

# The Family Court of the State of Delaware

## INSTRUCTIONS FOR CHILD SUPPORT CALCULATIONS (2011-2012)

Effective January 1, 2011 the Family Court revised the Delaware Child Support Formula as stated within Family Court Civil Rules 500 through 509. The formula is intended to comply with 13 Delaware Code §514 which states:

- Each parent is entitled to keep a minimum amount of income for their basic needs.
- Each child's basic needs are taken care of before the parents may retain any additional income.
- If income is available after the primary needs of the parents and each child are met, the child(ren) is (are) entitled to share in any additional income of the parents.

All allowances and percentages are indexed to designated elements of the Consumer Expenditure Survey published annually by the U.S. Department of Labor. These values are adjusted every two years based upon the most recent available expenditure information on single parent households for food, clothing, shelter and utilities as the leading indicators of basic household need. The current values apply to both prospective and retroactive calculations and will be updated again in January of 2013. The entire formula will be reviewed again in 2014.

The Delaware Child Support Formula serves as a rebuttable presumption for establishing child support obligations in the State of Delaware. The Court will use the Formula unless it finds that the results would not be in the best interest of the child(ren) or would be inequitable to the parties involved. Dalton v. Clanton, Del. Supr., 55 A.2d 1197 (1989).

An automated version of the Child Support calculation is available online at <http://courts.state.de.us/family>.

### INCOME ATTRIBUTION

The Court will use each parent's actual income if the parent is fully employed in a manner commensurate with their training and experience. A **Rule 16A Financial Report Form** is required to be submitted with supporting documentation at the mediation and before trial. Adequate supporting documentation usually is the parent's most recent tax returns, W-2 Forms, and three most recent pay stubs but may also include documentation of Social Security, unemployment compensation, workers' compensation, medical disability, child care and medical insurance. Self employed individuals and persons employed through a closely held corporation should be prepared with recent tax returns with all schedules, 1099 forms, documentation of significant expenses categories, and recent bank statements.

Parents who are unemployed or underemployed either voluntarily or due to their own misconduct, and parents who fail to provide adequate documentation or to appear for the hearing or mediation may be "attributed" income. The Court will examine earnings history, employment qualifications and the current job market. Wage surveys for individual occupations compiled by government agencies can be used to estimate earning capacity. Parents who qualify for unemployment compensation will be presumed to have lost their employment by no fault of their own. Qualification for Social Security disability-type benefits is proof that a person has a disability which may impede their ability to work and pay support. A parent receiving Supplemental Security Income (SSI) will not be assessed a child support obligation unless the Court finds the person has additional income or income capacity with which to pay support. Absent adequate information, a parent may be attributed at least as much income as the other party and every parent is presumed to have an earning capacity of no less than \$1,487 per month. Parents who suffer a loss of income due to their own misconduct may have their support obligation calculated upon actual current earnings where over a reasonable period of time they have earnestly sought to achieve maximum income capacity. Additionally, incarceration or anticipated incarceration for more than one year may be considered as evidence of a diminished earning capacity BUT incarceration is not a ground for modification.

### NET AVAILABLE INCOME

Net available income is determined by taking gross income and subtracting taxes, other important payroll deductions and a self support allowance. All amounts must be monthly. To convert from weekly, multiply by 52 and then divide by 12. For biweekly, multiply by 26 and then divide by 12. All amounts are rounded to the nearest whole number.

**Line 1--Monthly Gross Income**--Generally, all income must be included in the child support calculation. The Court can exclude second job income upon consideration of its history, purpose, amount and effect on visitation. Expense reimbursements or in-kind payments received in the course of employment, self-employment, or operation of a business should be counted as income if they are significant and reduce personal living expenses. However, a cost of living stipend paid as compensation for working in a high cost location will not be included as income as long as it is clearly identified on pay documents. **Monthly Gross Income** is the combination of the following:

**Wages:** This includes salaries, wages, commissions, bonuses and any other income (other than self-employment income) that is subject to Federal Retirement and/or Medicare taxes. For child support purposes, it also includes all income and benefits identified by an employer as "pre-tax".

**Self:** All income earned as an independent contractor and subject to federal self-employment tax.

**Unearned:** All other taxable income including but not limited to dividends, severance pay, pensions, interest, trust income, annuities, capital gains, workers' compensation, unemployment compensation, disability insurance benefits, prizes, and alimony or maintenance received.

**Nontax:** All other income not subject to income taxation. This includes most Social Security Disability (SSD) or retirement benefits and some private pension/disability benefits. Benefits paid to a child on account of a parent's disability are included in that parent's income but offset the Net Monthly Obligation dollar for dollar. Benefits paid to a child due to the child's own disability are included as income to the household in which it is received. All military allowances (except clothing) are included as nontaxable income. However, no military service member shall be attributed a housing allowance (BAH) that exceeds BAH (with dependents) provided to service members stationed at Dover AFB.

2011 Dover Air Force Base BAH with dependents

Rank	\$	Rank	\$	Rank	\$	Rank	\$
E01	1167	E07	1599	W04	1731	O2	1566
E02	1167	E08	1626	W05	1833	O3	1644
E03	1167	E09	1707	O1E	1605	O4	1872
E04	1167	W01	1575	O2E	1641	O5	2034
E05	1257	W02	1611	O3E	1746	O6	2055
E06	1572	W03	1647	O1	1293	O7	2076

**Line 2--Taxes:** Utilizing IRS and Delaware Department of Revenue income tax withholding tables or the Family Court tax estimation worksheets, record each parent's income tax liability based upon a single tax status with one (1) exemption. Delaware State income tax shall be utilized for all persons regardless of State of residence.

**Line 3--Allowable Deductions** (add the following across the line and enter the result in the appropriate column):

**Medical Insurance--**Monthly medical insurance premiums (including COBRA payments) paid by either parent regardless of persons covered by the policy.

**Medical insurance premiums allocable to children** can be included as an element of primary support at Line 12B rather than as a deduction from income with adequate documentation. The amount allocable to a child is the difference between the cost for the parent alone and the parent with minor dependents. Where the parent has multiple children in multiple households, the amount allocable to children must be multiplied by the number of children on Line 6 and then divided by the total number of children on Lines 6 and 10. Documentation is **REQUIRED**.

**Pension--**Mandatory contributions and some voluntary contributions are deductible. If any mandatory amount is less than 3% of gross income, voluntary contributions to a 401(k) or similar IRS approved retirement plan of up to 3% (including mandatory) of gross income may also be deducted.

**Union Dues--**Enter the average monthly union dues.

**Disability Insurance--**Enter Disability insurance premiums withheld from pay or purchased privately for purposes of income replacement (but not to cover credit card or mortgage obligations).

**Other--**Enter the monthly amount of any court ordered alimony payments to the other parent, or other allowable business expenses (such as supplies required by the employer to be purchased). Alimony paid must also be subtracted from taxable income when calculating Federal and State income tax liability (but not "FICA").

**Line 4--Self Support Allowance:** The self-support allowance is the minimum amount of income necessary for a parent to remain productive in a workplace. Each parent is given a self support allowance of **\$1120**.

**Line 5--Net Income after Self Support:** Subtract taxes, deductions & self support from gross income.

**Line 6--Number of Children Not of this Union Supported by each Parent:** Enter the number of children of other relationships to whom a duty of support is owed either in or out of each parent's household. Children outside a parent's household should only be counted if there is a court order for support or proof of a pattern of support.

**Line 7--Adjustment for Support of Other Children:** Enter the appropriate percentage as determined by the number of children on Line 6 and the table below (but not less than 67%):

<u>Number of Children</u>	<u>Percentage</u>	<u>Number of Children</u>	<u>Percentage</u>
0	100%	2	73%
1	81%	3 or more	67%

**Line 8--Net Available for Primary Support:** Multiply each parent's Net Income after Self Support (Line 5) by the Line 7 percentage. Add the figures for Father and Mother to get the total available income. Enter the result in the total column.

**Line 9--Share of Total Net Available:** Divide the Net Available for Primary Support for each parent (Line 8) by the Total Net Available for Primary Support (Line 8 Total). Enter the result for each parent.

**Medical Expenses** — The child support recipient is responsible for the first \$350 of unreimbursed medical expenses incurred each calendar year. "Incurred" is when medical services are actually provided except for orthodontic payment plans for which are "incurred" as each payment becomes due. Additional amounts are allocated according to the **Share of Total Net Available** (Line 9). The \$350 threshold does not apply to shared or split placement cases. Parents should attempt to manage medical reimbursement issues privately. A petition for reimbursement should be filed no later than December 31 in the 2nd year after the expense is incurred. Later applications may be considered for good cause shown.

### PRIMARY SUPPORT

The Court has established minimum levels of income needed to support one or more children. This primary support allowance is added to any work related child care expenses, medical insurance allocable to the children, private school expenses (under some circumstances), and any other expenses for any ongoing special needs of a child.

**Line 10--Number of Children of this Union in each Household:** Enter the number of children of this union who reside in each parent's household. If a child resides equally (more than 174 overnights) in both households, assign ½ child or ".5" to each household. Do not include children from other relationships.

**Line 11--Primary Support Allowance:** Enter the Primary Support Allowance that matches the number of children in Line 10 for each household (see tables below). Add the columns and enter the result in the Total column.

Primary Placement	
<u>Number of Children</u>	<u>Primary Support Allowance</u>
1	\$510
2	810
3	1090
each additional	+250

Additional Shared Placement Allowances	
<u>Number of Children</u>	<u>Primary Support Allowance</u>
.5	\$255
1.5	660
2.5	950
each additional ½	+125

**Line 12A--Child Care Expenses necessary for parent to work:** Enter the actual Monthly Child Care Expenses for the children of this support action required for the parent to work or seek work. No hypothetical or attributed childcare costs are permitted.

**Line 12B--Medical Insurance Allocable to Children:** As described at Line 3, medical insurance premiums allocable to the children of this union can be an element of primary support. If a parent believes available insurance is not reasonable in cost, the parent will not be compelled to acquire or maintain it if the cost to cover the parent and their children exceeds 10% of the individual parent's gross income OR if the parents' combined net income at Line 8 is insufficient to meet the children's primary needs as included on Lines 11, 12A and 12B. Additionally, Medical insurance acquired through a step-parent's employment can be included on this line if the step-parent has no other dependent children and to the extent the amount allocable to the children can be determined.

**Line 12C--Other Primary Expenses:** Other necessary monthly expenses incurred due to special needs of the child(ren). Private or parochial school expenses may be included if the parents have adequate financial resources and upon consideration by the Court of all of the equities especially:

- a. Previous agreement to pay for child(ren)s' attendance in private; or
- b. The child has special needs that cannot be accommodated in a public school setting; or
- c. Immediate family history indicates that the child likely would have attended private or parochial school..

**Line 13--Total Primary Need:** Add the totals from Lines 11, 12A, 12B and 12C.

**Line 14--Primary Support Obligation:** Multiply Line 9 (Share of Net Available) by Line 13 Total (Total Primary Need).

### STANDARD OF LIVING ADJUSTMENT (SOLA)

If there is income available after the parents have met their own and their child(ren)'s primary support needs SOLA is designed to give the child(ren) a share in each parent's economic well being.

**Line 15--Net Available for SOLA:** Subtract the Primary Support Obligation (Line 14) from the Net Income Available for Primary Support (Line 8) for each parent. Enter the result for each parent (but not less than "0").

**Line 16--SOLA Percentage:** Enter the SOLA percentage that corresponds to the Number of Children Due Support in this Support Action (Line 10 Total) but not more than 50 percent.

<u>Number of Children</u>	<u>SOLA Percentage</u>	<u>Number of Children</u>	<u>SOLA Percentage</u>
1	17%	3	29%
2	24%	each additional	+4%

**Line 17A--SOLA Obligation:** Multiply the Net Available for SOLA (Line 15) by the SOLA Percentage (Line 16). Enter the result for each parent, and then combine the parents' individual SOLA obligations for the total.

**Line 17B--SOLA per child:** Take total SOLA obligation (Line 17A total) and Divide by the Total Number of Children of this Union in each Household (Line 10 Total). Enter the result in the third column as the "per child" SOLA.

**Line 18--Gross Monthly Obligation:** Line 14 (Primary Support Obligation) plus Line 17A (SOLA Obligation).

### CREDITS AND THE NET MONTHLY OBLIGATION

The Net Monthly Obligation is the Primary Support obligation plus the SOLA obligation minus applicable credits and subject to certain limitations. In simple cases, the "custodial" parent merely keeps their own obligation and the obligated parent pays the amount on Line 18. However if the parent from whom support is sought has the children more than 109 overnights per year, has limited income, or incurs daycare or tuition expenses, further adjustments may be necessary.

**Line 19--Retained Primary and SOLA:** Multiply the number of children in each household (Line 10) by the "per child" SOLA on Line 17. Then add that to the Primary Support Allowance claimed by each party on Line 11.

**Line 20--Child Care / tuition paid by each parent:** Enter the total of Lines 12A and 12B for each parent.

**Line 21--Parenting Time Adjustment:** When a court order or written agreement entitles the parent from whom support is sought contact of more than 109 overnights per year, that parent retains a percentage of both the primary support allowance and the parents' combined SOLA. Enter on Line 21A the percentage from the following table corresponding to the number of annual overnights. Then multiply the percentage by Line 19 of THE OTHER PARENT and enter the result on Line 21B. The credit on Line 21B cannot exceed Line 17A.

<u>Annual Overnights</u>	<u>Percentage</u>	<u>Annual Overnights</u>	<u>Percentage</u>
110 to 132	10%	151 to 164	30%
133 to 150	20%	165 to 174	40%

**Line 22--Maximum Allowable Obligation:** Multiply the percentage used on Line 7 by the Net Available for Primary Support on Line 8 and enter the result on Line 22. This represents the maximum support obligation that can be ordered and preserves the self support allowance of individuals with multiple children in multiple households.

**Line 23--Net Monthly Obligation:** For each parent, subtract Primary/SOLA retained (Line 19), Childcare/tuition retained (Line 20) and the Parenting Time adjustment (Line 21B) from Gross Monthly Obligation (Line 18). Enter the result but not more than the amount on Line 22.

**Minimum Orders:** Unless the children reside in shared or split placement or the obligated parent is disabled, the Court will not impose an obligation of less than a presumptive minimum order. The obligation, if any, of a disabled person with limited resources will be determined on a case by case basis. The current minimum orders are:

1 child	\$ 130	3 children	\$ 270
2 children	200	each additional	+60

**Modification:** Petitions for modification filed within two and one-half years of the calculation of a current support obligation must allege "with particularity" a substantial change of circumstances not caused by the Petitioner's voluntary or wrongful conduct. Incarceration is not a ground for modification. Additionally, no modification will be ordered unless the new calculation produces a change of more than 10%. Beyond 2½ years, neither the "particularity" nor the "10%" requirement applies.