

Factors in Need and Ability to Pay (as published by Nolo)

The court begins making decisions on a request for alimony by considering the facts of the case to determine whether the spouse requesting alimony meets the standard to show the alimony is necessary. If there's a need for alimony, the court has to also determine whether the other spouse has the ability to pay. Unless there are some kind of exceptional circumstances, a court won't award alimony if it would leave the paying spouse with significantly less net income than the recipient.

A judge who finds both need and ability to pay next must consider all relevant factors in deciding what type of alimony to award and for how long. Florida law says that these factors include:

- the financial resources of the spouse seeking maintenance, including separate property and any award of marital property
- all sources of income, including investment income, available to either spouse
- each spouse's earning capacity, educational history, vocational skills, and employability
- any time and expense required by the spouse seeking maintenance to obtain education and training for appropriate employment
- the marital standard of living
- the length of the marriage
- each spouse's age and physical and emotional condition
- each spouse's contribution to the marriage, including homemaking, child care, education, and helping the other spouse build a career
- any tax consequences of the alimony award, and
- the responsibilities each spouse will have for any minor children they have in common.

A court may also consider whether either spouse committed adultery during the marriage, and under what circumstances. Courts are most likely to take adultery into account when one spouse's affair caused the other financial harm. For example, if one spouse bought lavish gifts for a paramour using marital funds, the court might factor that into the alimony award.

Florida law applies certain presumptions with regard to length of marriage and eligibility for permanent alimony. Following a marriage of at least 17 years, a judge may award permanent alimony if such an award is appropriate in light of the above factors. After a marriage of between 7 and 17 years, there must be clear and convincing evidence of appropriateness to justify the award. After a marriage of less than 7 years, permanent alimony is appropriate only in exceptional circumstances. A marriage lasts until the spouses actually file for dissolution, not when they informally separate or stop living together.