

Loss of Employment and Alimony

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New Jersey's recently enacted alimony statute deals with modification of alimony in the event the payor loses his/her job through no fault of their own.

Even though this law allows a payor to seek modification once the payor has been without employment for 90 days, there is not an automatic termination or reduction. The Court must consider many factors which are set forth in the statute, which include but are not limited to:

1. The reasons for the loss of income;
2. The payor's efforts to replace his or her employment or find alternative employment;
3. The payor's health and how it affects his or her ability to obtain employment; and,
4. Any severance award received from the previous employer.

In the recent case of Mills v. Mills, the ex-Husband, who had been working in flooring sales, agreed to pay alimony at the time of his divorce based on a salary of \$108,000. Less than two years later, he lost his job when his employer restructured the business and eliminated his job. The ex-Husband searched for a new job, and within three months obtained a similar job at another flooring company, earning \$70,000 per year, plus a \$6,000 annual car allowance. He also received a year-end bonus of \$6,000. Therefore, his income was \$82,000.

Based on this 20% decrease in salary, the ex-Husband filed a motion with the Court to decrease alimony. The ex-Wife argued that she should not receive a reduction because he was capable of earning \$108,000 and that he failed to demonstrate that he could not earn this level of income.

As in many post-judgment cases where the parties' allegations and viewpoints are conflicting, the Court held a plenary hearing, which is a trial with testimony, to determine the credibility of the parties and to understand and analyze all of the facts involved in the case.

The Court in the Mills case concluded that in light of the new alimony statute, as well as case law, there should be a practical two-step inquiry in addition to the factors set forth in the statute.

1. Was the supporting spouse's choice in accepting a particular replacement employment opportunity objectively reasonable under the totality of the circumstances?
2. If so, what if any resulting support adjustment should occur that is fair and reasonable to both parties, given their respective situations?

The Mills Court held that the Defendant's loss of job was due to a restructuring, and he made legitimate efforts to obtain replacement employment in the same field. The Court further found that Defendant's decision to accept a lower-paying job was reasonable given the circumstances. In fact, he was fortunate in this economy to find replacement work in his field so quickly.

Once the ex-Husband's choice of employment was found to be reasonable, the Court then lowered the ex-Husband's alimony obligation until further Court Order. The Defendant had the obligation to notify his ex-Wife in writing if there were any changes in his employment income. Additionally, he was to supply the Plaintiff with documented proof each year of his prior year's income. This would give the ex-Wife the needed information in the event the Defendant's income increased, which in-turn would allow the Plaintiff to apply to the Court for an increase in alimony.

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