



1-1-1989

Domestic Relations

University of the Pacific; McGeorge School of Law

Follow this and additional works at: <https://scholarlycommons.pacific.edu/mlr>



Part of the [Legislation Commons](#)

Recommended Citation

University of the Pacific; McGeorge School of Law, *Domestic Relations*, 20 PAC. L. J. 591 (1989).

Available at: <https://scholarlycommons.pacific.edu/mlr/vol20/iss2/19>

This Greensheet is brought to you for free and open access by the Journals and Law Reviews at Scholarly Commons. It has been accepted for inclusion in McGeorge Law Review by an authorized editor of Scholarly Commons. For more information, please contact mgibney@pacific.edu.

Domestic Relations

Domestic Relations; child support—health insurance coverage assignment

Civil Code § 4726.1 (new).

AB 3699 (Harris); 1988 STAT. Ch. 1395

Under existing law, a court must require either or both parents of a supported child to provide health insurance for the child if the insurance is available at no or nominal cost to them.¹ Chapter 1395 allows a court to order the employer or other health insurance provider of the obligated parent to enroll the child in the obligated parent's health insurance plan in the event the parent defaults.² The order is called a health insurance coverage assignment (assignment), and operates as an assignment of the obligation, which is binding on the existing and future employers of the parent.³ The order may be issued upon application by a party during a trial or at an entry of judgement ordering health insurance coverage, and is open to later modification by the court.⁴ The order is not effective until ten days after it has been served on the insurance provider, by which time the provider must give a copy of the order to the obligated parent.⁵ An obligated parent may move to quash an assignment order within

1. CAL. CIV. CODE § 4726(a). If no health insurance is available at no or nominal cost, the child support order will contain a provision specifying that insurance must be obtained if it becomes available at an appropriate cost. *Id.*

2. *Id.* § 4726.1(a), (c). The employer or insurance provider may deduct any appropriate premiums or costs from the wages or earnings of the parent. *Id.* § 4726.1(a). Employer includes the government of the United States and any public entity. *Id.* § 4726.1(m). CAL. GOV'T CODE § 811.2 (definition of public entity).

3. CAL. CIV. CODE § 4726.1(b). In order for the assignment to be binding on the employer, the employer must be served with a copy of the order. *Id.*

4. *Id.* The application must state that the applying party has given the obligated parent at least 15 days written notice of the applicant's intent to seek an assignment if the obligated parent fails to provide coverage as ordered by the court. *Id.* § 4726.1(c). Notice must be delivered personally or via registered mail unless the obligated parent waives the written notice requirement. *Id.*

5. *Id.* § 4726.1(d). The insurance provider must include with the copy of the order a written statement of the parent's right to move to quash the order. *Id.*

ten days of receipt of the copy from the insurance provider.⁶ If the insurance provider has not received notice of the filing of a motion to quash during this period, then it must take steps to commence coverage.⁷ Coverage must commence at the earliest possible time.⁸ If there is a choice of plans available, the provider must enroll the child in a plan that provides benefits or coverage where the child resides; if such coverage is unavailable, the insurance provider must return the assignment to the individual initiating the assignment.⁹

Chapter 1395 provides for sanctions against health insurance providers who willfully fail to comply with a valid assignment order.¹⁰ Employers are prohibited from using an assignment as the basis for discharging, disciplining, or refusing to hire an obligated parent.¹¹

CSF

6. *Id.* § 4726.1(e). The obligated parent must aver, under penalty of perjury, at least one of the following errors: (1) No order was issued to maintain health insurance; (2) the cost of coverage is more than nominal, or greater than that ordered by the court; (3) the increased premium is unreasonable; (4) the parent is not the parent obligated to provide health insurance; (5) the child will be provided with coverage from another source; or (6) the insurance provider's choice of coverage is inappropriate. *Id.*

7. *Id.* § 4726.1(f).

8. *Id.* Coverage must be consistent with any applicable group plan enrollment rules. *Id.*

9. *Id.* § 4726.1(f) (return must be made within 20 days). If the obligated parent obtains coverage inconsistent with the court's order, the coverage will not be superseded unless the plan fails to provide benefits or coverage where the child resides. *Id.*

10. *Id.* § 4726.1(g) (insurance provider who willfully fails to comply is subject to sanctions for contempt of court, and liable to the assignment applicant for any health care expenses for which there would have been coverage had the provider complied with the order).

11. *Id.* § 4726.1(i). Violation of this provision is punishable by a civil fine of \$500 or less. *Id.*

Domestic relations; child custody mediation

Civil Code §§ 4607.1, 4607.2 (new); §§ 4351.5, 4600, 4600.5, 4601, 4601.5, 4607, 5181 (amended).

SB 2510 (Robbins); 1988 STAT. Ch. 1550

SB 1306 (Morgan); 1988 STAT. Ch. 1442

AB 2698 (Speier); 1988 STAT. Ch. 1377

Sponsor: Women Lawyers Association of Los Angeles

Support: Family Law Section, State Bar of California; California

Coalition Against Domestic Violence; Family Violence Law Center;

Central California Coalition Against Domestic Violence

Opposition: Parents for Equal Custody

Existing law provides for certain mediation procedures when the

custody and visitation of children are issues in a marriage dissolution.¹ Chapter 1550 prohibits a court from ordering an agreement made pursuant to mediation unless the parties have affirmed the agreement.² Chapter 1550 also provides that the court may require one parent to notify the other parent of an intent to change the child's place of residence for more than thirty days.³

Existing law specifies an order of preference for custody determinations.⁴ Chapter 1442 declares that there is neither a preference nor a presumption for or against joint legal custody,⁵ joint physical custody,⁶ or sole custody,⁷ thus allowing the parties and the court the widest discretion in developing a parenting plan that will be in the best interests of the children.⁸

Chapter 1377 provides that where there is a history of domestic violence⁹, the mediator has the authority to meet with the parties individually, if one of the parties requests separate mediation meetings.¹⁰ If a protective order¹¹ is in force, the separate mediation meetings must be scheduled at different times, when the protected party so requests.¹²

LLG

1. CAL. CIV. CODE §§ 4351.5, 4600-4608.

2. *Id.* §§ 4351.5(f), 4607(e). An agreement also may be incorporated into a court order if one of the parties fails to appear at a hearing on the issue. *Id.* § 4351.5(f).

3. *Id.* § 4600.5(m) (also specifies notice procedure to allow time for mediation of new custody agreement).

4. *Id.* § 4600(b)(1)-(3). Depending on the best interests of the child, the order of preferences are: (1) to both parents jointly, or to either parent, (2) to the person or people with whom the child has been living in a stable and wholesome environment, or (3) to anyone else whom the court finds to be suitable, and capable of providing proper care and guidance for the child. *Id.*

5. *Id.* § 4600.5(d)(5) (definition of joint legal custody).

6. *Id.* § 4600.5(d)(3) (definition of joint physical custody).

7. *Id.* § 4600.5(d)(2), (4) (definitions of sole physical custody and sole legal custody).

8. *Id.* § 4600(d).

9. CAL. CIV. PROC. CODE § 542(b) (definition of domestic violence).

10. CAL. CIV. CODE § 4607(d).

11. *See generally id.* §§ 4359, 4516, 7020 and CAL. CIV. PROC. CODE § 546 (discussing protective orders).

12. CAL. CIV. CODE § 4607.2(a).

Domestic Relations; community property—state retirement benefits

Civil Code § 4800.8 (amended); Education Code § 22650, 22651, 22652, 22653, 22654, 22655, 22656, 22657, 22658, 22659, 22660, 22661, 22662, 22663, 22664, 22665, 22666 (new); § 23702 (amended); Government Code §§ 21215, 21215.1, 21215.2, 21215.3, 21215.4, 21215.5, 21215.6, 21215.7, 21215.8 (new); §§ 21204, 21205 (amended).

SB 1190 (Lockyer); 1988 STAT. Ch. 542

Support: Women, Family & Work Coalition; California Teachers Association; Commission on the Status of Women; Lutheran Office of Governmental Ministry; California Federation of Business and Professional Women; Public Employees Retirement System; Department of State Teachers Retirement System; Department of Personnel Administration

Opposition: POPAC

Existing law provides a member of the State Teacher's Retirement System (STERS)¹ or the Public Employee's Retirement System (PERS)² with various public retirement benefits³ that constitute community property⁴ if the retirement contributions are made during the marriage of the member and nonmember spouse.⁵ Upon dissolution of marriage or legal separation, existing law requires the court, in making a division of community property interests in a retirement plan, to issue necessary orders to guarantee that each party receives his or her respective community property share.⁶ Chapter 542 provides the court with an additional option, upon the dissolution of marriage or

1. CAL. EDUC. CODE § 22133 (definition of member of a State Teacher's Retirement System).

2. CAL. GOV'T CODE § 20013 (definition of a member of Public Employee's Retirement System).

3. *Id.* §§ 20032 (pensions), 20033 (annuities), 20036 (benefits). *See generally id.* CAL. GOV. CODE §§ 22700-22728 (computations of allowable service credit), 23800-23815 (death benefits), 24000-24005 (benefits for service retirees).

4. CAL. CIV. CODE § 687 (definition of community property). *See Chirmside v. Board of Administration*, 143 Cal. App. 3d 205, 210, 191 Cal. Rptr. 605, 609 (1983) (contributions withheld from earnings for pension account during marriage constitute community property); *Crossan v. Crossan*, 35 Cal. App. 2d 39, 94 P.2d 609 (1939) (pension plans constitute community property during marriage). *See generally Kent, Pension Plans and Problems Under Community Property Law*, 2 STAN. L. REV. 447, 457 (1950) (community property includes contributions made to retirement benefit plans attributable to marriage).

5. *See Chirmside*, 143 Cal. App. 3d at 205, 210, 191 Cal. Rptr. at 605, 609 (an interest in a retirement plan traceable to contributions of community funds or community labor constitutes community property).

6. CAL. CIV. CODE § 4800.8.

upon legal separation, of dividing the community property interests in a public retirement system into two separate accounts in the names of the member and nonmember spouse.⁷ However, Chapter 542 expressly states that a nonmember spouse is not a member of PERS or STERS.⁸

Under prior law, a member of the public retirement system could designate or change a beneficiary of the retirement fund without regard to the community property interests of the nonmember spouse.⁹ Chapter 542 expressly prohibits a member from making any beneficiary designation changes under PERS or STERS in derogation of the nonmember spouse's community property share.¹⁰ Additionally, under prior law, the nonmember spouse could not devise his or her community property share of the retirement plan under the Terminable Interest Doctrine.¹¹ Chapter 542 abolishes this application of the Terminable Interest Doctrine.¹² Under Chapter 542, a nonmember spouse who is awarded a separate account of his or her community property share has the right to designate beneficiaries of the fund.¹³

CC

7. *Id.* § 4800.8(c),(d); CAL. EDUC. CODE § 22652(b). *See id.* § 22660 (member's and nonmember's accounts administered separately). *See also* CAL. GOV'T CODE § 21215(b) (if community property is divided pursuant to the Public Employee Retirement System or State Teacher's Retirement System, the court must order that contributions made and acquired be divided into two separate and distinct accounts); CAL. EDUC. CODE § 22652(c)(1)-(4) (community property rights of nonmember spouse include, but are not limited to: Retirement allowance; refund of accumulated retirement contributions; the right to redeposit eligible accumulated retirement contributions; and the right to purchase eligible additional service credit). Chapter 542 may not be construed to establish any right in a nonmember spouse which it does not explicitly establish. CAL. EDUC. CODE § 22665. In addition, Chapter 542 confers specific rights upon a nonmember spouse who is awarded a separate account due to the dissolution of marriage or legal separation. *Id.*

8. CAL. EDUC. CODE § 22651. *See* CAL. GOV'T CODE § 21215.1 (definition of nonmember).

9. 1986 Cal. Stat. Ch. 717, sec. 8, at 94 (amending CAL. EDUC. CODE § 23702).

10. CAL. EDUC. CODE § 23702 (an exception permits a member to designate a beneficiary or change the beneficiary if the court has made an alternative order for distribution). *See* CAL. GOV'T CODE § 21204 (member's designation of beneficiary to receive community property share may not be made in derogation of the community property share of the nonmember spouse).

11. *See* Waite v. Waite, 6 Cal. 3d 461, 474, 492 P.2d 13, 22, 99 Cal. Rptr. 325, 333 (1972) (the nonmember spouse's community property share may not be devised to beneficiaries); *In re Marriage of Peterson*, 41 Cal. App. 3d 642, 656, 115 Cal. Rptr. 184, 193 (1974) (the nonmember spouse cannot alienate or devise his or her community property share in the retirement plan). *See also* Rappy, *Community Separate Interest in Pensions & Social Security Benefits After Marriage of Brown & ERISA Benefits After Marriage of Brown & ERISA*, 25 UCLA L. REV. 417, 443-482 (1978) (comprehensive review of nonmember spouse's community property rights with regard to retirement plans); *Chirside v. Board of Administration*, 143 Cal. App. 3d 205, 209, 191 Cal. Rptr. 605, 609 (1983) (contributions withheld from earnings for pension account during marriage constitute community property).

12. CAL. EDUC. CODE §§ 22654, 22662(d).

13. *Id.*

Domestic Relations; dissolution of marriage—deferred sale of home order

Civil Code § 4800.7 (repealed); § 4700.10 (new).

SE 1341 (Hart); 1988 STAT. Ch. 729

Support: Agape Fellowship of Los Angeles; National Organization for Women; Bay Valley District Business & Professional Women; California Home Economics Association; Women Lawyers Association of Los Angeles; Women Lawyers of Sacramento

Opposition: Family Law Coalition; Family Law Section, State Bar of California

Existing law requires the court to divide community property equally upon the dissolution of a marriage.¹ Existing law permits the court to make an order to temporarily award the use of the family home to the party with custody² of the minor children to minimize the impact of the dissolution on the children.³ Chapter 729 allows the court to make such an order, referred to as a deferred sale of home order,⁴ if it is economically feasible to do so.⁵ In making this determination the court must consider: (1) How long the child has lived in the home, (2) the school grade of the child, (3) the accessibility of the home to school and facilities such as child care, (4) whether the home is adapted to physical disabilities of the child or resident parent, (5) emotional detriment to the child, (6) the extent to which the location of the home permits the resident parent to continue employment, (7) the ability of each parent to obtain housing, (8) the tax consequences to the parents, (9) the economic detriment to the nonresident parent if the order is granted, and (10) any other factors the court deems just and equitable.⁶ If the court determines that a deferred sale of home order will minimize the adverse impact of dissolution or legal separation on the child and, accordingly,

1. CAL. CIV. CODE § 4800(a). *See id.* § 4501 (effect of dissolution of marriage).

2. *Id.* § 4700.10(a)(1) (definition of custodial parent).

3. *See In re Marriage of Herrmann*, 84 Cal. App. 3d 361, 365, 148 Cal. Rptr. 550, 552 (1978) (trial court was given discretion to award family home to wife for a reasonable period of time to provide a good home environment for minor child after which the home was to be sold and the proceeds divided equally). *But see In re Marriage of Stallworth*, 192 Cal. App. 3d 742, 748-49, 237 Cal. Rptr. 829, 833-34 (1987) (home award improper absent evidence from which the court could find that adverse impact on child resulting from sale of home outweighed economic detriment to parent without custody).

4. CAL. CIV. CODE § 4700.10(a)(2) (definition of deferred sale of home order).

5. *Id.* § 4700.10(b) (setting forth grounds for determination of economic feasibility).

6. *Id.* § 4700.10(b)(1)-(10). *See id.* §§ 4700.10(a)(3) (definition of resident parent), 4700.10(g) (this section is applicable to deferred sale of home orders made before or after January 1, 1989).

makes the order, the court must specify the order's duration.⁷ Further, absent contrary written agreement by the parties, the court may modify or terminate the order at any time.⁸

Under existing law, if the party awarded the home remarries, or if there is a change in the economic status of the parties, a rebuttable presumption is created that deferral of the sale is no longer equitable.⁹ Chapter 729 also establishes a rebuttable presumption when a change in the ten conditions enumerated above, which were considered by the court in initially granting the order, occurs.¹⁰

HSP

7. *Id.* § 4700.10(c). A deferred sale of home order recorded in the office of the county recorder of the county in which the real property is located may be considered to constitute additional child support. *Id.*

8. *Id.* § 4700.10(e)(1).

9. *Id.* § 4700.10(e)(2). Compare CAL. CIV. CODE § 4700.10(e)(2) with 1985 Cal. Stat. ch. 419, sec. 4, at (amending CAL. CIV. CODE § 4800.7(b)(2)).

10. CAL. CIV. CODE § 4700.10(e)(2).

Domestic Relations; family law—attorney fees, property division, and parental support of eighteen year old children

Civil Code § 4704.5 (new); §§ 4606, 4800.9, (amended).
AB 2840 (Harris); 1988 STAT. Ch. 153

Existing law provides that in proceedings in which the custody or visitation of a minor child is contested, the parents are required to pay reasonable compensation to the court-appointed private counsel representing the minor child.¹ Chapter 153 requires that this compensation be paid by the parties to the action.² Under existing law, if the parties in a marital dissolution do not agree in writing to a voluntary division of community and quasi-community property valued at under \$25,000, the court may submit the issue of character, value, and division of the property to arbitration.³ Chapter 153 raises this limit to \$50,000.⁴ Finally, Chapter 153 requires parents to support their unmarried child after the age of 18, if the child is a full-time high school student and lives at home, until the child completes twelfth grade or attains the age of 19, whichever occurs first.⁵

JM

1. CAL. CIV. CODE § 4606.

2. *Id.* (the court determines the proportions of the compensation).

3. *Id.* § 4800.9(a),(b).

4. *Id.* § 4800.9(a) (the court's decision as to value is not appealable).

5. *Id.* § 4704.5 (this provision does not apply to support agreements made or judgments entered before March 4, 1972).

Domestic Relations; family law—responsive pleadings

Civil Code § 4355.6 (new).

SB 2518 (Robbins); 1988 STAT. Ch. 159

In dissolution of marriage, child and spousal support, and child custody procedures, existing law prohibits the recipient of an order to show cause from seeking affirmative relief in a hearing brought by the moving party, even if the issues presented are identical.¹ Chapter 159 allows the responding party to seek, by filing a responsive declaration, alternative affirmative relief in certain hearings² on the identical issues raised by the moving party.³

JM

1. CAL. CIV. CODE §§ 4300-5004 (Family Law Act).

2. *Id.* § 4355.6 (in a hearing on an order to show cause, a modification of an order, or in a hearing on a motion other than contempt).

3. *Id.* The responsive declaration must be filed within the time set by the court rules or by statute. *Id.*

Domestic Relations; family support payments—state employees

Civil Code § 4701.2 (new); Government Code § 1151.5 (new); § 1153 (amended).

AB 2932 (Speier); 1988 STAT. Ch. 231

Sponsor: State Controller's Office

Support: Department of Social Services; Felton-Collins Woodhouse and Associates

Under existing law, state employees may request to have certain expenses deducted directly from their wages.¹ Chapter 231 allows deductions for child or family support.² Furthermore, under Chapter 231, the court may order a person to make child or family support payments in this manner.³

HSP

1. CAL. GOV'T CODE § 1151.

2. *Id.* § 1151.5(a).

3. CAL. CIV. CODE § 4701.2(a).

Domestic Relations; restraining orders

Civil Code §§ 4359, 4516, 7020, 7021 (amended); Code of Civil Procedure § 550 (amended).

AB 3300 (Wright); 1988 STAT. Ch. 271

Existing law permits either party in an action to terminate a marriage to seek an ex parte restraining order against the other party for the purpose of preventing domestic violence.¹ Under existing law, personal service of such a restraining order may not be made by one party against the other.² Additionally, existing law, which provides for enforcement of an ex parte restraining order by law enforcement officers who have been shown the order,³ does not specifically authorize service of the restraining order by such officers.⁴ Chapter 271 clarifies existing law by specifically authorizing any law enforcement officer present at the scene of reported domestic violence involving the parties to serve and enforce a judicially issued ex parte temporary restraining order.⁵ Chapter 271 requires the plaintiff in such a case to provide the officer with an endorsed copy of the order.⁶ Finally, Chapter 271 expands the list of domestic violence restraining orders which are to remain effective for three years.⁷

JAM

1. CAL. CIV. CODE §§ 4359(a)(2) (enjoining either party from contacting, physically abusing, or disturbing the peace of the other or a household member upon showing of good cause), 4359(a)(3) (excluding either party from the dwelling of the other upon showing of past or threatened physical assault or showing that physical or emotional harm would otherwise result), 4359(a)(6) (enjoining party to effectuate court orders), 7020(a)(1)-(3) (party may be enjoined under similar conditions during pendency of action).

2. CAL. CIV. PROC. CODE § 414.10.

3. CAL. CIV. CODE § 4359(c).

4. *Id.*

5. *Id.* §§ 4359(d), 7020(e); CAL. CIV. PROC. CODE § 550.

6. CAL. CIV. CODE §§ 4359(d), 7020(e); CAL. CIV. PROC. CODE § 550.

7. CAL. CIV. CODE §§ 4516, 7021.

Domestic Relations; spousal support—wage assignments

Civil Code § 4801.6 (amended); Code of Civil Procedure § 1218 (amended).

SB 1614 (Marks); 1988 STAT. Ch. 969

Under existing law, when a court has ordered a person to pay spousal support, the court also may order an assignment of wages

to satisfy the spousal support obligation.¹ Chapter 969 revises the provisions relating to assignment of wages for spousal support by: (1) Requiring a spousal support order to contain a wage assignment provision;² (2) specifying that a wage assignment may be made payable to the district attorney;³ and (3) amending the grounds for quashing a wage assignment for spousal support.⁴ Additionally, Chapter 969 sets forth certain conditions under which an order of assignment can be terminated.⁵ Chapter 969 also imposes further duties on an employer concerning the collection and disbursement of assigned and withheld wages.⁶ Finally, Chapter 969 states that the provisions

1. CAL. CIV. CODE § 4801.6(a). If the spousal support obligor is in arrears in an amount equal to one monthly installment, wage assignment is required. *Id.* § 4801.6(b)(1).

2. *Id.* § 4801.6(b). Spousal support orders entered or modified after January 1, 1989, that contain a wage assignment provision become effective only upon the assigned payee's filing of an application with the court, signed under penalty of perjury, that the obligor is in arrears in an amount equal to one monthly payment. *Id.* After receiving the application, the court must issue an order assigning the wages of the obligor to the payee. *Id.* The order is binding as an assignment upon any present or future employer of the obligor. *Id.* Where the support order does not contain a wage assignment provision, the application must state that the supported spouse has given the obligor written notice of intent to seek a wage assignment in case of default, and that the notice was given at least fifteen days prior to the application filing date. *Id.* § 4801.6(b)(2). Notice must be personally served or given by certified mail at least fifteen days before the filing date of the application. *Id.* Wages will be assigned for both current support and payments past due, with priority being given to the current support needs. *Id.* § 4801.6(b)(11).

3. See CAL. CIV. CODE §§ 4801.6(m) (district attorney shall be assigned payee for cases in which an application for services has been filed under Title IV-D of the Social Security Act), 4801.6(o) (no additional enforcement or collection duties are placed upon the district attorney beyond those imposed under existing law). Compare *id.* §§ 4801.6(b)(3) (requiring the supported spouse to notify the court and the district attorney of any change of address when the court orders payments to be made to the district attorney) and 4801.6(m) (assigned payee may be the district attorney) with 1980 Cal. Stat. ch. 866, sec. 1, at 2700 (enacting CAL. CIV. CODE § 4801.6(b)(3)) (assigned payee may be a county officer assigned by the court).

4. CAL. CIV. CODE § 4801.6(b). Grounds for full or partial quashing of a wage assignment include: Error in the amount of current or overdue support; alleged obligor is not the obligor from whom support is due; amount withheld exceeds amount allowable under federal law; or default has not occurred). *Id.* § 4801.6(b)(6). See generally 15 U.S.C. § 1673(b)(2) (1978) (maximum part of obligor's weekly disposable income subject to garnishment can not exceed 50% if obligor is supporting spouse or dependent child other than spouse or child for whom support is ordered, or 60% if obligor is not supporting such a spouse or dependent child).

5. CAL. CIV. CODE § 4801.6(b)(10). A court shall order termination of an assignment if past due support has been paid in full and one of the following conditions has occurred: The employer or district attorney has been unable to deliver payments for six months; the death or remarriage of the supported spouse has occurred; or the assignment has continued for twenty-four months after payment in full of any past due support. *Id.* However, if the assignment was pursuant to a second or subsequent application, it may only be terminated upon a finding by the court of good cause. *Id.*

6. See *id.* § 4801.6(b)(7) (employer who willfully fails to withhold and forward support to assigned payee within ten days of date obligor is paid is liable to assigned payee for amount of support not withheld, forwarded, or paid). Such willful failure is contempt, punishment for which is not to exceed \$1,000 or five days in prison, or both. CAL. CRV. PROC. CODE § 1218. See also CAL. CIV. CODE § 4801.6(f) (an employer cannot use an assignment as grounds

of existing law preventing the enforcement of certain orders and judgments do not apply to child or spousal support orders.⁷

PKR

for refusing to hire a person or for discharging or taking disciplinary action against an employee).

7. CAL. CIV. PROC. CODE § 1218.

Domestic Relations; spousal support

Civil Code § 4801 (amended).
SB 1296 (Hart); 1988 STAT. Ch. 407

Existing law provides that in a legal separation or marital dissolution proceeding,¹ the court may order one spouse to support the other financially to the extent the court deems just and reasonable.² In addition, existing law requires the court to consider certain factors when awarding spousal support, including the earning capacities of the parties.³ Chapter 407 requires the court to base its award of spousal support on the standard of living established during the marriage.⁴ The court also must consider spousal earning capacity from the perspective of its sufficiency to maintain the standard of living established during the marriage.⁵

Existing law directs the court to consider certain other factors beyond earning capacity in awarding spousal support.⁶ Chapter 407

1. CAL. CIV. CODE § 4350 (methods of dissolution). *Cf. id.* § 4501 (effect of dissolution of marriage).

2. CAL. CIV. CODE § 4801(a). The court determines the amount and duration of support. *Id.*

3. *Id.* § 4801(a)(1). *See generally* Brunch, *Management Powers and Duties Under California's Community Property Laws: Recommendations for Reform*, 34 HASTINGS L.J. 229, 270, 281 (1982) (recommending reform in property division in divorce proceedings).

4. CAL. CIV. CODE § 4801(a).

5. CAL. CIV. CODE § 4801(a), (a)(1). Existing law requires that, in determining the sufficiency of the earning capacity of each spouse to maintain the standard of living established during the marriage, the court must consider: (1) The marketable skills of the supported spouse, or the need and expense to develop marketable skills, and (2) the extent to which periods of unemployment due to domestic duties impaired the earning capacity of the supported spouse. *Id.* § 4801(a)(1)(A), (B). Chapter 407 requires the court to make a specific factual finding of the standard of living during the marriage. *Id.* § 4801(a)(10).

6. *Id.* § 4801(a)(2),(5)-(8),(10). These factors include: (1) The extent to which the supported spouse contributed to the attainment of an education, training, license, or the career position of the other spouse; (2) the obligations and assets of each spouse; (3) the duration of the marriage; (4) the supported spouse's ability to work without interfering with the raising

adds the following factors: (1) The supporting spouse's ability to pay; (2) the needs of each spouse based on the standard of living established during the marriage; and (3) the immediate tax consequences to each party.⁷

RPR

of dependent children; (5) the age and health of the parties; and (6) any other factors the court deems just and equitable. *Id.*

7. *Id.* § 4801(a)(3),(4),(9). To determine the supporting spouse's ability to pay, the court must take into account earning capacity, earned and unearned income, assets, and standard of living. *Id.* § 4801(a)(3).

Domestic Relations; support payments—unemployment and disability benefit withholding

Unemployment Insurance Code § 2630 (new); §§ 1342, 1255.7 (amended); Code of Civil Procedure § 704.120 (amended); Welfare and Institutions Code § 11350.5 (amended).

AB 1766 (Wright); 1988 STAT. Ch. 261

Existing law authorizes the Employment Development Department (Department) to withhold up to twenty-five percent of a recipient's weekly unemployment compensation payment to satisfy his or her child support obligations.¹ Chapter 261 also allows the Department to deduct up to twenty-five percent from a recipient's unemployment compensation disability insurance benefits.² Withheld disability and unemployment compensation payments may be applied toward both the individual's spousal and child support obligations.³ The State Department of Social Services will resolve all claims for a refund of overwithheld sums.⁴

ERK

1. CAL. WELF. & INST. CODE § 11350.5(c), (e).

2. *Id.* § 11350.5(b)-(e).

3. *Id.* § 11350.5(a), (j). A judgment creditor under a support judgment may seek, through a district attorney, to apply benefit payments to satisfy the judgment. CAL. CIV. PROC. CODE § 704.120(d). See also CAL. UNEMPLOY. INS. CODE § 2630(a)-(g) (providing procedures for implementing the application of benefit payments to support judgments), CAL. CIV. PROC. CODE § 704.120(e) (providing procedure for applying benefit payments to satisfy a support judgment). See generally CAL. WELF. & INST. CODE § 11350.5(j) (definition of support obligations).

4. CAL. WELF. & INST. CODE § 11350.5(f).