

# The Family Court of the State of Delaware

## **INSTRUCTIONS FOR CHILD SUPPORT CALCULATIONS (2015-2016)**

Effective January 1, 2015 the Family Court revised the Delaware Child Support Formula as stated within Family Court Civil Rules 500 through 508. The revised formula applies to both prospective and retroactive calculations. All monetary allowances will be adjusted in January of 2017 in accordance with any changes in the United States Department of Health and Human Services (HHS) poverty guidelines. The entire formula will be reviewed again in 2018. These instructions are intended to assist in determining child support obligations but are not a substitute for the Rules or any applicable law.

The Delaware Child Support Formula serves as a rebuttable presumption for establishing child support obligations in the State of Delaware. The Court will use the Formula unless it finds that the results would not be in the best interest of the child(ren) or would be inequitable to the parties involved. Dalton v. Clanton, Del. Supr., 55 A.2d 1197 (1989). Every child support order issued by the court, including consent orders negotiated outside of Court, must have one or more support calculations attached even if the parties agree to another amount. An automated version of the Child Support calculation is available online at <http://courts.delaware.gov/family/>.

### **INCOME ATTRIBUTION**

The Court will use each parent's actual income if the parent is fully employed in a manner commensurate with their training and experience. A **Rule 16A Financial Report Form** must be submitted with supporting documentation at mediation and before trial. Adequate documentation often is the parent's most recent tax returns, W-2 Forms, and three most recent pay stubs but may also include documentation of Social Security, unemployment compensation, workers' compensation, medical disability, child care and medical insurance. Self employed individuals and persons employed through a closely held corporation should be prepared with recent tax returns with all schedules, 1099 forms, documentation of significant expenses categories, and recent bank statements.

Parents who are unemployed or underemployed either voluntarily or due to their own misconduct and parents who fail to provide adequate documentation or to appear for the hearing or mediation may be "attributed" income. The Court will examine earnings history, employment qualifications and the current job market. Wage surveys for individual occupations compiled by the Department of Labor can be used to estimate earning capacity (<http://www.delawareworks.com>). Parents who qualify for unemployment compensation will be presumed to have lost their employment by no fault of their own. Qualification for Social Security disability-type benefits is proof that a person has a disability which may impede their ability to work. A parent receiving Supplemental Security Income (SSI) will not be assessed a child support obligation unless the Court finds the person has additional income or income capacity with which to pay support. Absent adequate information, a parent may be attributed as much income as the other party and every parent is presumed to have an earning capacity of no less than \$1,430 per month. Parents who suffer a loss of income due to their own misconduct may have their support obligation calculated upon actual current earnings if over a reasonable period of time they have earnestly sought to achieve maximum income capacity. Incarceration of one year or more may be evidence of diminished income capacity.

Whether second job income will be considered is determined case by case. Second job income is more likely to be included if it has been historically earned, raises the standard of living of the parent, or is necessary to meet the minimum needs of the child. It is more likely to be excluded if it merely allows the parent to make ends meet, is used to pay extraordinary medical or educational expenses, is necessitated by the nonpayment of support, or substantially conflicts with visitation. Fluctuations in income or that wage income may exceed 40 hours per week is not a basis for exclusion. The Court must determine average monthly income likely to prospectively recur. Previously earned second job income and overtime will not be considered if it is no longer earned, has been over 2½ years since the last determination of current support, and income from primary employment is consistent with reasonable earning capacity.

### **NET AVAILABLE INCOME**

Net available income is determined by taking gross income and subtracting taxes, other important payroll deductions and a self support allowance. If the party seeking support is not a parent, then support is calculated using only the income of the parent who is a party to the case before the court. All amounts must be monthly. To convert from weekly, multiply by 52 and divide by 12. For biweekly, multiply by 26 and divide by 12. All numbers are rounded.

**Line 1--Monthly Gross Income** is the combination of the following:

**Wages:** This includes salaries, wages, commissions, bonuses and any other income (other than self-employment income) that is subject to Federal Retirement and/or Medicare taxes including pre-tax benefits.

**Self:** All income earned as an independent contractor and subject to federal self-employment tax.

**Unearned:** All other taxable income including but not limited to dividends, severance pay, pensions, interest, trust income, annuities, capital gains, workers' compensation, unemployment compensation, disability insurance benefits, prizes, and alimony or maintenance received.

**Nontax:** All income not subject to income tax including most Social Security Disability (SSD) or retirement benefits and some private plans. Benefits paid to a child due to a parent's disability are included in that parent's income but offset the Net Monthly Obligation dollar for dollar. Benefits paid due to a child's own disability are income to the household in which it is received. All military allowances (except clothing) are included as nontaxable income. However, no servicemember shall be attributed a housing allowance (BAH) that exceeds BAH w/dependents at Dover AFB.

2015 Dover Air Force Base BAH with dependents

Rank	\$	E05	1500	W01	1590	O1E	1728	O3	1902
E01	1377	E06	1587	W02	1752	O2E	1884	O4	2106
E02	1377	E07	1701	W03	1908	O3E	1983	O5	2199
E03	1377	E08	1827	W04	1971	O1	1509	O6	2220
E04	1377	E09	1953	W05	2046	O2	1584	O7	2241

**Exceptions to income:** Expense reimbursements or in-kind payments received in the course of employment, self-employment, or operation of a business should be counted as income only if they are significant and reduce personal living expenses. A cost of living stipend given to an employee as compensation due to relocation to a high cost location will not be included as income as long as it is clearly identified on pay documents. Adoption subsidies disbursed pursuant to 42 U.S.C. § 673 or a subsequent or similar statute shall not be counted as income.

**Line 2--Taxes:** Utilizing IRS and Delaware Department of Revenue income tax withholding tables or the Family Court tax estimation worksheets, record each parent's income tax liability based upon a single tax status with one (1) exemption. Delaware State income tax shall be utilized for all persons regardless of State of residence.

**Line 3--Allowable Deductions** (add the following across the line and enter the result in the appropriate column):

**Medical Insurance--**Medical insurance (including COBRA) paid by either parent regardless of who is covered by the policy. Insurance is unaffordable if the cost to cover the parent and the child(ren) exceeds 10% of gross income. However, if acquired it must be maintained until further order of the court or written agreement of the parties.

**Medical insurance premiums allocable to children** can be included as an element of primary support at Line 12 rather than as a deduction from income. The amount allocable to children is the difference between the cost for the parent alone and the parent with minor dependents. If the parent has children in multiple households, multiply the amount allocable to children by the number of children on Line 6 and then divide by the sum of Lines 6 and 10. Documentation is **REQUIRED**.

**Pension--**All mandatory pension contributions are deductible. Voluntary contributions to an IRS approved retirement plan are deductible to the extent combined mandatory and voluntary contributions do not exceed 3% of gross income.

**Union Dues--**Enter the average monthly union dues.

**Disability Insurance --** Enter Disability insurance premiums withheld from pay or purchased privately for purposes of income replacement (but not to cover credit card or mortgage obligations).

**Other--**Enter the monthly amount of any court ordered alimony payments to the other parent, or other allowable business expenses (such as supplies required by the employer to be purchased). Alimony paid must also be subtracted from taxable income when calculating Federal and State income tax liability (but not "FICA").

**Line 4--Self Support Allowance:** The self-support allowance is the minimum amount of income necessary for a parent to remain productive in a workplace. Each parent is given a self support allowance of **\$1000**.

**Line 5--Net Income after Self Support:** Subtract taxes, deductions & self support from gross income.

**Line 6 -- Does the parent support other dependent children?** Enter "Yes" or "No". This refers only to natural or adopted children who reside in the parent's household, or for whom there is a court order for support or proof of a pattern of support. It also includes adult dependents for which there is a court order of support or written agreement between the parties before the court. This does not include step children.

**Line 7-- Adjustment for Support of Other Dependents:** If Line 6 is "Yes", enter 70%; if "No", enter 100%.

**Line 8--Net Available for Primary Support:** Multiply each parent's Net Income after Self Support (Line 5) by the Line 7 percentage. Add the figures for Father and Mother to get the total available income.

**Line 9--Share of Total Net Available:** Divide the Net Available for Primary Support for each parent (Line 8) by the Total Net Available (Line 8 Total). Enter the results on Line 9. If the party seeking support is a not a parent, then enter **50%**.

**Medical Expenses** — Each parent is responsible for a percentage of all medical expenses not paid for by insurance in accordance with the Share of Total Net Available (Line 9). Parents should attempt to manage medical reimbursement issues privately. A petition for reimbursement should be filed no later than December 31 in the 2nd year after the expense is incurred. Later applications may be considered for good cause shown.

### PRIMARY SUPPORT

Primary support consists of a Primary Support Allowance based upon the number of children of this union in each household, work related child care expenses, medical insurance allocable to the children, private school expenses (under some circumstances), and other ongoing special needs of a child.

**Line 10--Number of Children of this Union in each Household:** Enter the number of children of this union who reside in each parent's household. If a child resides equally (more than 163 overnights) in both households, assign ½ child or ".5" to each household. Do not include children from other relationships.

**Shared Placement:** If a child resides in shared placement, the parents are expected to equally share in all incidental expenses that would otherwise be borne by a primary residential parent. Failure to do so can result in sanctions including, possibly, calculating support as if the child resides primarily with the other parent.

**Line 11--Primary Support Allowance:** Enter the Primary Support Allowance that matches the number of children in Line 10 for each household (see tables below). Add the columns and enter the result in the Total column.

Number of Children	Primary Support Allowance
1	\$500
each additional	+300

Number of Children	Primary Support Allowance
.5	\$350
each additional ½	+150

**Line 12--Itemized Primary Need** – Enter the following for each parent and put the total on Line 12.

**Child Care Expenses:** Enter actual Monthly Child Care Expenses for the children of this support action required for the parent to work. Hypothetical or attributed childcare costs are not permitted.

**Medical Insurance Allocable to Children:** As described at Line 3, medical insurance premiums allocable to the children of this union can be included on Line 12 as an element of primary support. This includes medical insurance acquired through a step-parent's employment if the step-parent has no other dependent children covered by the policy.

**Allowable Tuition or Other Primary Expenses:** Private or parochial school expenses may be included if the parents have adequate financial resources and upon consideration by the Court of all of the equities especially:

- a. Previous agreement to pay for child(ren)s' attendance in private; or
- b. The child has special needs that cannot be accommodated in a public school setting; or
- c. Immediate family history indicates that the child likely would have attended private or parochial school..

**Line 13--Total Primary Need:** Add the totals from Lines 11 and Line 12.

**Line 14--Primary Support Obligation:** Multiply Line 9 (Share of Net Available) by Line 13 Total (Total Primary Need)

### STANDARD OF LIVING ADJUSTMENT (SOLA)

If there is income available after the parents have met their own and their child(ren)'s primary support needs SOLA is designed to give the child(ren) a share in each parent's economic well being.

**Line 15--Net Available for SOLA:** Subtract the Primary Support Obligation (Line 14) from the Net Income Available for Primary Support (Line 8) for each parent. Enter the result for each parent (but not less than "0").

**Line 16--SOLA Percentage:** Enter the SOLA percentage that corresponds to the Number of Children Due Support in this Support Action (Line 10 Total).

Number of Children	SOLA Percentage	Number of Children	SOLA Percentage
1	19%	3	33%
2	27%	each additional	+4%

**Line 17A--SOLA Obligation:** Multiply the Net Available for SOLA (Line 15) by the SOLA Percentage (Line 16). Enter the result for each parent, and then combine the parents' individual SOLA obligations for the total.

**Line 17B—SOLA per child:** Take total SOLA obligation (Line 17A total) and Divide by the Total Number of Children of this Union in each Household (Line 10 Total). Enter the result in the third column as the "per child" SOLA.

**Line 18--Gross Monthly Obligation:** Line 14 (Primary Support Obligation) plus Line 17A (SOLA Obligation).

### CREDITS AND THE NET MONTHLY OBLIGATION

The Net Monthly Obligation is the Primary Support obligation plus the SOLA obligation minus applicable credits and subject to certain limitations. In simple cases, the "custodial" parent merely keeps their own obligation and the obligated parent pays the amount on Line 18. However if the parent from whom support is sought has the children more than 79 overnights per year, has limited income, or incurs daycare or tuition expenses, further adjustments may be necessary.

**Line 19--Retained Primary and SOLA:** Multiply the number of children in each household (Line 10) by the "per child" SOLA on Line 17. Then add that to the Primary Support Allowance claimed by each party on Line 11.

**Line 20--Child Care / tuition paid by each parent:** Enter the total of Line 12 for each parent.

**Line 21--Parenting Time Adjustment:** If a court order or written agreement entitles a parent with 80 to 163 average overnights per year, that parent retains a percentage of the primary support allowance and the parents' combined SOLA. If actual practice differs from the order or agreement or there is no order or agreement, then the number of overnights can be established by clear and convincing evidence. Enter on Line 21A the percentage for the number of overnights from the below table, multiply it by the OTHER PARENT's Line 19, and enter the result on Line 21B.

<u>Annual Overnights</u>	<u>Percentage</u>	<u>Annual Overnights</u>	<u>Percentage</u>
79 or less	0%	125 to 163	30%
80 to 124	10%	164 or more	shared

**Line 22—Self Support Protection:** Multiply Net Available for Primary Support on Line 8 by 60% and enter the result on Line 22. This is the maximum support obligation that can be ordered.

**Line 23--Net Monthly Obligation:** For each parent, subtract Primary/SOLA retained (Line 19), Childcare/tuition retained (Line 20) and the Parenting Time adjustment (Line 21B) from Gross Monthly Obligation (Line 18). Enter the result but not more than the amount on Line 22. In cases involving shared or split placement, no obligation will be assessed if the calculation suggests an obligation of less than \$50 per month. An obligation may be imposed against either parent and without regard to who filed the petition.

**Minimum Orders:** Unless the children reside in shared or split placement or the obligated parent is disabled, the Court will not impose an obligation of not less than **\$100** for one child and **\$160** for more than one child. The obligation, if any, of a disabled person with limited resources will be determined on a case by case basis.

**Modification:** Petitions for modification filed within 2½ years of the last determination of current support must allege "with particularity" a substantial change of circumstances not caused by the Petitioner's voluntary or wrongful conduct. No modification will be ordered unless the new calculation produces a change of more than 10%. Beyond 2½ years, neither the "particularity" nor the "10%" requirement applies. A change in result caused solely by a revision of the child support formula itself does not constitute a substantial change of circumstance. Support orders may increase, decrease, or even reverse the payer and payee regardless of who filed the petition.

**Incarceration:** The support obligation of an incarcerated parent will be calculated based upon that parent's pre-incarceration circumstances and incarceration is NOT a ground for modification if the parent:

- Has sufficient independent wealth or other resources with which to pay support;
- Is incarcerated for crimes against a dependent child or a support recipient;
- Is incarcerated for nonpayment of child support, or
- Is anticipated to be incarcerated for less than one year.

In all other cases, incarcerated parents will be assessed an obligation based upon pre-incarceration circumstances for the first 12 months of continuous confinement, and a minimum order for the 13<sup>th</sup> through 36<sup>th</sup> month to be reduced by one-half starting the 37<sup>th</sup> month. Such support orders will direct the specific dates and amounts of future adjustments.