

HOW CHILD SUPPORT IS DETERMINED IN OHIO

A PRIMER

By

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Concentrating In Family Law

In determining child support, the Court examines a number of income and expenses issues. Initially, the Court looks at each party's gross income. Gross income includes:

1. Earned Income (taxable or not)
 2. Unearned Income (taxable or not)
 - a. 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 - specifies retirement, disability, and survivor benefits
 18. Workers Compensation Benefits
 19. Unemployment Insurance Benefits
 20. Disability Insurance Benefits
 21. Veterans 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.

* Housing or vehicles or allowances

* Expenses reimbursement or per diem

Gross income does not include:

1. Means tested government benefits, including , Supplemental Security Income, food stamps, disability assistance, 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 as determined from a local passbook savings rate, or another appropriate rate, not to exceed 10%, if the income is significant. The level of imputed income is determined by the following:

Prior employment experience

Education

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

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.

Calculating the child support payment - There is a child support worksheet the Court must use in calculating support. A copy is attached. The worksheet contains 33 lines. The information for each line is as follows:

1. Line 1. a.- Gross Income
2. Line 1. b. - Three (3) year average of overtime, bonuses, and commissions. Year on is the most recent year.
3. Line 2- Self-employment income.
4. Line 2. a.- Lists gross receipts.
5. Line 2. b.- Lists ordinary and necessary business expenses.
6. Line 2. 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.
7. Line 2. d. - The adjusted gross income after deducting the business expenses and Social Security Tax.
8. Line 3 - Income from interest and dividends.
9. Line 4 - Unemployment compensation received.
10. Line 5 - Worker's Compensation, disability insurance benefits, or social security/retirement

benefits.

11. Line 6 - Other annual income.
12. Line 7 - Total gross income.
13. 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 (\$3,400 for 2008) less the child support received for each child.
14. Line 9 - Deduct court ordered support paid for other children.
15. Line 10 - Deduct court ordered Spousal Support paid.
16. Line 11 - Deduct local income taxes.
17. Line 12 - Deduct mandatory work related paycheck deductions, such as union dues and uniforms.
18. Line 13 - Total gross income adjustments.
19. Line 14 - Adjusted annual gross income.
20. Line 15 - Combined annual income to determine child support.
21. Line 16 - Percentage of parent's income to total income.
22. Line 17 - The basic child support obligation from the child support schedule.
23. Line 18 - Annual support obligation per parent.
24. Line 19 - Work related childcare expenses.
25. Line 20 - Health Insurance costs for children to be covered.
26. Line 21 - Adjustments to child support for shared parenting or where the obligor parent is paying the childcare and/or health insurance costs.
27. Line 22 - Obligation after adjustments to child support.
28. Line 23 - Obligor's obligation for child support 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.
29. Line 24. a. - deviation from sole residential parent support amount- requires specific facts and monetary amount to be stated. See deviation reasons below.
30. Line 24. 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.

31. Line 25 - Final figure.

32. Line 26 - Decree amount, which includes the processing fee.

33. Line 27 - The signatures of both parties are required. The requirement of notarization has been eliminated.

High income earners - Where the parties combined gross income is greater than \$150,000.00, the worksheet caps support at the \$150,000 level. To exceed this amount, the party seeking more must demonstrate that it is in the children's best interest to do so. The court shall consider the needs and the standard of living of the children and the parents.

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

a. The child is mentally or physically disabled and incapable of self support.

b. The parents have agreed to continue the duty of support pursuant to a Separation Agreement.

c. 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.

Dependency Exemption - When a Court determines child support, it must also determine who is to receive the dependency exemption for the minor children for tax purposes. Ohio courts recognize the dependency exemption as an issue related to child support, and reviewable when child support is reviewed. The parties may not prohibit a future review by the court.

a. The IRS rule is that the custodial parent receives the exemption. However, the Court can change that if it finds it in the child's best interest to do so. The grounds for giving the exemption to the non-custodial parent are: the net tax savings, the relative financial circumstances and needs of the parents and children, the amount of time the children spend

with each parent, the eligibility of either or both parents for the federal earned income tax credit or other state or federal tax credits, and 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.

b. If the parties have shared parenting, so that both are custodial parents, the Court must review the factors to determine which custodian receives the exemption.

Medical Expenses - The Court shall also issue a separate order for extraordinary medical, dental, orthodontia, psychological and counseling expenses.

- a. Extraordinary medical expenses are identified as uninsured medical expenses incurred for a child during a calendar year that exceed \$100.00.
- b. The statute does not require that the court divide such expenses according to the income percentages on the worksheet. Rather, the court has discretion to divide them as it sees fit under all the circumstances.

Private School Tuition - The Court has authority to order payment of private school tuition. In determining when to do so, the Court looks at where the children attended school during the marriage, the intent of the parties regarding private school, and whether, upon divorce, the parties can still afford private school tuition.

Calculations of support in shared parenting - Shared parenting support is calculated on the same worksheet as sole custody 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. The factors to consider for a deviation in support are discussed below.

Deviation - All 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. The recognition that the child support guideline amount may not be appropriate in every case is built into the federal mandate concerning the guidelines. The guideline amount is merely presumptive, and the court may deviate from the guideline amount when the guideline presumption is rebutted. To deviate, a court must find that the application of the guidelines “would be unjust or inappropriate” in a particular case.

The Ohio statute follows this principle. The court must prepare a worksheet calculating the usual amount of support and then prepare findings of fact explaining why deviation is in the best interest of the children. 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.

Deviation Factors

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;
- 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.

Deviation in Shared Parenting Plans - As stated above, the guideline support amount is to be applied to shared parenting plans unless the deviation factors outlined above apply. Shared Parenting Plans do provide more flexibility in that the statute requires the court to consider “extraordinary circumstances”, which include:

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 child care, school tuition, medical expenses, dental expenses, any other relevant expenses;
4. Any other circumstances the court considers relevant.