

Child Support Statute Amendment Results in Small Change for High Income Earners

I have represented many high income clients through difficult divorces. Under the existing Child Support Formula and Guidelines, the paying parent paid child support and the other party's income was not considered at all in determining the amount that he/she would pay. Under a new amendment, the outcome for high income earners will be markedly different – because in 2012, the New Hampshire Legislature dramatically changed the existing formula for calculating child support, particularly for high income earners, especially in dual income cases. The new law amending the Child Support Formula and Guidelines statute, RSA 458-C:3, is/will be effective July 1, 2013. The amendment was the result of a 2009 economic analysis/study prepared by the University of New Hampshire Cooperative Extension (“UNH Study”) at the request of the New Hampshire Department of Health and Human Services/Division of Child Support Services. This article will address how and when two of the changes will significantly affect high income earners, especially in dual income cases. First, the revisions to the child support formula will fully consider the income earned by the party receiving child support (the Supported parent or “the Obligee”) in the calculation of child support paid by the party paying child support (the Paying Parent or “the Obligor”). This is a radical departure from the existing formula where the Obligee's income had little to no effect on the amount paid by the Obligor. Second, the new law reduces the percentage of income paid by an Obligor, based upon the combined net income of both parties. Finally, the last section of this Article will address the timing mechanism for application of the July 1 changes and when the Court will apply the new changes.

Under the pre July 1, 2013 Child Support formula and Guidelines (the Previous Formula and Guidelines), an Obligor pays child support based on a percentage of his/her net income. The

percentage is based upon the number of children of the parties. An Obligor pays 25% of his/her net income for one child, 33% for two children, 40% for three children, and 45% for four or more children. The Previous guidelines for calculating child support failed to incorporate in a substantive way the Obligee's income in determining the amount to be paid by the Obligor. Although the Previous formula claims to do so, for all intents and purposes, it does not. For example, in a hypothetical pre July 1 case where an Obligor earns \$11,000 per month in gross income, he or she pays the same approximate amount (\$1,990) whether the Obligee earned \$1,500 or \$4,000 per month.¹ Additionally, the Obligor was required to pay that same approximate amount even if the Obligee earned more than the Obligor. The unfairness inherent in the existing formula was a driving force for the legislature's adoption of some of the recommendations of the UNH study.

In an effort to address the inequities of the existing formula and guidelines, as of July 1, 2013, child support will be calculated using the Income Shares Model ("ISM"). The Income Shares Model is based on the premise that a child should receive the same percentage of total parental income as the child would have received had the family remained intact. The new calculation method will combine the income of both parties in setting the total amount that will presumably be spent on the child and each parent's respective proportional amount is then calculated from that total amount. Under the Previous Formula and Guidelines, an Obligor with one child who earns \$11,000 per month gross (whose Obligee earns \$2,000 per month) would pay approximately \$1,990 per month in child support. For a case using the New Formula and Guidelines, that same Obligor, under the same circumstances, would pay approximately \$1,546

¹ This article does not consider additional adjustments to calculation of child support such as Court ordered support paid to others, self-employment taxes, mandatory retirement, state income taxes or child care expenses. Nor does it address special circumstances resulting in deviations to adjustments in the application of support guidelines as permitted by RSA 458-C:5.

per month, a difference of \$444 per month.² In a new case applying the Revised Formula and Guidelines post July 1, 2013, if the Obligee in that same hypothetical scenario earned \$4,000 per month, the Obligor would pay \$1,496 per month, a difference of \$494 per month. Thus the amendment to the Previous Guidelines alleviates some of the inequities inherent in basing child support solely upon the Obligor's income without any real consideration of Obligee's income and Obligor's own contribution to childrearing costs.

Under the Revised Child Support Formula and Guidelines, the second significant benefit to high income earning Obligor is the reduction in the percentage of combined net income devoted to child support once it exceeds the \$60,000 mark. As stated earlier, under the Previous Guidelines, child support is based upon the number of children and a percentage of net income earned by the Obligor. The UNH study specifically relied upon economic analysis which determined that as income increases, the proportion of income spent on supporting a child decreases. As a result of that economic analysis, the UNH Study recommended a decrease in the percentage of child support to be paid as the combined net income of the parties' increases.³ The percentage of combined net income devoted to child support for one child incrementally drops from 25% to as low as 19% when the combined net income devoted to child support increases from \$60,000 to \$125,000 or more. For each additional child, the percentage of combined net income devoted to child support also decreases – from 45% for four or more children for those parties earning \$15,000 per year in combined net income down to 33.5% for four or more children for parties earning \$125,000 per year in combined net income. So, the higher the combined net income of the parties, the greater the reduction in the percentage of combined net

² As will be mentioned later, a portion of the reduction is due to the reduction of the percentage of combined income devoted to child support for those whose combined income is over \$100,000.

³ The New Hampshire Legislature did not reduce the percentage of combined net income devoted to child rearing expenditures as fully as recommended by the UNH Study.

income attributable to child support. For example, the same hypothetical Obligor mentioned earlier (who earns \$11,000 per month, with a stay at home (no income) Obligee and one child) would experience a drop in his/her child support payment from \$1,990 to \$1,628 as a result of the percentage decrease from 25% to 20%. An Obligor (\$25,000 per month, with four children and a stay at home Obligee) would experience a greater reduction – from approximately \$7,700 per month to \$5,803 per month, reflecting the decrease from 45% to 33%. That same Obligor (\$25,000 per month with four children) would pay \$5736 per month if the Obligee earned \$4,000 per month. Thus, high income earners will experience real relief from the inequities in the Existing Formula and Guidelines. In situations where both parents are gainfully employed, high income earners will see even more drastic reductions given the new consideration of the Obligee's income under the Revised Formula and Guidelines.

The new Child Support Guidelines are effective for new cases filed after July 1, 2013, for cases filed before July 1, 2013 where the issue of child support has not yet resulted in a final Uniform Support Order as well as those cases which are eligible for modification based on a substantial change in circumstances or the statutory three year entitlement to review under RSA 458-C:7. Although the amendment may create a significant difference between the Existing and the Revised Child Support Guidelines amounts, the new statute will not, in and of itself, constitute a substantial change in circumstances entitling a party to a review before the three year statutory entitlement period has run.

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