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HOW CHILD SUPPORT IS DETERMINED IN OHIO

A PRIMER

By

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Anytime a couple has a child and ceases to live together, the state may intervene in determining what each parent should contribute to the support of that child. Who pays who is based upon both the amount of time the parties have with the child and the incomes of the parties. This will be explained below.

Where a parent seeks an order of support depends on the parties' marital status. When a couple is not married, support is sought through the Department of Job and Family Services in an administrative process. If either party is unhappy with that determination, he is free to seek a review by the Juvenile Court. Married parents who have not filed for divorce can also seek a support order through Juvenile Court. A married couple who has filed for divorce obtains a support order through Domestic Relations Court.

Instead of seeking a judicial determination of support, a couple may wish to negotiate an amount of support, with or without the assistance of counsel. This negotiated settlement can later be presented to a court to become an enforceable order. In our practice, we often reach an agreed amount of support to be paid while we negotiate parenting time, property divisions, and other aspects of a couple's separation.

WHAT INCOME IS USED TO DETERMINE SUPPORT?

For determining child support, there is a statute that provides guidance for determining the support each parent should provide. The statute sets out a number of income and expense issues to be examined. Initially, each party's gross income is determined.

Gross income includes:

1. Earned Income (taxable or not)
2. Unearned Income (taxable or not)
 - For example, items such as lottery winnings, when paid in a lump sum or in a series of payments for less than three (3) years are non-recurring income and excluded from gross income. However, investment income from the proceeds would be counted as gross income.
3. Salaries
4. Wages
5. Overtime pay *
6. Bonuses *
7. Commissions*
- * These are averaged over 3 years
8. Royalties
9. Tips

10. Rents
11. Dividends
12. Severance Pay
13. Pensions
14. Interest
15. Trust Income
16. Annuities
17. Social Security Benefits - retirement, disability, and survivor benefits
18. Workers Compensation Benefits
19. Unemployment Insurance Benefits
20. Disability Insurance Benefits, other than Social Security
21. Veteran's Benefits
22. Spousal Support Actually Received
23. Income of Military and National Guard Members - base pay, basic allowance for quarters, basic allowance for subsistence, supplemental subsistence allowance, cost of living adjustment, specialty pay, variable housing allowance, and pay for training or other types of required drills
24. Self-generated income
25. Potential cash flow from any source, e.g.
 - a. Housing or vehicles or allowances for these
 - b. Expense reimbursement or per diem

Gross income does not include:

1. Means tested government benefits, including, Supplemental Security Income (SSI), food stamps, or other assistance for which eligibility is based on income or assets.
2. Non-means tested service connected disability not yet distributed to the veteran.
3. Child support for children not from this marriage.
4. Mandatory deductions from wages (e.g. union dues).
5. Nonrecurring or unsustainable income or cash flow items - defined as income in any year, not exceeding 3 years that the parent does not expect to continue to receive on a regular basis. This does not include lottery winnings not paid in a lump sum or other income expected to be received for more than 3 years or that the parent receives and invests or uses to produce income or cash flow for more than 3 years.
6. Adoption assistance and foster care maintenance payments.

Potential Income:

If a party is not employed and does not receive any of the incomes listed above, it may be possible to impute income to him or her. This is the income a party should be able to earn if fully employed or imputed income from any non-income producing asset. The latter means that if a party has an asset that could be invested to earn income, the court can determine how much that income should be, up to 10% of the invested amount per year. The level of imputed income is determined by the following:

1. Prior employment experience
2. Education
3. Physical and mental disabilities, if any
4. Availability of employment in the geographic area where the parent resides
5. Prevailing wages and salary levels in the geographic area where the parent resides
6. Special skills and training
7. Evidence that the parent has the ability to earn the imputed income
8. Age and special needs of the child for whom support is being calculated
9. The parent's increased earning capacity because of experience

Self-employment:

If a party is self-employed, the court looks at gross receipts minus ordinary and necessary expenses. These expenses include actual cash items and depreciation of business equipment. These do not include other depreciation or other noncash items allowed as deductions for federal tax purposes.

Finally, if one party will receive spousal support from the other, that is included as income for the recipient.

WHAT EXPENSES I PAY COUNT IN CALCULATING SUPPORT?

After gross income is determined, there are a number of expenses which are deducted from that to reach a net income amount for determining support. These deductions include:

1. spousal support paid;
2. child support paid for other children;
3. a deduction for other children of a parent when those children live with him (the tax dependency exemption amount is the number used – see irs.gov for the current amount);
4. any local taxes paid;
5. any mandatory work-related deductions, such as union dues.

ONCE INCOME AND EXPENSES ARE DETERMINED, HOW IS SUPPORT CALCULATED?

Once the net amount of income is determined, the parties' incomes are added together and each party's percentage to the total income is determined. This is the percentage of support each is responsible to provide a child.

The percentage calculated is applied to the statutory amount of support. The state's child support guidelines are based upon assumptions about economic expenditures in the average family. These assumptions are derived from statistical data gathered by numerous federal and state agencies concerning the average cost of raising the average child. This figure runs about 10% of the combined gross income amount for 1 child, 15% for 2 children, and 20% for 3 children.

WHAT OTHER CHILD RELATED EXPENSES ARE PAID BESIDES BASIC SUPPORT?

After the basic support numbers are determined, two additional items must be added to the support amount. These are the cost of work-related child care and the cost of medical insurance to cover the child only. If there is no insurance available for the children, an additional amount must be added to the support amount to offset the cost of medical expenses. This is called a "Cash Medical order". Health insurance is considered available when it is offered through the parent's employment or can be obtained privately at a cost not to exceed 5% of the parent's gross annual income.

I HAVE HEARD THERE IS A CHILD SUPPORT WORKSHEET. HOW IS IT USED TO DETERMINE SUPPORT?

Once all the numbers are determined, the initial calculation of support can be made. For this purpose, a child support worksheet has been created. A copy of the worksheet is attached, and I'll go through each of the 33 lines to explain the procedure so you may follow along and do your own calculation. You can also access an online support worksheet here:

<http://www.alllaw.com/calculators/Childsupport/ohio/>

1. Line 1 – Income:
 - a. Gross Income from employment
 - b. Three (3) year average of overtime, bonuses, and commissions. Year one is the most recent year. Use the 3 year average or year one amount, whichever is less. However, if this year's earnings are expected to be even less, use this year's expected number.
2. Line 2 – Self-employment income:

- a. List gross receipts.
 - b. List ordinary and necessary business expenses.
 - c. Provides for an adjustment of 5.6 % of the amount of the adjusted gross income, which accounts for the additional Social Security Tax paid by self employed individuals.
 - d. The adjusted gross income after deducting the business expenses and Social Security Tax.
3. Line 3 – Income from interest and dividends.
 4. Line 4 – Unemployment compensation received.
 5. Line 5 – Worker’s Compensation, disability insurance benefits, or social security/retirement benefits.
 6. Line 6 – Other annual income.
 7. Line 7
 - a. Total annual gross income.
 - b. Health insurance maximum (most required be paid to cover children)
 8. Line 8 – Adjustment for other minor children living with a parent. The calculation is made by multiplying the number of children times the Federal Income Tax Exemption for that year (\$3,650 for 2010 returns) less the child support received for each child.
 9. Line 9 – Deduct court ordered support paid for other children.
 10. Line 10 – Deduct court ordered Spousal Support paid.
 11. Line 11 – Deduct local income taxes.
 12. Line 12 – Deduct mandatory work related paycheck deductions, such as union dues and uniforms.
 13. Line 13 – Total gross income adjustments.
 14. Line 14
 - a. Adjusted annual gross income.
 - b. Cash medical support maximum
 15. Line 15 – Combined annual income to determine child support.
 16. Line 16 – Percentage of parent’s income to total income.
 17. Line 17 – The basic child support obligation from the child support schedule.
 18. Line 18 – Annual support obligation per parent.
 19. Line 19 – Work related childcare expenses.
 20. Line 20 – Health Insurance costs for children to be covered.
 - a. Cost to parent to cover children.
 - b. Cash medical support obligation
 21. Line 21 – Adjustments to child support when health insurance is provided – this is where the other parent’s share of the health insurance cost is reduced from the obligor’s payment.
 22. Line 22 – Obligation after adjustments to child support for health insurance.
 23. Line 23 – Obligor’s annual total when health insurance is provided, less any non-

means tested benefits including SSI and Veterans benefits paid to or received by a child, or a person on behalf of the child, due to death, disability or retirement of the parent.

24. Line 24 – Adjustments to child support when health insurance is not provided.
25. Line 25 – Obligation after adjustment when health insurance is not provided.
26. Line 26 – Obligor’s annual total when health insurance is not provided, less any non-means tested benefits including SSI and Veterans benefits paid to or received by a child, or a person on behalf of the child, due to death, disability or retirement of the parent.
27. Line 27 – Deviations
 - a. Deviation from sole residential parent support amount requires specific facts and monetary amount to be stated. See deviation reasons below.
 - b. Deviation from Shared Parenting Order- requires specific facts, including amount of time child spends with each parent, ability of each parent to maintain adequate housing for children, and each parent’s expenses for children.
28. Line 28 – Final figure.
29. Line 29 – Decree amount, which includes the processing fee.
30. Line 30 – Final cash medical support figure to be paid, if required.
31. Line 31 – Decree amount of cash medical, which includes processing fee.

The child support worksheet caps support at a combined income of \$150,000. In order to exceed this amount, the party seeking more money must demonstrate that it is in the children’s best interest to do so. In determining the need, the standard of living of the children and the parents is considered.

IS THERE ANY WAY TO RECEIVE MORE OR PAY LESS CHILD SUPPORT?

The guidelines also recognize that the basic guideline amount may not be appropriate in every case. Therefore, there are provisions to deviate from the basic amount, to either increase or decrease the amount. To deviate one way or the other, a court must find that the application of the guidelines “would be unjust or inappropriate” in a particular case. As the worksheet amount is presumed to be the correct amount of support, the burden of proof for a deviation is upon the party advocating it. There are 16 deviation factors, as follows:

1. Special and unusual needs of the children;
2. Extraordinary obligations for minor children or handicapped children not stepchildren or offspring of the marriage at issue;
3. Other court ordered payments;
4. Extended parenting time or extraordinary costs associated with parenting time.

However, the statute says that this does not allow the court to deviate due to a denial of or interference with a right of parenting time granted by court order;

5. The obligor obtaining additional employment after a child support order is issued in order to support a second family;
6. The financial resources and the earning ability of the child;
7. Disparity in income between parties or households;
8. Benefits that either parent receives from remarriage or sharing living expense with another person;
9. The amount of federal, state, and local taxes actually paid or estimated to be paid by a parent or both of the parents;
10. Significant in-kind contributions from a parent, including, but not limited to, direct payment for lessons, sports equipment, schooling, or clothing;
11. The relative financial resources, other assets and resources, and needs of each parent;
12. The standard of living and circumstances of each parent and the standard of living the child would have enjoyed had the marriage continued;
13. The physical and emotional condition and needs of the child;
14. The need and capacity of the child for an education and the educational opportunities that would have been available to the child had the circumstances requiring a court order for support not arisen.
15. The responsibility of each parent for the support of others;
16. Any other relevant factor.

Factor #10 includes school expenses. Many of our clients have children in private schools. Not only can this expense be used as a deviation, but the Court has authority to order whether private school tuition should be ordered to be paid and by whom. In determining whether to do so, the Court looks at where the children attended the school during the marriage, the intent of the parties regarding private school, and whether, upon divorce, the parties can still afford private school tuition.

I HAVE HEARD SHARED PARENTING REDUCES CHILD SUPPORT; IS THIS TRUE?

When the parties have Shared Parenting, the child support worksheet is still the starting point in determining support. In this instance, the court performs a case by case analysis to determine whether the support that would be paid in a sole custody situation should still be paid, should be reduced, or not paid at all. While the above deviation factors may be considered, there are additional factors to consider for a deviation, up or down, in support when there is shared parenting, as follows:

1. The amount of time the children spend with each parent;
2. The ability of each parent to maintain adequate housing for the children;
3. Each parent's expenses, including:
 - a. child care,
 - b. school tuition,
 - c. medical expenses,
 - d. dental expenses,
 - e. any other relevant expenses.
4. Any other circumstances the court considers relevant.

**IS THE BASIC CHILD SUPPORT EXPECTED TO COVER
MEDICAL EXPENSES NOT PAID BY INSURANCE?**

In addition to the determination of support, there must be a determination of medical expenses not covered by insurance and an allocation of the dependency tax exemption. The medical expenses which must be divided are extraordinary expenses for medical, dental, orthodontia, psychological and counseling. Extraordinary expenses are defined as those exceeding \$100 per child per calendar year. The child support worksheet calculation presumes the parent receiving support will pay the first \$100 per child per year. The sharing of the extraordinary expenses after that can be 50-50 or based on another percentage.

WHO RECEIVES THE TAX DEPENDENCY EXEMPTIONS FOR THE CHILDREN?

With regard to the tax dependency exemption for the minor children, the IRS rule is that the custodial parent receives the exemption. However, the Court, or the parents by agreement, can change that if it finds it in the child's best interest to do so. In the case of Shared Parenting, where both parents are the custodial parents, the Court must determine who shall receive the exemption(s). For more on Shared Parenting, see our report on Child Custody.

The grounds for giving the tax exemption to the non-custodial parent are:

1. The net tax savings,
2. The relative financial circumstances and needs of the parents and children,
3. The amount of time the children spend with each parent,
4. The eligibility of either or both parents for the federal earned income tax credit or other state or federal tax credits, and
5. Any other relevant factor concerning the best interest of the child.

If the parent paying support is to receive the exemption, he or she must be substantially current in his or her support payments for the tax year the exemption is to be taken.

WHEN DOES THE REQUIREMENT TO PAY CHILD SUPPORT END?

The duty to pay support ends when a child turns 18, except as follows:

1. The child is mentally or physically disabled and incapable of self support;
2. The parents have agreed to continue the duty of support pursuant to a Separation Agreement;
3. The child continuously attends a recognized and accredited high school on a full-time basis. However, support ends at 19, even if the child is still in high school.

Although rare, support can end early if a child emancipates by moving away from home and supporting himself, getting married, or enlisting in the military.

HOW CAN I RECEIVE MORE INFORMATION?

We hope you have found this report useful. As you can see, there are a number of issues to examine when determining the proper amount of support in a case. We strive to obtain full information from you to include all factors that may affect your calculation to give you accurate advice. If you would like to discuss your situation, please call the office at **513-241-4029** or email us at **cathy.cook@cathycooklaw.com**. We offer a free phone consultation. For a more in-depth analysis of your situation, we offer an in office case audit.

LEGAL NOTICE

The above is an overview of child support in the state of Ohio. It is not legal advice, and does not create an attorney-client relationship with Cathy R. Cook, Attorneys at Law. Your own situation should be reviewed and analyzed by an attorney.