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 considers 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 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.

(c) When issuing an order for alimony, the court shall exclude from its income calculation:

(1) capital gains income and dividend and interest income which derive 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.

(d) 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.

(e) 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 that party's own support by reason of physical or mental abuse by the payor;

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

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

(f) 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.

(g) If a 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 or child support duration available at the time of divorce; or (ii) rehabilitative alimony beginning upon the termination of child support.