California CHILD SUPPORT LAWS
Calculation, Modification and More

Written by B. Robert Farzad, Managing Partner of Farzad and Ochoa Family Law Attorneys, LLP.
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INTRODUCTION

What are the laws on child support in California? It is a simple question but one that involves a comprehensive discussion for a proper answer. You are in luck. This E-Book on California child support laws you are about to read lays out the most common issues, questions and answers about child support in our State.

We will cite to California Family Code sections throughout this E-Book. Sometimes we will quote them and you will know that because we use quotes but most often, we just summarize the parts of the code section we are discussing at that time.

This California child support E-Book is comprehensive. If you came here expecting something that skips the details, you will be disappointed. If you came here thirsting for knowledge, you are in luck. However, we obviously cannot cover every child support issue in one E-Book. California child support is a very large family law topic.

This E-Book assumes the reader of this book (you) are smart enough to hire an experienced California family law attorney. If you are reading this E-Book with the expectation it will help you represent yourself, you are making a mistake. Do not do it. No book can replace legal advice and the value that comes from effective representation.

- B. Robert Farzad

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The purpose and intent of California child support laws
CHAPTER 1

The purpose and intent of California child support laws

California Family Code 4053 lays out the purpose and intent of California child support laws. In summary (not word for word), here is what it teaches:

• A mother and father’s first and most important obligation is to support their child.
• That obligation is mutual, based on ability, each parent's income and time with the child, all consistent with the child's best interest.
• A child should share in the standard living of both parents.
• Child support may improve a custodial parent’s standard of living because that improves a child’s standard of living. That means child support also reduces the disparity of each parent’s standard of living.
• California is an expensive State to live in and child support orders reflect that.
• California law presumes the parent who has the primary parenting time already contributes a significant part of his or her resources for the child. This presumption can be rebutted.
• California’s child support guidelines are designed to reduce conflict and lessen litigation.

What does all of this mean?

The higher income earner is not solely responsible for supporting a child. The responsibility is mutual and both parents have the obligation to provide financial support for their children. But that does not mean a higher income earner can dismiss his or her support obligation and his or her obligation to provide with the proper standard of living. The child has the right to live at the higher income earner’s standard of living and is not relegated to that of the lower income earner.

Ultimately, what it means is the child’s best interest is California’s number one priority.
But do California child support laws really work in the way the legislature intended? While California child support laws are designed to speed up and streamline the process, four issues often get in the way.

1. Parents who frustrate or interfere with the other’s parent’s time with the children: This takes place in parental gatekeeping matters which can lead to parental alienation. A parent does this to artificially increase his or her own time and therefore increase child support.

2. Parents who have little interest in spending quality time with their children but still seek parenting time they do not want or cannot handle: Why? To artificially decrease their child support exposure.

3. Parents who refuse to become gainfully employed when they have the earning capacity, ability and opportunity: Remember, the obligation to support a child is a mutual one. It doesn’t just fall on the noncustodial parent. Unfortunately, most parents don’t realize this and think just because they are the higher income earner, all of the burden must fall on them.

4. Parents who lie about their income, often claiming it is less than what it actually is, to pay less than what California child support laws require.

It is not coincidence there are specific laws to prevent and punish these things.
Guideline Child Support Orders
CHAPTER 2

Guideline child support orders

Contrary to what many family law lawyers will tell you, the court can consider Family Code 4320 when evaluating a temporary alimony order. Family Code 3600 states:

“During the pendency of any proceeding for dissolution of marriage or for legal separation of the parties or under Division 8 (commencing with Section 3000) (custody of children) or in any proceeding where there is at issue the support of a minor child or a child for whom support is authorized under Section 3901 or 3910, the court may order (a) either spouse to pay any amount that is necessary for the support of the other spouse, consistent with the requirements of subdivisions (i) and (m) of Section 4320 and Section 4325, or (b) either or both parents to pay any amount necessary for the support of the child, as the case may be.”

California child support laws place a direct correlation between parenting time (called “visitation”, a term for which this author never really cared) and child support. This a double-edged sword.

On the one hand, a parent who has more time with the child will have a greater need for child support. That is the theory behind it. On the other, the moment you connect parenting time and child support, you give parents with poor motives to use custody and parenting time as leverage in child support.

SO HOW DOES THE COURT CALCULATE GUIDELINE CHILD SUPPORT?

From a practical perspective, guideline child support is what the computer program (Dissomaster and X-Spouse being the two most common in California) tells the judge child support should be. That assumes the correct information is inputted into the program.

Does the Family Court have to follow California’s child support guideline? Not in every case, but there has to be a proper, legal reason to deviate from it. California Courts cannot simply fail to order the guideline child support amount for reasons not permitted by law. That is because the guideline child support number is presumptively deemed to be correct. This presumption of correctness can be rebutted up or down.
The Court needs to have admissible evidence that shows the guideline formula would be “unjust or inappropriate” in the case. What can the Court consider? We have listed it here. And the person who wants the Court to deviate from the guideline formula is the one who has to persuade the Court it should.

The list is:

1. “The parties have stipulated to a different amount of child support under subdivision (a) of Section 4065.”

That is a fancy way of saying the parties agreed to a different amount.

2. “The sale of the family residence is deferred pursuant to Chapter 8 (commencing with Section 3800) of Part 1 and the rental value of the family residence where the children reside exceeds the mortgage payments, homeowner’s insurance, and property taxes. The amount of any adjustment pursuant to this paragraph shall not be greater than the excess amount.”

This is self-explanatory and a unique situation.

3. “The parent being ordered to pay child support has an extraordinarily high income and the amount determined under the formula would exceed the needs of the children.”

At some point, California’s child support guideline becomes too much because the other parent’s income is so high that to use the computer formula would be far more than what the children need. Keep in mind though that children are to share in their parent’s lifestyle so don’t assume this section means that wealthy parents get a break on child support – far from it.

4. “A party is not contributing to the needs of the children at a level commensurate with that party’s custodial time.”

The custodial parent is presumed to contribute the majority of his or her resources to the child right? What happens when that is wrong? The noncustodial parent has the burden of proof to show that.

5. “Application of the formula would be unjust or inappropriate due to special circumstances in the particular case. These special circumstances include, but are not limited to, the following:

(A) Cases in which the parents have different time-sharing arrangements for different children.
(B) Cases in which both parents have substantially equal time-sharing of the children and one parent has a much lower or higher percentage of income used for housing than the other parent.

(C) Cases in which the children have special medical or other needs that could require child support that would be greater than the formula amount.

(D) Cases in which a child is found to have more than two parents.

This section may be the most common. It is also the broadest and gives the Court the most discretion, especially about children with “special medical or other needs.”

THE COURT MUST STATE HOW IT GOT TO THE POINT OF DEVIATING FROM THE CALIFORNIA CHILD SUPPORT GUIDELINE NUMBER

If the Court finds any of these factors apply and the Court intends to deviate from the California guideline support number, Family Code 4056 requires the Court to follow certain mandatory steps. The Family Court has to state:

1. The amount of support that would have been ordered under the guideline formula.
2. The reasons the amount of support ordered differs from the guideline formula amount.
3. The reasons the amount of support ordered is consistent with the best interests of the children.

(b) At the request of any party, the Court shall state in writing or on the record the following information used in determining the guideline amount under this article:

1. The net monthly disposable income of each parent.
2. The actual federal income tax filing status of each parent (such as, single, married, married filing separately, or head of household and number of exemptions).
3. Deductions from gross income for each parent.
4. The approximate percentage of time pursuant to paragraph (1) of subdivision (b) of Section 4055 that each parent has primary physical responsibility for the children compared to the other parent.
DO CALIFORNIA CHILD SUPPORT LAWS ALLOW PARENTS TO AGREE TO LESS OR MORE THAN WHAT THE STATE GUIDELINE REQUIRE?

While child support arrears generally cannot be waived, parents can agree to less or more than what California guideline requires for child support. If it is less, Courts take a more critical eye toward the agreement before they approve it. If it is more, you guessed it, it is usually approved without a second look. We talk about the issue of waiver a bit more later in this E-Book.

CAN A PARENT BE ORDERED TO PROVIDE SECURITY FOR PAYMENT OF CHILD SUPPORT?

Yes. Sometimes, parents are required to provide security for payment of child support. This is not mandatory. The Family Court can determine whether it is appropriate in a case and the amount ordered must be reasonable. There is a whole set of California Family Code sections that deal with this between Family Code 4560 through 4573. The duration of the order is "up to one year’s child support or such lesser amount as is equal to the child support amount due to be paid by the child support obligor between the time of the date of the order and the date when the support obligation will be terminated by operation of law."

AT WHAT AGE DO CALIFORNIA CHILD SUPPORT PAYMENTS STOP?

Child support terminates when a child turns 18 years old except when the 18-year-old child is still a full-time high school student and lives with a parent. In that situation, child support terminates when the child turns 19 or graduates from high school, whichever occurs first. California child support also terminates if a child marries, joins the military, is emancipated or dies.

Parents can also agree to support for an adult child beyond that although that is unique.
California Child Support Calculator
CHAPTER 3

California Child Support Calculator

California child support calculation involves many factors. The three most common and most important factors when calculating the California child support amount are:

1. The number of children who are entitled to support.
2. The amount (percentage) of parenting time each parent has with the children.
3. Each parent’s net disposable income although do not let that confuse you because the computer program takes the gross income and determines the net monthly disposable for each parent. How does it do that? By making legal assumptions like your tax base. I realize some may be scratching their head on this but look at it this way – guideline child support is intended to simplify the process and that means the occasional shortcut.

The above are not the only factors. They are simply the ones that have the most impact on the child support number.

If there is more than one child, the child support program makes an allocation of the support such that the youngest child receives the full amount of support for one child and then it is a downward adjustment for each additional child. The allocation is not important for most people’s purposes because the computer program figures it out for you. Parents can agree and the Court can order a different allocation between the children.
CALIFORNIA CHILD SUPPORT LAWS ALSO MANDATE HEALTH INSURANCE COVERAGE FOR CHILDREN, IN ADDITION TO THE BASE CHILD SUPPORT.

Every child support order must have a provision about “medical support.” This is in addition to the guideline child support amount. Medical support is a Family Court’s order that one or both parents must provide the child with health insurance so long as that insurance is available at no cost or reasonable cost. Health insurance coverage includes medical, dental and vision. What is reasonable? Typically, group health insurance policies through employment are considered reasonable as are plans that don’t exceed five percent of the parent’s gross income.

The one bit of good news for parents paying health insurance is that it is a line item deduction on the child support guideline calculation. Therefore, it is really both parents contributing toward it because it does lower the child support obligation by a permitted amount.

A paying parent can request he or she be excluded from providing health insurance and there are forms made available for that but Courts are not overly receptive to such claims because they want to see children insured.

California Family Code sections 3750 through 3753 are good reading on the subject of health insurance and child support.
California Child Support Add-Ons
CHAPTER 4
California Child Support Add-Ons

MANDATORY CHILD SUPPORT ADD-ONS

The mandatory add-ons are the following:

1. Uninsured health care expenses

Reasonable medical, dental, and vision related bills that are uninsured are typically ordered divided 50/50 or some other percentage. Not paying those is the same as not paying child support.

There is a presumption the amount paid toward the children’s uninsured health care are reasonable but that rule has an exception within Family Code 4063(e). Like just about every presumption in family law, it can be rebutted.

Uninsured health care costs are an area that can become heavily litigated. This is especially true when one parent claims the treatment was done without their consent or it was not reasonable or necessary.

What about California child support orders and braces? Does that fall under uninsured medical expenses? This is another issue that often comes up. Can one parent require the other to pay 50% or otherwise share in the cost of braces?

If the braces were recommended by a dental care professional, that helps. If the braces are also a necessity (as opposed to only cosmetic), that helps more. Is there a specific law that specifically says braces are or are not covered under uninsured dental expenses and therefore part of a child support order? Not directly but most parents know whether the braces really are a necessity, luxury or a combination of each so the specific facts typically control this situation.

Also keep in mind that uninsured health care costs are presumed reasonable so there is at least an argument to be made the parent disputing the necessity of the braces is the one that has the burden of proof.

2. Child care costs as an additional child support add-on

Family Code 4062(a)(1) states that child care related to employment or reasonably necessary education or training for employment skills must be added to the child support. This amount is generally divided 50/50 although the Court can order a different allocation.
Sometimes, this amount is paid directly to the other parent but it can also be paid directly to the child care provider. That may be best especially in situations where there is a reasonable question as to whether or not the parent asking for the payment is really incurring the expense. This author sees this in cases where a relative is the child care provider and claims a cost but that cost is really not being paid by the parenting claiming it.

DISCRETIONARY CHILD SUPPORT ADD-ONS

1. Public versus private school

The Family Court may order private schooling costs (including tuition) but whether or not to do so is within the Court’s discretion. If a child has been attending private school, the chances of getting such an order are better than asking for a child to go from public to private.

Some children have special needs that require private or special schooling. That is more often granted. Of course, each parent’s ability to pay is a factor.

2. Child support add on for extracurricular activities

The Court also has the discretion to order payment for extracurricular activities. This also most often occurs when a child has been engaging in such activities. Ability to pay is again a factor.1

3. Travel expenses

The Court can order travel expenses paid for visitation. This sometimes occurs when a custodial parent has to travel a greater than normal distance to take the child to the noncustodial parent.

The more common scenario however is when the noncustodial parent is the one asking for reimbursement of travel expenses to come and see the child.

There has been a conflict within the law on this issue so taking the specific situation to a family law attorney is important.

Do not confuse this scenario with one that involves a non-custodial parent who requests that the custodial parent share in travel expenses because the custodial parent moved with the child, even if with the Court’s permission. There is direct legal authority for such a request and whether it is ordered, how it is paid and for how much is in the Court’s discretion and dependent on the facts.
How do you start the child support process?
CHAPTER 5

How do you start the child support process?

Child support actions traditionally start one of two ways (although these are not the only way).

1. A divorce or parentage filing; or
2. A California Department of Child Support Services action through the local child support agency.

Child support actions that do not involve the Department of Child Support Services start with a request for order (used to be called order to show cause).

The request for order starts on a form numbered FL-300. There are other child support forms that are discretionary (you can use them or give the same information in a separate declaration). Attorneys sometimes use the forms and other times prefer to type them out in a formal declaration to lay out the basis for the request.

IMPORTANT ROLE OF THE INCOME AND EXPENSE DECLARATION

No matter the style, the basis for the child support request must be stated and a request must include an income and expense declaration, a critical part of the process. If the declaration is incomplete, it could have a serious impact on the child support request. For example,

• If the parent that requests child support fails to complete it properly, that could delay the request or cause a denial.

• If the parent that opposes child support fails to complete the income and expense declaration properly, that could cause, among other things, monetary sanctions against that parent or assumptions made about his or her income the parent may not like.

• Self represented parents often do not properly complete and income and expense declaration. The most common mistakes include the failure to complete every section or leaving out the income verification documents required by sections five (dealing with wages, salary, etc.) and section seven (dealing with a self-employed parent). Failing to state the expenses properly and accurate is also common among self represented parents.
SERVING THE CHILD SUPPORT REQUEST FOR ORDER

Once the child support request for order is filed, it has to be served on the other parent. The method of service depends on whether the parent has already been served with the divorce or parentage petition or not. The method of service can also vary depending on whether the other parent resides within California or not.

DEADLINE TO RESPOND TO THE CHILD SUPPORT REQUEST FOR ORDER

Once service takes place, the other parent has a deadline by which to respond. That time is generally nine Court days before the hearing if the response is personally served on the other parent. Serving the response by mail or another way means an earlier filing and service (which means the responding parent has to move even faster to file and serve the response).

DO NOT CONFUSE THIS WITH RESPONDING TO A SUMMONS AND PETITION. A WHOLE DIFFERENT SET OF TIMELINES APPLY THERE.

Nine court days does not leave a lot of time because court days means you skip weekends and holidays. Thus, a parent served with a child support request for order has to move quickly and hire an experienced child support lawyer to prepare the response and appear at the hearing.

THE CHILD SUPPORT HEARING

At the child support hearing, the Family Court will review each parent’s submitted paperwork, listen to testimony under oath and decide. If there are issues and disputes regarding parenting time, income, imputation of income or other appropriate disputes regarding child support that are factually or legally supported, the Family Court will hear those and make a ruling. Whatever the Court’s ruling, it will typically be memorialized verbally and on the record.

With self-represented parents, the Court may document its ruling with something called a “minute order” which is another way of saying the Court clerk takes down the Family Court’s child support ruling in a typewritten format, on the computer. That minute order then becomes part of the Court record.

No matter what the Court's ruling, a list of the factors the Court considered when arriving at the California child support guideline number must be listed.

Family Court judges will typically do that by either accepting either lawyer’s computer printout that lists these factors or the Court will run its own number with the same or similar computer program and print it out.
Retroactivity and how far back does child support go?
CHAPTER 6

Retroactivity and how far back does child support go?

What does retroactive child support mean? It means the child support order isn’t just a prospective one (from a present or future date, going forward) but a retroactive one (going backward to start at a previous date). In other words, “retroactive” child support means child support that starts on a past date.

HERE IS HOW THE RETROACTIVE CHILD SUPPORT WORKS AND THE RULES ABOUT IT.

The first child support order is typically, though not always, the temporary one. It is the order before a judgment. That first, temporary order can be made retroactive to the date the petition (or whatever other initial document is filed). Does it have to be? No. But the Court may order that it starts at that past date.

The petition is typically what starts a divorce or parentage action. That means the start date of the first California child support order can go back to the date that was filed even though the Court hearing is after that. There are exceptions to this.

Illustration

A petition for divorce is filed on February 1. It is then served. A request for order for child support is then filed on March 1. The hearing is on April 15. On April 15, the Court makes its child support order and may make it retroactive to February 1 or March 1.

We are not going to discuss ex parte (emergency) child support orders here. Those are covered by Family Code 3620 through 3634.

One exception is when that initial petition (or other document that started the process) wasn’t served on the other parent within 90 days of its filing. In such a situation, the retroactive start date is the date it was served. Guess what? There is an exception to the exception and you may have already figured it out – this exception does not apply per Family Code 4009. Pay attention to the bold part.
**Family Code 4009:** An original order for child support may be made retroactive to the date of filing the petition, complaint, or other initial pleading. If the parent ordered to pay support was not served with the petition, complaint, or other initial pleading within 90 days after filing and the court finds that the parent was not intentionally evading service, the child support order shall be effective no earlier than the date of service.

Sometimes, the Family Court will reserve retroactivity when it makes a child support order. This is also an area of law that includes conflicting opinions and an experienced family law attorney’s advice is important.
Modification of California child support orders
CHAPTER 7

Modification of California child support orders

We’ve been talking about the initial child support order. What about a modification of it?

California child support laws allow such modified orders to go back to the date the modification request for order was filed. California law doesn’t distinguish between who filed the modification request or whether it was to increase or decrease child support. Once again though, there are exceptions. We won’t cover all of them here (these issues can get complex and the advice of an experienced child support lawyer is needed) but Family Code 3653 (b) through (d) carve out some of them.

Subsection (b) states that a modification request based on unemployment can be made retroactive to the “later of the date of the service on the opposing party…to modify or terminate or the date of unemployment.” This is subject to certain Federal Law and also the court finding good cause to do otherwise.

Subsection (c) deals with a change in income due to activation to the United States military service or National Guard duty and deployment out-of-state. In such a situation, the child support order must be made retroactive “to the later of the date of the service on the opposing party of the notice of activation, notice of motion, order to show cause to modify or terminate, or the date of activation, subject to the notice requirements of federal law (42 U.S.C. Sec. 666(a)(9))…” Once again, the Family Court may find good cause to do otherwise.

Subsection (d) also allows the Family Court to order the child support payee to reimburse the payor for any support paid in excess of the retroactive amount. The Court has a lot of discretion on how to order this.

There are situations where the parents can ask or the Court can order to “reserve” retroactivity even after it makes an order. We will discuss that in a future article.
THE ROLE “CHANGE OF CIRCUMSTANCES” PLAYS IN MODIFICATION OF A CALIFORNIA CHILD SUPPORT ORDER

After a family law judge makes a child support order, one or both parents (or the Department of Child Support Services if they are involved) may want to change the order. So long as the order was at the guideline amount or above it, the parent who seeks the modification needs to show a “change in circumstances” since the last child support order was made.

If the judge ordered (nearly always by agreement of both parents) a child support amount below the guideline amount, a parent can ask to change that amount at any time. The parent does not need to show a material change in circumstances.

WHAT IS A MATERIAL CHANGE OF CIRCUMSTANCES?

There are plenty of proper reasons to seek a modification based on a material change of circumstances and the following lists the most common ones (though not every one) this author has seen:

1. The parenting time has changed: This typically happens when one parent’s parenting time goes up or down, whether by agreement or a contested child custody hearing and order.

2. Either parent’s income situation has changed: income has gone up, down or one parent has become unemployed.

3. A parent has had another child from another relationship.

4. Changes have been made to the child’s needs or expenses: The most common ones are child care, medical or other health related costs, a special need has developed (including a medical diagnosis), etc.

A change in just about any of the factors that go into the child support calculation may be the basis but be careful – if the change is not a significant one (“material”), filing a modification request may be a waste of time. For example, if the change in income or parenting time is very small, it may not have much, if any, impact. How do you know if you are the one who wants to bring a child support modification request or are facing one? Simple. Get good legal advice. Trying to figure these types of things out on your own is usually not wise.
Parents who wait to file that child support modification may regret it.
Parents who wait to file that child support modification may regret it

If you are the parent who wants a modification of child support (especially a downward one), waiting is one of the worst things you can do. Until there is a new order, the last order remains in effect and, as we discussed, the Court usually cannot go back before your modification request was filed and served. That means you are stuck with the order until you change it, absent limited exceptions, which are beyond the scope of this E-Book.

Verbal agreements may not help you and are often not considered after a modification request is filed. Until you get a Court order, it is safest to assume you are not protected.

Why would anyone wait to modify child support if they can show a material change of circumstance? In this author’s opinion there is rarely, if ever, a good reason but here are some bad ones we have heard and seen people use:

- Life gets in the way – we know, it happens. Work, family, providing for yourself and others hardly leaves time to think about starting a Court proceeding.
- Fear or anxiety – to some people, going back to Family Court (especially if the previous experiences were not good ones) is the last thing they want. It’s “easier” to do nothing.
- For those who seek a downward modification due to a change in parenting time, he or she is concerned if he or she files the request, the other parent will start keeping the children from him or her. Fathers go through this all the time. They worry about “rocking the boat” so they keep paying the higher child support even if they have close to equal, equal or even primary parenting time. The parent receiving support also does this for fear of “upsetting” the paying parent.
- A job loss can turn a parent’s financial life upside down. The unemployed parent may think it is temporary so the parent waits days, then weeks, and that turns into months and all the while, that parent cannot afford to pay his or her own expenses.

These are four of many this author has heard. None of them are good ones, although all of them are understandable from an emotional perspective. But your emotions are not what should control your decisions. Your intelligence and common sense should.
Be careful waiting to file that child support modification. The advice of an attorney is critical during this time period to know when to file and how to do it.

**HOW IS CHILD SUPPORT IN CALIFORNIA MODIFIED IF THERE IS A MATERIAL CHANGE OF CIRCUMSTANCES?**

Child support modifications come into play in two instances. Modification of temporary orders or modification of judgments that ordered child support.

Modifications are identical in almost every respect to an initial request. They involve the same forms although a parent does have to make it clear to the family law Court he or she seeks a modification. Typically, the Court order to be modified is attached or at least referenced.

Other than that, the same factors that went into the last order, go into the child support modification request. The major difference a parent may find is that he or she has to show a change of circumstances from the time of the last order. Child support modifications are not there to simply revisit the last order because a parent was unhappy with it. That would cause chaos in the Court system.

As we have discussed, the main exception we have seen is modification of child support orders that were below California guideline. Remember that for those, no change of circumstances is required. Other exceptions are beyond the scope of this Child Support E-Book.

**A FEW WORDS ABOUT APPEALING CALIFORNIA CHILD SUPPORT ORDERS**

But what if the judge got it wrong? What do you do then? There are several methods by which you can challenge the Family Court’s child support order.

That is beyond the scope of this E-Book but some of them include a motion for reconsideration which has strict and quick timelines associated with it as well as an appeal.

I’m sure you’ve heard of an appeal and the ability to take to a higher Court a decision by a trial Court judge. Those also have filing deadlines and speaking with a family law appellate attorney immediately is a must.

You may also be under the belief that appeals always lose and there is no sense to bring one even if the family law judge completely got the decision wrong based on the facts, the law or both.

Certainly a cost versus benefit analysis has to be done on any appeal but do you really think the many California appellate cases over the years and decades would’ve come down remanding or reversing a Family Court’s child support order if there was no hope?
How is income determined for child support purposes?
CHAPTER 9

How is income determined for child support purposes?

California has statewide guidelines and Family Code sections that define gross income.

California Family Code section 4058 considers gross income that from any source except for child support payments that are actually received or public assistance programs where the eligibility for program assistance is based on need. Some California appellate courts have determined that supplemental Social Security (SSI) benefits are also excluded from income because they are based on public assistance. In addition, some appellate courts have ruled spousal support payments between the same parents must also be excluded.

By statute, income includes salaries and wages as well as commissions, bonuses, rents (which are typically from rental property), dividends, pensions, interest income, income from a trust or annuity (unless the annuity is connected to a non-income source such as personal injury proceeds), benefits paid as a result of a workers compensation case, unemployment insurance, disability insurance benefits (especially when it is designed to replace income), Social Security benefits and alimony that is received from an unrelated case to the parent that seeks child support. Like many general rules, there may be exceptions so the advice of an attorney you retain as to whether or not an item is or is not income will be necessary.

For business owners or executives going through a divorce, their income is typically the gross revenues of the business minus business expenses, unless of course they have business partners or co-owners who also share in the business profits.

Courts also have the discretion to include as income those benefits (whether those are employment or self-employment) that reduce living expenses. This reduction of the expenses can include rent-free housing, meal allowances and just about anything that reduces the living expenses of an individual and for which individual would normally have to pay but receives as a benefit of employment.
California case law has also stated recurring monetary gifts from a person’s parents can also be considered income regardless of whether or not the gifts are considered income for federal tax purposes.

For those who hold stock options, there are cases that have determined unexercised stock options can be considered income.

For service members, the basic allowance for housing and subsistence have been considered income.

Unless child support is not disputed or the parents’ incomes are easy to figure out because they are both W2 employees, it is common for there to be some investigation or discovery (formal written requests for information during the divorce or paternity case) during the litigation process.
What is not income for California child support purposes?
CHAPTER 10
What is not income for California child support purposes?

This list is not intended to be exhaustive but does highlight some of the more common types of money received that the Family Court may not input into the California guideline formula when determining child support.

• Student loans that are used for books and tuition are not considered income for child support purposes.

• The principle of life insurance death benefits is generally not considered income. However, any interest that is obtained from it or income received from it can be considered child support.

• Future income that is speculative is not considered income for child support purposes. For there to be a consideration of future income, there generally has to be some evidence that the future income is consistent with past income.

• Stock is not considered income when it cannot be liquidated or is received in connection with the sale of the business. This is not a hard and fast rule and there are exceptions as the type of stock, its marketability and the potential rate of return from it can be considered by the court.

• Under most circumstances, equity in a parent’s residence is not considered income. The two cases that have come down in California Courts on this issue are Marriage of Henry in 2005 and Marriage of Williams in 2007. A careful reading of these decisions is needed to understand this rule and the potential, limited exceptions to it.

• Personal injury proceeds are generally not considered income unless the personal injury proceeds were specifically earmarked as compensation for lost income. It is not common for that to happen in a personal injury case although it is possible. Typically, the settlement agreement does not distinguish between income versus non-income or what specifically the personal injury damages were designed to compensate. Such damages are traditionally awarded in a settlement as a lump sum without designation. Once again, the advice of a family law attorney about your specific situation is necessary. There may be exceptions and situations where personal injury proceeds may be considered income and the attorney you hire should evaluate your situation based on its facts.
• Gifts of a nonmonetary nature are generally not considered income. It is not unusual for a parent to provide an adult child with a gift whether that is small items such as household items or something as large as a car. In such situation the value of that gift is generally not considered income for child support purposes.

The determination of child support and what is and is not income in a California child support case can be complicated and in any case where one or both parents are some employed and have a non-W-2 income structure, the services of an experienced family law attorney who is knowledgeable on child support issues can be very helpful.

CAN A PARENT’S ASSETS BE CONSIDERED FOR CHILD SUPPORT CALCULATION?

It’s a unique situation but the short answer is – sometimes. A parent’s assets that are underinvested or not utilized properly give the Court discretion to consider the rate of return (in other words, “interest”) that should be earned on that money.

Of course, the question that has to be asked in today’s world is what a reasonable rate of return may be? Banks are giving very little interest and the market can get volatile. CDs are not what they used to be. You can certainly invest your money in the stock market, and many do, but is it really fair for a family law judge to tell you whether your risk tolerance is too low?

That’s why there are no hard and fast rules about these situations and every factual case will be judged on its own merit. Ultimately, it takes persuasive evidence to take liquid assets and investments and make a case that it is underinvested or there should be a greater rate of return on it.
The role of tax returns when determining income for California child support purposes
CHAPTER 11

The role of tax returns when determining income for California child support purposes

Tax returns are presumed to be correct evidence of a parent’s gross income. That presumption is often rebutted in Family Court because parents do fail to report (or do under report) their income. In such situations, evidence that demonstrates the information on the tax returns is not reliable is something the Court does consider and, in our experience, readily does so.

Lying about income is less frequent with a wage earner (Form W2 verified) employee. This author has seen not reporting or underreporting of income most often with self-employed parents and not just in cash businesses. A very good example of what could happen in such situations is the appellate case of Marriage of Barth from 2012, which was an Orange County family law case handled by Judge James Waltz.

What does a Court rely on in such circumstances? There are lot of options available. Some are:

• Profit and loss statements of the business, ledgers, bank and credit card statements that may show personal expenses being written off as business ones.
• Loan applications like those for a mortgage, rent, vehicle, equipment, etc.
• The amount of monthly expenses spent…as this author often states, only the Federal Government can spend more money than it brings in.

Those are just a few examples. There is more, much more, but that would be an E-Book by itself.
WHAT ARE THE CONSEQUENCES OF LYING TO THE COURT ABOUT INCOME?

First, if the person has willfully given false testimony (and that includes providing false information on the income and expense declaration), then that may be a felony in the State of California. Perjury can be reported and prosecuted.

In addition, the Court could make very unfavorable presumptions about the income and it could backfire to such an extent the Family Court designates an income that is actually higher than what the person earns, even if they had told the truth from the outset. In short, losing credibility can blow up in the face of the person that lost it.

The Court also has the power to order sanctions and attorney fees. In some cases, especially if there is a lack of cooperation in the “discovery” process or other circumstances, the Court can order issue, evidentiary or terminating sanctions. That is beyond the scope of this E-Book and we will save that for another day.
What if a father or mother refuses to work or is underemployed?
CHAPTER 12

What if a father or mother refuses to work or is underemployed?

This issue comes up a lot. Typically, it goes something like this – Parent A is facing a child support order. Parent B doesn’t work. Parent A tells the Court that Parent B is capable of working and refuses. What does the Court do?

The Family Court can consider a parent’s earning capacity in the place of income if that parent is unemployed or underemployed. Family Code 4058(b) specifically states “the Court may, in its discretion, consider the earning capacity of a parent in lieu of the parent’s income, consistent with the best interests of the children.”

California child support law breaks earning capacity into two parts – the ability to earn an income and the opportunity to do so. Ability means the parent can actually work and doesn’t suffer from, as one example, disabilities that prevent the parent from working. Opportunity means there are jobs out there to be had. Makes sense, right?

There is actually one more factor. The earning capacity imputation of income must also be consistent with the children’s best interest. That last part may seem like a no-brainer but there are situations where a parent has special needs children (or an infant) that make it difficult to work full-time and working full-time (or part-time) would be inconsistent with the children’s best interest.

If a parent can show the other has both the ability and opportunity, that imputed income would then replace the actual earned income if the parent is working (but underemployed) or simply become the parents’ imputed earned income.

This is not a fault-based statute. Courts usually don’t get into why a parent is not working. What Courts care about is just what we have written – earning capacity through ability and opportunity.

The genesis for all of these laws comes down to one thing – California child support laws are very clear that both parents have the duty to support their children and that duty cannot be placed unreasonably on only one parent.
Special issues in child support cases
CHAPTER 13

Special issues in child support cases

ROLE OF NEW SPOUSE INCOME ON CALIFORNIA CHILD SUPPORT

The moment an attorney or judge brings up the subject of the new spouse’s income and its role in California child support, one parent will cry fair and the other parent will cry foul, depending on which parent has the new spouse and the respective income. Here is a common scenario.

Let’s say the father pays $2,000.00 per month in child support to the mother. The mother is the custodial parent. The father gets remarried and his new wife makes a decent income. The father’s standard of living just went up, right? The mother now claims his new spouse’s income should be considered for child support. The father claims that would be unfair – after all, it’s not her biological child.

Both parents have it wrong.

The new spouse’s income is relevant for determining the tax liability of that parent so the guideline formula will be correct. This assumes of course the parent and his or her new spouse file a joint tax return.

Take the same hypothetical but add more detail. Let’s say the father makes $100,000.00 per year and his new spouse makes $200,000.00 per year. At $100,000.00 per year, the father was in a lower tax bracket than at $300,000.00 joint income with his new spouse. That means more money is deducted from their combined pay. That new tax bracket is what the California child support guideline formula cares about. Do you know what happens next? The father’s child support likely goes down because he has less net disposable income from his $100,000.00 – he is in a combined higher tax bracket. The new spouse’s income therefore has an indirect impact on child support.

Can the new spouse’s income be used for other purposes, to directly raise or lower support? Remember, that is different from the scenario we talked about. The Family Code doesn’t allow that absent certain “extraordinary circumstances.” Family Code 4057.5 is an interesting statute. To meet its burden is not easy but it’s clear that it was born from pretty unique situations that are designed to avoid extreme hardship situations.
Here is what section 4057.5 states, in summary (not verbatim):

_The new spouse income of the payor can't be used unless it’s an extraordinary case where keeping that income out would cause “extreme and severe hardship” to the child for whom support is paid. But the Court also has to consider whether including the new spouse income would cause that same hardship to a child that is supported by the payor or the new spouse._

The same rule applies about the new spouse income of the parent receiving support – same hardship to the child being supported but also the payee or new spouse’s other child.

The statute cites as one extraordinary case a situation where a parent voluntary and intentionally quits, remains unemployed, underemployed or reduces his or her income and relies on the new spouse’s income. See what the law is doing? Just because a parent marries into money with a new spouse doesn’t mean his or her child suffers.

The rules are strict with how the new spouse’s income is determined and there are hardship deductions given. These are complex issues. Even the date this statute went into effect complicates it further. As we have said throughout this California Child Support E-Book, the advice of an experienced attorney about your specific factual situation is important.
CALIFORNIA CHILD SUPPORT LAWS ABOUT BONUSES, OVERTIME AND COMMISSIONS

Annual gross income generally does include overtime, commissions and bonuses. That is because the IRS typically considers those things income and California’s definition of income is pretty much in-line with that of the Federal Government.

The situations that often come up are these:

**Question:** What happens if the bonus or overtime is sporadic?

**Answer:** It doesn’t matter. Since income is often based on the “average”, Courts will look at one or more years to figure out what that average is. This isn’t a draconian process. The goal is to determine the present from a consistent (even if a sporadic) past.

**Question:** What happens if the past bonus, overtime or commissions are likely not going to continue?

**Answer:** If the spouse that is employed can show that, the Family Court can exclude its consideration of these items. But this isn’t always easy. The employee’s testimony may not be enough. Family Courts hear pretty regularly from the higher earning spouse that his or her income is going down, won’t be the same as before, etc. so judges will naturally want some proof of that.

**Question:** What happens when the employed spouse claims he or she voluntarily won’t work overtime?

**Answer:** That is fine of course but there should be a reason for it and “because I wanted to” may not work too well. At the same time, Courts are aware that, during a relationship or marriage, one spouse may work a lot of hours that are not sustainable after separation, especially when custody, parenting time and taking care of the kids without the other parent come into play.

Another approach the Court can take is order a percentage of the future overtime or bonus instead of factoring that income into the monthly guideline support order. That may actually work well for both parents because the paying spouse doesn’t pay a monthly support order that is higher than what he or she can afford on a month to month basis, but the parent receiving support still gets guideline support when averaged out over a year. This percentage would not be set at one number or percentage. It would change depending on the amount of the overtime, bonus, etc. This approach is sometimes called an “Ostler-Smith”, which is named after a California case.
What does all of this tell you? The Court has discretion on such issues and every case is driven by its own facts.

What is deducted from gross income for California child support purposes?

Let’s look at Family Code 4059 and take it in order. This isn’t a word for word account of this code section. The details are in the code. Deducted from gross income are:

1. State and federal income taxes: But what happens in a situation where a parent is not paying his or her taxes? One appellate case has stated that a parent who does not pay income taxes does not get a deduction. Makes sense, right? A parent shouldn’t deduct what isn’t actual being paid.

What about spousal support? Does that get deducted? The short answer is no. The fact that a spouse is paying spousal support to the spouse who receives child support is not a proper deduction. However, the reverse gets you a different answer. When calculating spousal support in California, the child support being paid to the same parent has to be considered. That means if a spouse has been ordered to pay spousal support and then later ordered to pay child support to the same parent, that paying spouse may be due for a spousal support modification.

2. Contributions under the Federal Insurance Contributions Act, also known as FICA.

3. Mandatory union dues or retirement deductions.

4. Health insurance or health plan premium deductions for the parent and any children that parent has the obligation to support: This also includes deductions for state disability insurance premiums.

5. Child support or spousal support paid under a Court order to a different spouse or child: Does that mean only Court ordered support payments are deducted? No, but it gets tricky here. The Court can still allow the deduction for un-ordered support so long as the amount being paid is consistent with California guideline (it doesn’t exceed it) and the child does not live in the home of the parent paying the support. Gamesmanship is common in these situations so careful attention must be paid as to whether the child support is or is not really being paid, for legitimate reasons and how.

6. Family Code 4059(f) allows for deduction of “job-related expenses, if allowed by the Court after consideration of whether the expenses are necessary, the benefit to the employee, and any other relevant facts.”
7. The often confused hardship deduction that Family Code sections 4070 through 4073 lay out: Hardship deductions include (a) extraordinary health care expenses for which the paying parent is financially responsible, (b) catastrophic losses that are uninsured, and (c) basic, minimum living expenses of the parent’s natural or adopted children from another relationship or marriage who reside with the parents and who the parent has an obligation to support. The rules regarding stepchildren get more complex.

Just because one of these apply does not mean the Court has to give a hardship deduction. The Family Court is required to look at the circumstances of each case and whether a Court gives a hardship deduction or not can turn on the facts and the Court’s discretion.

Is a hardship deduction dollar for dollar? Not necessarily. The Court has discretion here too and, no matter the amount of the hardship deduction, Family Code 4072 requires the Court to document the basis for the deduction.
Child support arrears, interest and enforcement
CHAPTER 14

Child support arrears, interest and enforcement

We will not be covering this topic in detail because this Child Support E-Book is more focused on requesting or responding to child support requests and not about collection. There are a couple of important things though that you should know.

DO CALIFORNIA CHILD SUPPORT LAWS ADD INTEREST TO UNPAID SUPPORT?

Yes. The law is pretty simple. Child support arrears accrue interest at the statutory rate of 10% per year.

There are also situations where an additional penalty may apply. If the child support payment is more than 30 days late, the parent owed the child support may file and serve a form called a “notice of delinquency” that parent signs under penalty of perjury. There are specific rules regarding proper service of this form. Once filed and served, the support set forth in this notice that remains unpaid for more than 30 days after filing and service can incur a six percent penalty of the delinquent amount for each month the support remains unpaid. This can accumulate up to a maximum of 72 percent of the unpaid support amount set forth in the notice. We encourage you to read Family Code section 4722 to learn more.

DO CALIFORNIA CHILD SUPPORT LAWS ALLOW CHILD SUPPORT TO BE WAIVED?

Parents cannot take away the Court’s power (called jurisdiction) to order either of them to pay child support. California’s laws are so strict that parents cannot even waive or limit a child’s right to child support. What do we mean by limit or waive? Here is one example – let’s say a parent fails to make child support payments. This could be for a variety of reasons. Whatever the reason, the mother and father get together and sign an agreement that waives the child support previously owed and unpaid. Is that agreement enforceable? Generally, no. Child support arrears cannot be waived nor can the Court modify the child support arrears that have already accrued.

There are exceptions and they are based on unique circumstances which we will cover in a future version of this E-Book. There are also situations where the Court can decide not to enforce a child support order due to the custodial parent’s misconduct. That will also be in a future update of this E-Book.
Choosing your advocate
CHAPTER 15
Choosing your advocate

We sincerely hope you enjoyed this E-Book on California child support laws. In this chapter, we will discuss several suggestions when you search for a California family law attorney. The following suggestions are especially helpful if you believe your family law case may become contested or complex.

Here is a list of our suggestions:

FIND AN EXPERIENCED FAMILY LAW ATTORNEY

There are two types of experience. The first is actual family law experience as a practicing lawyer in California. The second is local experience in the county where the California case is pending. What experience is right for you of course depends on your case and also your budget. Highly skilled and experienced attorneys may have higher hourly rates and larger retainer deposit requirements.

One aspect of experience you should carefully consider is whether the attorney you hire only practices family law. If you find your attorney handles more than one area of law (criminal law, personal injury, immigration, etc.) along with family law, what does that potentially tell you about that lawyer’s expertise in family law compared to an experienced attorney whose practice is limited solely to family law?

REPUTATION

Reputation is hard to gauge. Here are some tips:

Check the attorney’s California State Bar profile to make sure he or she has an active license. Look for any indication of past discipline by the State Bar. Such information is usually stated on the online State Bar profile.

Researching an attorney on the internet may be helpful although an online persona may be misleading. Regardless, the testimonials / reviews an attorney or law firm receive may help you understand how that attorney is perceived by his or her former clients. But be careful here because it is not uncommon for an opposing party on a case (not the attorney’s client) to write a negative review, pretending to be a client. The same can happen with a former disgruntled employee, etc.
Major websites do not know who is writing the post and do not carefully screen it. The same can be said about positive reviews.

Ask the attorneys with whom you consult for references. Surely, a highly skilled attorney should be able to give you a few references of former clients who have had situations similar to yours and you can contact them. Of course, the attorney will need to get those clients’ permission before doing so.

RESOURCES

Is your case complex? If so, carefully consider whether you should hire a family law firm with multiple lawyers and staff to represent you, versus a solo practitioner who may be just one or two attorneys and a secretary. A law firm’s resources can go a long way in ensuring proper time is dedicated to your case.

FEES

If you go cheap, you will likely get cheap. Lawyers whose hourly rates are very low and who take a small retainer deposit may lack the skill and experience you need. Do not let the fee issue be your sole, deciding factor. It should be one factor and not the only one. And while flat fee options make sense on certain limited scope family law cases, be very careful when a lawyer tells you he or she will handle your entire case from beginning to end for a flat fee. Find out what that involves and get it in writing.

Also, do not get yourself caught up in a “free” consultation. We know plenty of lawyers who offer a free consultation. Some of them are focused on one thing at consultation – selling the client to retain. Is that what you want? To be “sold” on the lawyer? Or are you there to get answers to questions, discuss strategy and figure out how you should proceed forward. Your consultation should be a strategy session that involves a real discussion about your facts, your issues, your concerns and needs and an honest dialogue about what the lawyer or law firm can do for you.

BEWARE THE CHEERLEADER OR BARKING SUIT

If your goal is for the attorney to tell you what you want to hear, then you have already gotten off to a bad start. Lawyers who become cheerleaders or overaggressive, barking suits do not do their clients any service. What you want is someone who will give you thoughtful and objective advice. Advice is not always good news or what you hoped to hear. A lawyer who tells you the strengths and weaknesses in your position and speaks with you about strategy and budget is a keeper.
ABOUT THE AUTHOR

B. Robert Farzad is the Managing Partner of Farzad and Ochoa Family Law Attorneys, LLP. Farzad and Ochoa Family Law Attorneys, LLP is one of the largest family law firms in Orange County, California. The firm has offices in Orange County and Los Angeles.

Mr. Farzad has been licensed to practice law in the State of California since 1996. He is an experienced, respected and trusted family law attorney. His experience includes the handling of complex divorce and parentage matters including high conflict and contested family law cases that involve pre and post judgment alimony issues.

Mr. Farzad is a published writer on divorce and has been a featured blogger on the Huffington Post. His writing has been featured in Orange County Lawyer Magazine and he has been interviewed by writers and radio hosts on his family law knowledge and experience. Mr. Farzad has presented seminars for the Orange County Bar Association and Continuing Education for the Bar (CEB). He is an executive committee member of the Orange County Bar Association, Family Law Section.

B. Robert Farzad remains actively involved in handling family law matters at his law firm.

Mr. Farzad has written additional E-Books on the subjects of California’s Child Custody Laws, California Spousal Support Laws and more.