



COVID-19 Child and Spousal Support Guidance for Families: FAQs

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March 27, 2020



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With business closures, job losses, and layoffs, many divorced and separated individuals are wondering what to do about child and spousal support obligations. Here are some frequently asked questions, along with our best guidance as to each.

1. I just lost my job. Do I still need to pay support?

Yes. Continue to pay the full amount if you are financially capable of doing so.

If you are not able to do so, send as much as you can and follow the frequency of payments set forth in your order (i.e., weekly, biweekly, monthly). The PACSES (Pennsylvania Child Support Enforcement System) is closed, but the office is processing all payments. Income Withholding Orders (IWO) are still being processed, if you are still receiving any part of your wages. If your income is not withheld, continue to send your checks to Pa SCDU (Support Collection and Disbursement Unit) as usual.

Let your obligee know about your situation, as well as how much you plan to pay and when, so that he or she can make the necessary spending adjustments rather than be blindsided.

Be fully transparent.

2. What should I do next?

Apply for unemployment compensation (UC). Currently, it is challenging to do so online, but be patient and keep trying. Once your application is granted, continue to send payments until you see that support is being withheld from your check. After that, you may stop sending your own payments unless you have the means to make up the difference to pay the full amount of your order. PACSES will withhold a certain amount from your UC checks, which will usually be less than your current support order. Please refer to the alerts being sent from our COVID-19 Response Team with respect to pending Federal legislation, which includes funding and expansion of the Unemployment Compensation system.

3. Will arrears accumulate and will collection and enforcement begin?

Arrears will accumulate, but we have been informed that PACSES has suspended its enforcement and collection machinery, which means that the seizure of bank accounts and other actions that are normally taken after a full month of missed support, such as credit bureau reporting, will not be occurring while the offices are closed. We do not know whether the IRS refund offset program has been suspended. That program is administered at the federal level.

Once the offices reopen, counties are expected to be granted the authority to work cooperatively with support obligors who have accumulated arrears through no fault of their own. However, this is an evolving situation. We believe that obligors who continue to make regular payments during this time will be regarded much more favorably than those who stop sending payments. Therefore, we recommend that you send in as much as you can afford. Child support will be prioritized for enforcement over spousal and alimony *pendente lite*.

4. Will PACSES reject or hold my partial payment?

We are not certain that PACSES will function with that level of refinement while its office is closed. For now, we are being advised only that its office is closed and that payments are being processed during closure. We recommend continuing to send payments, whether full or partial.

5. I think that my income reduction will last awhile, what should I do?

Support orders are modifiable for substantial and continuing changes in income. File a Petition to Modify Order of Support, which most counties are accepting electronically until courts reopen. Each county office is closed until further notice, so no conferences are being scheduled. Filing now is the only way to preserve your rights with respect to retroactivity of the modification, absent agreement between you and your obligee.

If you believe that the change in your income is temporary, however, you may choose to ride things out rather than seek modification. Just know that you may not argue for retroactive reduction in your support obligation if it turns out that you are wrong. Any change in your order will be retroactive no earlier than the date that you filed a petition, absent agreement.

6. How do I prove that the reduction is beyond my control?

The burden of proving the income reduction is on the person seeking the modification. Save and print out all notices, letters, and emails issued by your employer, including all COVID-19 messages and notices and all HR communications. If your employer has published press releases or given interviews, save this material as well. Make sure to follow any internal procedures and processes for challenging any changes in your employment status. It may be necessary later to demonstrate that you took all available action to retain your status and your compensation level. If you feel that your employer is using this emergency as a pretext to take retaliatory or other action against you, do not hesitate to consult with legal counsel immediately.

Your obligee may be skeptical that you are using the emergency as a pretext to reduce your support obligation.

7. I pay support, but do not have a court order, what should I do?

Follow the steps above: notify your obligee, make steady and regular payments, and negotiate a more permanent modification of the support amount. If you are not able to agree, your obligee may file a Complaint for Support, which will not be conferenced until the county offices open again.

Between now and then, take the necessary steps to ensure that PACSES will credit you for all payments, by getting your obligee to sign a writing that designates each payment as a credit toward the ultimate obligation. Do this before you make each and every payment. Payments that are made without such a writing will be treated as gifts rather than support credits. The order will be retroactive to the date the Complaint was filed.

8. What if I take a new job, but it pays less?

Be prepared to maintain the preexisting level of support. In the alternative, be prepared to prove that no replacement employment was reasonably available to you at your prior level of income, after conducting a diligent search.

9. Will the courts understand the realities of my new situation?

While we can't guarantee any ruling by any court, we feel strongly that parties who can show that they used their best efforts to meet their support obligations during this emergency will be rewarded with equitable results, while obligors who stopped paying altogether will be regarded as irresponsible. We are seeing job losses and employment changes across all industries. Fortunately, the courts are fully aware of this situation.

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About the Author: Ms. De Shong is one of Pennsylvania's leading family law attorneys. She has counseled hundreds of men and women on all aspects of divorce, child custody, distribution of assets, support, and alimony, as well as property settlement agreements, prenuptial agreements, cohabitation and partnership agreements, family business agreements, protection from abuse matters, and more. She is a Fellow of the American Academy of Matrimonial Lawyers, a national organization of approximately 1,600 highly skilled litigators and negotiators who represent individuals in all areas of family law, and the Litigation Counsel of America, a national trial lawyer honorary society. If you would like further information about Ms. De Shong and family law, or if you have a family law matter that you would like to discuss with her, please email Ms. De Shong at adeshong@wispearl.com.

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