

ARIZONA SPOUSAL MAINTENANCE GUIDELINES

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SECTION I. GENERAL INFORMATION

A. EXECUTIVE SUMMARY

The legislature amended Arizona's spousal maintenance statute, A.R.S. § 25-319, effective September 24, 2022, and directed the Supreme Court to establish Spousal Maintenance Guidelines. The Supreme Court approved these Guidelines for determining the amount and duration of spousal maintenance awards in Arizona. The criteria for determining whether a spouse is eligible for spousal maintenance under A.R.S. § 25-319(A) did not substantively change. But under A.R.S. § 25-319(B), courts "may award spousal maintenance pursuant to the guidelines *only for a period of time and in an amount necessary to enable the receiving spouse to become self-sufficient.*"

The Guidelines lead to a preliminary target range from which the court determines the appropriate award. Yet if the court finds the amount resulting from applying the preliminary target range is inappropriate or unjust, the court may deviate based on the factors in Section IV of the Guidelines. The Guidelines also establish a duration range for the spousal maintenance award, but the statute does not authorize a deviation from the duration ranges.

The preliminary target range is based on a per capita method used by the United States Bureau of Labor Statistics Consumer Expenditure Survey on Children by Families, adjusted for Arizona. There are many examples throughout these Guidelines using varying fictional party names.

B. PURPOSES

1. To allow the requesting spouse to become self-sufficient.
2. To achieve consistency in awards for persons in similar circumstances.
3. To guide in establishing spousal maintenance awards and to promote settlements.

C. APPLICATION

If the court has jurisdiction to determine spousal maintenance, these Guidelines apply in all proceedings brought under Title 25 of the Arizona Revised Statutes after the statute's effective date.

Under Arizona law, there is a distinction between “eligibility” for spousal maintenance and “entitlement” to spousal maintenance. Eligibility means that a party meets at least one of the factors under A.R.S. § 25-319(A). Entitlement means that upon application of the Guidelines, the court determines in its discretion that the party should receive an award of spousal maintenance under A.R.S. § 25-319(B). A party eligible for spousal maintenance is not necessarily entitled to an award.

Application of these Guidelines creates a preliminary target range for the spousal maintenance award consistent with each party’s ability to be self-sufficient during the duration of the award and to allow the receiving spouse to become self-sufficient during that time.

Calculating the spousal maintenance award is usually done on a computer-generated calculator found on the Supreme Court’s website. [add website address] To calculate the preliminary target range, the user inputs relevant information into the information fields on the worksheet.

Step 1: Determine Family Size

To determine the family size, include the parties and any child for whom at least one of the parties has a legal obligation to support. A court order for support of the child is unnecessary.

Step 2: Determine the parties’ annual income

Applying Section II of these guidelines, first calculate each spouse’s annual income (line 30) and annual attributed income (line 31). Then add the annual and any annual attributed income for both spouses to determine the combined annual income.

Commented [PS1]: Attributed income in this paragraph requires further discussion.

Commented [MPJ2R1]: Also, this sentence implies that the user will have to do the math. Should the worksheet do it automatically?

Step 3: Determine the Family’s Average Monthly Mortgage Principal

The spousal maintenance expenditure tables do not include the principal payment for a mortgage for the marital residence. As a result, add the monthly amount of principal paid for the marital residence. Do not include mortgage interest, taxes paid on the residence, or mortgage insurance. To determine the average monthly amount, the principal paid for the 12 months immediately before the filing of the action is divided by 12. Unlike the other numbers in this calculation, this number is a monthly amount.

Step 4: Determine Expenditures

After Steps 1 through 3 are completed, the calculator auto-generates a range that includes expenditures for one adult and one-half of the family's indivisible expenditures (the mortgage?). The calculator combines these expenditures and the average monthly mortgage principal into a combined expenditure figure (line 53). The receiving spouse's share of the combined expenditures is calculated proportionately to that spouse's share of the combined annual income. The calculator is based on expenditure and income data for persons with similar demographic and geographic characteristics.

Step 5: Calculate the Preliminary Target Range

The target range (line 55) is the amount left after subtracting the receiving spouse's share of expenditures from the combined expenditures. The court can award an amount within the target range after considering the statutory factors and facts in a particular case. The court can deviate from the target range based on the deviation guidelines in Section IV.

D. EFFECTIVE DATE

All original spousal maintenance orders entered on or after July 1, 2023, must use these Guidelines, except in these circumstances:

- a. The parties agree that the Guidelines will not apply; or
- b. The dissolution petition was filed before September 24, 2022.

For spousal maintenance orders entered on petitions filed before September 24, 2022, the court may consult the Guidelines in resolving modification petitions . *See Arizona Supreme Court Admin. Order 2022-119.*

Commented [MPJ3]: Why is this here?

These guidelines apply to modification petitions filed after September 24, 2022. In deciding a modification petition subject to the guidelines, and unlike petitions to modify child support, a party cannot establish a substantial and continuing change of circumstances by showing that applying the Guidelines would change an existing order.

SECTION II. DETERMINING INCOME

A. DETERMINING THE SPOUSES' INCOMES FOR PURPOSES OF CALCULATING SPOUSAL MAINTENANCE

1. What is included in Spousal Maintenance Income?

- a. The term "Spousal Maintenance Income" does not have the same meaning as "Gross Income" or "Adjusted Gross Income" for tax purposes. Spousal Maintenance Income may differ from Child Support Income.
- b. Income for the purposes of determining spousal maintenance includes income from any source before any deductions or withholdings. Income may include salaries, wages, commissions, bonuses, dividends, severance pay, military pay, pensions, interest, trust income, annuities, capital gains, social security benefits subject to statutory limitations, workers' compensation benefits, unemployment insurance benefits, disability benefits, military disability benefits to the extent includable under the law, recurring gifts, or prizes.
- c. Seasonal or fluctuating income within a year is annualized to determine the average monthly income.

Example: Shawn is a teacher paid only 9 months a year. Shawn is paid \$7,000 a month from September through May and is not paid for June, July, and August. The earnings must be annualized as follows: Multiply the monthly income by the number of months the parent is paid to arrive at the annual earnings ($\$7,000 \times 9 \text{ months} = \$63,000$); and then divide the annual salary by 12 to arrive at the average monthly income ($\$63,000 \div 12 = \$5,250$).

- d. The court has the discretion to consider whether non-continuing or non-recurring income is considered income for calculating spousal maintenance. The court also has the discretion to average fluctuating income over periods exceeding one year.
- e. Spousal Maintenance Income from self-employment, rent, royalties, a business proprietorship, or a jointly-owned partnership or closely-held corporation is calculated by taking total income received before any deductions or withholdings minus ordinary and necessary expenses required to produce the income. Ordinary and necessary expenses include one-half of the self-employment tax actually paid.

Commented [PS4]: To promote consistency, would the subcommittee prefer to use "Spousal Maintenance Income" when the parties' incomes are being discussed or "income" and "annual income" as needed?

- f. Expense reimbursements or benefits a spouse receives during employment, self-employment, or business operation are included as Spousal Maintenance Income if they are significant and reduce personal living expenses. *Cash value is assigned to in-kind or other non-cash employment benefits.* **[McNutt language?]**
- g. Continuing or recurring military entitlements, including but not limited to BAH and BAS (Basic Allowance Housing, Basic Allowance Subsistence), are included as Spousal Maintenance Income. Military-provided housing is an in-kind or other non-cash employment benefit.
- h. Child support a spouse receives from a third party for a child included in the family size.

2. What is not included in Spousal Maintenance Income?

- a. Spousal Maintenance Income does not include the following:
 - i. Sums a parent receives from the other parent in this case as child support under a court order; and
 - ii. Federal disability benefits under 10 U.S.C. § 1413a or 38 U.S.C. chapter 11.
See A.R.S. § 25-530.
- b. Reasonable spousal maintenance the payor spouse pays on existing court orders in another case.
- c. The court does not consider how marital property is distributed between the spouses except to the extent that such property generates income for a spouse.

3. When is overtime included in Spousal Maintenance Income?

The spousal maintenance expenditure tables are constructed to reflect the standard of living for the parties during the marriage. So unlike child support income, a court should include overtime or extraordinary work regimen income regularly earned by the marital community.

Commented [HK5]: This tracks CSG § II(A)(1)(f).
McNutt primarily discussed OT, not in-kind or cash benefits.

4. When is Spousal Maintenance Income attributed even if not actually earned?

- a. Attributed Spousal Maintenance Income is not actually earned or received but is an assigned income based on a court finding regarding the amount that should be used to calculate spousal maintenance.
- b. Generally, the court will attribute some level of income if a spouse can work.
- c. Factors the court considers when attributing income include, but are not limited to:
 - i. The parties' assets, residence, employment and earnings history, job skills, educational attainment, literacy, age, health, criminal record, other employment barriers, and record of seeking work;
 - ii. The local job market, the availability of employers willing to hire the parties, the prevailing earnings level in the local community, and standards for the number of hours considered full-time based on a particular field of employment;
 - iii. If the party can find suitable work in the marketplace at a greater income based on the party's current educational level, training and experience, and physical capacity; and
 - iv. The reasons a party is unemployed or underemployed, whether voluntarily or involuntarily.
 - a) If involuntary, whether it is reasonable for that party to find replacement income above actual earnings.
 - b) If voluntary with reasonable cause, whether the party's decision and its benefits outweigh the reduced income's impact on the party's ability to become self-sufficient or pay spousal maintenance.
 - c) Whether the party **complaining** of a voluntary reduction in income acquiesced in the other party's conduct.

Commented [MPJ6]: Where does this go? It can't be used in the original number is that number is to reflect standard of living.

- d) The timing of the **action** in question in relation to the entering of a decree or the execution of a written agreement between the parties.
 - e) If voluntary and without good cause, whether income attribution is appropriate.
- d. A person can declare retirement upon attaining full retirement age under the Social Security Act to receive full social security benefits. *See 42 U.S.C. §416(l).* This is a rebuttable presumption. If both parties receive social security benefits and have been married for more than ten years, the court may consider the difference in the parties' social security income when determining spousal maintenance.
- e. If the court attributes income to calculate spousal maintenance, the court must note the amount attributed in the worksheet.
 - f. As explained in Section II(B)(5), income from dissipated income-producing property may be attributed.

5. When is income not attributed in calculating Spousal Maintenance Income?

a. Incarceration

The court does not attribute income to a person who is incarcerated, but the court may establish or modify spousal maintenance based on the ability to pay.

b. Additional Examples

The court may decline to attribute income to either party. Examples of cases in which it might be inappropriate to attribute income include, but are not limited to, the following:

- i. A party is physically or mentally disabled;
- ii. A party is engaged in reasonable career or occupational training to establish basic skills or that is reasonably calculated to enhance earning capacity;

Commented [HK7]: I made this a separate subsection. It doesn't seem to fit well here. It seems more appropriate under #5 When NOT to attribute income.

- iii. Unusual emotional or physical needs of a natural or adopted child if that child requires that party's presence in the home; or
- iv. A party is the caretaker of a young child, and childcare costs are prohibitive.

B. PROPERTY AND ASSETS TO INCLUDE WHEN DETERMINING A SPOUSE'S SPOUSAL MAINTENANCE INCOME AND FINANCIAL RESOURCES

1. What are property and assets?

- a. Property includes all assets capable of providing in their current or converted form for the reasonable needs of the spouse seeking maintenance. *See Deatherage v. Deatherage*, 140 Ariz. 317, 321 (App. 1984).
- b. For purposes of Spousal Maintenance Income and unless rebutted, the court must consider all property and assets available to a party, including sole and separate property and assets.
- c. In considering the income potential of property and assets and unless rebutted, the court must presume that the rate of return for the asset is the rate provided by A.R.S. § 44-1201(B) for money judgments.
- d. The first \$100,000 of a party's assets are not subject to a rate of return. Otherwise, assets subject to a rate of return include, but are not limited to, the following:
 - i. "Passive asset." A passive asset increases or decreases in value because of external market conditions and can generate a rate of return to the holder. Common examples of passive assets include stocks, bonds, and real estate. It also includes interest in entities where the holder is not an active participant;
 - ii. "Active asset." An active asset is one where a party is actively working the asset regularly, leading to the asset's growth or appreciation. For example, a business or professional practice is one example of an active asset;

- iii. An asset, such as a business, that is not divided in the dissolution. For such an asset, the income is determined by the income or distributions available to the asset owner;
- iv. Income or distributions from retirement assets. If not currently being received or available, the court must include an amount for income or distributions as of the spouse's full retirement age as defined by 42 U.S.C. §416(l);
- v. Income or distributions from trusts and annuities available to the beneficiary or to be received within a reasonable time;
- vi. Interest paid on any property equalizing payments; and
- vii. If available, vested or partially vested stock options and Restricted Stock Units, deferred compensation, and similar employment benefits.

2. What is not included as property or an asset?

The court does not consider how marital property is distributed between the spouses except to the extent such property generates income for a spouse.

3. What is Double Counting of Property and Assets?

Property and assets should not be double-counted. Examples of when double counting can occur:

- a. The community owns a 100% interest in a business. Where the value of that business is established using the income approach, the employee spouse's reasonable compensation is subtracted from the total business earnings to arrive at a present value. The spouse being bought out is awarded 50% of that value. Double counting occurs if the total business earnings are also used to calculate spousal maintenance. However, because the employee spouse's reasonable compensation is not included in the value of the business, it is not double counting to consider the employee spouse's reasonable compensation when calculating spousal maintenance. If the court finds that income is counted twice, the court may adjust the award downward.

Commented [MPJ8]: Award or income?

The same concept applies when the community owns less than a 100% interest, or there is a community lien on one party's separate property business; and

- b. When there is a present value buy-out of a defined benefit retirement plan, the employee spouse pays the non-employee spouse up front for their share of the future benefit. Double counting occurs if the non-employee spouse has already been paid for the future benefit up front, and that same future benefit is also used to calculate spousal maintenance. If the court finds that the benefit is counted twice, the court may adjust the award downward.

Commented [MPJ9]: same

4. How do the excessive or abnormal expenditures or dissipation of property affect what is included as property and assets?

The court must consider “[e]xcessive or abnormal expenditures, destruction, concealment, or fraudulent disposition of community, joint tenancy and other property held in common.” A.R.S. § 25-319(B)(11). This factor is sometimes referred to as marital waste.

If the spouse dissipated an income-producing asset, any reduction in that income can be attributed to that spouse.

The court may also consider marital waste as grounds for deviating under Section IV(C)(10).

SECTION III. DETERMINING THE DURATION OF THE AWARD

A. What is Arizona's policy about spousal maintenance duration?

Under A.R.S. § 25-319(B), as revised effective September 24, 2022, the spousal maintenance award is only for a period of time and in an amount necessary to enable the receiving spouse to become self-sufficient. In that regard, the duration of the award is directly linked to how long it will take to achieve financial self-sufficiency. This policy has also been expressed in case law. The purpose of the award and its duration are aimed at a party achieving financial independence through diligent efforts in procuring training and skills necessary to become self-sustaining. See *Rainwater v. Rainwater*, 177 Ariz. 500, 503 (1993); *Schroeder v. Schroeder*, 161 Ariz. 316, 321 (1989); *Thomas v Thomas*, 142 Ariz. 386, 392 (1984).

B. How is the duration of a spousal maintenance award determined?

1. Length of Marriage

For spousal maintenance purposes, the length of the marriage is the number of months from the date of marriage to the date of service of process of the dissolution or legal separation petition. The time before the parties were legally married is specifically omitted from this calculation. Periods of physical separation without the initiation of dissolution or legal separation proceedings are included in the length of the marriage for these purposes.

2. Duration Ranges

If a party is eligible for spousal maintenance under A.R.S. § 25-319(A) and is entitled to an award under A.R.S. § 25-319(B), the duration range for the spousal maintenance award is:

- a. For marriages of up to 24 months, a duration range of up to 12 months of spousal maintenance;
- b. For marriages of [24 months or more] to 60 months, a duration range of up to 36 months of spousal maintenance;
- c. For marriages of [60 months or more] to 120 months, a duration range of up to 48 months of spousal maintenance;
- d. For marriages of [120 months or more] to 192 months, a duration range of up to 60 months; and
- e. For marriages of [192 months or more] a duration range of up to 96 months, subject to the "Rule of 65".

Commented [HK10]: Consider these numbers to account for "gap" that might confuse the calculator as discussed by Norman Davis

i.—f (?) The "Rule of 65."

When the age of the party seeking an award of spousal maintenance combined with the length of the marriage exceeds 65 (age + length of marriage as of the date of service of process of the petition for dissolution

or legal separation), the duration range shall not apply. This formula is known as the Rule of 65.

For the Rule of 65 to apply, three things must be true: (1) the party seeking the award is at least 42 years old, (2) the marriage length, as defined above, is at least 16 years (193 or more months), and (3) the age of the spouse seeking spousal maintenance plus the marriage length is equal to or greater than 65. In those cases that qualify, the duration~~s~~ of the award shall be determined on a case-by-case basis. The public policy that underlies spousal maintenance applies, but the age of the party seeking the award combined with the length of marriage impacts a party's ability to achieve self-sufficiency with a good faith effort within the stated duration range.

Example 1: Pat was 40 years old and had been married to Marty for 25 years when the petition was filed for dissolution of marriage. Pat is requesting spousal maintenance. ($40 + 25 = 65$) Pat and Marty's marriage meets the length requirement, and the sum of those two numbers is 65; however, the Rule of 65 does not apply in this case because Pat does not meet the age requirement, Pat and Marty's marriage does not meet the length requirement, and the sum of those two numbers is not 65.

Commented [PS11]: Change the language to better illustrate the three requirements.

Example 2: Pat was 49-52 years old and had been married to Marty for 13 years when the dissolution petition was filed. Pat is requesting spousal maintenance. ($49-52 + 13 = 62-65$) Pat meets the age requirement and the sum of those two numbers is 65; however, the Rule of 65 does not apply in this case because Pat and Marty's marriage does not meet the length requirement, and the sum of those two numbers is not 65.

Example 3: Pat was 43 years old and had been married to Marty for 17 years when the petition was filed for dissolution of marriage. Pat is requesting spousal maintenance. ($43 + 17 = 60$) Pat meets the age requirement, and Pat and Marty's marriage meets the length requirement; however, the Rule of 65 does not apply in this case because the sum of those two numbers is not 65.

Example 4: Pat was 42 years old and had been married to Marty for 23 years when the petition was filed for dissolution of marriage. Pat is requesting spousal maintenance. ($42 + 23 = 65$) The Rule of 65 applies in this case because Pat meets the age requirement, Pat and Marty's marriage meets the length requirement, and the sum of those two numbers is 65.

ii. g? Disability of Receiving Spouse

a) Permanent Disability

If the evidence establishes that the party seeking spousal maintenance has a condition or circumstances that prevent that party from ever achieving self-sufficiency, the duration of the award shall be determined on a case-by-case basis.

b) Indefinite Disability

There are cases where a disability exists, but there is uncertainty about how long the disability may impact future earning ability. There is a choice between setting an indefinite duration award or a fixed term award for these cases. The best option is to establish a fixed-term award, even if the duration of the award exceeds the applicable duration range. By doing so, the burden of proof is placed on the receiving spouse to file a modification petition showing the disability impacting that spouse's earning ability continues to exist. The modification action must be filed before the original fixed-term spousal maintenance award expires.

Commented [PS12]: This section needs further discussion.

Commented [MPJ13R12]: Shouldn't permanent disability be a separate range in our range section?

C. How is the specific duration of the award determined from the defined duration ranges?

For determining the specific duration of the award within the applicable duration range above, the court must consider the relevant statutory factors under A.R.S. § 25-319(B), including, but not limited to, the following:

1. The standard of living established during the marriage;
2. The length of the marriage;

Commented [MPJ14]: This needs further discussion. I believe the answer is that if the court cannot find a permanent disability, then the fixed ranges apply. If the disability becomes permanent during the fixed range, the receiving spouse can petition to modify. If we make permanent disability a separate range, it is not a deviation.

3. The age, employment history, earning ability, and physical and emotional condition of the spouse seeking maintenance;
4. The ability of the spouse from whom maintenance is sought to meet that spouse's needs while meeting those of the spouse seeking maintenance;
5. The spouses' comparative financial resources, including their comparative earning abilities in the labor market;
6. The contribution of the spouse seeking maintenance to the earning ability of the other spouse;
7. How much the spouse seeking maintenance has reduced that spouse's income or career opportunities for the other spouse's benefit;
8. The financial resources of the party seeking maintenance, including marital property apportioned to that spouse, and that spouse's ability to meet that spouse's own needs independently;
9. The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment and whether such education or training is readily available.

D. For duration purposes, what is the starting date for a spousal maintenance award?

Unless the court orders otherwise, the final spousal maintenance award begins on the first day of the first month following entry of the decree of dissolution of marriage or legal separation. Any temporary spousal maintenance award is not part of the final award duration unless ordered by the court.

For temporary orders, the starting date is the first day of the month following the service of the temporary orders petition.

E. Does Arizona law permit "lifetime" awards?

No. Historically, indefinite spousal maintenance awards were mischaracterized as "lifetime" awards. Under Arizona law, there are no lifetime awards. When the court

enters a fixed-term award, the burden of proof for any modification action brought during the term of the award is on the receiving spouse to establish that there are substantial and continuing changed circumstances to extend the duration of the award. When the court enters an indefinite term award, the burden of proof for any future modification action to terminate the award or shorten its duration is on the paying party to establish that there are substantial and continuing changed circumstances to terminate the award or set a fixed date for its termination. The court should consider where the burden of proof is appropriately assigned in determining whether to order a fixed versus indefinite award. If that burden of proof is more properly on the receiving spouse, the court must order a fixed-term award.

SECTION IV. DEVIATIONS IN CONTESTED SPOUSAL MAINTENANCE CASES

A. A deviation occurs when a court orders spousal maintenance in an amount outside the preliminary target range. An agreement by the parties as to amount or duration is not a deviation.

B. The court must deviate if, after considering all relevant factors, including those outlined in A.R.S. § 25-319(B) and applicable case law, it makes written findings stating:

1. Why an amount within the preliminary target range is inappropriate or unjust in the particular case; and
2. The court shows what the order would have been without the deviation; and
3. The court shows what the order is with the deviation.

C. In considering whether to deviate from the preliminary target range, the court must consider all relevant factors including, but not limited to the following:

1. The standard of living established during the marriage;
2. The length of the marriage;
3. The age, employment history, earning ability, and physical and emotional condition of the spouse seeking maintenance;

Commented [MPJ15]: Needs further discussion. If permanent disability a separate range, can't we say modification of the award is limited to modification of the amount?

Commented [PS16]: consider making this a box on worksheet where court identifies it is a deviation, so it is generated in the order - like CSG

4. The ability of the spouse from whom maintenance is sought to meet that spouse's needs while meeting those of the spouse seeking maintenance;
5. The spouse's comparative financial resources, including their comparative earning abilities in the labor market.
6. The contribution of the spouse seeking maintenance to the earning ability of the other spouse;
7. The extent to which the spouse seeking maintenance has reduced that spouse's income or career opportunities for the other spouse's benefit;
8. The ability of both parties after the dissolution to contribute to the future educational costs of their mutual children;
9. The financial resources of the party seeking maintenance, including marital property apportioned to that spouse, and that spouse's ability to meet that spouse's own needs independently;
10. Excessive or abnormal expenditures, destruction, concealment, or fraudulent disposition of community, joint tenancy, and other property held in common;
11. The cost for the spouse seeking maintenance to obtain health insurance and the reduction in the cost of health insurance for the spouse from whom maintenance is sought if the spouse from whom maintenance is sought can convert family health insurance to employee health insurance after the marriage is dissolved;
12. All actual damages and judgments from conduct that resulted in criminal conviction of either spouse in which the other spouse or a child was the victim;
13. The payment or receipt of spousal maintenance would compromise the spouse's ability to receive and afford out-of-pocket necessary or extraordinary health care or mental health services;
14. One spouse is the custodian of a child whose age or condition is such that the custodian should not be required to seek employment outside the home;

15. One or both spouses reside in a location with significant price variation from the other spouse such that a deviation is necessary for parity between the spouses; or
16. The tax rates for each spouse.

D. The spousal maintenance calculator uses several expenses as data points to determine expenditures, then divides those expenditures equally between the two parties. The court may consider evidence that one spouse pays more than half of these expenses as grounds for deviating. Additionally, the court may consider that there are more expenses not included in the spousal maintenance calculator as grounds for deviating from the presumptive range. These expenses are already included in the calculator and should not be grounds for deviating absent evidence of extraordinary expenses:

1. health, dental, and vision insurance, and medical services, supplies, and drugs;
2. utilities, fuels, and public services (excludes cable and satellite);
3. housing (excludes mortgage principal);
4. food;
5. apparel and services (excludes children's costs);
6. transportation;
7. reading materials;
8. personal care products and services;
9. life insurance and other personal insurance;
10. entertainment;
11. tobacco products and smoking supplies; and
12. alcoholic beverages.

E. It is not a deviation to:

Commented [MPJ17]: ?

1. Award spousal maintenance in an amount that decreases gradually over time, otherwise known as a step-down award, if the amounts are within the preliminary target range.
2. Determine that a spouse who may be *eligible* under A.R.S. § 25-319(A) is not *entitled* to the spousal maintenance award resulting from the application of these Guidelines because the receiving spouse is self-sufficient, or the paying spouse lacks the ability to pay. If, in the exercise of its discretion, the court determines a spouse is not *entitled* to the award of spousal maintenance calculated by these Guidelines, then the court must state its reasons on the record if requested by the parties;
3. Round off the monthly spousal maintenance amount for ease of accounting; or
4. Compromise on any individual figure incorporated in the spousal maintenance calculation.
5. If the parties agree to an amount or duration of spousal maintenance different from the amount or duration determined under these Guidelines, the court may adopt that agreement if it finds the following criteria are met:
 - a. The agreement is in writing or stated on the record under Rule 69, Arizona Rules of Family Law Procedure; and
 - b. All parties have entered the agreement free of duress and coercion; and
 - c. If the parties have entered into a written separation agreement under A.R.S. § 25-317 regarding spousal maintenance, and the court finds the agreement complies with A.R.S. § 25-317;
6. For any agreements entered into during the pendency of a case for dissolution or legal separation, all parties have entered into the agreement with knowledge of the amount of spousal maintenance that would have been ordered under the Guidelines but for the agreement.

SECTION V. TEMPORARY ORDERS

Commented [HK18]: As discussed at the last meeting, this language is intended to explain that it is an exercise of discretion - not a deviation- to find a spouse is not entitled to SM. Although this is how we previously interpreted 25-319(B), I wonder if this is still a correct statement after the amendment to 25-319(B). Now 319(B) states that the amount resulting from application of the Guidelines SHALL be the award unless the court deviates.

Commented [PS19R18]: Further discussion needed. Is this a deviation?

Commented [MPJ20R18]: I think Karen is correct, I think it is a deviation.

The policy underlying temporary orders is to maintain the parties' standard of living while the case proceeds through the court, if possible. To that end, efficiency and expediency are the primary concerns.

To accomplish the twin goals of efficiency and expediency, the court must apply the Guidelines, subject to these presumptions:

- A. Income will not be attributed to the receiving spouse if the receiving spouse has not been employed full-time by a bona fide employer for at least 24 months immediately before the petition was filed. A closely held business is not a bona fide employer if the receiving spouse did not labor for the pay received.
- B. The target amount range under the Guidelines applies.

Unlike temporary child support orders that are automatically retroactive to the initial filing date, a party must ask the court to make temporary spousal maintenance awards retroactive or the court cannot order that relief. [is there a statute for this?]

The temporary support calculation and any allocation of expenses between the parties are without prejudice to the final determination of reimbursement claims and do not determine the final spousal maintenance award. The court can review and revise temporary orders when it finally resolves the case, at which time the temporary order can be retroactively adjusted based on all the evidence, rather than the more limited information that existed early in the case.

SECTION VI. MODIFICATIONS

A. What duration range applies when a party seeks to modify duration?

To extend the spousal maintenance award beyond the duration of the original award, the receiving spouse must show substantial and continuing changed circumstances after the entry of the initial award of spousal maintenance. *See A.R.S. § 25-327(A).* When a substantial and continuing change in circumstances establishes that an extension of the award is appropriate, the modified term of the award may not exceed the maximum applicable duration range.

B. May the retirement of the party paying spousal maintenance during the term of the award constitute changed circumstances for modification purposes?

Yes. Under Arizona case law, the retirement of the paying party may constitute a change in circumstances for modification purposes. This applies whether the anticipated retirement date was contemplated at the time of the original spousal maintenance award. *See Chaney v Chaney*, 145 Ariz. 23, 26-27 (App. 1985). What may occur in the future affecting employment is speculative and is not considered when establishing the present rights of the parties relating to spousal maintenance. The proper approach is for the affected party to wait until that time to seek modification or termination of the award.