

**FREQUENTLY ASKED QUESTIONS
FOR
NEW INCOME SHARES CHILD SUPPORT GUIDELINES
FEBRUARY, 2005**

1. When do the new child support guidelines go into effect?

ANS: The new Guidelines are applicable to any judicial or administrative action to establish, modify or enforce child support heard by a tribunal on or after the effective date of the Guidelines which was Tuesday, January 18, 2005.

2. How do these guidelines differ from the old ones we have been using up until now?

ANS: They differ in several ways. First, they require consideration of the income of both parents, not just the “obligor” parent, as was usually the case under the old guidelines. Second, the new Guidelines call for building health insurance costs and work-related childcare costs onto the regular support payment, rather than requiring one parent or the other to pay the full amount of the health insurance premium and /or child care without making express provision for these expenses in the child support order, as was often the case under the prior guidelines. Under the new Guidelines, the basic child support figures found on the Child Support Schedule in the new Guidelines do not include health insurance or childcare costs. Under the prior Guidelines, the health insurance premium was often paid by the alternate residential parent, and the childcare expenses were often assumed by the primary residential parent. These expenses are explicitly considered as an additional cost under the new Guidelines, to be paid in pro-rata share by each parent. Third, detailed calculations are to be made to credit parents for payments made for the support of other children, as was called for in recently passed legislation. Fourth, the amount of support to be paid is no longer a fixed percentage of the net income of the obligor parent. The amount of the child support obligation is based upon a percentage that varies depending upon the combined income level of both parents.

3. What other child care expenses can be considered?

ANS: The guidelines contemplate that in some cases “extraordinary” additional expenses should be factored into the final payment amount. “Extraordinary” expenses include educational and “special” expenses and will have to be calculated as a deviation on a case-by-case basis. Private school tuition and related costs are examples of extraordinary educational expenses. “Special” expenses include summer camp, music or

art lessons, band, etc. In order for special expenses to be considered as a deviation, the expense or group of expenses must exceed 7% of the monthly basic child support obligation because an amount is already included in the basic obligation to pay for a certain level of these expenses.

4. If my client's situation means he or she would pay a good deal less child support if calculated under the new guidelines, may I petition the court for a reduction?

ANS: You must have a “significant variance” to be eligible for a modification. A significant variance *always* requires a 15% difference between the amount of the current order and the amount of the proposed new order (the 15% is 7.5% for individuals who have been deemed under the Guidelines to be low-income providers). From January 18, 2005 until January 1, 2006, a significant variance also requires one of four additional factors: 1) at least a 15% change in the income of the alternate residential parent; 2) a change in the number of children for whom the alternate residential parent is legally responsible; 3) a child under the order becomes disabled, or 4) the parties sign an agreed order to modify the child support order in compliance with the requirements of Income Shares. After January 1, 2006, these four additional factors will be eliminated and a significant variance will, again, be only a 15% (or 7.5%) difference in the amount of the order. If the first modification of an existing order under Income Shares will impose a hardship on a parent by either significantly increasing or decreasing the amount of the order, the court can deviate in the amount of the modification calculated under the Income Shares Guidelines.

5. Can my spouse and I agree on a support figure? Can we deviate from the guidelines?

ANS: Yes, but as was the case under the old guidelines, there is a presumption that the figure determined by the Guidelines is the correct one. The tribunal is required to review the stipulation before approval although a hearing is not mandatory. The agreed figure must conform to the new guidelines or contain sufficient facts to warrant a deviation. Any order with a deviation must be based on the best interests of the child, state the reasons for the deviation, the amount that would have been required under the guidelines, and discuss why the guideline amount would have been unjust or inappropriate.

6. What happens if my client and his or her spouse are not doing "standard visitation," e.g., every other weekend, two weeks in the summer, etc.?

ANS: The Guidelines make explicit provisions for differing division of parenting responsibility, both with uniform division of parenting time for all children in the family and where the amount of time differs among the children. If the alternate residential parent spends more than 120 days or less than 54 days with the child, the Guidelines presume a transfer of additional expenses between the parents warranting an adjustment to the child support obligation of the alternate residential parent. The Guidelines provide a percentage adjustment to the support obligation on a sliding scale based upon the number of days the ARP spends with the children.

7. How do I figure these new amounts?

ANS: The rules contain child support worksheets, credit work sheets, instructions and a child support schedule. Use of the worksheets to calculate support is mandatory under the Guidelines and the completed worksheets must be maintained as part of the official record either by filing them as exhibits or as attachments to the order. The Department of Human Services has also created a computer calculator to assist with the calculations which may be accessed at <http://www.state.tn.us/humanserv/is/isdownloads.htm>.

8. What happens if the other side won't produce evidence of income?

ANS: First, there are the normal discovery procedures. The tribunal can also consider whatever evidence your client may be able to produce. In cases where there is absolutely no evidence, the tribunal can impute an income of \$35,851 per year for male parents and \$26,450 for females.

9. How is income defined?

ANS: The definition of income in the new Guidelines is identical to the definition in the previous model. "Income" is very broadly defined but does not include child support payments from any case or means-tested public assistance programs, such as Supplemental Security Income or Families First payments or Food Stamp assistance.

10. If my client doesn't make as much now as he or she did in the past, can he or she be accused of being "voluntarily underemployed?"

ANS: Yes. A determination of willful and voluntary unemployment or underemployment can be based on any intentional act or choice that affects income and is not limited to occupational choices motivated only by an intent to avoid or reduce payment of child support. The tribunal must consider the reason motivating the occupational choice and should consider whether a change will, ultimately, benefit the child.