

# TITLE XLIII

## DOMESTIC RELATIONS

### CHAPTER 458-C: CHILD SUPPORT GUIDELINES

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#### **Section 458-C:1**

**458-C:1 Purpose.** – The purpose of this chapter is to establish a uniform system to be used in the determination of the amount of child support, to minimize the economic consequences to children, and to comply with applicable federal law by using specific guidelines based on the following principles:

- I. Both parents shall share responsibility for economic support of the children.
- II. The children in an obligor's initial family are entitled to a standard of living equal to that of the obligor's subsequent families.
- III. The percentage of net income paid for child support should vary according to the number of children and, with limited exemptions, not according to income level.

Source. 1988, 253:1, eff. April 30, 1988. 2005, 273:8, eff. Oct. 1, 2005.

#### **Section 458-C:2**

**58-C:2 Definitions.** – In this chapter:

- II. “Adjusted gross income” means gross income, less:
  - (a) Court-ordered or administratively ordered support actually paid to others, for adults or children.
  - (b) Fifty percent of actual self-employment tax paid.
  - (c) Mandatory, not discretionary, retirement contributions.
  - (d) Actual state income taxes paid.
  - (e) Amounts actually paid by the obligor for allowable child care expenses or the medical support obligation for the minor children to whom the child support order applies.
- I-a. “Allowable child care expenses” means actual work-related child care expenses for the children to whom the order applies, up to no more than an annual total of \$5,000 for one child, \$9,000 for 2 children, and \$12,000 for 3 or more children.
- II. “Child support obligation” means the proportion of total support obligation which the obligor parent is ordered to pay in money to the obligee parent as child support.
- III. “Court” means issuing authority, including the office of fair hearings, department of health and human services, having jurisdiction to issue a child support order.
- IV. “Gross income” means all income from any source, whether earned or unearned, including, but not limited to, wages, salary, commissions, tips, annuities, social security benefits, trust income, lottery or gambling winnings, interest, dividends, investment income, net rental income, self-employment income, alimony, business profits, pensions, bonuses, and payments from other government programs (except public assistance programs, including aid

to families with dependent children, aid to the permanently and totally disabled, supplemental security income, food stamps, and general assistance received from a county or town), including, but not limited to, workers' compensation, veterans' benefits, unemployment benefits, and disability benefits; provided, however, that no income earned at an hourly rate for hours worked, on an occasional or seasonal basis, in excess of 40 hours in any week shall be considered as income for the purpose of determining gross income; and provided further that such hourly rate income is earned for actual overtime labor performed by an employee who earns wages at an hourly rate in a trade or industry which traditionally or commonly pays overtime wages, thus excluding professionals, business owners, business partners, self-employed individuals and others who may exercise sufficient control over their income so as to recharacterize payment to themselves to include overtime wages in addition to a salary. In addition, the following shall apply:

- (a) The court, in its discretion, may consider as gross income the difference between the amount a parent is earning and the amount a parent has earned in cases where the parent voluntarily becomes unemployed or underemployed, unless the parent is physically or mentally incapacitated.
- (b) The income of either parent's current spouse shall not be considered as gross income to the parent unless the parent resigns from or refuses employment or is voluntarily unemployed or underemployed, in which case the income of the spouse shall be imputed to the parent to the extent that the parent had earned income in his or her usual employment.
- (c) The court, in its discretion, may order that child support based on one-time or irregular income be paid when the income is received, rather than be included in the weekly, bi-weekly, or monthly child support calculation. Such support shall be based on the applicable percentage of net income.

IV-a. "Medical support obligation" means the obligation of either or both parents to provide health insurance coverage for a dependent child and/or to pay a monetary sum toward the cost of health insurance provided by a public entity, parent, or other person, or for medical costs not covered by insurance, including payment for the cost of premiums, co-payments, and deductibles.

IV. "Minimum support order" means an order of support equal to \$50 per month, unless the court determines that a lesser amount is appropriate under the particular circumstances of the case.

V. "Net income" means the parents' combined adjusted gross income less standard deductions published on an annual basis by the department of health and human services and based on federal Internal Revenue Service withholding table amounts for federal income tax, F.I.C.A., and Medicare, which an employer withholds from the monthly income of a single person who has claimed a withholding allowance for 2 people.

- (a) Federal income tax;
- (b) F.I.C.A.

VI-a. "Reasonable cost" means that the medical support obligation does not exceed 4 percent of the individual parent's gross income.

VII. "Obligor" means the parent responsible for the payment of child support under the terms of a child support order.

VIII. "Obligee" means the parent or person who receives the payment of child support under the terms of the child support order.

IX. "Percentage" means the numerical figure that is applied to net income to determine the amount of child support.

X. "Self-support reserve" means the poverty level standard of need as established by the department of health and human services for a single individual living alone.

- XI. "Total support obligation" means net income multiplied by the appropriate percentage derived from RSA 458-C:3.

Source. 1988, 253:1. 1989, 406:1. 1990, 224:1, 2, 5. 1995, 310:181. 1998, 242:1-3. 2004, 77:1, eff. May 7, 2004. 2006, 189:1, eff. July 29, 2006. 2007, 227:3 to 5, eff. June 25, 2007. 2008, 245:1, eff. June 24, 2008.

### Section 458-C:3

#### 458-C:3 Child Support Formula. –

- I. Number of Children Percentage of Net
- 1 25 percent
  - 2 33 percent
  - 3 40 percent
  - 4 or more 45 percent
- II. (a) The total support obligation shall be determined by multiplying the parents' total net income, as defined in RSA 458-C:2, VI, by the appropriate percentage derived from this section.
- (b) The total child support obligation shall be divided between the parents in proportion to their respective incomes as adjusted by this section, except when there are incurred by the obligee child care expenses or for the actual amount paid for medical insurance coverage for the minor children to whom the child support order applies.
- (c) For those cases involving allowable child care expenses or medical insurance expenses incurred by the obligee, the same methodology described in subparagraphs (a) and (b) shall be used, except that as part of the determination of each parent's share of the child support obligation, the obligee's allowable child care expenses or medical insurance expenses shall be deducted from the adjusted gross income of the obligee.
- (d) All child support obligations calculated pursuant to this chapter shall be rounded to the nearest whole dollar.
- III. The number of children in the same household for which child support is paid is the determining factor in the percentage applied against net income.
- IV. Self-support reserve and minimum child support obligation.
- (a) If the obligor parent's gross income is less than the self-support reserve and the court has determined that the obligor is not voluntarily unemployed or underemployed, the court shall order the child support obligation in the amount of a minimum support order.
  - (b) If the obligor parent's gross income is greater than the self-support reserve but payment of the order as calculated under this chapter would reduce the obligor parent's income below the self-support reserve, the obligor parent's share of the total support obligation shall be presumed to be the difference between the self-support reserve and that parent's adjusted gross income, but in any event shall be no less than the amount of a minimum support order.
  - (c) [Repealed].
- V. If the minor child is not currently enrolled in private health insurance, the court shall calculate a reasonable medical support obligation for each parent. A medical support obligation shall be reasonable if it does not exceed 4 percent of the individual parent's gross income under RSA 458-C:2, VI-a. If the court determines that health insurance is available at a reasonable cost to either parent, or is available by combining the reasonable medical support obligation of both parents, the court shall order either or both parents to provide such support.

Source. 1988, 253:1. 1989, 406:2, 3. 1990, 224:3, 4. 1998, 242:4. 2002, 227:3. 2004, 169:3, eff. July 23, 2004. 2007, 227:6, eff. June 25, 2007. 2008, 245:2, eff. June 24, 2008.

## **Section 458-C:4**

### **458-C:4 Application of Guidelines. –**

- I. Subject to the provisions of RSA 458-C:5, guidelines provided under this chapter shall be applied in all child support cases, including temporary orders, and in any order modifying a support order.
- II. There shall be a rebuttable presumption in any proceeding for the award of child support that the amount of the award which would result from the application of guidelines provided under this chapter is the correct amount of child support. A written finding or a specific finding by the presiding officer on the record that the application of the guidelines would be unjust or inappropriate in a particular case, as determined by using the criteria set forth in RSA 458-C:5, shall be sufficient to rebut the presumption in such case.
- III. [Repealed.]
- IV. When arrangements for child support are delineated in an agreement between the parties, and not made according to guidelines provided under this chapter, the presiding officer shall determine whether the application of the guidelines would be inappropriate or unjust in such particular case, using the criteria set forth in RSA 458-C:5, and in certifying the agreement shall enter a written finding or a specific finding on the record that the application of the guidelines would be inappropriate or unjust and state the facts supporting such finding.

Source. 1988, 253:1. 1989, 406:4, 5, eff. Aug. 4, 1989. 2006, 185:8, eff. May 26, 2006.

## **Section 458-C:5**

### **458-C:5 Adjustments to the Application of Guidelines Under Special Circumstances. –**

- I. Special circumstances, including, but not limited to, the following, if raised by any party to the action or by the court, shall be considered in light of the best interests of the child and may result in adjustments in the application of support guidelines provided under this chapter. The court shall make written findings relative to the applicability of the following:
  - (a) Ongoing extraordinary medical, dental or education expenses, including expenses related to the special needs of a child, incurred on behalf of the involved children.
  - (b) Significantly high or low income of the obligee or obligor.
    - (1) In considering an adjustment when one or both parents have high income, the court shall consider whether the child support amount derived from application of the guidelines substantially exceeds the child's or children's reasonable needs, taking into account the style of living to which the child or children have become accustomed or will experience in either party's home.
    - (2) In considering an adjustment when one or both parents have low income, the court shall determine how to optimize use of the parents' combined incomes to arrive at the best possible outcome for the child or children, provided that the basic support needs of the child or children are met. In making this determination, the court may consider income tax consequences, the earned income tax credit, the allocation of the right of a parent to claim a child as a dependent for income tax purposes, and other child-related tax benefits.
  - (c) The economic consequences of the presence of stepparents, step-children or natural or adopted children.
  - (d) Reasonable expenses incurred by the obligor parent in exercising parental rights and responsibilities, provided that the reasonable expenses incurred by the obligee parent for the minor children can be met regardless of such adjustment.
  - (e) The economic consequences to either party of the disposition of a marital home made for the benefit of the child.

- (f) The opportunity to optimize both parties' after-tax income by taking into account federal tax consequences of an order of support, including the right to claim the child or children as dependents for income tax purposes.
  - (g) State tax obligations.
  - (h) Parenting schedule.
    - (1) Equal or approximately equal parenting residential responsibilities in and of itself shall not eliminate the need for child support and shall not by itself constitute ground for an adjustment.
    - (2) In considering requests for adjustments to the application of the child support guidelines based on the parenting schedule, the court may consider the following factors:
      - (A) Whether, in cases of equal or approximately equal residential responsibility, the parties have agreed to the specific apportionment of variable expenses for the children, including but not limited to education, school supplies, day care, after school, vacation and summer care, extracurricular activities, clothing, health insurance costs and uninsured health costs, and other child-related expenses.
      - (B) Whether the obligor parent has established that the equal or approximately equal residential responsibility will result in a reduction of any of the fixed costs of child rearing incurred by the obligee parent.
      - (C) Whether the income of the lower earning parent enables that parent to meet the costs of child rearing in a similar or approximately equal style to that of the other parent.
  - (i) The economic consequences to either party of providing for the voluntary or court-ordered postsecondary educational expenses of a natural or adopted child.
  - (j) Other special circumstances found by the court to avoid an unreasonably low or confiscatory support order, taking all relevant circumstances into consideration.
- II. The party relying on the provisions of this section shall demonstrate special circumstances by a preponderance of the evidence.

Source. 1988, 253:1. 1989, 406:6. 1998, 242:5-7, eff. Oct. 23, 1998. 2005, 273:9, 10, eff. Oct. 1, 2005. 2007, 121:1, eff. Aug. 10, 2007.

#### **Section 458-C:6**

**458-C:6 Review of Guidelines.** – Not less than once every 4 years, the department of health and human services shall review the guidelines provided under this chapter in order to determine whether application of such guidelines results in the determination of appropriate child support award amounts. Upon completion of the review, the department of health and human services shall report its findings and recommendations to the president of the senate, the speaker of the house of representatives, and the governor. The review required under this section shall meet the requirements of 42 U.S.C. section 667 and may be conducted in conjunction with a legislative review of the child support guidelines.

Source. 1989, 406:7. 1995, 310:181, eff. Nov. 1, 1995. 2005, 272:1, eff. Sept. 20, 2005.

#### **Section 458-C:7**

##### **458-C:7 Modification of Order.** –

- I. (a) The obligor or obligee may apply to the court or, when the department of health and human services has issued a legal order of support pursuant to RSA 161-C, to the department, whichever issued the existing order, for modification of such order 3 years after the entry of the last order for support, without the need to show a substantial change of circumstances. This section shall not prohibit the obligor or obligee from applying at any time for a modification based on substantial change of circumstances.

- (b) Not less than once every 3 years the department shall provide notice to the parties subject to a child support order payable through the department informing them of their right to request a review, and, if appropriate, the right to apply for adjustment of the child support order. The notice provision may be included as part of the initial support order or any subsequent orders.
- II. Any child support modification shall not be effective prior to the date that notice of the petition for modification has been given to the respondent. "Notice" means:
    - (a) Service as specified in civil actions; or
    - (b) Acceptance of a copy of the petition, as long as the petition is filed no later than 30 days following said acceptance, and as long as the petitioner provides proof of acceptance by a certified mail receipt. Nothing in this subparagraph shall be construed to affect service as required by law.
  - III. Whenever the court, pursuant to this chapter, modifies a support order which results in an overpayment of support, the court shall order, absent a showing of undue hardship, the obligee to directly reimburse the obligor for such overpayment of support or order an adjustment to the modified support order until reimbursement of the overpayment has been satisfied. Any reimbursement ordered shall be only for an overpayment that occurs after the date that notice of the petition for modification of support order was given to the respondent. The court shall enter an order for reimbursement as a provision of the modified order, which order for reimbursement shall take effect 30 days after issuance, unless either the obligor or obligee requests, within such 30-day period, a separate hearing to determine the amount and frequency of reimbursement.

Source. 1991, 233:1. 1995, 310:175, 181. 2004, 169:1, eff. July 23, 2004. 2007, 274:1, eff. Jan. 1, 2008.