

## Imputed Income in California Child Support Orders

In the family law system, parents are legally equally responsible for the financial support of their children. Each parent's income is a key factor in [calculating out how much child support is owed or received](#). In some cases, parents intentionally reduce their income in order to avoid the responsibility of paying support or as a method of increasing the amount of support received. They may cut back work hours or refuse to work completely.

Parents that attempt to perform these actions falsely believe they're hurting the other parent or "cheating the system." Unfortunately, it's the children that are the real victims of these behaviors. Because California public policy looks at the best interests of the children, the law allows judges to attribute, or "impute" income to parents who are not working full-time and/or to their full earning capacity.

### Overview of Child Support Orders

In most cases (aside from delinquency), child support is paid until the child turns 18 and graduates from high school. Parents may agree on the amount of child support, but if an agreement cannot be reached, either party may ask a court to order child support pursuant to the state guideline formula.

In most cases, child support is paid to the parent who cares for the children most of the time (known as the "custodial parent"), or in cases where timeshare is relatively equal, to the lesser earning parent. The law assumes that the custodial parent already spends money directly on the child, thus the need for support. The parent with less parenting time (known as the "non-custodial parent") usually makes the payments.

### Imputing Income

If a parent has attempted to change their income to avoid support, a judge may "impute" income. This is income that is attributed or credited to a parent even though the parent is not actually earning that amount. Judges impute income to ensure that children's needs are met and to prevent the non-payment of support.

Assume the non-custodial parent has been earning \$100,000 a year, then suddenly claims that he or she is now earning minimum wage and unable to continue paying child support. The judge will want more information about the drop in income, and the custodial parent will have a chance to show the judge that the drop in the non-custodial parent's income was due to that person's desire to minimize the child support obligation or some other voluntary reason.

If it can be proven that the support-paying parent voluntarily quit work or otherwise deliberately lowered his or her income, the judge will not condone that kind of behavior. Instead, the court may

impute income, which means that the court may choose to ignore the person's change of income. In this case, the court would likely use the amount they were most recently earning (\$100,000) and child support owed would be based on that amount.

California courts will look at two main factors when determining whether to impute income to a parent. The factors include the **ability** and **opportunity** for the unemployed or underemployed parent to earn income. The reason for the unemployment (or reduced income) is a key factor to determining whether to impute income. In legitimate cases of job loss or reduction of pay, an individual will not necessarily have income imputed immediately. Therefore, it's important for a judge to understand the cause(s) behind the decrease in income.

## **Involuntary Unemployment**

Involuntary unemployment occurs when someone legitimately loses a job and is unable to secure new employment. In this scenario, the unemployed parent will be required to show the court the job loss wasn't planned and that the person was laid off as opposed to being fired for bad behavior at work. Unemployed parents must also be prepared to demonstrate substantial efforts to locate another job, and an inability to land something due to lack of opportunity.

A parent will also be considered involuntarily unemployed if he or she suffers from physical or mental disabilities that limit the ability to work. If a parent claims disability, the court may require that person to provide documentation and/or apply for state or federal assistance. If a parent truly lacks the ability and/or opportunity to work, the court won't impute income to that parent.

## **Voluntary Unemployment**

Voluntary unemployment occurs when a parent is able and has the opportunity to work, but chooses not to. This may include:

- loss of employment due to misconduct (or illegal activity)
- voluntary early retirement
- ceasing work to return to school
- voluntarily quitting

These voluntary actions will likely also result in an imputation of income, as the parent is in control of his or her income.

## **Voluntary Underemployment**

Voluntary underemployment occurs when a parent makes weak efforts to find employment at the same (or better) level of income that was previously earned. The court will examine recent work history and qualifications to decide if a parent is working below their full potential. This can also

include intentionally cutting back on hours and the refusal to use or invest assets.

In the case of a career change, the court will consider the extent to which the children will ultimately benefit from the career change to decide if the parent is voluntarily underemployed.

When a parent is unemployed or working below full capacity, the court will consider the reasoning behind the unemployment (or underemployment). If the court finds the parent is unwilling to work or be fully employed, it will impute (or attribute) income to the parent as long as it is consistent with the best interests of the children receiving the support.

Income may also be imputed when a parent drops from full-time employment to part-time employment to pursue additional education (or some other interest – a hobby, volunteer work or travel). Additionally, if parent leaves a job to start their own business, income may be imputed to him or her.

## **Determining the Correct Amount of Income to Impute**

When courts decide how much income to impute to a parent, they must first determine the parent's "earning capacity," which means his or her income earning potential. Earning capacity includes one's ability and opportunity to work, and in some situations, willingness. The ability to work is usually determined by examining educational level, work skills, and employment history. Opportunity takes into consideration the availability of applicable job opportunities in their local area: Is the specific job field hiring, or is there an employment deficit? Willingness is determined by looking at behavior: searching for jobs, distributing resumes, and attending interviews.

If both the ability and opportunity to work are present, a court can impute income after reviewing all of the evidence. The evidence is usually provided by the parent seeking child support and sometimes in the form of an expert's report or testimony regarding salaries for a qualifying job. A court may also use the most recent salary earned by the parent and impute that amount. On occasion, it can be difficult to determine how much a parent could earn, the court will impute minimum wage. The exact amount imputed will always be case-specific.

## **Conclusion**

Trying to avoid or succeed with imputing income for purposes of child support is tricky and very complex. For more information and specific advice for your situation, please feel free to [contact us](#).