

Illinois Adopts a New Approach to Child Support Calculations

Starting on July 1st, calculating child support in Illinois will be radically different. As a result of the General Assembly's passage of Public Act 99-764, Illinois will join the majority of jurisdictions and become the 40th state to adopt the "income shares" model of support calculation. The income shares model – which considers the income earned by *both* parents — will replace the percentage guideline formula which is based upon the income of the support payor and which has been used for the past three decades.

Enacted in 1984, the current formula calculates the minimum level of child support based upon a percentage of the net income of the paying party, with the percentage increasing as the number of children to be supported increases. For example, under the present law, where only one child is to be supported, the minimum level of support is 20% of the payor's net income. The support amount then increases as follows: for two children - 28% of the payor's net income; for three children - 32%; for four children - 40%; for five children - 45%; and for six or more children, the percentage tops-out at 50%.

The current statute mandates the application of these guidelines unless a specific finding is made by the court "that a deviation from the guidelines is appropriate after considering the best interest of the child in light of the evidence." 750 ILCS 5/505. The court is directed to assess a number of factors, including: the financial resources and needs of the child and the parties; the

standard of living the child would have enjoyed had the marriage not dissolved; the physical, mental and emotional needs of the child; and the child's educational needs. If a court deviates from the guidelines, it must expressly state the reasons justifying this variance.

Courts have often deviated from guidelines support where one or both parents are high-income earners, and the application of the standard percentages

results in support far in excess of the needs of the child, thereby creating a "windfall." In such cases, courts deviate downward from the guidelines amount to prevent the windfall, while still considering the standard of living the child would have enjoyed if the parties had remained together.

Over the years, however, many states have abandoned similar payor-focused percentage-based models, believing that they do not optimally calculate support because they do not reflect the actual costs of raising a child, nor appropriately allocate those costs between the parents. Further, because the percentage guidelines model focuses only on a single-payor, it has also often engendered disputes between the parents concerning who should pay for what, thereby adversely affecting the child's best interests.

To remedy the perceived problems posed by the payor-focused percentage-based approach, the vast majority of jurisdictions have replaced it with the income shares model.



Michele M. Jochner

Partner
mjochner@sdfllaw.com

“The income shares model - which considers the income earned by both parents - will replace the percentage guideline formula.”

IN THIS ISSUE

1 Illinois Adopts a New Approach to Child Support Calculations

By Michele M. Jochner

2 “Net Income” Under the New Support Statute

By Brian A. Schroeder

3 Clarification Needed for the New Shared Parenting Child Support Adjustment

By Timothy M. Daw

38 Attorneys Named to 2017 Super Lawyers

Schiller DuCanto & Fleck congratulates our 38 lawyers named to Super Lawyers 2017.

The attorneys named Super Lawyers are: Allison B. Adams, Leslie S. Arenson, Jacqueline Stephens Breisch, Brett M. Buckley, Kimberly A. Cook, Jay P. Dahlin, Timothy M. Daw, Charles J. Fleck, Brittany Heitz Goodlett, Meighan A. Harmon, Burton S. Hochberg, David H. Hopkins, Jessica Bank Interlandi, Joshua M. Jackson, Michele M. Jochner, Patrick M. Kalscheur, Jennifer Dillon Kotz, Michelle A. Lawless, Benjamin S. Mackoff, Gregory C. Maksimuk, Carlton R. Marcyan, Claire R. McKenzie, Natalie A. Momoh, Andrea K. Muchin, Karen Pinkert-Lieb, Patrick T. Ryan, Karen M. Schetz, Donald C. Schiller, Brian A. Schroeder, Eric L. Schulman, Jason N. Sposeep, Tanya J. Stanish, Arnold B. Stein, Anita M. Ventrelli, Thomas F. Villanti, Jane D. Waller, Evan D. Whitfield and Erika N. Wyatt.

Continued on page 2

“Net Income” Under the New Support Statute

The first Article in this Newsletter discussed the “shared income” model for child support that Illinois is adopting on July 1, 2017. This Article will discuss what may be the most important aspect of this new model, which is how the new law defines “net income” for computing the amount of child support owed. This Article will highlight the key changes in the child support law, and will offer tips for maximizing the favorable application of the new law to your individual case.

The new law requires the Illinois Department of Healthcare and Family Services to establish baseline child support amounts, which are similar to the income tax table concept, and are based on the number of children and the net income of the parents. The Department has not yet issued these baseline amounts, and hopefully will do so by July 1st. As illustrations of this model, the baseline child support amount for 2 children with a household net income of \$100,000 will be less than a household net income of \$200,000, the baseline support amount for 3 children will be higher than that for 2 children, etc. Again, “net income” is the key to determining the amount of child support owed.

Net income first requires consideration of gross income, which the new law defines broadly as “all income from all sources.” Gross income does not include money received from public assistance, or money paid or received for children of one but not both of the parties. Gross income includes maintenance payments a parent is receiving, but this can be offset if the person receiving maintenance is also receiving child support.

Net income is calculated by subtracting from gross income either the “standardized tax amount” or the “individualized tax amount.” The “standardized tax amount” is the total of federal and state income taxes for a single person claiming the standard tax deduction, one personal exemption, the applicable number of dependency exemptions for the minor child/children of the parties, and Social Security tax and Medicaid tax calculated at the Federal Insurance Contributions Act rate. The new law requires the Illinois Department of Healthcare and Family Services to set the standardized tax amount, which it has not done as of yet.

The “individualized tax amount” is the actual federal, state, Social Security and Medicare withholdings a parent is actually paying. Just as with itemizing deductions for income tax purposes, the individualized tax amount should be used as a subtraction from gross income whenever it exceeds the standardized tax amount.

Special consideration is given to income from operating a business. The new law defines business income as “gross receipts minus ordinary and necessary expenses required to carry on the trade or business.” The new law recognizes that people sometimes pay personal expenses through their business as a means of understating their actual income and thereby reducing their child support obligation. To prevent this from occurring, the new law allows the court to disallow accelerated depreciation and unreasonable expenses as deductions from gross business income. The new law does not prohibit or even limit the amount of necessary business expenses, which is good for business owners. In order to prevent successful challenges to the reasonableness of business expenses, accurate documentation of the nature of the expenses is essential, which, for example, includes receipts for office supplies, advertising, travel, etc.

Also, expense reimbursement or in-kind payments, such as a company car, a housing allowance, or reimbursed meals, are considered income if not otherwise included in the recipient's gross income, but only if the item is significant in amount and reduces personal expenses. In other words, one meal a month is not going to be an issue, but being reimbursed for two meals a day may be a problem. On the other hand, a substantial reimbursement for gas will not be considered income if the gas was used for business purposes, because this reimbursement would not reduce personal expenses.

The new law also addresses unemployment and underemployment. If a parent is voluntarily unemployed or underemployed, the court will consider that parent's potential income based upon work history, qualifications, and income producing assets, if any. The minimum potential income is 75% of the poverty guidelines for a single person.



Brian A. Schroeder

Partner

bschroeder@sdfllaw.com

In conclusion, the new child support law goes into effect on July 1, 2017. By then the Department of Healthcare and Family Services should have issued the baseline child support and standard tax amounts, which will make it easy for parents to determine whether to use the standard or itemized tax amounts in determining net income. Individuals who run a business must maintain detailed records of reasonable expenses, and individuals who are reimbursed for business expenses must do the same. This will ensure the best possible application of the new law to your case.

SDF Welcomes
Adam Miel Zebelian



Adam joins Schiller DuCanto & Fleck after 7 years as an Assistant State's Attorney litigating criminal and civil matters.

Illinois Adopts a New Approach to Child Support Calculations (*Continued from cover*)

In the words of the new statute, this approach attempts to reflect “the percentage of combined net income that parents living in the same household in this State ordinarily spend on their children.” To determine that amount of “ordinary” support that is to be paid upon behalf of a child, a “Schedule of Basic Support Obligation” is being created by an economic research institute and will be administered by the Illinois Department of Healthcare and Family Services (HFS). This Schedule of normal child-raising costs is tied to the parent's income-level and will be derived from figures generated by the Bureau of Labor statistics, as adjusted for Illinois. By using these costs to determine child support, the standard of living the child would have enjoyed had the parents remained together may be more easily ascertained.

The basic calculation begins with consideration of the net income earned by each party. This amount is totaled, and then the court assigns a percentage to each party reflecting their contribution to the total income. For example, if the parties' total income is \$100,000, and the husband earns \$70,000 of that amount, he has contributed 70% and the wife has contributed 30%. Then, the court looks to the Schedule to determine the Basic Support Obligation and also uses these same percentages to assign this expense to each party, i.e. the husband is responsible for 70% and the wife for 30%. The statute allows adjustments based upon the specific facts and circumstances of each case, including: whether there is shared parenting time; whether a parent is also providing support to a non-shared child; and whether one party is paying spousal support to the other.

In enacting the income shares approach, the Illinois General Assembly set forth in the new statute the six purposes it intends to achieve in implementing this approach: (1) “to establish as State policy an adequate standard of support for children, subject to the ability of parents to pay”; (2) “to make awards more equitable by ensuring more consistent treatment of persons in similar circumstances”; (3) “to improve the efficiency of the court process by promoting settlements and giving courts and the parties guidance in establishing levels of awards”; (4) “to calculate child support based upon the parents' combined adjusted net income estimated to have been allocated to the child if the parents and children were living in an intact household”; (5) “to adjust the child support based upon the needs of the children”; and (6) “to allocate the amount of child support to be paid by each parent based upon the child support and the child's physical care arrangements.”

In sum, the “income shares” approach makes it clear to both parents that child support is a shared responsibility, and it is hoped that its adoption will enhance the fairness of determining child support.

Clarification Needed for the New Shared Parenting Child Support Adjustment

Commencing July 1, 2017 the Illinois child support laws have been revamped adopting an “income shares” model. Embedded within the new child support statute are provisions which link the amount of parenting time and the amount of child support a parent can be required to pay or be responsible for in certain factual situations. This Article will briefly touch on the relationship between parenting time and child support historically, under the new law and certain issues that need to be addressed under the new statute.

Under the existing child support statute, case law has permitted a departure from the guidelines in situations where the parents shared equal or approximately equal parenting time of their children. In these circumstances, the child support guidelines were found to be inapplicable.

See In re Marriage of Smith, 2012 IL App (2d) 11052. The courts developed an alternative methodology for setting child support in these shared circumstances: (1) determining each party’s obligation to pay child support to the other under the guidelines and then offsetting the amounts; or (2) setting child support based on the deviation factors. This later methodology is highly subjective.

The new statute in “shared parenting” situations creates a departure from the case law decisions and eliminates the ability of the court to use the subjective deviation considerations. The new statute provides a formula for the allocation of the child support obligations in shared parenting situations. The statute defines a shared parenting relationship as existing when each of the parents “exercises” or “has” at least 146 overnights annually, which equals 40% of the total overnights in a given year:

“If each parent exercises 146 or more overnights per year with the child, the basic child support obligation is multiplied by 1.5 to calculate the shared care child support obligation. The child support obligation is then computed for each parent by multiplying that parent’s portion of the shared care support obligation by the percentage of time the child spends with the other parent. The respective child

support obligations are then offset, with the parent owing more child support paying the difference between the 2 amounts. Child support for cases with shared physical care are calculated using a child support worksheet promulgated by the Department of Healthcare and Family Services. An adjustment for shared physical care is made only when each parent has the child for 146 or more overnights per year.”

750 ILCS 5/505(3.8) (2017) (emphasis added).

There are several issues that need to be clarified in the statute. One issue is a conflict in the statutory language. In the first sentence of the statute, the offset of the child support obligation requires that “each parent exercises 146 or more overnights

per year with the child.” The plain meaning of the word “exercises” is that a parent has already spent this amount of time in a given year. However, the last sentence of the state provides, “An adjustment for shared physical care is made only when each parent has the child for 146 or more overnights per year.” The plain meaning of the word “has” is possessory, *i.e.* an entitlement. In this context, if someone has been awarded at least 146 overnights but has yet to spend this amount of time with the child, he or she would be entitled to the adjustment.

The plain meaning of these sentences is in conflict. In awarding a parenting time schedule, one of the considerations is “the amount of time each parent spent performing caretaking functions with respect to the child in the 24 months preceding the filing.” 750 ILCS 5/602.7(b)(3) (2016).

On January 11, 2017 a bill was introduced to modify the new statute to clarify language without making substantive changes in the law. 100th Ill. Gen. Assem., Senate Bill 69, 2017 Sess. In the proposed legislation the last sentence of the statute, as previously mentioned above, (*i.e.* “An adjustment for shared physical care is made only when each parent has the child for 146 or more overnights per year”) has been eliminated. If this new bill passes, the possible unintended consequence that a parent must actually exercise the parenting time for at least a year

before the deduction is allowed becomes the likely interpretation based on the plain meaning of the statute. The “shared parenting” term was also changed to “shared physical care.”

Another significant issue is whether the court can deviate from the “shared parenting adjustment.” The structure of the statute reflects that the shared parenting adjustment is a mandatory deviation from the guidelines. There is no provision that would allow a deviation from this adjustment. This is more compelling comparing the shared parenting provision with a “split care” adjustment that is available when there are multiple children and each parent has primary parenting of at least one of the children. *See* 750 ILCS 5/505(a)(3.9) (2017). In the split care provisions of the statute there is a specific authorization for the court to deviate from the split care formula. 750 ILCS 5/505(a)(2) (2016) (*i.e.*, “...unless the court determines, pursuant to other provisions of this Section, that it should deviate from the guidelines. . .”). The legislature could have inserted a similar recognition of the ability to deviate in the shared parenting section. In addition, the proposed modifications to the statute do not address this deviation issue.

It is clear that the new child support law will be construed and interpreted based on the facts of future cases. The shared parenting/shared physical care adjustments require clarification. Whether this clarification emanates from the legislature or the courts remains to be determined.



Timothy M. Daw

Senior Partner
tdaw@sdflaw.com

IN THE NEWS

Meighan A. Harmon, Carlton R. Marcyan and Donald C. Schiller were named Top 100 lawyers across all areas of law by Super Lawyers 2017.

Meighan A. Harmon, Karen Pinkert-Lieb and Anita M. Ventrelli were named Top 50 Female lawyers across all areas of law by Super Lawyers 2017.

Joshua M. Jackson was a guest lecturer at the DePaul University College of Law regarding "Tax Aspects of Divorce."

Meighan A. Harmon was interviewed on WBBM radio regarding finances and divorce.

Patrick Kalscheur's article "Meditation secret weapon in courtroom" was published in the Modern Family column of the Chicago Daily Law Bulletin.

Gregory C. Maksimuk was interviewed for an article that appeared in Naperville Magazine titled "Financial Separation: Navigating asset allocation when a marriage ends."

Timothy M. Daw presented "The Unhealthy Relationship Between Parenting Time and Support" at the DCBA Mega Meeting on January 27, 2017.

Donald C. Schiller was presented with the Hon. Edward Jordan Life Time Achievement Award by Judge Grace Dickler at the annual AAML IICLE MLK seminar.

Jason N. Sposeep was interviewed for the Super Lawyers Magazine article titled "It Gets Better: Meet a couple of re-married divorce attorneys."

Claire R. McKenzie received the 2016 10 Best Female Attorney - Client Satisfaction Award from the American Institute of Family Law Attorneys.

Michele Jochner's article "In Season of Giving, Parental Gifts Carry Tax, Legal Concerns With Them" was published in the Modern Family column of the Chicago Daily Law Bulletin. She was also on the panel to judge the final round of the 2016 Chicago Bar Association Moot Court Competition.

Arnold B. Stein participated in a roundtable discussion titled "Family Law: The Executive Divorce" that was published in Crain's Chicago Business.

Kimberly A. Cook has been appointed by the Supreme Court of the State of Illinois to serve on the Illinois Supreme Court Committee on Jury Instructions in Civil Cases for the term January 1, 2017 – December 31, 2019.

Brett Buckley's article "Consider pre-nup in engagement season" was published in the Modern Family column of the Chicago Daily Law Bulletin.

Amy Schiller's article "Cuban ballplayers special part of immigration question" was published in the Time-Out column of the Chicago Daily Law Bulletin.

Jacqueline Stephens Breisch and **Anne Prenner Schmidt** both completed training to be listed as Lake County Child Representatives and Guardian ad Litem.

Patrick Ryan's article "Financial literacy: The hidden, but vital part, in divorce law practice" was published in the Modern Family column of the Chicago Daily Law Bulletin.

Karen Pinkert-Lieb was a panelist at "To Have and To Hold, For Better, For Worse: A Conversation About Marriage and Divorce" on November 16th, 2017.

Schiller DuCanto & Fleck
congratulates
Kimberly A. Cook and
Thomas F. Villanti
on their promotion to Partner!



The materials contained in this Newsletter are intended for general informational purposes only and not to be construed as legal advice or opinion.

Michele M. Jochner, Editor / Burton S. Hochberg, Co-Editor / Brittany Heitz Goodlett, Co-Editor / Justine E. Robinson, Layout/Design

**SCHILLER
DUCANTO
& FLECK** LLP

CHICAGO
LAKE FOREST
WHEATON

sdflaw.com

200 North LaSalle Street
30th Floor
Chicago, IL 60601-1089

(312) 641-5560 Phone
(312) 641-6361 Fax

One Conway Park
100 North Field Drive, Suite 160
Lake Forest, IL 60045-1973

(847) 615-8300 Phone
(847) 615-8284 Fax

310 South County Farm Road
Suite 300
Wheaton, IL 60187-2477

(630) 665-5800 Phone
(630) 665-6082 Fax