

Modification of Alimony Due to Retirement

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During the course of divorce proceedings, alimony from the supporting spouse to the dependent spouse is typically calculated based on a variety of factors. The income of the two spouses is a critical factor in determining the amount of alimony to be paid. However, some incomes are not guaranteed and can change over time. One of the most common scenarios in which the income of a spouse can change is due to retirement. Following one's retirement, a spouse can petition the court to modify the alimony payments they either receive or pay. However, there are an additional set of factors the court must consider in permitting alimony payments to be modified if the parties were divorced prior to September of 2014.

The leading case in New Jersey addressing the modification of alimony is **Lepis v. Lepis** (1980), which states that "the party seeking modification [of alimony] must demonstrate that changed circumstances have substantially impaired the ability to support himself or herself." Furthermore, the court will look at the party's circumstances at the time of the divorce (when the alimony was determined) and at the time of application for the modification of alimony to see any differences in the circumstances between these two dates.

Because retirement is one of the leading causes for a petition for the modification of alimony to be filed, there are cases in New Jersey that have laid out a series of factors to determine whether or not the retirement of one of the spouses warrants alimony to be modified.

First, in **Dilger v. Dilger** (1990), the court concluded that the appropriate factors to be considered are: the reasonable expectations of the parties at the time of the agreement, whether the supporting spouse was planning retirement at a particular age, and the opportunity given to the dependent spouse to prepare to live on the reduced support.

Next, in **Deegan v. Deegan** (1992), additional factors were set forth for consideration in determining whether retirement warrants modification of alimony. These factors include the following: the age of the party, the health of the party, his or her motives for retiring, the timing of their retirement, his or her ability to pay maintenance even after retirement, and the ability of the other spouse to provide for him or herself.

Finally, in **Silvan v. Silvan** (1993), a few more factors were added, including whether, at the time of the divorce, any attention was given by to the parties to the possibility of future retirement, whether

retirement was mandatory or voluntary, and whether the particular retirement occurred earlier than might have been anticipated at the time alimony was awarded.

The age of retirement in New Jersey (for those born after 1960) is 67, the full social security retirement age. Retirement at the age of 67 will still initiate an analysis of the above factors if the retiring party wants to have alimony modified.

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