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## **Spousal Support as Spousal Worker Severance Pay\***

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Most states, including California, view spousal support as an **obligation** of one spouse to support the other spouse in **need** of support. In fact, the term **support** conveys the idea of help to others in need. I propose that marriages where spouses engage in unequal amounts of household-related work be viewed as partnerships in which one spouse acts as a **spousal worker** whereas the other spouse takes the role of the employer. Viewed from such perspective, what is now called spousal support is one aspect of **workers' rights**. Valuable insights can be gained by considering spousal support as a particular kind of **spousal worker compensation**, the equivalent of **severance pay** in the labor market. This essay defines the concept of spousal worker and compares key features of a spousal support system based on the concept of spousal worker severance pay with key characteristics of existing spousal support laws.

Marriage involves work, which can be called spousal labor (see Grossbard-Shechtman 1993). Spousal labor includes activities commonly called "household duties", "housework", "household chores", and "homemaking." Some aspects of child care may be considered spousal labor and so are many more activities such as yardwork, home repairs or counseling a spouse.<sup>1</sup> To the extent that one spouse can be considered as a worker and the other as an employer, the worker has the right to be compensated for labor performed. The concepts of fair compensation and workers' rights, applicable to other forms of employment, can be applied to employment within marriage. One right workers often acquire is the right to a severance pay when employment is discontinued. In turn, severance pay is often related to accumulated pension rights. Married spouses who engage full time or part-time in homemaking and get supported financially by their spouses can be viewed as engaging in **spousal labor** in return for a material compensation. To the same extent that some workers in the labor force view it as their right to obtain severance pay in case long-term employment is discontinued, spousal workers may claim they have the right to obtain spousal support after a divorce. Consider the following example.

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1. Activities generally enjoyed by both spouses, such as sexual relations, are not considered work.

**An Example.** Consider a couple--Mr. and Mrs. Jones--divorcing after 20 years of marriage. Assume both spouses had been employed outside the home and that the husband had been earning considerably more than the wife. For instance, in a typical year of marriage, well before divorce was planned by either party, the present value of his income was \$50,000 whereas the present value of her income was \$30,000. Assume that they had been sharing their income, which implies that they both had equal access to each other's income. During this same period, the wife was devoting significantly more of her time to family-related tasks than the husband. It is therefore appropriate to consider her as the spousal worker and him as the spousal employer. As he earned \$20,000 more than her and shared those earnings, half of that amount (\$10,000) can be viewed as a yearly compensation for her spousal labor during the marriage.

To estimate a severance pay at divorce, we can apply criteria commonly found in other forms of long-term employment. Based on the standards used by the State of California for its employees, for instance, this woman would have accumulated pension rights at a rate of 9.5 % of her estimated earnings from spousal labor. Ignoring the need to calculate present values for the purpose of this example, if her earnings from spousal labor were \$10,000 a year for 20 years she would be entitled to a divorce compensation of \$19,000 ( $\$10,000 \times 20 \times .095$ ).

A liquidity problem may arise if the ex-spouse does not have the means to pay the other spouse a severance pay. This could be solved in ways similar to those used in the enforcement of workers' rights in other areas of employment. One solution would be for the employer-spouse to pay the severance pay over an extended period of time, transforming it into the equivalent of what is now called spousal support. Another solution would be for him to finance the severance pay out of his share of the couple's property. The severance pay would then be a lump sum.

### ***Spousal Support as Severance Pay vs. Existing Spousal Support.***

(1) Judges typically rule that the need for spousal support ends with remarriage or equalization of the spouses' earning capacities. In contrast, spousal worker severance pay (if an annuity) would continue to be paid after the spousal worker entitled to such compensation remarries or finds a lucrative job.

(2) Under the present system higher earners have an incentive to underreport their post-divorce earnings or to actually stop themselves from earning more when divorce is planned or after divorce. Under a spousal worker severance pay system what matters are the activities during the time the marriage functioned smoothly. Spousal worker severance pay would be based on the difference between the earnings of the spouses during marriage and on the difference in spousal

workload during marriage. Under the proposed system, there would be no incentive to earn less after divorce.

(3) Under the present system spousal support is awarded separately from property division. Under the proposed system judges may rule that persons unable to pay a spousal worker severance pay as an annuity (due to low current earnings) would use part of their assets to finance their obligations towards spousal worker severance pay.

(4) Present spousal support awards do not take account of the division of labor between the spouses during marriage, unless the marriage was a traditional marriage. A system based on spousal worker severance pay would take account of how much each spouse contributed to home-making defined in a broad sense. For instance, spouses employed outside the home who spent considerably more time taking care of home-bound matters than their spouse would be entitled to a severance pay if they earned less during marriage. Presently, they generally are not. In contrast, some spouses who are presently eligible for spousal support may not be eligible for spousal worker severance pay. For instance, consider a higher earning spouse who also did most of the home-making jobs. Such relationship would not involve the employment of spousal labor and would not create eligibility for spousal worker severance pay.

(5) The proposed approach may also offer new ways of dealing with the problem of disabled spouses. Disabled spouses would be eligible for disabled spousal worker compensations. A spouse employing a spousal worker would be obligated towards a disabled spouse during marriage and after divorce in the spirit of disability benefits in the labor force.

In conclusion, viewing spousal support as a severance pay for spousal workers leads to the possibility of dramatically different legal rulings in matters of spousal support and property division at divorce. The implications presented in this brief essay suggest a few directions for future legal change. Many more implications can be derived, e.g. regarding rights to military pension by the spouse of army personnel, social security benefits to spouses, or tax laws affecting marriage. Before more potential implications are developed, it is hoped that some of the ideas presented here can be implemented.

### **Reference**

Shoshana Grossbard-Shechtman, (1993), *On the Economics of Marriage--a Theory of Marriage, Labor and Divorce*. Boulder, CO: Westview Press.

