



Calculating Child Support: How Hard Can it Be?

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"The guidelines are easy. It's just a formula. How hard can it be?" That is probably the most frequent comment I hear regarding the child support guidelines. True, the calculations are based on a formula, but it's not always so easy. This article will explore the difficulties in calculating child support and some of the finer points one should be familiar with related to this issue.

Section 61.30 of the Florida Statutes governs child support and establishes the amount which shall be ordered for support in initial proceedings as well as modifications. This statute specifically defines the formulas to be used in calculating child support under the "regular guidelines" as well as when there is substantial shared parenting, commonly referred to as the "Gross Up Method".

Step 1 in the formula is the determination of Gross Income of each parent. This is the item that drives the amount of child support. This is also the number that is many times, hardest to figure out. While section 61.30(2)(a) lists 14 different types of income to be included (see below), there is a multitude of cases which argue over what is income for support purposes.

Section 61.30(a)(2)(a) - Gross Income shall include, (but is not limited to) the following items:

1. Gross Salary or Wages
2. Bonuses, commissions, overtime, tips
3. Business income from self-employment, Partnerships, S Corp (gross receipts less ordinary and necessary expenses)
4. Disability benefits
5. Worker's Compensation benefits and settlements
6. Unemployment Compensation
7. Pension, retirement & annuity payments
8. Social Security benefits
9. Spousal support received from a prior marriage or court ordered in the action before the court
10. Interest & dividends
11. Rental income (gross less ordinary and necessary expenses)
12. Royalty, trust & estate income
13. Reimbursed expenses or in-kind payments which reduce living expenses
14. Gains derived from dealing in property, unless the gain is non-recurring

As gross income is the most important item in figuring child support, let us take a deeper look at what one should be mindful of when determining the parent's income.

Starting with a basic W-2 wage earner, it is of utmost importance to understand the components of earnings. Wages could include one time bonuses, restricted stock vestings, stock option redemptions or other extraordinary compensation items. Reviewing the year end paystub or W-2 detail will typically provide the breakdown being sought. It is also necessary to make sure voluntary contributions and pretax deductions for health insurance, 401K, IRA, unreimbursed medical and dependent care expenses are included. Otherwise, income may be understated.

With regard to bonuses, many clients take the position that these payments are not guaranteed and therefore should not be included in income. The courts have determined that when the "bonuses are regular and continuous, it is an abuse of discretion to exclude them when making support awards" (Parry v. Parry, 933 So. 2d 9 (Fla. 2nd DCA 2006)).

When the earnings are from an S Corporation, things get a little tricky. If the shareholder-spouse can prove that undistributed pass-through in-

come is needed for business purposes, then it can be excluded from income. The burden is on the shareholder-spouse to show that it is needed for banking and finance purposes, to purchase equipment or inventory, pay operating expenses, etc.

If the earnings are from self-employment, then legitimate business expenses should be deducted from the revenue to arrive at the appropriate income before taxes. To the extent personal expenses are being paid by the business which reduces the living expenses of the parties, (i.e. auto insurance, auto lease, health insurance, etc.), then these items should be considered income for determining support.

Disability payments can be treated either as an asset or income depending on whether it is "in pay" status. These payments by their very nature replace future lost income. Therefore if the party is actually receiving disability payments, they should be included in income for support purposes and not treated as an asset subject to equitable distribution.

In the case of worker's compensation, it is important to look to the components that comprise the damages. The portion of damages relating to past lost wages is considered marital property subject to distribution. However, any damages paid for future loss of earnings is income which could be considered for support awards.

Many of our clients these days live off of trust income. This trust income must be included in the determination of gross income for purpose of child support (*Beck v. Beck*, 852 So. 2d 934 (Fla. 2003). Deferral or rejection of receipt of trust income will not exclude it from consideration in the determination of child support (*Oxley v. Oxley*, 695 So. 2d 364 (Fla. 4th DCA 1997)).

Other income which must be con-



sidered is gifts. Typically one should look to the financial resources of the parties but not the financial assistance of family and friends. However, there is an exception if it can be demonstrated that the gifts are continuous, ongoing, not sporadic and that they will continue in the future (*Rogers v. Rogers*, 824 So. 2d 902 (Fla. 3d DCA 2002)).

It is important to note certain items which are not to be considered income for support purposes. Funds received by a child from supplemental security income are excluded pursuant to 61.30(11)(a)(2). Aid to families with dependent children benefits are not included either. So, the child's disability payments or other government aid does not reduce the parent's obligation to provide support for the child (*Chapoteau v. Chapoteau*, 659 So. 2d 1381 (Fla. 3d DCA 1995)).

So now that we have determined what is and is not gross income, we need to determine what the net income of each parent is. From the gross income, certain deductions are allowed which are described in section 61.30(3). Federal, state and local taxes may be deducted but should be calculated based on the filing status and dependency exemptions which will be in effect post-dissolution. Other allowable deductions from gross income include federal insurance contributions, self employment tax, mandatory union dues and mandatory retirement payments. Health insurance payments can decrease gross income as well but cannot include the portion related to the minor child(ren). Gross income may also be reduced by court ordered support for other children and court ordered spousal support paid from a prior marriage or the action before the court. However, the payments must be court ordered and must actually be paid.

After calculating each of the parent's present net monthly incomes, they must be combined to determine the total monthly net income from both parties. By way of example, assume the Father's monthly net income is \$8,000 and the Mother's net income is \$4,000 and the parties have three children. The combined monthly net income is then \$12,000. Remember that any alimony received is included

as income for determining child support (61.30(2)(a)(9)).

Going to Step 2, we look to the guideline tables at 61.30(6) which will dictate the amount of basic child support based on the combined income and number of children. Under our scenario the support amount would be \$2,795 plus 9.5% of the amount over \$10,000, which in this case would be \$190 ($\$2,000 \times 9.5\%$). The total basic support is then \$2,985.

Next, in Step 3, we must determine each party's percentage of the total net income and apply that to the total basic support we just calculated. In our example the Father's net income represents 67% of the total and the Mother's is 33%.

For Step 4, these percentages must be applied to the total basic guideline support of \$2,985, to determine each party's share of the basic obligation. The Father's basic obligation becomes \$1,990 and the Mother's \$995.

In Step 5, we must determine if there is any additional support needed for the child(ren). The statutes allow for additional expenses for the child(ren) to be considered. These include 75% of the child care costs, health insurance for the children, and uncovered medical, dental and prescription costs.

In Step 6, the total of all these additional expenses is then split proportionately based on the percentages determined previously and added to the basic support obligation of each party. So, let's assume that the includable child care costs are \$300 (75% of \$400 per month total), health insurance is \$500 and uncovered medical expenses are \$50 per month. Of this \$850 additional support, \$567 would be the Father's obligation and \$283 the Mother's. We add this additional support to the basic support obligation of each party to come up with \$2,557 for the Father and \$1,278 for the Mother.

Next, in Step 7, we give credit to the party who is actually paying the additional amounts discussed in Step 6. To make it easy, we assume that the Father is paying for the \$850 in child care, health insurance and uncovered medical expenses. Therefore, after giving him a credit for these payments, his obligation becomes \$1,707

which he is to pay to the Mother who is the primary residential parent.

Despite the calculations above, the court has the discretion to adjust the support award based on many factors that can be found at 61.30(11)(a). Some of these factors are the special needs of disabled children and the independent income of the child (not including government aid discussed above).

In 2001, section 61.30 was amended to include the concept of shared parenting. Section 61.30(11)(b) provides for a different formula, known as the "Gross Up Method", for the calculation of child support when the child spends a "substantial" amount of time with each parent. "Substantial" as defined in 61.30(11)(b)(10) is when the noncustodial parent exercises visitation for at least 40% of the annual overnights, or 146 nights. If this threshold is met by either parent, we modify the calculation beginning with Step 4, discussed above. At that point, in our example, we had determined the Father's share of the basic support obligation to be \$1,990 and the Mother's to be \$995.

However, under the Gross Up Method, the basic monthly obligation directed by the tables in 61.30(6) is multiplied by 150% and the result allocated based on the parties percentage of total income. For our example the guideline support of \$2,985 multiplied by 150% becomes \$4,478. The Father's 67% share becomes \$2,985 and the Mother's 33% becomes \$1,493.

The number of overnights with each parent must then be considered and each parent's percentage of overnights calculated. Let's assume for our scenario that the children spend 150 overnights with their Father, or 41%. Therefore, the time spent with Mom is 215 overnights or 59%. The Gross Up Method then dictates that each parent's increased obligation is multiplied by the other parent's percentage of time spent with the children. In essence, each parent is paying the other for the time the other parent spends with the children based on their level of income.

Continuing our example, we would multiply the Father's grossed up ob-

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ligation of \$2,985 by 59% (the time Mom spends with the children). This results in an amount of \$1,758. Doing the same for the Mother's side, her resulting obligation is \$614.

From here, the calculation resumes the regular guideline method. Additional support expenses are considered such as child care costs, health insurance and uncovered medicals. They are allocated proportionately based on the parent's relative net incomes and the parent who actually pays these costs is given a credit. However, under the gross up method, the child care costs are not reduced to 75% as in the regular method. Again, the court may deviate from the ultimate calculated amount based on the factors in 61.30(11)(a).

To follow through with our example, we left off with the Father's obligation being \$1,758 and the Mother's being \$614 before the additional sup-

port items. These additional support items total \$950 (remember we use the entire child care cost of \$400 not 75% or \$300). The Mother's share of the \$950 is \$317 and the Father's is \$633. He then gets a credit for the amount paid for these expenses, however, the result cannot be less than zero. Although the Father in our example paid \$950, he only gets credit for the \$633 which is his portion of the expenses because the Mother is picking up the difference.

As stated earlier, the objective of the shared parenting or Gross Up Method, is to acknowledge in a monetary sense the increased amount of time the nonprimary residential parent spends with the children. Each parent essentially pays the other for the time the other spends with the children based on their respective income levels. The result of these adjustments leaves the Father owing the Mother \$1,758 ($\$1,758 + \$633 - \633) and the Mother owing the Father \$931 ($\$614 + \317). Netting the amounts each parent owes the other

leaves the Father ultimately paying \$827 per month to the Mother in child support.

Comparing the two methods, the support paid by the Father was \$1,707 under the regular method and \$827 under the Gross Up Method. As you can see there is a dramatic difference. It behooves the non-primary parent to give serious consideration to spending greater than 40% of the overnights with the children. Not to mention the benefit the children receive by spending a more balanced amount of time with each of their parents.

In summary, knowing how the guideline calculations work and how they relate to the unique circumstances of the children involved is key. Calculating child support is not a matter of blindly entering numbers into a formula. It can clearly be complicated. It is critical for one to fully understand the various income types and components relative to the case at hand. But hey, how hard can it be?