An individual’s child support obligation is calculated utilizing several factors, the most important of which is the income that the individual earns. Usually a person’s income is calculated by looking at the salary and any appropriate deductions, including taxes, health insurance premiums, mandatory retirement or union dues. Some people have the opportunity to work overtime, which adds to their yearly income. The New Jersey Child Support Guidelines contains a provision that states if a person has sporadic income as a result of overtime or a second job, an average will be calculated for purposes of child support. The guidelines further provide that the court is able to exclude sporadic income if the party can demonstrate that it would not be available in an equivalent amount in the future.

However, what happens if an individual is offered over time, but declines to take it? Is the court able to take this “extra” income into consideration? Generally, a court is entitled to find that a person is voluntarily unemployed or underemployed. Then, the court will “impute” income to that person. For example, if an individual is only working part time, the court can calculate child support based upon the presumption that the person should be working full time.

Recently, in the case of Ferrer v. Colon, both parties were police officers. One of the police officers worked overtime and agreed that the overtime should be utilized to determine income for purposes of child support. However, the other party said that in addition to the overtime actually worked, there was an offer of even more overtime. The argument was the additional, offered over time should be added to the
income for purposes of the child support calculation.

The court rejected this argument, saying it was only going to use the actual overtime worked. The court found that the police officer was fully employed, and she did not have an obligation to take on additional employment simply for the purposes of calculating child support. The court based its decision on what the police officer had earned in the past in overtime.

The court recognized that support obligations must take into account past earnings as well as the ability to earn. A party is unable to manipulate his or her income so as to improperly reduce their support obligations. Moreover, a party cannot shield income earned beyond his or her full-time employment from the calculation of child support. This does not mean however, that a person should be imputed income based on a scenario that is inconsistent with the historical data. Cases must be evaluated considering the quote, “reasonableness” and “relative advantages” under the totality of the circumstances.

COPYRIGHT © 2020, STARK & STARK

Source URL: https://www.natlawreview.com/article/if-you-refuse-over-time-are-you-underemployed