

2009 LEGISLATION ALERTS

DOMESTIC RELATIONS

CHILD SUPPORT

MEDICAL SUPPORT

ORS CH 25, 107.106, 416.448

2009 OR LAWS CH 351 (HB 2272)

HB 2272 amends ORS 25.323 to require that every child support order include a medical support clause that addresses the providing of private health care coverage. The bill also prohibits ordering a providing party to pay cash medical support or provide health care coverage if that party's income is equal to or less than the Oregon minimum wage for full-time employment.

HB 2272 also amends ORS 25.325 to require that the support enforcement agency issue a medical support notice to the providing party's employer if a child support order, with a medical support clause, is entered and support enforcement services are being provided. The bill amends ORS 25.333 to allow a party to contest a medical support notice on the grounds that the party's income is equal to or less than Oregon minimum wage for full-time employment.

Practice Tip: The bill also clarifies that a judgment that addresses medical support is a governing child support judgment. If a child support judgment requires a specific type of child support and the last-issued child support order is silent as to that type of child support, the requirement of the earlier-issued judgment continues in effect.

Effective date: January 1, 2010

SUSPENSION OF PRIVILEGES

ORS 25.750

2009 OR LAWS CH 209 (HB 2273)

HB 2273 amends ORS 25.750 to extend the license suspension provisions to apply to all support enforcement matters when child support payments are in arrears, regardless of whether it is in an ongoing case.

Effective date: January 1, 2010

*The amendments apply to all child support judgments and orders, whether entered **before**, **on**, or **after** the effective date.*

REFERRAL OF SUPPORT OBLIGATIONS TO DEPARTMENT OF REVENUE

ORS 25.610

2009 OR LAWS CH 210 (HB 2274)

Currently, an administrator may refer a support obligation to the Department of Revenue to collect from the obligor's income tax refund. If the children are receiving support enforcement services, the support enforcement service must be partly funded by Title IV-D of the Social Security Act, 42 USC 651 et seq. HB 2274 removes this requirement. The resulting effect is that the administrator may now request the Department of Revenue to collect past due child support from the obligor's tax refund, even if the child is receiving support enforcement services not funded by Title IV-D.

Practice Tip: This bill specifically addresses children in a closed custody facility of

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DISCLAIMER

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the Oregon Youth Authority (OYA), which is not partially funded by Title IV-D.

Effective date: January 1, 2010

PRESUMPTION OF INABILITY TO PAY
ORS 25.245 – 25.646, 107.135, 412.024,
416.415
2009 OR LAWS CH 80 (HB 2275)

HB 2275 amends ORS 25.245 to create a rebuttable presumption of inability to pay child support if a parent is eligible for and receiving funds from Temporary Assistance to Needy Families (TANF).

Effective Date: May 5, 2009

The amendments become operative on January 1, 2010.

FINANCIAL RESPONSIBILITY ORDERS
ORS 416.425
2009 OR LAWS CH 80 (HB 2275)

Currently, minimum child support payments are based on the assumption that an obligor parent can obtain at least a minimum wage job. This is not always a reality in many Oregon communities. HB 2275 addresses this presumption and amends ORS 416.425 to allow the Attorney General to declare a “period of significant unemployment.” The Support Enforcement Division then has authority to suspend or modify a support enforcement order for six months during such a “period of significant unemployment” if a party to the support order experiences an “employment-related change of income.” The suspension or modification order may be extended for additional six-month periods if the party’s original circumstances remain unchanged.

Effective date: May 5, 2009

ASSIGNMENT OF SUPPORT RIGHTS
ORS CH 25
2009 OR LAWS CH 352 (HB 2276)

HB 2276 creates a new statute requiring that support rights be assigned to the state before providing support enforcement services or the person seeking aid of the Support Enforcement Division must submit a signed application to the administrator. Furthermore, any support judgment providing for payment to the Department of Justice under ORS 25.020 must also incorporate such an application.

Effective date: January 1, 2010

PHYSICAL CUSTODY CHANGES
ORS 416.400 – 416.465
2009 OR LAWS CH 353 (HB 2277)

HB 2277 allows the Support Enforcement Division to modify a child support order based on a change in physical custody – either court-ordered or with the other parent’s consent – beyond parenting time and visitation. The bill permits a parent with physical custody to file a sworn affidavit to change the support order. The other parent may contest the affidavit by requesting a hearing.

Effective date: January 1, 2010

JUDGMENT REMEDIES FOR CHILD SUPPORT
ORS 18.180
2009 OR LAWS CH 354 (HB 2278)

HB 2278 amends ORS 18.180 by providing that judgments for child support expire after 35 years rather than 25 years.

Effective date: January 1, 2010

*The amendments apply to all judgments, whether entered **before**, on, or after the effective date, but they do not operate to revive any judgment remedies that expired before the effective date.*

ORDERS TO WITHHOLD
ORS 25.424
2009 OR LAWS CH 445 (SB 373)

SB 373 creates a private right of action, for both the obligor and obligee, against the withholding employer for failure to pay the Department of Justice as required by the withholding order. This bill supersedes *Arvidson v. Kurahashi*, 217 Or App 74, 81 (2007), which held that ORS 25.424 only provided a cause of action against a withholding employer for overwithholding, not for failure to pay the DOJ on time. . SB 373 also removes damages limitations by allowing the obligor or obligee to recover for any amounts improperly withheld and any damages as a result of a withholding violation. Such damages would include those alleged in *Arvidson* like having to pay late fees as a result of late support payments.

Effective date: January 1, 2010

The amendments do not apply to any amount that was withheld or paid under an order to withhold before the effective date.

DOMESTIC PARTNERSHIP

2007 OREGON FAMILY FAIRNESS ACT 2009 OR LAWS CH 561 (HB 2839)

HB 2839 amends several provisions of the 2007 Oregon Family Fairness Act (2007 Oregon Laws Ch 99). Section 2 clarifies that the prohibition against having another living partner, wife, or husband at the time of partnership does not apply to partners already registered in a different state and only seeking to register in Oregon. Additionally, sections 3 and 4 create a mechanism for domestic partners to change their surnames in a manner comparable to that provided for married persons.

Practice Tip: For the 2008 tax year only (and when eligible), section 6 provides that a taxpayer may subtract from his/her taxable income any health insurance benefit paid by the taxpayer's employer for the taxpayer's domestic partner.

Effective date: September 28, 2009

Sections 1 and 2 apply to declarations of domestic partnership entered into before, on, or after the effective date. Sections 3 and 4 become operative January 1, 2010. Section 6 applies to tax years beginning on or after January 1, 2008, and before January 1, 2009.

additional written findings when it determines, contrary to DHS, that placement with the relative is not in the child's or ward's best interest.

Effective date: January 1, 2010

The amendments apply to hearings held on or after the effective date.

MOTION TO INTERVENE ORS 419B.116

2009 OR LAWS CH 182 (SB 559)

SB 559 addresses an inconsistency between the elements that must be stated in a motion to intervene in ORS 419B.116(4) and the elements that must be proved by a preponderance of the evidence in order to prevail on such a motion in ORS 419B.116(5)(c). The bill amends ORS 419B.116(5)(c)(D) to require the intervener to show that the "existing parties cannot adequately present the case." This element is consistent with ORS 419B.116(4)(d). Previously, ORS 419B.116(5)(c)(D) required proof that "The existing parties cannot adequately protect the best interests of the child or ward without the intervention."

Effective date: January 1, 2010

The amendments apply to motions filed on or after the effective date.

JUVENILE LAW

"CAREGIVER RELATIONSHIP" WITH UNRELATED FOSTER PARENT ORS 419B.116

2009 OR LAWS CH 92 (HB 2050)

The establishment of a "caregiver relationship" with a child allows a person the right to file a motion to intervene in a juvenile dependency proceeding. ORS 419B.116(2). HB 2050 extends the time during which a relationship must exist between a non-related foster parent and child or ward from six months to twelve months.

Effective date: January 1, 2010

The amendments apply to nonrelated foster parent caregiver relationships commencing on or after the effective date.

CHILD NOT PLACED WITH RELATIVE ORS 419B.192

2009 OR LAWS CH 565 (HB 2897)

Under current law, the Department of Human Services (DHS) must make diligent efforts to place a child or ward with relatives or persons with a caregiver relationship. HB 2897 amends ORS 419B.192 to require the court to make

MISCELLANEOUS

MODIFICATION OF FAPA PROTECTIVE ORDER ORS 107.730

2009 OR LAWS CH 211 (HB 2310)

HB 2310 amends ORS 107.730 to allow a party or petitioner to request the court to modify FAPA orders for good cause by an ex parte motion.

Practice Tip: HB 2310 also expands the terms the court may modify to include (1) temporary order of custody to petitioner, (2) removal of respondent from petitioner's residence, (3) respondent's restraint from entering petitioner's residence, and (4) prohibiting contact between respondent and petitioner.

Effective date: January 1, 2010

The amendments apply to all protective orders issued under FAPA, whether issued before, on, or after the effective date.

**SERVICE OF LEGAL DOCUMENTS
ORS 107.718, 163.730
2009 OR LAWS CH 359 (HB 2311)**

HB 2311 clarifies that service of process or other legal documents does not violate a restraining or stalking order.

Effective date: January 1, 2010

Practice Tip: Service must be made as provided in ORCP 7 and 9.

**STATUTE OF LIMITATIONS IN CHILD ABUSE CASES
ORS 12.117**

2009 OR LAWS CH 879 (HB 2827)

HB 2827 amends ORS 12.117 to extend the statute of limitations for civil actions against the perpetrator of child abuse or an individual who knowingly allowed, permitted, or encouraged child abuse. The action must be commenced before the later of: (1) the date on which the person turns 40 (previously 24), or (2) five years (previously three years) from the date the person discovers or in the exercise of reasonable care should discover the causal connection between the child abuse and the injury.

Effective date: January 1, 2010

*The amendments apply to all causes of action, whether arising **before**, on, or after the effective date, except for a cause of action for which a judgment was entered before the effective date.*

**DE NOVO REVIEW
ORS 2.570, 19.360, 19.415, 183.650,
419A200, 421.628, 545.579
2009 OR LAWS CH 231 (SB 262)**

SB 262 provides that de novo review in equity cases (other than parental rights termination proceedings) is now discretionary, rather than automatic.

Effective date: June 4, 2009

The amendments to ORS 19.415 apply only to appeals for which a notice of appeal is filed with the court of appeals under ORS 19.240(3) on or after the effective date.

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