

Establishing Child Support

Child support is calculated as a function of the obligor's (the parent paying support) net income. "Net income" means income from all sources. Defining "income" sounds simple, but there are many complicating factors. Call our office to learn more about your rights, risks, and responsibilities of child support.

Gifts as Income: Occasionally, a parent who owes child support will receive substantial income in the form of gifts from parents, a new spouse, friends, an employer, etc. To anyone else, it looks like income – the parent gets money and can spend it or save it as he or she wishes – but the parent claims that "gifts" should not be included in "income" when calculating child support. Illinois law is silent on the issue and judges have been left to figure it out for themselves. It used to be quite clear that gifts should not be included in "income."¹ One recent case, however, says equally clearly that gifts are to be included in income.² The facts of the case will determine the outcome³ – talk with one of our knowledgeable attorneys to see if your gifts are really gifts ... or if they count as income.

Loans as Income: Believe it or not, loans can count as income when you're figuring out your child support payments.⁴ Like gifts, sometimes they count and sometimes they don't. The facts of the case will determine the outcome.⁵

Permissible Deductions from Gross Income to determine Net Income: The parent paying child support may deduct from his or her gross income certain amounts to arrive at "net income." There are only a few exceptions listed in Illinois law, but experienced divorce attorneys can be quite creative and persuasive in helping expenses fall into one of the categories. The categories of deductions that are allowed are:

Taxes, Health Insurance, and Union Dues: Properly calculated taxes may be deducted from your gross income in calculating "net income." Any good accountant will tell you, however, that there are several ways to "properly" calculate taxes. You must be careful, however, as the court will permit some forms of creative accounting, but will reject certain practices.⁶ Call our office to work with an attorney who can help you maximize the impact of your tax obligations.

Some health insurance premiums⁷ may be subtracted from your gross income to reduce your child support obligation. You should be able to set up your papers so you can deduct the premiums for the child identified in the support order. A good attorney, however, should be able to help you deduct all of your premium payments: health insurance premiums for you, your new spouse, the children in your new family – even your step-children. This can be a very effective way to reduce your child support obligation. If your new spouse, or your employer, pays for your health insurance coverage, it would be worth having a knowledgeable divorce attorney look at the numbers to see how you can use the insurance payments to reduce your child support obligation.⁸

Union dues are deductible from gross income in calculating net income for child support purposes.

Retirement Contributions: Many – but not all – retirement contributions may be deducted from gross income in an effort to reduce "net income" for child support purposes.⁹ Work with a good attorney, however, as not all contributions are approved by Illinois' child support law.

Prior Support Obligations: Certain child support support and maintenance (alimony) payments¹⁰ already being paid sometimes may be deducted from gross income in arriving at "net income" when making the child support calculation.

Repayment of Debts for the Production of Income: This exemption can best be utilized if you are self-employed. Even if you are not self-employed, however, it may be worth it to consider the amount of unreimbursed business expenses incurred in any given year. Generally, courts are supposed to hold that unreimbursed business expenses do not constitute "debts" incurred for the production of income,¹¹ but they often overlook the technical requirements of the law and allow such claims.

In some circumstances, repayment of **student loans** can be considered as a deduction from net income.¹² In some cases the entire amount of the loan payments may be deducted, while in other cases only a portion of the loan payment counts. Permitting the entirety of student loan payments to be deducted from gross income may preclude the child from realizing the benefit of the obligor parent's extra income realized by virtue of the extra education. For example, suppose a parent obtains a law degree – lawyers make little money during the first part of their career when they are repaying their student loans and they make the most money late in their career after the loans have been paid off. To permit a full deduction of all of the loan payments against a relatively small salary isn't fair when compared to the great benefit the lawyer will realize later in life. In fact, there is a formula for determining how much of an obligor's student loan debt should be deducted from "net income" when calculating child support.¹³

Illinois courts also recognize that to deny the deduction of student loans without exception could discourage obligor parents from seeking higher education – and that would only hurt the children (and society) in the long run. The point is that just because an expense falls into the category of a debt repayment does not mean that it is necessarily deductible for child support purposes. Speak with one of our attorneys to see if your case qualifies and if student loan repayments may impact your child support calculation.

Expenditures for the production of income are not deductible in calculating net income for child support purposes if they do not represent legitimate expenditures of the repayment of a legitimate debt. In one case,¹⁴ the husband had "mandatory loans" deducted from his pay. Ultimately, the court concluded that the mandatory deductions actually counted as income – and had to be included in the child support calculation.

Reasonable expenditures for the benefit of the child and custodial parent: When a non-custodial parent voluntarily spends money for the benefit of the custodial parent and child, those expenditures may be subtracted from the obligor's income in calculating "net income" for child support purposes.¹⁵

Medical expenditures: Illinois law recognizes that sometimes things go wrong in life and individuals are beset with unexpected health care expenses that simply must be paid. Under such circumstances, an obligor owing a duty of support may seek a temporary reduction in his or her child support obligation.¹⁶

Variations from the Guidelines: The guidelines are just that – "guidelines." A judge may award more or less than the guideline amount. The court must consider certain factors¹⁷ that are laid out in Illinois law. The Illinois Appellate Court has said "[T]he trial court cannot blindly apply the statutory guidelines. Where the relevant factors call for variance from the guidelines, variances should be made."¹⁸

Specific factors that have been found to justify a variance from the guidelines include:

Income of a New Spouse: Contrary to common belief, Illinois law permits judges to consider the income of a second spouse when establishing or modifying child support awards. The door swings both ways, too. A custodial parent who remarries a well-to-do spouse may suffer a reduction in child support to be paid by the non-custodial parent.¹⁹ Likewise, a non-custodial parent who remarries a spouse of substantial means may be required by the court to pay a higher child support than if the marriage had not taken place.

The Prodigious Parent: A variance from the child support guidelines is warranted where the guideline support amount would result in a windfall to the receiving parent.²⁰ When an award based on the guidelines seems far in excess of the reasonable needs of the child, variance from the guidelines is warranted.²¹

Notable, prodigious Illinois parents include: Keon Clark, professional basketball player for the Utah Jazz. In 2002 his salary was \$4.5M. His support obligation was set at \$8,500 per month. Interestingly, the mother testified that she spent only about \$1,000 on the child each month and her own affidavit showed that her **total** monthly expenses amounted to only \$4,200. Mr. Clark's support obligation was more than double the mother's **total** living expenses.²²

The Projected Standard of Living: Child support is not limited merely to the needs of the child and the court may consider the standard of living that the child would have enjoyed had the parents not

divorced.²³

Consider, for example: the neighborhood the children would have lived in had the marriage not dissolved. Consider the trips they would have taken, the private schools they may have attended, the activities in which they would have been involved. Those considerations, and more, are part of the "lifestyle" factor.

The Illinois Supreme Court has said that "...children are not expected to live in a minimum level of comfort while the non-custodial parent is living a life of luxury."²⁴ On the other hand, the Court has also said that child support is not intended to reward children (and the custodial parent) with an extravagant lifestyle, but is to insure adequate support.²⁵

Child's Educational Expenses: The Illinois child support guidelines presume that a child will attend free, public school. The guidelines do not factor in the cost of tuition at private, parochial, or trade schools. For that reason, Illinois courts have, albeit rarely, awarded above-guideline support where a child's educational expenses suggest the need. In some cases judges have even required the non-custodial parent to pay the child's tuition at a private or parochial school.²⁶ Some courts have expanded the concept of educational expenses to include extracurricular activities: in one case a non-custodial parent was ordered to pay an extra \$20 to go to the purchase of the child's clarinet.²⁷

Split Custody or 50/50 Parenting: In cases of "split custody" (one child lives with Mom and one with Dad), Illinois precedent suggests that the court may disregard the guidelines entirely.²⁸

Child's Substantial Income or Expenses: When children have access to funds for their own support, as with trust accounts and inheritances, courts will sometimes reduce the non-custodial parent's obligation. There is no formula or rule of thumb. Each case is determined on its own facts.²⁹

A variance from the guidelines is not warranted, however, where a custodial parent dissipates marital assets during the case: an award or judgment to offset dissipation by a custodial parent may not be used by the non-custodial parent as an offset against child support.³⁰

Gross Disparity of Income Between Parents: When the non-custodial parent is of exceptionally modest means, Illinois judges have sometimes allowed a reduction in the child support obligation. This factor usually comes into play where the application of the guidelines would result in a child support award that would have little effect on the standard of living of the child, but would have a devastating effect on the financial well-being of the non-custodial parent.³¹

Custodial Parent Caring for Other Children:

Ultimately, in determining child support, the court must consider and weigh the relative financial needs and resources of the parties and the standard of living the child would have enjoyed had the marriage not dissolved.³²

A table of cases showing variances (higher and lower) from the guidelines can be seen by contacting us.³²

Multi-State Jurisdiction – Which State Controls: What do you do when you live with the child in one state and the parent who is supposed to pay support lives in another state? Illinois adopted the Uniform Interstate Family Support Act³³ in 1996³⁴ The law determines in which circumstances and how a child support order entered in one state may be enforced in another state.³⁵

This article was written by the law office of Cowell Taradash, P.C., whose attorneys are familiar with the latest court decisions, recent changes in the law and even the tendencies of many judges. We can help. Contact us at 866.987.6723 or info@illinoisdivorce.com.