

# WEST VIRGINIA CODE: §48-6-301

## **§48-6-301. Factors considered in awarding spousal support and separate maintenance.**

(a) In cases where the parties to an action commenced under the provisions of this article have not executed a separation agreement, or have executed an agreement which is incomplete or insufficient to resolve the outstanding issues between the parties, or where the court finds the separation agreement of the parties not to be fair and reasonable or clear and unambiguous, the court shall proceed to resolve the issues outstanding between the parties.

(b) The court shall consider the following factors in determining the amount and duration of spousal support and separate maintenance, if any, to be ordered under the provisions of parts V and VI, §48-5-1 et seq. of this code as a supplement to or in lieu of the separation agreement:

- (1) The length of time the parties were married;
- (2) The period of time during the marriage when the parties actually lived together as husband and wife;
- (3) The present employment income and other recurring earnings of each party from any source;
- (4) The income-earning abilities of each of the parties, based upon such factors as educational background, training, employment skills, work experience, length of absence from the job market, and custodial responsibilities for children;
- (5) The distribution of marital property to be made under the terms of a separation agreement or by the court under the provisions of §48-7-6 et seq. of this code, insofar as the distribution affects or will affect the earnings of the parties and their ability to pay or their need to receive spousal support and separate maintenance: Provided, That for the purposes of determining a spouse's ability to pay spousal support, the court may not consider the income generated by property allocated to the payor spouse in connection with the division of marital property unless the court makes specific findings that a failure to consider income from the allocated property would result in substantial inequity;
- (6) The ages and the physical, mental, and emotional condition of each party;
- (7) The educational qualifications of each party;
- (8) Whether either party has foregone or postponed economic, education, or employment opportunities during the course of the marriage;

- (9) The standard of living established during the marriage;
- (10) The likelihood that the party seeking spousal support and separate maintenance can substantially increase his or her income-earning abilities within a reasonable time by acquiring additional education or training;
- (11) Any financial or other contribution made by either party to the education, training, vocational skills, career, or earning capacity of the other party;
- (12) The anticipated expense of obtaining the education and training described in §48-6-301(b)(10) of this code;
- (13) The costs of educating minor children;
- (14) The costs of providing health care for each of the parties and their minor children;
- (15) The tax consequences to each party;
- (16) The extent to which it would be inappropriate for a party, because that party will be the custodian of a minor child or children, to seek employment outside the home;
- (17) The financial need of each party;
- (18) The legal obligations of each party to support himself or herself and to support any other person;
- (19) Costs and care associated with a minor or adult child's physical or mental disabilities; and
- (20) Any other factors as the court determines necessary or appropriate to consider in order to arrive at a fair and equitable grant of spousal support and separate maintenance.