



Law Notes



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COST-OF-LIVING ADJUSTMENTS IN CHILD SUPPORT OR SPOUSAL MAINTENANCE ORDERS¹

By Julie M. Pawluk

All child support and spousal maintenance orders are subject to cost-of-living adjustments to be applied every two years. This is different from an increase or decrease in the support or maintenance amount due to a substantial increase or decrease in either party's income or expenses. Rather, the cost-of-living adjustment is nearly automatic. However, it does require some action by the person receiving the support or maintenance in order to go into effect.

The person receiving the support or maintenance payments must send a notice to the person obligated to

make those payments (the "obligor"), requesting the cost-of-living adjustment. This notice must be sent to the obligor at the obligor's last known address at least 20 days before the date on which the adjustment would become effective. The notice must inform that person of the date on which the adjustment would become effective, the procedure for contesting such an adjustment, and the amount of the adjustment. When the obligor receives this notice, he or she then has 20 days in which to ask the court to stop the cost-of-living adjustment from going into effect. This is done by scheduling a hearing with the court, and serving and filing a motion contesting the cost-of-living adjustment. The person objecting must provide an appropriate reason to prevent the cost-of-living adjustment from going into effect. An example might be if the person paying the support or maintenance can show that they have not had a cost-of-living adjustment in their income since the date of the last support order. Once a motion has been served, the cost-of-living adjustment will be stayed (will temporarily not go into effect) until the court makes a decision on the obligor's objection to the adjustment. If the obligor does not request such a hearing, the cost-of-living adjustment will become automatic on the effective date.

The adjustment itself is based upon a cost-of-living index, which is specified by the court. For example,

in the Twin Cities the court could use the Consumer Price Index for All Urban Consumers, Minneapolis-St. Paul (CPI-U), the Consumer Price Index for Wage Earners and Clerical, Minneapolis-St. Paul (CPI-W), or another cost-of-living index published by the Department of Labor which it finds to be more appropriate. The adjustment becomes effective on May 1 of the year in which it is made, for cases in which payment is made to the public authority. For cases in which payment is not made to the public authority, a person may apply for an adjustment in any month, but no sooner than two years after the date of the divorce decree, and every two years thereafter.

While a cost-of-living adjustment is typically not a large amount (often only 4% to 5%), the cost-of-living increases are compounded. Thus, over the years it can result in a significant adjustment amount. For this reason, the adjustments should not be taken lightly by either party.

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Legal Trivia

In 1845 English law, attempting to commit suicide was considered a capital offense, punishable by hanging.

In Topeka, Kansas it is illegal for a person to install a bathtub in their own home.

CONSUMER RIGHTS¹

By Michael J. McNamara

Effective March 1, 2005, Minnesota residents (as well as residents of Illinois, Michigan, Wisconsin, and Nebraska) became entitled under the federal Fair and Accurate Credit Transactions Act to one credit report per year from each of the three major credit reporting companies.

Although a consumer could obtain a credit bureau report from each of the three major credit bureau reporting companies at the same time, consumer advocates recommend that the requests be staggered throughout the year with a separate request made of each company. The three major credit reporting companies are:

Equifax
P.O. Box 105873
Atlanta, GA 30348-5873
Telephone: 1-800-997-2493

Experian Information Solutions
P.O. Box 949
Allen, TX 75013-0904
Telephone: 1-888-397-3742

TransUnion
P.O. Box 390
Springfield, PA 19064-0390
Telephone: 1-800-916-8800

In an era of increasing “identity theft” it is increasingly important that consumers regularly check the accuracy of their reported credit histories. Only by doing so can consumers learn of inaccuracies and attempt to correct them.

Unfortunately, consumer harm caused even by the credit reporting agency itself may go uncompensated. For example, the United States Supreme Court ruled in 2001 that harm caused to a consumer by a credit reporting bureau releasing the consumer’s

credit history to an imposter could not be the basis for a claim by the consumer because a statutory two-year period barred the suit. The Court so ruled even though the consumer did not learn of the fraud within two years and *even though the statute itself provided for a two-year period to commence suit after first learning of the fraud.*²

Although it may be hard to enforce a consumer’s rights against the “Visas” and “Mastercards” of the world, consumers should have an easier time enforcing their rights against collection agencies when the consumer’s use of credit or checks has gone awry. When that occurs and a collection agency becomes involved, the federal Fair Debt Collection Practices Act provides the following protections to consumers:

Contact by the collection agent may occur only between 8:00 a.m. and 9:00 p.m. *unless the consumer otherwise agrees.* No contact may be made at work if the agent knows an employer forbids that contact.

Within five days of the first contact a collector must send a written notice to the consumer identifying the amount owed, the name of the creditor to whom the money is owed, and how to challenge the debt.

A collector may not harass, oppress, or abuse a consumer in attempting to collect a debt, nor may a collector threaten harm, use obscene or profane language, publish the names of consumers who refuse to pay their debts, or make repeated attempts by telephone to annoy a consumer.

Collectors may not imply that they are attorneys or government representatives, may not use any false or misleading statements in

order to attempt to collect the debt, may not imply or state that you have committed a crime by not paying the debt, may not falsely state that they operate or work for a credit bureau, or falsely indicate that papers being sent to you are not legal forms (the papers a collector sends you *are* legal papers/forms).

Collectors may not disclose personal information about you or the debt to third parties without your written consent.

If you believe a debt collector has violated any of the above requirements you can file a complaint with the Federal Trade Commission, the Minnesota Department of Commerce, or the Minnesota Attorney General.

The Minnesota Department of Commerce licenses collection agencies operating in Minnesota, whether they are based in Minnesota or elsewhere. That agency recently imposed a \$70,000.00 civil penalty against a Pennsylvania-based collection company for violating Minnesota collection law. As part of the settlement of the claim against the company, it also had to design and implement a compliance plan, approved by the Department of Commerce, that would assure no future violations. Violations by that company (Alliance One Receivables Management, Inc.) included falsely informing debtors that the debt had to be paid by telephone electronic transfer, by falsely informing debtors that a late fee could be added if they did not pay the debt by electronic telephone transfer, and by employing unlicensed collectors.

Conclusion: We should all closely monitor and control our spending while making every effort to avoid both “deficit” spending and poor bookkeeping.

We should also obtain our credit reports every four months. If we do find errors in our credit reports we should promptly contact the credit reporting company and see that a correction is made. If we nonetheless find ourselves being contacted on a debt, we should confirm the accuracy of the debt and protect our state and federal rights while paying a valid debt or challenging an invalid one.

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²TRW, Inc. v. Andrews, No. 00-1045, November 13, 2001.

Legal Trivia

In Britain if you wish to have a TV you must buy a license.

In the town of Normal, Illinois it is illegal to make faces at Dogs.

PROTECTING YOUR INTELLECTUAL PROPERTY IN TODAY'S HI-TECH WORLD¹

By Thomas R. Howard

In today's hi-tech, digital environment your intellectual property (IP) is more at risk than ever before. Some companies feel that they are not vulnerable to a theft or diversion of these assets, or that the confidentiality agreement some of their employees signed several years ago is all the protection that they need. When you consider that an employee, full-time, part-time, or temporary, could download your vendor list, client list, pricing list, marketing plans, or other confidential material in just a few minutes and walk out with all of that information on a CD-ROM, the need for additional IP protection becomes apparent.

Many companies do not use trade secret or confidentiality agreements, and even those that do will find themselves in a poor position in court if they ever try to enforce those agreements without additional protective efforts on their part. It is no longer enough to have an employee sign a confidentiality agreement and then try to use it if the employee leaves with your information on a disk or in his or her head. Recent cases, both in state and federal court, illustrate the importance of not only having up-to-date confidentiality agreements with everyone who has access to the company's confidential information, but make it incumbent upon employers who wish to protect their intellectual property to make additional proactive and ongoing efforts beyond those agreements to protect their company's intellectual assets. The use of confidentiality agreements should extend beyond your upper-level employees to independent contractors, part-time employees, and others such as temporary workers, who have access to your computers and company networks.

Existing confidentiality or secrecy agreements should be reviewed to make sure that they include provisions required by evolving case law, and procedures should be put into place to counteract increased accessibility to intellectual property and easier access to such information. In a Connecticut case, Pressure Science, Inc. v. Kramer, 413 F. Supp. 618 (D. Conn. 1976), the Court found that the "plaintiff's failure to require all employees working in a supposedly confidential area to sign a non-disclosure agreement evidenced a *fatal lack of concern for confidentiality*" (emphasis added). In a case that came down on the positive side for the employer, Josten's v. National Computer

Systems, Inc., 318 N.W.2d 691, 700 (Minn. 1982), the Court favorably noted in protecting the employer and in enforcing a confidentiality agreement, that the employer "specifically called the confidential nature of the work to each employee's attention in an individual confidential disclosure agreement each signed." Other cases demonstrate that a company must put into place procedures that indicate the company's on-going concern for the confidentiality of its important information.

If you have not updated your confidentiality or secrecy agreements with your employees or, if you have none, you should avail yourself of a review of any existing documents and schedule an "intellectual property protection inventory" to review your documents and procedures to maximize the protection of your intellectual property and to increase the likelihood that you would prevail in a court action against someone who improperly used or removed your intellectual property or confidential information. We would be happy to visit with you to review your agreements, policies, and procedures to make sure they measure up to current standards and provide you maximum protection for the information that is so vital to your company's business and future.

¹© Thomas R. Howard 2005.

Legal Trivia

Every Citizen of Kentucky is required by law to take a bath once a year.

In Michigan, it is illegal to chain an alligator to a fire hydrant.

LEGAL QUOTES

Lawyers have been known to wrest from reluctant juries triumphant verdicts of acquittal for their clients, even when those clients, as often happens, were clearly and unmistakably innocent.

Oscar Wilde

It is hard to say whether the doctors of law or of divinity have made the greater advances in the lucrative business of mystery.

Samuel Goldwyn

HEALTH CARE DIRECTIVES AND OTHER ESTATE PLANNING¹

By Chad E. Henderson

An enormous amount of media attention has been brought to bear on the Terry Schiavo case and the importance of having a Health Care Directive. In Minnesota, the actual legal document is a Health Care Directive, which was formerly known under earlier Minnesota Statute Sections as a Living Will or Health Care Declaration. If you have had such a document prepared in the past, it will still have legal effect. However, it is important to have the language reviewed to make sure the document still complies with your wishes. If you do not have a Health Care Directive you should schedule an appointment to discuss it with one of our attorneys.

A Health Care Directive is an essential part of any estate plan, which should also include a Will and/or Revocable Living Trust, and a Power of Attorney. The estate-planning topic will be discussed in greater detail in our next newsletter. In the meantime, please review your existing documents, if any, and call if you have questions or need to make an appointment.

As with any legal matter, you must obtain legal advice that is designed for your unique circumstances and you should not rely on information obtained from the Internet or other non-attorney sources. Without proper legal guidance, self-drafted documents can actually cause you to incur greater difficulty and additional legal expense. Our goal is to make sure our clients have proper estate-planning documents to avoid misunderstanding or confusion by other family members.

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Henderson, Howard, Pawluk & McNamara is a full service law firm with offices in Brooklyn Center, MN. We are committed to providing quality legal representation in the following areas:

- **BANKRUPTCY**
Individual and business.
- **BUSINESS LAW**
Corporations, partnerships, business organization, purchases, sales and mergers.
- **CRIMINAL LAW**
DWI, misdemeanor, traffic, license revocation, felony and juvenile matters.
- **FAMILY MATTERS**
Divorce, child custody, child support and post-decree actions, adoptions and paternity.
- **PERSONAL INJURY**
Automobile accidents, products liability, slip and fall, dog bite, and other accidents involving injury or death.
- **REAL ESTATE**
Residential and commercial, purchase agreements, property closings and title opinions.
- **WILLS AND ESTATES**
Wills and trusts, probate and estate administration, guardianships and elder law.

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