

POST DIVORCE LIFE

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Question: My ex-wife and her two kids moved in with her boyfriend. Do I still have to pay her alimony? What about the child support payments?

Answer: You must continue paying alimony and child support if there is an existing court order requiring you to do so. The mere fact that your ex-wife and children have moved in with her boyfriend does not change your obligations, unless your child support and alimony are modified by a new court order.

You may wish to consider going back to court to change your court order. Your ex-wife's boyfriend's income - or "new mate income," as we call it in California - has different applications based upon whether we are talking about child support or alimony.

Normally, the new mate's income is not considered in determining the amount of child support, since the new mate has no legal obligation to support your children. However, the court will consider new mate income if excluding it would result in difficulty for your children. This typically occurs when your ex-wife stops working as a result of her new mate's income. In this situation, if you went back to court, your ex-wife might be imputed the salary she had been receiving at the job she quit. This would not help you, since your current child support order is probably based on her income at this job. But if she refused promotions, or intentionally remains underemployed in reliance upon new mate income, a good argument could be made that her earning potential is higher, which would mean your child support should be lower. This is difficult to prove, unless subpoenaed records from your ex-wife's employer show that she turned down promotions and raises.

If your ex-wife's expenses went down due to perks given to her by her new mate, this could be used as additional income to your ex-wife. For example, if the new mate was not charging your ex-wife rent, utilities, or other household expenses, these "freebies" could be added to your ex-wife's income as additional non-taxable income. You would need to subpoena your ex-wife's checking account records, after she has lived with her new mate for a number of months, to see whether she still pays rent, utilities, food, and other necessary living expenses.

Payment of spousal support is a completely different animal. Typically, spousal support lasts until the death of you or your ex-wife, or until she remarries. Living together with a boyfriend is not considered remarriage, but it makes an arguable presumption that there is a decreased need for spousal support. Because of this, many ex-spouses try to hide the fact that they are cohabiting. If your ex-wife is cohabiting openly, it will be easy to prove in court.