
- New York Child Support FAQ's -

1. **When are my children emancipated, so that I am no longer obligated to support them?**

A parents liability for the support of his or her children is limited to children under the age of 21 years. In the absence of an express or implied contract, parents have no duty to support an adult child. For custody, visitation and other purposes, the age of majority is age 18, but for purposes of the parental support obligation the age of majority remains at 21. The mutual parental duty of child support is not absolute. It may be suspended or terminated before the child is 21 if the child becomes emancipated by becoming economically independent of his/her parents through employment, by marriage or entry into the military service. Under unusual circumstances, a child may be deemed emancipated if he/she is guilty of outrageous misbehavior, such as makes it inequitable to enforce the support obligation, or if without cause, he/she withdraws from parental control and supervision.

2. **How is child support calculated?**

Domestic Relations Law, s. 240(1-b) and Family Court Act s. 413(1)(b), known as the Child Support Standards Act ("CSSA") provide that the court shall calculate the "basic child support obligation", and the non-custodial parent's pro rata share of the "basic child support obligation". Unless the court finds that the non-custodial parent's pro rata share of the "basic child support obligation" is unjust or inappropriate, after considering ten enumerated factors, it must order the non-custodial parent to pay his or her pro rata share of the "basic child support obligation". In arriving at the "basic child support obligation" the Court must calculate the "combined parental income" and multiply it by the appropriate "child support percentage." "Income" is defined as "gross income as was or should have been reported on the most recent federal income tax return". There are required deductions from gross income for social security and New York City and Yonkers

income taxes. The law contains provisions for additions to "income" and deductions from "income".

- **The "child support percentage" is:**
- **17% of the combined parental income for one child;**
- **25% of the combined parental income for two children;**
- **29% of the combined parental income for three children;**
- **31% of the combined parental income for four children;**
and
- **no less than 35% of the combined parental income for five or more children.**

Where there are five or more children, the court must exercise its discretion in fixing the amount of the child support percentage. Where the combined parental income exceeds the statutory cap which is adjusted every two years, after the court determines the non-custodial parent's share of the "basic child support obligation", it must next determine the amount of child support for the amount of combined parental income in excess of the statutory cap. It may do so, in the exercise of its discretion, through consideration of ten discretionary factors and/or the child support percentage.

There are two additional items of support which are part of and which the court must consider in determining the "basic child support obligation" and two items it may consider in determining the non-custodial parent's share of the "basic child support obligation":

- **When a custodial parent is working or receiving education leading to employment, reasonable child care expenses must be apportioned pro rata, in the same proportion as each parent's income is to the combined parental income.**
- **In addition, the Court must fix the non custodial parent's pro rata share of the child's future reasonable health care expenses not covered by insurance, prorated in the same proportion that each parent's income is to the combined parental income and the non custodial parent's pro rata share must be paid in the manner determined by the Court.**
- **The Court may also make an award directing the non custodial parent to pay the costs of present or future post secondary, private, special or enriched education for the child. The non custodial parent will pay these expenses in the manner determined by the Court. This**

provision is discretionary. When the Court determines that the custodial parent is "seeking work" and incurs child care expenses as a result, it may determine reasonable child care expenses and apportion them between the custodial and the non custodial parent. The Court can direct the manner of such payment. This provision is also discretionary.

- The law requires that a minimum of \$25.00 per month be fixed as child support even if the non custodial parent is unemployed and has no income or assets.
3. Can my ex-spouse and I agree to amounts that vary from the amount of child support required by the "CSSA" guidelines?

Yes. You and you spouse can waive the provisions of The Child Support Standards Act as long as the waiver is in writing. However, your agreement must recite that you have been advised that the "basic child support obligation" provided in Domestic Relations Law §240 (1-b) and Family Court Act § 413(1)(b) would presumptively result in the correct amount of child support to be awarded. In the event that your Agreement or Stipulation deviates from the "basic child support obligation," it must specify the amount that the "basic child support obligation" would have been and the reason or reasons that it does not provide for payment of that amount. The reason for this is to assure that the parties are aware of their rights and obligations under the Child Support Standards Act and knowingly waive such rights. This provision may not be waived by either party or counsel. If this provision is not complied with to the letter the waiver will be invalid.