



WHAT TO DO WHEN YOU CAN'T PAY YOUR CHILD SUPPORT BECAUSE OF A LAYOFF CAUSED BY THE CORONAVIRUS

The United States Department of Labor reported that **6,648,000 people** applied for unemployment during the week of March 28, 2020. This was a startling increase of 3,341,000 from the previous week. Despite the passage of the CARES Act and attempts to stabilize the economy, many people are struggling financially after losing their jobs due to the coronavirus outbreak.

Many divorced and separated parents who have been laid off will encounter problems paying child support. If you are one of these parents, your child support obligation is probably weighing heavily on your shoulders. You don't want to let your children down, anger their other parent, or be punished by the government for something that is beyond your control. Here is some vital information that you need to understand about support rules and suggestions for what you can do if you are currently unable to pay.

GENERAL GUIDELINES

You are obligated to pay the amount of support set by the court in your support order until a new order is in place. The person to whom you pay support can take legal action against you to enforce the support order.

Child support and child custody are usually treated separately, so if you do not pay child support, the other parent cannot legally withhold visitation from you. However, if you later seek to increase the amount of time your child lives with you, it may be difficult to convince a judge to make this change if you are not able to provide for your child.

Even if you can't make the full support payment, try to pay some of it. You will be helping your child. You will be minimizing the arrearage that you will eventually have to pay. You will appear more sympathetic to the court if you try to get your support reduced and your child's other parent is more likely to be cooperative.

MODIFYING YOUR SUPPORT ORDER

WHAT YOU MUST PROVE TO GET YOUR SUPPORT OBLIGATION REDUCED

If you have lost your job or had your hours reduced because of the pandemic, you can petition the court to modify your support obligation. Most courts require you to prove you have experienced a substantial change in circumstances and that your loss of income is involuntary. You may have to establish that the change in your income meets a threshold dollar amount or percentage, for example, a 20 percent reduction. Therefore, keep employment records that show your earnings before the layoff and your current earnings.

You also need to show that court that you have been diligently seeking employment. You do that by keeping a record of your attempts to find a job (e.g., ads that you answer, resumes that you send, registration with your state employment development department, etc.).

In normal times, many courts required you to show your change in circumstances was going last for a while. Thus, courts sometimes decided that a petition for a reduction in child support was premature. However, given the extent of the unemployment crisis and the uncertainty about when the economy will rebound, courts may be more generous in granting modifications, at least temporary ones.

BENEFITS OF PROMPT FILING

On the other hand, filing your petition soon after your job loss may be beneficial because in many states the court can make the modification retroactive to the date you filed. You will avoid accruing a large arrearage. The court cannot make a child support reduction retroactive to the time when you lost your job. For example, if you wait for three months after losing your job to file for a modification, you will still owe child support for those three months (plus interest), even if the court grants your petition.

Filing a petition to modify support may also protect you from being held in contempt for failure to pay.

HELP WITH FILING

An attorney can prepare and file your petition. While stay-at-home orders are in place, attorneys may not be seeing clients in person. However, most are offering telephone and teleconferencing meetings.

You may be able to file the petition yourself. Check the website for your local court. It may provide instructions and the appropriate forms that you can download and prepare. Your courts may be closed to all but emergency motions, but you still may be able to file papers electronically.

Your state child support collection and enforcement agency is another resource that may be able to assist you with reducing your child support. See below.

A hearing on your petition may be delayed because of the court closure. You can use the time to strengthen your case by documenting your efforts to find another job. However, some courts may provide alternatives for hearing your case, such as video hearings.

MAKING AN AGREEMENT WITH THE OTHER PARENT

Let your child's other parent know about your job loss so he or she is prepared for the shortfall. Parents are encouraged to try to work together to support their children and find solutions without resorting to the courts. For example, parents may be able to work out a payment plan or alternative arrangement either on their own or through mediation. This may be a practical solution while courts are closed and before the order can be officially modified.

Bear in mind that an informal agreement with your ex is not enforceable. It will not alter your support obligation unless the agreement is put in writing and a judge issues a new order based on it.

If you simply make an oral agreement that you can pay less now and catch up later, your child support will continue to accrue at the same amount. Eventually, you will have to pay the accumulated arrearage. Your ex can hire an attorney or go to the state child support enforcement agency to begin enforcement proceedings against you.

YOUR STATE CHILD SUPPORT COLLECTION AND ENFORCEMENT AGENCY

Every state has a child support collection and enforcement agency. Many parents pay support through their state agencies.

Contact your state agency as soon as you are laid off. Some states require a parent to notify the agency within a certain period (e.g. 10 days) after a job loss. The agency may be able to assist, although the services provided vary from state to state.

Some states' child support enforcement agencies will help you obtain a child support modification. Although due to heavy caseloads, you may get faster results by petitioning the court on your own or with help from an attorney.

If you and your child's other parent can agree on a temporary modification, the agency may be able to help you put the stipulation in writing and get it signed by a judge.

If the agency knows your income has been adversely affected by the coronavirus, it may delay or suspend enforcement efforts against you. Some child support enforcement agencies say that they are considering enforcement actions on a case-by-case basis.

Once you are re-employed, you can work with the agency to develop a plan to pay off any arrearages that accumulate during your layoff.

CAN UNEMPLOYMENT BENEFITS BE TAKEN TO PAY CHILD OR SPOUSAL SUPPORT?

Generally, the state child support enforcement agency can deduct child support payments from unemployment benefits. Your state determines how much of these benefits can be taken with some states allowing up to 50% to be used for your outstanding obligation.

When you apply for unemployment benefits, let the unemployment office know about your support order.

As part of the CARES Act, many filers will be eligible for \$600 in additional weekly benefits paid by the federal government until July 31, 2020. This extra amount of benefits may help you maintain your child support obligation while looking for a new job.

WILL YOU GET AN ECONOMIC STIMULUS CHECK IF YOU ARE BEHIND ON CHILD SUPPORT?

To boost the economy, the federal government is sending federal payments of up to \$1,200 to eligible single peoples and \$2,400 to eligible married couples. However, the Debt Collection Improvement Act of 1996 allows the Treasury Department to collect overdue child support by reducing or withholding federal payments. Just as your federal tax return can potentially be taken to pay down your back child support, so may your economic stimulus check.

Depending on how much you are behind, you might only receive a **portion of the check or nothing at all**.

CONSEQUENCES OF NOT PAYING SUPPORT

Do not ignore your child support obligation even though you have lost your job. It will not go away and arrearages will continue to mount. Your child's other parent and your state child support enforcement agency may not pursue you immediately. But eventually, they will.

If you fail to pay your support obligation, you may face a variety of civil and criminal penalties. Potential consequences include:

- **Jail time**—Many states make it a crime to not pay child support and to accrue arrears of a certain amount. Jail time usually ends when the past-due amount is paid or a certain portion of it is paid. Under the federal Deadbeat Parents Act, a parent can be charged with a misdemeanor and face incarceration of up to six months if he or she owes child support and moves to another state to try to escape this obligation. To be convicted of this crime, the prosecutor must prove the obligated parent (1) had the ability to pay support, (2) willfully failed to pay it, and (3) had not paid the support for at least a year or owes more than \$5,000 in child support. This offense can be considered a felony when the support goes unpaid for two years or exceeds \$10,000. You could also face jail time if you are found in contempt of court for willfully failing to pay support.
- **Fines and penalties**—Some states may impose additional fines, penalties, or interest on unpaid support obligations.
- **Income withholding**—The court can issue an order to have your support obligation automatically withheld from your wages each pay period, as well as from unemployment benefits.
- **Liens or seizures**—If your ex gets a judgment against you, he or she may be able to enforce the judgment by placing a lien on your property or seizing your bank account or other assets.
- **Suspension of licenses**—Your driver's license and professional licenses can be suspended for non-payment of support.
- **Interception of federal payments**—Your income tax refund and other federal payments can be intercepted.
- **Interception of other funds**—Gambling or lottery fund winning may also be intercepted to pay your obligations.
- **Denial of passports**—Your passport application or renewal can be denied if you owe more than \$2,500 in child support.
- **Credit reporting**—Unpaid child support can be reported to the credit agencies and negatively impact your credit score.

LONG-TERM PLANS TO ADDRESS YOUR OBLIGATION

Remember that your obligation to pay support continues until the court issues an order to the contrary. You will likely still have to pay some child support, even if the order is modified to a lower amount.

While enforcement action may be suspended for now, you may accumulate arrearages that the enforcement agency may pursue you for later. Try to make a good faith effort to pay some of your obligation and consult with a lawyer if you need your support order modified for a longer-term.