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What Is Income?

by Milinda J. Reed, Esq.

Income can come from many sources. Most employed people are paid a salary, while some self-employed persons pay themselves only when their business makes enough money to do so, thereby controlling the timing and amount of their income. Some people receive investment income, either from dividends paid by stocks or from profits made by investing in the stock market. Some people own investment property, such as an apartment building, and receive rental income. Some people had a good job last year but quit when the marriage fell apart. The court may impute income to them (ascribe a certain amount to them as if they were still working).

Reading Your Pay Stub

If you work for wages, you get paychecks with a pay stub, which provides a lot of information. It shows your gross income before anything is deducted. It shows your deductions and your rate of withholding. For example: M-3 means "married with three exemptions." Your pay stub shows what you get paid per hour for regular and overtime, how often you get paid, and how many hours you worked the last pay period. It will show whether you are paying for health and dental insurance, and whether you've invested in a plan that enables you to set aside pretax dollars for paying medical and dental bills. Your pay stub also shows how much from each paycheck goes into your retirement plan.

If you're self-employed or otherwise unable to predict your income due to commissions, bonuses, or other factors, you may need to look at tax returns or paycheck stubs for several years to develop realistic income figures. Sometimes the court will take an average of your earnings over the past few years to determine a number for your income.

All of this information is important. First of all, it tells you how much money you earn each pay period. If you're paid weekly, you can multiply your net pay by fifty-two and divide by twelve to get your monthly income. If you're paid every two weeks, multiply by twenty-six and divide by twelve to get your monthly income. Because most budgets are computed on a monthly basis, it's helpful to compare monthly income to monthly expenses.

Your spouse gets to see your paycheck stubs, too. If you're socking away a large percentage of your pay into retirement or over-withholding so that you get a tax refund at year's end, you can be sure your spouse or your spouse's lawyer will notice this right away. If you operate a business, your spouse's lawyer will be able to look over your books and see what you are deducting as business expenses. While these deductions may be valid for IRS purposes, they may not be for child support purposes.

Other Income

If you have investments, they may generate income. (If they don't, you may need to make some changes!) Stocks pay dividends and bonds mature. Some people buy and sell stocks, and others buy and sell real estate. If you invest in a new venture, you might lose money the first few years, which you can take as a deduction on your taxes. Understandably, your spouse will want to keep an eye on this venture, but it's unlikely you'd invest in a business if you didn't expect it to make money at some point.

If you receive allowances from your employer for food, a car, or housing, this too can be counted as income. If you own a small business and deduct expenses from your income taxes for these items, the amounts could be added back into your income for the purpose of child support calculation. Amounts you deduct for depreciation on equipment or business assets can also be added back into your income for child support purposes.

Social Security

If you or your spouse are near retirement age, you'll want to figure out your eligibility for Social Security benefits. When people have been married for more than ten years, a spouse who doesn't work is allowed to collect on the earner's Social Security record and is usually eligible to receive up to half the earner's Social Security. The age of eligibility will depend on when the earner entered the job market. As society ages, the age of eligibility goes up.

If you or your spouse becomes disabled and eligible for Social Security disability benefits, your children may be eligible for benefits, too. While most courts take the position that these benefits are not a substitute for child support, this money is available to help take care of the kids. You are not exempt from child support requirements because you are receiving social security disability. The court will still evaluate your income and determine what amount you will have to pay. Even though your income will probably be less than the self-support reserve, you will still have to pay the minimum amount that your state allows.

Imputed Income

Say your spouse had a good job during the marriage. Angry now, your spouse quits and refuses to look for a new job. If you take her to court for child support, the court may well determine that because your spouse earned \$20 an hour on that job, she has the ability to earn \$20 an hour. The court imputes this income to your spouse and orders child support accordingly. Or, say you decide to change jobs and take one that pays less and provides no overtime. The court may use your previous earnings as the basis for the support order, imputing to you the ability to earn the amount you earned before.

Supporting two households after divorce is complicated. You need a lawyer who knows your state's laws and can help you develop a support plan that stretches the dollars. Divorce lawyers know how to analyze your financial situation and will help pinpoint optimum levels for child support and spousal maintenance.

The court can also impute income if it appears that you have hidden income or failed to disclose an asset. Let's say for example that you are a sole proprietor and you produce an income tax return that shows you make \$50,000 a year. However, the way you live suggests that you make a lot more. For example, you drive an expensive car, have an expensive apartment, and take fancy vacations. If your spouse can prove that you are spending more money than it looks like you're making, the court may decide you are hiding money. Under these circumstances, the court can impute earnings to you. Any time the court imputes income, it must set forth in its decision the exact reasoning by which the amount to be imputed has been calculated.

Imputing income can create a financial mess. When orders are based on what the court believes you can do rather than what you're actually doing, you can quickly fall behind in your support obligation. As a result, the spouse relying on the support order will not have the money needed to pay bills.

One purpose of imputing income is to encourage the unemployed or underemployed payor to find a good job and to discourage a dishonest spouse from hiding income and assets. Another is to maintain a consistent child support obligation, so that when the payor does get a decent job the accumulated back payments, called arrears, can be collected for the benefit of the children.