Emancipation

Emancipation in New Jersey

One of the most commonly asked questions we receive is: “How long will child support lasts in New Jersey?” The answer to this question is very fact sensitive and turns on the specific circumstances of each individual family.

Our New Jersey case law has held that the duty to support a child ends when the child has moved beyond the sphere of influence and responsibility exercised by a parent and has obtained an independent status of his or her own.

Absent parent’s agreement on the issue, this standard more often than not requires that a litigant provide to the Court documented demonstrative proofs, testimony, and at times expert testimony to determine whether or not a child has reached a point in his or her life where they are considered emancipated for support purposes.

Unknown to many parents, New Jersey enacted a new set of child support laws which took effect on February 1, 2017. This new legislation has a significant impact on all child support orders whether entered prior to, or after, the February 2017 effective date. It is important to know the details of the new law and the effect it will have to both payors of child support as well as recipients, as the new changes can have a significant impact on your family.

The key provisions of the new law are outlined below:

- Unless otherwise provided in a court order or judgment, the obligation to pay child support shall terminate on the date that a child marries, dies, or enters the military service.
- Previously, there was a rebuttable presumption that a child support should terminate upon the child attaining the age of 18. The new statute increases the age presumption in requiring child support obligations terminates when a child reaches 19.
- The termination of child support at age 19 however, may be extended if:

- another age for such termination is specified in a court order, which shall not extend beyond the date the child reaches 23 years of age;
- a written request seeking the continuation of child support is submitted to the court by a custodial parent prior to the child reaching the age of 19; or
- the child receiving support is in an out of home placement through the Division of child Protection and Permanency in the Department of Children and Families.

Notwithstanding the provisions of the new statute above, the obligation to pay child support terminates by operation of law when a child reaches 23 years of age. However, if a child support obligation is terminated by operation of law, if there are any arrears owed, those arrears remain due and are enforceable.

Contact a Lawyer for Termination of Child Support

When a child is reaching the age of 19, a custodial parent may submit a written request, with supporting documentation to the court, including a projected future date when support will terminate, seeking the continuation of child support beyond the date the child reaches 19 years of age in the following circumstances:

- the child is still enrolled in high school or other secondary educational program;
- the child is a student in a post-secondary education program and is enrolled for the number of hours or courses the school considers to be full-time attendance during some part of each of any five calendar months of the year; or
- the child has a physical or mental disability, as determined by a federal or State government agency, that existed prior to the child reaching the age of 19 and requires continued child support.
- A custodial parent may file a motion with the court seeking to extend the obligation to pay child support beyond the date the child reaches 19 years of age due to exceptional circumstances as may be approved by the court.

The circumstances above which could warrant continuation of child support are relevant because child support terminates when a child is emancipated. However, there are many nuances to this issue.

For example, what constitutes fulltime college enrollment? There are situations when parties will define the term in a settlement agreement, but what will the Court assess if there is no specified

provision?

In the case of Sakovits v. Sakovits, the court held that even when parties define emancipation in their agreement and a child is deemed emancipated pursuant to this agreement, a child may still nevertheless be deemed not emancipated by the Court. For example, when a child takes a “brief hiatus” between high school and college and is deemed to be emancipated by their parents’ agreement, courts have held that it would be unreasonable to enforce this emancipation language.

In the case of Keegan v. Keegan, the Appellate Division recognized that a child is not required to maintain a particular GPA in order to receive contribution from his or her parents. In Keegan, the Appellate Division affirmed the trial court’s decision to order the father to continue to contribute towards his daughter’s college education without giving any relevance to the daughter’s 2.36 cumulative GPA.

There are also other circumstances where a child may not be deemed emancipated when she or he is working full-time with the intention of enrolling in college. In the 2013 case of Radcliffe v. Radcliffe, the New Jersey Appellate Division held that an eighteen-year-old child was not emancipated when she was a recent high school graduate and she creatively took a hiatus from college to obtain skills to enable her to defray the college costs to her parents.

Moreover, while there are provisions in the new child support statute which addresses circumstances where a child has physical or mental disability, it is important to know and consider all available options when it comes to providing for the financial needs of a disabled child and the proper way to provide for those needs. When a child is unlikely to be emancipated as an adult, the parties may need to address considerations beyond custody and child support.

In addressing the best interests of a special needs child, the courts will evaluate the child’s disability and whether that child has the possibility of becoming emancipated and further, what is in the child’s best interest. Child Support is considered an asset of the child and will be treated as unearned income. The effect this has on qualifications for various government benefits is important to consider when addressing the issue of emancipation and child support. For example, child support will reduce the

amount available to a child for Supplemental Security Income (SSI) purposes. Caring for a child with special needs often continues for the parent's lifetime; regardless of whether that obligation is legal in nature or self-imposed.

It is important to plan in advance and prepare a sound financial strategy for when a child may [or may not] become emancipated under the new law. This may involve the creation of a special needs trust. Experienced and skilled legal counsel is important here as there are various legal requirements in creating this type of instrument or even when petitioning the Court for this relief.

When planning support for a child with special needs, remember that it is important that asset and income guidelines for public benefits programs are followed. Put another way, support obligations, which disqualify the child, or later disabled adult, from public benefits, are not in the long-term best interests of that child or the parent.

Each emancipation case is reviewed based on individual facts and circumstances. It is important when dealing with these issues that you have legal counsel that can provide strong advocacy and knowledge surrounding the issue of child support and emancipation. This is even more important as the changes to the New Jersey statute will undoubtedly have an impact on properly negotiating and drafting settlement agreements and how one should properly navigate issues of child support and emancipation.

If you need an experienced divorce or family law attorney, please contact our office for a consultation.

For more information regarding special needs trusts, please see /practices/wills-trusts-estates-estate-planning/special-needs-trusts/.