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WHEN IS A CHILD SUPPORT MODIFICATION APPROPRIATE?

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I. INTRODUCTION

It has been a while since the court entered a child support order for your children. It may have been entered as part of your divorce judgment or in a separate support case if you and your child's other parent were never married. Regardless, now that some time has passed, the child support amount appears inadequate or excessive. How can you get it adjusted?

A child support order can be modified through two different avenues. The parents can agree to a modification. See III. Modification of Child Support by Agreement. If an agreement is not possible, the parent seeking the modification can petition the court. See IV. Modification of Child Support by the Court.

II. THE CHILD SUPPORT GUIDELINES

All states have child support guidelines to help judges determine which parent should pay child support and in what amount. The guidelines ensure that children are adequately provided for, the amount awarded is fair to parents, and that similarly situated parents are paying (and receiving) similar amounts.

In most states, the child support guidelines are expressed in a formula that considers both parents' incomes, the number of children that need support, the number of overnights each parent has with the children, and the cost of the children's health insurance and daycare. In a few states, only the paying parent's income is considered.

In most cases, a court will order child support in the guideline amount. However, courts have discretion to order child support in a greater or lesser amount than the guidelines when a deviation is in the best interests of the children or necessary to be fair to both parents. See VII Deviation from Child Support Guidelines.

III. MODIFICATION OF CHILD SUPPORT BY AGREEMENT

A child support modification does not always require litigation. Litigation can be avoided if the parents can agree on the new amount of support. If you are on good terms with your children's other parent, the two of you may be able to reach an agreement by direct negotiations. If direct negotiations are too difficult, your attorneys can negotiate on your behalf. Mediation is a third option.

In mediation, a neutral mediator (most often an attorney) assists the parents to reach a compromise on a child support modification. The mediated agreement is filed with the court and is incorporated into the court's order of modification.

If each parent's financial information is readily obtainable, the new child support amount can be quickly calculated using the state formula. On the other hand, if one or both parents are self-employed, own their businesses, or perform contract labor, determining the income of each will require some effort. Nonetheless, after gathering and exchanging financial information, the income numbers may be sufficient to make negotiations or mediation a viable tool in reaching a settlement.

Once you and your children's other parent reach an agreement, the agreement must be presented to the court for incorporation into a court order. The child support modification is not official and enforceable until the court orders it.

The court may refuse to order an agreed child support modification if it concludes the modification is not in the children's best interests. A court will usually find an upward modification to be in the children's best interests. You can expect a court to closely scrutinize a downward modification and to require an explanation of why it is necessary and not to the children's detriment.

If you are seeking a child support modification, consider trying negotiation and mediation before resorting to litigation. A settlement will save you money on court and attorney fees, reduce the risk of an unfavorable outcome, minimize rancor, and preserve a civil relationship with your children's other parent. If negotiation and mediation are not successful, you still have the option of asking a judge to modify the child support order.

IV. MODIFICATION OF CHILD SUPPORT BY THE COURT

To obtain a child support modification through litigation, you must file a petition with the court. The court may grant the petition if you can establish certain requirements. Most courts require you to prove that a change in circumstances that is substantial and relatively permanent has occurred. If you are requesting a change because of a decline in income, the loss of income generally must be involuntary. Finally, the requested modification must be in the children's best interests.

Many changes in circumstances may be grounds for a child support modification. Some of the most common are shown in the following case studies. These case studies are meant to illustrate the legal principles that courts generally follow. They are not guarantees that your case, if similar, will reach the same result. Litigation is always a risk. Different judges may see the same set of facts differently. Your family law attorney is in the best position to provide you with guidance tailored to your state's law and particular situation.

A. A Substantial Change of Circumstances

A change in circumstances must be substantial to justify a child support modification. The courts don't want to be flooded with petitions from parents seeking changes of a couple of dollars a month. The costs to the parents of going to court in these cases will exceed the benefit.

State law and court decisions determine how significant a change must be to satisfy this requirement. Some states have enacted legislation that requires the guideline support amount to change by at least a minimum percentage for the change to be considered substantial.

CASE STUDY #1: STATE REQUIRES AT LEAST 20 PERCENT CHANGE

Eleanor's child support obligation is currently \$90.00 per week for one child. Her state recognizes a 20 percent change in the child support amount as a substantial change in circumstances. That is, $\$90.00 \times 20 \text{ percent} = \18.00 . Thus, the



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modified obligation must increase to at least \$108.00 per week or decrease to \$72.00 per week to be considered a substantial change.

CASE STUDY #2: RECEIVING PARENT GETS A SMALL RAISE

Denise receives child support from her ex-husband Jim. Denise lives in a state that considers the income of both parents in setting child support. At the time of her divorce, Denise was earning \$11.00 per hour working 40 hours per week. This income was used to calculate Jim's initial child support obligation. Several months after the divorce, Denise received her annual 2.5 percent raise resulting in a new hourly rate of \$11.27 per hour, an increase of approximately \$44.00 per month. Such a small pay raise, when plugged into the state formula, will probably result in a minimal decrease in Jim's child support obligation. It probably does not warrant a petition for modification.

B. A Relatively Permanent Change

The change in circumstances warranting a modification of the child support obligation should be relatively permanent. A change in circumstances that is likely to last for just a few weeks or even a few months may not warrant a modification. Courts do not want to rule on a child support modification petition only to face another petition from the same parents a month or two later. Your family law attorney can advise you on what your state considers to be a relatively permanent change.

CASE STUDY #3: PAYING PARENT WORKS TEMPORARY, SHORT-TERM OVERTIME

Jan works in a toy factory. The number of weekly hours she is required to work increases by one hour of overtime each day for ten workdays to catch up on a backlog of orders. The change is neither substantial nor permanent. It cannot be the basis for a child support modification.

C. An Involuntary Loss of Income

A parent's loss of income must be involuntary. Otherwise, the paying parent could simply choose to work less or not at all to reduce or eliminate a child support obligation. The receiving parent could similarly choose not to work to increase a child support obligation.

CASE STUDY #4: PAYING PARENT VOLUNTARILY REDUCES WORK HOURS

Oscar's initial child support obligation was based on his income from a full-time job working 40 hours per week. Oscar reduces his work hours from 40 hours per week to 20 hours per week because he wants more time to pursue his hobby of nature photography. He hopes that eventually he will be able to sell his photographs and launch himself into a new career. Under his state's child support formula, his new reduced income will reduce his child support obligation by roughly 40%. Although the change is substantial, his voluntary reduction in hours worked cannot be the basis for reducing his child support obligation.

D. Best Interests of the Children

Typically, a modification increasing the child support is in the best interests of the children. Accordingly, the trial court will be more inclined to grant a modification to increase the obligation, rather than to decrease it. It is difficult but not impossible to get child support reduced. See VI. Changes Warranting a Decrease in the Support Obligation.

V. CHANGES WARRANTING AN INCREASE IN THE SUPPORT OBLIGATION

Many changes may warrant an increase in child support such as:

- A substantial increase in the paying parent's income. The paying parent may get a raise or promotion, find a better job, or take on additional part-time work or overtime that is likely to continue. Income from all sources (even a second job or overtime) is used to calculate child support.
- A substantial decrease in the recipient parent's income in states that consider both parents' income. The recipient parent may have lost a job and been unable to find an equally good paying one due to a bad economy or an illness or injury. The parent may have given up a job to care for a special needs child. However, the parent cannot just decide to take a lower-paying job, or work less, or not at all and expect to receive more child support.
- A change in the children's needs. The children's needs may increase as they get older. A child may need specialized medical care or educational support. Inflation may have eroded the purchasing power of a dated support order.
- The children are spending more overnights with the recipient parent and fewer with the paying parent. The recipient parent needs more child support to cover the additional expense.

CASE STUDY #5: PAYING PARENT GETS A SUBSTANTIAL RAISE

Don learns that Margaret, the paying parent, has been promoted to district sales manager with an increase in pay of \$15,000.00 annually. A \$1,250.00 monthly raise in pay is likely substantial and permanent due to the promotion. Inserting Margaret's new monthly pay into the state child support formula along with Don's unchanged pay will likely increase the child support obligation. The increase is in the children's best interest. Children are entitled to share in the good fortune of a parent and to maintain the same standard of living at each parent's home.

CASE STUDY #6: PAYING PARENT WORKS LONG-TERM OVERTIME

Carl works in a steel mill. His employer enters a large contract to produce rolls of steel coils over the next five years with all employees being required to work 20 hours per week overtime. Overtime is mandatory to meet the contract requirements. Carl's annual pay was \$43,200.00, that is \$20.76 per hour for a 40-hour workweek. At time and a half, Carl's pay increases to \$31.14 per hour for 20 overtime hours each week for 52 weeks each year. This increases his pay by an additional \$32,385.60 ($\$31.14 \times 20 \text{ hours per week} \times 52 \text{ weeks}$) to \$75,585.60 annually.

This change in circumstances meets all the requirements for an upward modification of child support: The increase in pay is substantial; the increase is relatively permanent; the increase will likely result in a significant increase in Carl's child support obligation and thus is in the best interests of the children.

CASE STUDY #7: PAYING PARENT GETS A SECOND JOB

Ray's employer appreciates the quality of his work and notifies him that beginning next year he will be given an extra two weeks off. Ray wants to use the additional vacation time to go hunting in Idaho and Wyoming. Ray recognizes he does not have sufficient income to pay for a two-week hunting trip. He takes a second job to earn additional money for the trip. Unfortunately for Ray, income from all sources (even a second job) is used to calculate the guideline child support amount. Katie, Ray's former wife, learns of Ray's second job and decides to request an increase in child support. This newly earned income from a second job will likely warrant an increase in Ray's child support obligation.

An increase in the paying parent's income, even a substantial one, will not always result in an upward modification of child support as the following case study shows. In this case study, the court considered both the high number of uncompensated hours per week the paying parent worked and the recipient parent's decision not to work despite the ability to do so.

CASE STUDY #8 PAYING PARENT WORKS WELL OVER 40 HOURS PER WEEK; RECIPIENT PARENT IS VOLUNTARILY UNEMPLOYED

Bill and Ann divorced two years ago. Laura, their daughter, lives with Ann who has chosen not to work outside the home, citing parental responsibility as her prime role. Ann is a high school graduate capable of gainful employment. The court imputed minimum wage income to her for child support calculation purposes (i.e., the court assumed she was employed full-time earning minimum wage and inserted that amount into the child support formula). Laura is a highly self-sufficient 12-year-old. She requires no daycare, takes the bus to and from school daily, cooks, cleans, does her own laundry, and maintains good grades.

Four months after the divorce, Bill takes a new job as a long-haul cross-country driver at considerably higher pay than his former job as a local truck driver. Ann learns of Bill's job change and files a petition for modification of child

support. At the trial, the evidence establishes that Bill is paid by the mile. He earns income only when the “wheels are rolling.” He earns no income for the time it takes to load and unload the truck, when stuck in traffic, or waiting for the warehouseman to open the loading dock. Bill works more than 80 hours per week. After deducting Bill’s expenses, the court calculates Bill’s hourly pay based on an 80 hour work week and then uses his pay for 40 hours to determine his child support obligation. This results in no increase in Bill’s child support obligation. Ann’s petition for modification is denied. The court is unimpressed with her decision not to work but impressed that Bill works over 80 hours per week, with half of those hours earning no compensation, yet pays his child support obligation regularly.

VI. CHANGES WARRANTING A DECREASE IN THE SUPPORT OBLIGATION

Changes that may warrant a decrease in child support are the mirror image of those that warrant an increase:

- A substantial involuntary decrease in the paying parent’s income. The paying parent may become disabled or face long-term unemployment or underemployment due to economic forces beyond his or her control. The paying parent cannot defeat the support obligation by opting to work part-time rather than full time, or not working at all.
- A substantial increase in the recipient parent’s income in states that consider the recipient’s income.
- A decrease in the children’s needs. The children may no longer need daycare or tutoring or medical treatments. The children are spending more overnights with the paying parent and fewer with the recipient parent decreasing the recipient parent’s expenses and need for child support.
- The number of children the paying parent is obligated to support has increased. The paying parent has had one or more additional children with a new spouse or partner. Courts vary in how they treat this situation with some be hesitant to decrease the support for the earlier born children.
- A child marries, enters the military, or becomes emancipated and self-supporting.
- A child attains the age prescribed by your state at which child support terminates. That age may be 18, 19, 20 or 21 depending on state law. However, parents can agree to continue child support beyond the age required by state law.

CASE STUDY #9: CHILD SUPPORT OBLIGATION ENDS

Stacie receives child support from her former husband George for their three children. In their state, the child support obligation ends when a child has turned 18 and has graduated from high school. If a child is over 18 and still in high school, child support ends when the child graduates or turns 19, whichever occurs first. Their eldest child, George Jr., graduates from high school next June when he will be 18 years and 5 months old. George can petition the court for a child support reduction at that time. The number of children to be supported is a factor in their state’s child support formula. The child support for two children is less than the child support for three. However, if George’s child support obligation has not been modified in years, the reduction may be less than he anticipates. If George’s income has increased significantly since the original child support order was entered, it’s even possible that Stacie may be able to get an upward modification.



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CASE STUDY #10: PAYING PARENT IS PERMANENTLY DISABLED

David, the paying parent, earns \$28.00 per hour, plus regular overtime, at a union job in construction. The job is physically demanding and dangerous. David is injured on the job. After two weeks of short-term disability, he is placed on long term disability and receives 60% of his weekly net pay as compensation. He attempts to pay his child support obligation but falls short. After five months, his doctors conclude he has attained maximum medical improvement. They declare him permanently disabled and unable to return to his job. He can find no other job. He files for social security disability income and begins receiving disability pay. He should file a petition for modification to decrease his child support order based on a much lower income and permanent disability. Such a petition for modification will likely be granted.

CASE STUDY #11: MINOR CHILD JOINS MILITARY AND IS EMANCIPATED

Stan and Karen have a 17-year-old daughter, Lark. Although she is brilliant, she despised high school, dropped out in her sophomore year and earned her G.E.D. at night, while working part-time at the local tanning salon. Lark announces to Karen that she is enlisting in the U.S. Air Force. Karen willingly signs the military's required consent form. By the time Stan (the paying parent) is advised of this change in status, Lark is permanently stationed at Lackland AFB, TX going through basic training with a four-year commitment. She is now on active military duty and has just become emancipated. Lark is supporting herself with her military pay. Stan should file a petition for modification of child support to terminate his obligation to pay child support to Karen.

CASE STUDY #12: MINOR CHILD GETS FULL-TIME JOB AND IS EMANCIPATED

Jane and Alan's 17-year old son Ethan quits high school and begins working full-time at the local grocery store with benefits including group health insurance and a 401k. Ethan moves into an apartment with his girlfriend and shares expenses, living on his own. These acts constitute emancipation from his parents. Ethan has become solely responsible

for his expenses and no longer relies on his parents for assistance. A petition for modification terminating the obligation to pay child support is warranted.

VII. DEVIATION FROM STATE CHILD SUPPORT GUIDELINES

A child support obligation calculated according to the state guidelines is presumed to be correct. However, the family court judge has discretion to deviate from the guidelines when the deviation is in the children's best interests or necessary to be fair to both parents.

CASE STUDY #13: CHILD DEVELOPS SPECIAL NEEDS

Rob seeks an increase in child support above the state guidelines from his son's mother, June. The boy has recently been diagnosed with a genetic condition and needs leg braces to walk (not covered by insurance) and an outrageously expensive special diet (also not covered by insurance). The trial judge awards \$75.00 in child support per week above the calculated guideline amount.

CASE STUDY #14: PAYING PARENT HAS ADDITIONAL FAMILY OBLIGATIONS

During testimony, Molly, the child support paying parent, presents evidence that she is obligated to provide around the clock nursing care for her terminally ill mother who she is caring for in her home. In consideration of these facts, the court deviates from the child support guideline and reduces Molly's child support obligation by 40 percent. The court observes that both parents are employed, blessed with great jobs, and their children will have adequate financial support despite the reduction.

VIII. KEEPING ABREAST OF CHANGES

Parents need to stay abreast of any change in circumstances warranting a child support modification. One way to do this is by agreeing to exchange financial affidavits or declarations, together with pay stubs and tax returns at least annually. Such an agreement may be included in the marital settlement agreement of divorcing couples.

Voluntary exchange of financial information will enable you to plug the numbers into your state's child support calculator to get some idea of whether pursuing a modification in child support makes sense. Otherwise, you may have to go on your assumptions and seek the court's help to get the actual figures.

Many courts have a child support services department that provides free help calculating child support. Someone at the department will input the changed variables, i.e., income, childcare costs, medical expenses, into a software program to calculate the guideline child support amount. Other courts may provide a child support calculator on their websites. Your family law attorney can also help you estimate the guideline child support before you take the next steps.

You may discover that the guideline child support changes little from the initial order and it is not worth the time it will take to seek a modification. If the amount changes considerably, you will now have the necessary information to attempt to negotiate a modification with the other parent or proceed to court to modify your child support order.

IX. HOW OFTEN CAN YOU SEEK A CHILD SUPPORT MODIFICATION?

Many states have enacted restrictions on child support modification petitions. You may be limited to filing only if the change you are seeking is greater than a certain percentage of the current amount or if a minimum period has elapsed since the last support order was entered.

Permitting a parent to file a modification petition every few months increases the court's workload and often results in little or no change in the support amount. Moreover, running to court to get a child support adjustment every time there is the slightest change of circumstances wastes money and guarantees animosity between parents.

Allowing a parent to file for modification no more often than every 24 months or if there will be at least a 20 percent change in the child support amount, for example, will regularly benefit the children without being a burden on family court.

X. QUESTIONS TO ASK YOURSELF IF YOU ARE CONSIDERING SEEKING A CHILD SUPPORT MODIFICATION

Answering these questions will help you to determine whether a child support modification is worth pursuing.

- How long has it been since the last child support order or modification was entered? Has enough time passed according to your state's law?
- Has your income or the income of your children's other parent changed substantially since the last order?
 - Have you or your children's other parent changed jobs, been promoted, or become self-employed?
 - Have you or the other parent begun working overtime?
- Have you or the other parent taken on a second job to supplement earnings?
- Have the living arrangements of your children changed dramatically over the last several months or years? Are the children spending more or fewer overnights with you?
- Has the noncustodial parent been regularly exercising overnight (and other) visitation?
- Has the monthly premium for employee group health insurance changed appreciably? Is a recalculation of child support amount on this basis a justification for a modification petition?
- Has the expense of daycare significantly increased, decreased, or terminated for the children?
- Have you visited your state's family law or court website to determine if a child support calculator is available for use online? Or have you contacted your local courthouse to see if child support calculation services are provided there?

- Have you attempted to recalculate the child support amount using your state's formula based on perceived or known changes to the factors in the formula? Has this recalculated child support obligation changed substantially?
- Is there any indication that the facts would support a deviation from the guideline amount (e.g., a special needs child or additional family obligations)?

If you have questions regarding modifying your child support order, do not hesitate to consult with your attorney to discuss the changes you know or believe to have taken place. He or she can help you run the numbers through a child support calculator to determine if a modification is warranted.