

How Is Child Support Determined in New York?



By Robyn D. Weisman, Esq. March 25, 2019

One of the frequent and most important issues to be decided in mediation is what is child support and when if ever is it recalculated. In New York, child support is calculated pursuant to the Child Support Standards Act (CSSA).

In calculating child support, the CSSA looks at the gross income of the parties, minus standard deductions such as FICA, and then calculates child support based upon how many children the parties have. For example, for one child, the percentage is 17 percent; two children, 25 percent; three, 29 percent; etc. This is strictly based upon the New York State Laws and is not negotiable unless there are certain considerations allowed by the law.

In New York, child support is meant to cover food, clothing, and shelter. All of the agreed-upon extra expenses with respect to education, child care and out-of-pocket medical expenses are typically shared pro-rata to the parties' respective incomes. Certain other expenses may be split between the parties.

What is pro-rata? Pro-rata is determined depending on both parent's income, for example, if the parties both have incomes of \$100,000 per year, their expense-sharing ratio would be 50-50. In another example where the child support payer has an income of \$100,000, and the child support payee has an income of \$60,000, the expense-sharing ratio would be 60-40 respectively.

Now what happens in the future with child support? Does it get recalculated? The New York Domestic Relations Law provides that unless the parties have specifically opted out of the following provisions in a signed stipulation: "The court may modify an order of child support where a) three years have passed since the order was modified or adjusted, or b) there has been a change in either party's gross income of 15 percent or more since the order was entered or last modified or adjusted."

As with most things in mediation, the parties can agree to come up with their own recalculation method. This would be the “opting out” of the New York State Laws. In other words, they don’t need to do what the Domestic Relations Law says and may agree upon a calculation method that best suits their needs.

There are a number of ways for this agreement to occur. Let’s say the payor has a fluctuating income based upon commission or bonus, the parties may want to recalculate annually. The parties may also want to consider including a cost-of-living increase provision. This can be done in yearly increments or every two years, or whatever increment decided by the parties.

In cases where there are multiple children, recalculation often occurs as each child is emancipated. There may also be a provision in place that triggers a recalculation should there be a significant increase or decrease in either party’s gross income.

There are circumstances where the parties have agreed to waive child support and share the expenses of the children. This becomes very important to provide details as to what expenses are being shared.

Mediation is a great way to create an agreement that works for the couple and the family. An experienced mediator who is also an attorney would be in the best position to explain the law and the options available.

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