



The Family Court of the State of Delaware

INSTRUCTIONS FOR CHILD SUPPORT CALCULATION (2023)

Effective February 1, 2023, the Family Court revised the Delaware Child Support Formula (“the Formula”) as stated within Family Court Civil Rules 500 through 510. The revised formula applies to both prospective and retroactive calculations. All monetary allowances will be adjusted no later than February 1st of every year 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 2026. These instructions are intended to assist in determining child support obligations but are not a substitute for the Rules or any applicable law.

The Formula is a rebuttable presumption for establishing child support obligations in Delaware. This means the child support obligation indicated by the Formula should be adopted unless the Court finds the result contrary to the best interest of the child or unfair to the parties and chooses to deviate from the Formula. Every child support order, 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 <https://courts.delaware.gov/family/>.

REASONABLE EARNING CAPACITY

A **Child Support Financial Disclosure Report** (also known as Form 16A) must be submitted with supporting documentation at any mediation conference and prior to any hearing. Documentation includes a parent’s most recent tax returns, W-2 forms, and 3 most recent pay stubs but may also include documentation of Social Security, unemployment compensation, workers’ compensation, medical disability, childcare, 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.

Child support is calculated upon each parent’s **reasonable earning capacity**. Delaware Department of Labor wage surveys (<https://laborfiles.delaware.gov/main/lmi/publications>) can be used to assess whether earnings are appropriate and to determine reasonable earning capacity. A parent employed at least 35 hours per week at a job appropriate to their training and experience, and earning

greater than the “entry” level wage for their profession as reported in the wage surveys is presumed to have reached reasonable earning capacity. A parent in an appropriate job but working fewer than 35 hours per week must be imputed (treated as if they are working) at least 35 hours per week. If income is undocumented, if a parent is un- or underemployed either voluntarily or due to their own misconduct, or if a parent fails to appear for a hearing or mediation, then reasonable earning capacity will be imputed at not less than “presumptive minimum income”. Presumptive minimum income is \$1960 per month (statewide entry level wage according to the DOL wage surveys at 150 hours per month and updated annually). However, a parent who voluntarily or through misconduct has a decrease in income may be imputed their prior income or an income based upon their education, training, and experience.

For cases facilitated by the Division of Child Support Services (DCSS), quarterly wages earned by parents and reported to government agencies for unemployment compensation purposes (DOL and INQT reports) will be admitted into evidence. Notices for hearings and mediation conferences to establish or modify support have contact information for parties to obtain their own wage reports prior to the hearing or mediation. If credible evidence is presented to contradict a wage report, the court may provide a party 10 days to submit documentation resolving the discrepancy.

Parents who receive **unemployment compensation** are presumed to have lost employment by no fault of their own. A parent who loses employment involuntarily and through no fault of their own will be imputed the greater of one-half of their prior income, any unemployment compensation received, or presumptive minimum income. However, unemployment that exceeds 6 months in duration is presumed to be voluntary. Parents who don't receive unemployment compensation are presumed to have left employment voluntarily or been fired for misconduct. Parents who suffer a loss of income voluntarily or due to misconduct may have their obligation calculated upon actual current earnings if over a reasonable period they have earnestly sought to maximize their income capacity.

Receipt of **Social Security Disability (SSDI)** or Supplemental Security Income (SSI) is proof of a disability which may limit ability to work. A parent receiving SSI will not be assessed an obligation unless the parent has additional income or resources with which to pay support. SSI paid to a household due to a child's disability is also not considered income for any purpose. **Continuous incarceration** of more than 180 days is also evidence of diminished earning capacity. Most orders that issued after January 31, 2019, will automatically decrease to one-half of a “minimum order” on a parent's 181st day of continuous confinement.

NET AVAILABLE INCOME

Net available income is determined by taking gross income and subtracting certain deductions and a self-support allowance, and accounting for each parent's obligation to support other children, if any. If the party seeking support is not a parent, then support is calculated using only the income of the parent in the case before the Court and a primary share of 50% is utilized at Line 9. All amounts must be monthly and rounded to the nearest whole number. To convert from weekly, multiply by 4.333. For biweekly, multiply by 2.167.

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 compensation.

Secondary Income: Secondary income is income from second jobs and passive income from interest, dividends, and trusts. Whether to include **secondary income** is determined case by case. It 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 (including those of a dependent outside of the case), is necessitated by the nonpayment of support, or the job substantially conflicts with visitation. Passive income may also be excluded if it was historically saved or reinvested.

Overtime: Fluctuations in income or that overtime is not guaranteed is not a basis for exclusion. The Court must determine the average monthly income likely to recur. Secondary income and voluntary overtime that is no longer earned will not be imputed if it has been over 2½ years since the last determination of support, and income from primary employment is consistent with reasonable earning capacity.

Other Income: All other income (including SSDI and SSR) otherwise includable on the parent’s federal income tax return is presumptively considered in the calculation. Some types of nontaxable resources are entered under “nontaxable income” as described below. SSDI (Social Security Disability Insurance) paid into a household for the support of a child of the union due to a parent’s disability are included in that parent’s income but offset the Net Monthly Obligation (Line 24) dollar for dollar. SSI (Supplemental Security Income) paid into a household due to a child’s disability is will NOT be considered.

Self-Employment: All income from self-employment or as an independent contractor and typically reported on a 1099 Form and includable on a Schedule SE federal income tax return is considered for child support. If actual payment of self-employment taxes is not provided, a 7% deduction is provided on Line 3. But without documentation, it should be reported as “other oncome”.

Nontaxable Income: Alimony awarded or modified after 2018, nontaxable proceeds from a private or public entity paid to a parent due to an injury or disability, personal injury awards or settlements, military allowances, or any cash entitlement not based on need that enhances the standard of living of a parent but is not taxable under federal law shall be included. This includes Veterans Administration (VA) benefits but does not include any payment made by the Social Security Administration (SSA). Nontaxable income is subject to a 25% surcharge on Line 2.

While all military allowances (except clothing) are included, no military service member shall be attributed a housing allowance (BAH) that exceeds BAH w/dependents at Dover AFB.

2023 Dover Air Force Base BAH w/dependents (BAS is \$452.56 for enlisted & \$311.68 for officers)

E01	\$2,001	E05	\$2,142	E09	\$2,577	W04	\$2,601	O3E	\$2,613	O4	\$2,724
E02	\$2,001	E06	\$2,157	W01	\$2,160	W05	\$2,694	O1	\$2,151	O5	\$2,865
E03	\$2,001	E07	\$2,271	W02	\$2,337	O1E	\$2,301	O2	\$2,154	O6	\$2,886
E04	\$2,001	E08	\$2,421	W03	\$2,523	O2E	\$2,496	O3	\$2,514	O7	\$2,907

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 (whether or not voluntary) to a high-cost location will not be included as income if it is clearly identified on pay documents. Adoption subsidies pursuant to 42 U.S.C. § 673 or a similar statute shall not be counted as income.

Line 2 – Nontaxable Income Adjustment – Multiply any nontaxable income include on Line 1 by 25% to represent the taxable earned income equivalent. Other than payments made by the Social Security Administration, a parent shall be imputed an additional 25% of that nontaxable income in increased by 25% to estimate the taxable earned income equivalent.

Line 3—Self Employment Tax Adjustment: If a parent provides documentation of actual payment of self-employment tax, 7% of the parent's self-employment income will be deducted from gross income. However, the deduction is only available to the extent combined wages and self-employment income does not exceed the Social Security maximum (currently \$13,350).

Line 4--Allowable Deductions

Pension: All mandatory pension contributions are deductible. Voluntary contributions to an IRS approved retirement plans (for example, 401K, TSP, 457, 403(b), SEP) are deductible but only to the extent mandatory contributions do not exceed 5% of gross income. The automated calculation on the Court's website will automatically calculate the maximum allowable amount.

Union Dues: Average monthly union dues.

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

Medical Insurance NOT covering these children: Medical insurance premiums (including COBRA) covering the parent or their dependents BUT NOT THE CHILDREN OF THIS UNION are a deduction from gross income. Insurance premiums for policies that cover the children of this union are entered on Line 12(c).

Other: Any court ordered alimony payments, or mandatory deductions included on pay stubs (such as uniforms or supplies) required by an employer.

Line 5--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 **\$1460**.

Line 6--Net Income after Self Support: Subtract the self-employment adjustment (if applicable), deductions, health insurance & the self-support allowance from gross income.

Line 7A -- 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 if there is a court order of support or written agreement between the parties before the Court. This does not include stepchildren. If the person seeking support is a guardian, then indicate here whether the guardian has guardianship of any children other than in the pending case.

Line 7B-- Adjustment for Support of Other Dependents: If Line 7A is “Yes” (the parent supports other minor children), enter 70%; if “No” (the parent does not support other minor children), enter 100%.

Line 8--Net Available for Primary Support: Multiply each parent’s Net Income after Self Support (Line 6) by the Line 7B percentage. Add the figures for Father and Mother to get the parent’s combined 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%**.

PRIMARY SUPPORT

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

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 $\frac{1}{2}$ child or “.5” to each household. Do not include children from other relationships.

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).

<u>Number of Children</u>	<u>Primary Support Allowance</u>	<u>Number of Children</u>	<u>Primary Support Allowance</u>
1	\$730	.5	\$535
each additional	+390	each additional ½	+195

Line 12—Itemized Primary Need

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

B - 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 the equities especially:

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

C - Medical Insurance Covering to the Children: Any medical insurance premium for a policy that covers the children of this union is included on Line 12C. Documentation is **REQUIRED**. That amount is then multiplied by 75% if the parent has no other children to support ("No" on Line 7A), or 50% if the parent has other children to support ("Yes" on Line 7A). This includes insurance acquired through a stepparent's or guardian's employment but only if the stepparent's or guardian's own children are not covered by the policy. If the cost to cover the both the parent and the children exceeds 10% of income, then it is presumed to be unaffordable. However, once acquired, coverage must be retained until further order of the Court or written agreement of the parties.

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 16A—High Income Excess. If the Net Available for SOLA (Line 15) for both parties is less than \$14,600, enter "0" on Lines 16A and 16B, and proceed to Line 17. Otherwise, for each party subtract \$14,600 from Line 15 and enter the results on Line 16A (but not less than "0"). Then add the amounts together and enter the result on Line 16A Total.

B--High Income Offset. Multiply Line 16A Total by **30%**. Enter the result on both parents' Line 16B.

Line 17--SOLA Percentage: Enter the SOLA percentage corresponding to the Number of Children (Line 10 Total).

<u>Number of Children</u>	<u>SOLA Percentage</u>
1	12%
2	17%
3	21%
each additional	+2%

Line 18A--SOLA Obligation: Subtract the High-Income Offset (Line 16B) from the Net Available for SOLA (Line 15) and multiply the result by the SOLA Percentage (Line 17). Enter the result for each parent, and then combine the parents' individual SOLA obligations for the total.

Line 18B—SOLA per child: Divide the SOLA obligation (Line 18A Total) by the Total Number of Children of this Union in each Household (Line 10 Total). Enter the result on Line 18B.

Line 19--Gross Monthly Obligation: Line 14 (Primary Support Obligation) plus Line 18A (SOLA Obligation).

CREDITS AND THE NET MONTHLY OBLIGATION

The Net Monthly Obligation is the Primary Support obligation plus the SOLA obligation minus applicable credits, but subject to Self-Support Protection as described on Line 23.

Line 20--Retained Primary and SOLA: Multiply the number of children in each household (Line 10) by the "per child" SOLA on Line 18B and add the Primary Support Allowance for each party on Line 11.

Line 21--Child Care / tuition paid by each parent: Enter the total of Line 12 for each parent.

Line 22--Parenting Time Adjustment: If the obligated parent enjoys 80 to 163 overnights per year, that parent retains a portion of primary support and SOLA. The adjustment is controlled by the number of overnights of contact in the currently enforceable contact order or agreement. If there is no order or agreement, or if practice differs from the order or agreement, then a party must by clear and convincing evidence prove a different number of overnights. From the below table, enter the percentage on Line 22A, multiply it by the OTHER PARENT's Line 20, and enter the result on Line 22B.

<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 23--Self Support Protection: Does the parent support children in 3 or more households? Enter Yes or No on Line 23A. If Yes, enter **35%** on Line 23B; if No, enter **50%**. Multiply Line 8 by Line 23B and enter the result on Line 23C. This is the maximum support obligation that can be ordered.

Line 24--Net Monthly Obligation: For each parent, subtract Primary/SOLA retained (Line 20), Childcare/tuition retained (Line 21), and the Parenting Time adjustment (Line 22B) from Gross Monthly Obligation (Line 19). Enter the result but not more than Line 23C. 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 without regard to who filed the petition.

Line 25—Cash Medical Support: Each parent is required to contribute to each child’s medical expenses not covered by insurance. The percentage is based on each parent’s Primary Share of Net Available on Line 9. If the percentage is not already a multiple of 10%, then round the percentage to the next multiple of 10% that is closer to 50%. For example, if Line 9 is greater than 40% but less than 60%, then Cash Medical Support will be split 50/50. If it is greater than 30% but not greater than 40%, then the parent’s share is 40% and so on. The automated calculation will do the math:

<u>If Line 9 is at least</u>	<u>but not more than</u>	<u>then Line 25 is</u>	<u>If Line 9 is at least</u>	<u>but not more than</u>	<u>then Line 25 is</u>
0%	10%	10%	50%	59%	50%
11%	20%	20%	60%	69%	60%
21%	30%	30%	70%	79%	70%
31%	40%	40%	80%	89%	80%
41%	49%	50%	90%	100%	90%

Parents should attempt to manage medical reimbursement issues privately. Petitions may be filed for reimbursement for a past medical expense or contribution to an anticipated expense. A petition for a past expense should be filed no later than December 31 in the 2nd year after the expense is incurred. For example, reimbursement for an expense incurred in 2021 must be filed no later than December 31, 2023. Later applications may be considered for good cause shown.

Minimum Orders: Unless the children reside in shared or split placement or the obligated parent is disabled, the Court will impose an obligation of not less than **\$150** for one child and **\$220** 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.

<u># Children</u>	<u>Not Incarcerated</u>		<u>Incarcerated</u>	
	<u>Current Support</u>	<u>Arrears Only</u>	<u>Current Support</u>	<u>Arrears Only</u>
1	\$150	\$180	\$75	\$90
2 or more	\$220	\$264	\$110	\$132

Repayment: If an obligated parent owes back support or arrears, the court will direct the balance to be repaid at an amount equal to 20% of current support but not less than \$20 per month. Furthermore:

- If the obligation terminates due to the change of placement of the children to the obligated parent, then the presumptive repayment is 20% of the prior current support obligation.
- If an obligation terminates for any other reason, the obligation continues in the total amount until all balances are paid.

- Payment on arrears owed to the State of Delaware is limited to \$20 per month if the parent owes current support or arrears to any other private individual or to another State.
- A person is presumed to have the ability to pay at least 120% of what their obligation would have been under the Formula if current support had been ongoing. When using the Formula for this purpose, a 50% "primary share" on Line 9 is utilized.
- The standard repayment for genetic test costs is \$20 per month.

Retroactivity: In a new support petition, 6 months of retroactivity prior to filing is presumed. Each party may present evidence to persuade the Court to impose greater or lesser back support, but it cannot exceed 2 years. Retroactivity in a modification petition cannot go further back than 3 days after the date the summons is mailed. If a person seeking support affirmatively declined current support in a previous petition, then back support cannot go further back than that declination.

Modification: Petitions for modification filed within 2½ years of the last order of current support must allege "with particularity" a substantial change of circumstances not caused by the Petitioner's voluntary or wrongful conduct. An order will not be modified unless a change of more than 10% is indicated. Beyond 2½ years, neither the "particularity" nor the "10%" applies. A change caused solely by a revision of the child support formula is not ground for modification. Support orders may increase, decrease, or reverse the payer and payee regardless of who filed the petition. The 2½ year 'particularity' requirement also applies to petitions to modify an arrears payment.

Shared Incidental Expenses: 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. At a minimum, shared expenses include:

- Haircuts
- School lunches
- Instrument rentals
- School supplies
- School project supplies
- Enrollment/uniform and other mandatory fees (but not equipment) associated with participating in local recreational sports or extracurricular activities.
- Local field trips not requiring overnight accommodations or air transportation.

Whether other expenses should be shared by the parents depends upon:

- Whether the parents agreed or acquiesced to the expense being incurred (even if the parents did not agree how to divide the expense);
- Whether the expense is customarily incurred by similarly situated families;
- Whether both parents benefit from the expense;
- The amount of the expense and the frequency with which it will be incurred; and
- The parents' respective abilities to contribute to the expense.

Incarceration: The obligation of an incarcerated parents will be based upon pre-incarceration circumstances for the first 180 days of continuous confinement. If the incarcerated parent has insufficient resources to otherwise pay their full obligation, beyond 180 day the obligation is reduced to a one-half of a minimum order thereafter. All orders that issued after January 31, 2019, contain a provision whereby this adjustment occurs automatically upon 181 days of continuous confinement. For obligations determined prior to 2/1/2019, the reduction requires the filing of a Petition for Support Modification.

Exceptions still applicable - Orders issued between 2/1/2019 and 1/31/2023 include exceptions wherein the obligation will not be reduced if the support recipient or the children of the order were the victims of an offense for which the obligated parent is incarcerated, or if the parent is incarcerated for nonpayment of child support. These exceptions will remain in force until the obligation is modified which can be petitioned for by either party upon a substantial change of circumstances or the passage of 2½ years. While the Formula has been modified to remove these exceptions in future orders, a change to the Formula is not in itself a basis for modification.