

The Family Court of the State of Delaware

INSTRUCTIONS FOR CHILD SUPPORT CALCULATION (2021)

Effective February 1, 2019, the Family Court revised the Delaware Child Support 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 in February 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 2022. 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 is a rebuttable presumption for establishing child support obligations in Delaware. The Formula applies unless the Court finds the results are contrary to the best interest of the child or inequitable to the parties. 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 <http://courts.delaware.gov/family/>.

REASONABLE EARNING CAPACITY

A **Child Support Financial Disclosure Report** must be submitted with supporting documentation at mediation and before trial. Documentation includes a parent's most recent tax returns, W-2 forms, and 3 most recent pay stubs but may also include 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.

Child support is calculated upon each parent's **reasonable earning capacity**. Wage surveys published by the Delaware Department of Labor can be used to assess whether earnings are appropriate or determine reasonable earning capacity (<http://www.delawareworks.com>). 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 by the Delaware Department of Labor 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 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 40 hours per week, and at not less than minimum wage (\$9.25 per hour). However, a parent who voluntarily or through misconduct has a decrease in income may be imputed their prior income.

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 minimum wage at 40 hours per week. Parents who don't receive unemployment compensation are presumed to have left employment voluntarily or been fired for cause. Unemployment that exceeds 6 months in duration is presumed to be voluntary. 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 of time they have earnestly sought to achieve maximum 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 earning capacity with which to pay support. Incarceration of more than 180 days is also evidence of diminished earning capacity.

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. All amounts must be monthly and rounded to the nearest whole number. To convert from weekly, multiply by 52 and divide by 12. For biweekly, multiply by 26 and divide by 12.

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.

Second Job: Whether to include **second job 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, is necessitated by the nonpayment of support, or the job substantially conflicts with visitation. Fluctuations in income or that overtime is not guaranteed is not a basis for exclusion. The Court must determine average income likely to recur. Second job 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 primary employment is consistent with reasonable earning capacity.

Self: All income earned as an independent contractor (sometimes called "1099" income) for which self-employment taxes are actually paid. Documentation, such as a tax return with Schedule SE attached is REQUIRED.

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

All income not subject to income tax including most Social Security Disability (SSD) or retirement benefits and private pension plans. This includes any self-employment income for which unemployment taxes are not paid.

Benefits paid to a child due to a parent's disability are included in that parent's income but offset the Net Monthly Obligation (Line 24) dollar for dollar. Benefits for a child's disability are income to the household in which it is received.

All income from self-employment for which proof of payment of self-employment tax is not provided.

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

2021 Dover Air Force Base BAH with dependents (BAS is \$387 for enlisted and \$266 for officers)

E01	\$1605	E05	\$1668	E09	\$1989	W04	\$2007	O3E	\$2016	O4	\$2103
E02	1605	E06	1689	W01	1701	W05	2082	O1	1677	O5	2217
E03	1605	E07	1776	W02	1821	O1E	1797	O2	1686	O6	2235
E04	1605	E08	1881	W03	1947	O2E	1929	O3	1941	O7	2250

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--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 \$11,900.

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

Pension—All mandatory pension contributions are deductible. Voluntary contributions to an IRS approved retirement plan are deductible 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).

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

Line 4—Medical Insurance: Any medical Insurance (including COBRA) paid for by a parent is a deduction from gross income UNLESS allocated to the children of this union. If the insurance covers the children and the parent has other children to support (“Yes” on Line 7A), then 25% is allocated to the children. If the policy covers the children but parent has no other children to support (“No” on Line 7A), then 50% is allocated to the children. Documentation is **REQUIRED**. If the cost to cover the both the parent and the children exceeds 10% of income, then it is presumed unaffordable. However, once acquired, coverage must be retained until further order of the Court or written agreement of the parties.

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 **\$1180**.

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 for which there is a court order of support or written agreement between the parties before the Court. This does not include step children. If the person seeking support is a guardian, then indicate here whether or not 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”, enter 70%; if “No”, 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 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).

<u>Number of Children</u>	<u>Primary Support Allowance</u>	<u>Number of Children</u>	<u>Primary Support Allowance</u>
1	\$540	.5	\$380
each additional	+320	each additional ½	+160

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

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 of 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 Allocated to the Children: Any portion of medical insurance not included as a deduction on Line 4 should be included on Line 12C. This includes 25% or 50% of medical insurance acquired through a step-parent’s or guardian’s employment but only if the step-parent’s or guardian’s own children are not covered by the policy. For guardians, it is 25% if they are guardians of other children (‘yes’ on Line 7A), 50% if they are not. For step-parents, it is 25% if their spouse has other children to support other than with the step-parent (‘yes’ on Line 7A), 50% if they do not.

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 15A) for both parties is less than \$15000, enter “0” on Lines 16A and 16B, and proceed to Line 17. Otherwise, for each party subtract \$15000 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 20%. Enter the result on both parents’ Line 16B.

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

<u>Number of Children</u>	<u>SOLA Percentage</u>	<u>Number of Children</u>	<u>SOLA Percentage</u>
1	12%	3	21%
2	17%	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). This amount should not be below \$0. Enter the result for each parent, and then combine the parents’ individual SOLA obligations for the total.

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

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 not more than Net Available Income multiplied by a Self-Support Protection percentage.

Line 20--Retained Primary and SOLA: Multiply the number of children in each household (Line 10) by the “per child” SOLA on Line 18B. Then add that to the Primary Support Allowance claimed by 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. If there is no order or agreement, or practice differs from the order or agreement, then the number of overnights may be established by clear and convincing evidence. 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 30% on Line 23B; if No, enter 45%. Multiply Net Available for Primary Support on 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, from Gross Monthly Obligation (Line 19) subtract Primary/SOLA retained (Line 20), Childcare/tuition retained (Line 21) and the Parenting Time adjustment (Line 22B) from. Enter the result but not more than the amount on 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 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 **\$110** for one child and **\$170** 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.

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 more or less but back support cannot exceed 2 years. Retroactivity in a modification petition cannot go further back than 3 days after the date the summons is mailed.

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 grounds for modification. Support orders may increase, decrease, or reverse the payer and payee regardless of who filed the petition.

Incarceration: The obligation of an incarcerated parents will be based upon pre-incarceration circumstances for the first 180 days of continuous confinement, and a one-half of a minimum order thereafter. However, incarceration will not have any effect on an obligation if the obligated parent:

- Has sufficient independent wealth or other resources with which to pay support; or
- Is incarcerated for crimes against a dependent child or a support recipient; or
- Is incarcerated for nonpayment of child support.

All orders that issue after January 31, 2019 contain a provision whereby this adjustment occurs automatically upon 181 days of continuous confinement.