

How Does a Bonus Factor Into Alimony?

by Maria P. Imbalzano, Esq.

Alimony is based on income, whether taxable or non-taxable, and it is not only calculated on base wages as some people believe. Other types of income that may be looked at in the alimony calculus are fees, tips, commissions, bonuses, royalties, overtime, interest, dividends, disability, and Social Security.

Many employees receive a base salary and a bonus, dependent on either their individual performance for the year or the company's performance as a whole. When determining alimony, we look at 13 statutory factors, but one of those factors is both parties' incomes.

When we are dealing with an unknown or variable component of income, we can take an average of the prior three years and use that average to determine income. For example, if the payor's base income is \$100,000 and he/she received a bonus over the prior three years of \$10,000, \$5,000 and \$20,000 respectively, the average income over those three years is \$111,667. In the alternative, the parties may wish to agree upon a percentage of the bonus that the payee shall receive as supplemental alimony.

There are competing interests between the payor of alimony and the payee in how they would want a bonus handled. The receiver of alimony may want stability and certainty in monthly payments so that he or she would know they could meet their monthly budget. Therefore, the payee would want to use the averaging method. On the other hand, the payor of alimony may not want to average the last three years of income which included

bonuses because he/she may believe they will not receive a bonus in the coming years or the bonuses in the past may far exceed the bonuses in the future.

If the parties agree to a percentage of future bonuses as supplemental alimony, the wording of the Marital Settlement Agreement must be very specific and clear as to the parties' intent.

In the recent case of *Sercia v. Sercia*, the parties agreed to a base alimony and a percentage of the husband's bonus as supplemental alimony; however, the language in the agreement was as follows:

"The parties have agreed that [Plaintiff] shall pay to [Defendant] one-third of the net cash bonus earned each year. [Defendant] shall only be entitled to said share when [Plaintiff's] bonus totals one-hundred thousand dollars, i.e., it is the parties' intent that [Defendant's] total alimony package shall be capped at [Plaintiff] earning a \$125,000 base salary plus up to \$100,000 bonus. The parties agree that [Defendant's] share of the bonuses shall be one-third unallocated support on the first \$100,000 cash base, the net amount being [taxed at Plaintiff's] regular the bracket..."

The wife filed an enforcement motion the next year seeking her one-third of the Plaintiff's \$53,221 bonus. The lower court denied the motion finding that Plaintiff's bonus had not reached \$100,000.

The Appellate Division relied on the specific language used in the parties' Marital Settlement Agreement and stated that the



first four sentences of the above paragraph were unambiguous. The wife was only entitled to supplemental alimony when the husband's bonus reached \$100,000.

One might read the above paragraph totally opposite of the way the Lower Court and Appellate Division interpreted it. When the entire paragraph is read as a whole, it could be interpreted to mean that the Plaintiff shall pay one-third of the first \$100,000 of bonus. Due to the inartful drafting of this provision, it was held that the ex-wife will not receive supplemental alimony on her ex-husband's bonus unless his bonus is \$100,000 or over.

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