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Child Support Orders

In rapidly changing economic times, parents who have child support orders need to know their rights and obligations. Pennsylvania's system of child support collection is centralized in Harrisburg. You can learn about the system and access your own child support account at www.childsupport.state.pa.us.

Child support orders may be modified at the request of either party if the income of either party has changed substantially. Generally, the modification is retroactive to the date the modification request was filed in writing with the county domestic relations office. But, a Pennsylvania appellate court upheld a five year retroactive modification of an order, finding that a father had failed to disclose substantial salary increases over that five-year period of time. The father's monthly net income increased progressively from just over \$5,000 per month to over \$14,000 per month over the five-year period.

The Pennsylvania child support guidelines require that all parties to support orders must inform the local domestic relations office and the other party to the case in writing within seven days of any "material" changes to his or her circumstances. Material changes in circumstances include salary changes but also include changes in health insurance benefits, day care expenses, and any other issues that affect the support order at issue, such as a change of address or employer.

The Pennsylvania child support statute also requires that a party who knows of a change in the other party's income must promptly file for a modification. But, in the case of the father whose salary increased over five years, the court found that the mother did not know of his income changes and had not received any of the father's tax returns. The court disregarded the mother's failure to promptly request modification, simply because there was no evidence that the mother knew of the father's economic success.

Where a parent has any concrete reason to believe that the child support order should be changed, delaying moving for modification can be costly. Usually, the courts will not modify any child support orders retroactive to a date prior to the filing of the request for modification. But where a paying parent fails to meet his or her affirmative duty to disclose increased income to the local domestic relations office and the other parent, grounds may exist for broad retroactive modification of a child support order. Modification may be retroactive if significant physical or mental disability or another compelling reason precluded the petitioner from filing for modification if, when the petitioner was no longer precluded, he or she promptly filed the petition.

Calculation of Pension Payments

Private and government employers sometimes offer retirement incentives to move highly compensated senior employees into retirement and off the payroll. Some retirement incentive plans are designed to help employers identify their staffing needs. By rewarding employees who commit to a retirement date, the employer can plan ahead for its upcoming staffing needs.

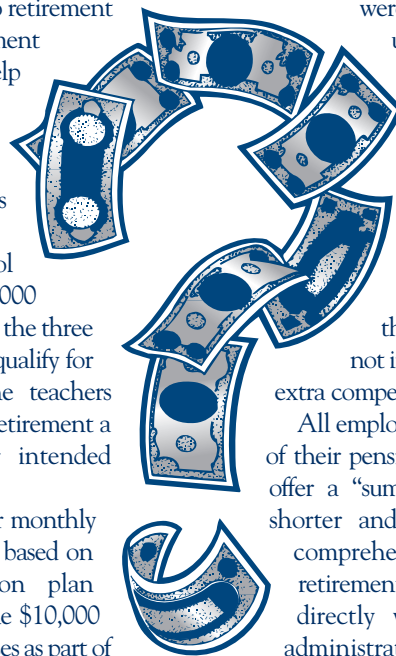
Recently, a Pennsylvania school district offered its teachers a \$10,000 bonus plus a 3.5% salary increase in the three years prior to their retirement. To qualify for the additional compensation, the teachers simply had to give notice of their retirement a full three years prior to their intended retirement date.

When the teachers retired, their monthly pension payments were calculated based on their salaries. But the pension plan administrator refused to include the \$10,000 payments or the 3.5% salary increases as part of their "salary" in calculating their monthly pension payments. The plan administrator decided

that the \$10,000 payments and the salary increases were more like "severance pay" than regular pay and were thus not part of the regular salary used in the pension payment calculation.

The teachers sued the pension plan and lost, with the court upholding the plan administrator's conclusions. Many pensions are calculated based on the final several years' salary of the employee. But each plan differs—the definition of salary may or may not include bonuses, overtime, and other extra compensation.

All employees are entitled to a complete copy of their pension plan documents. All plans also offer a "summary plan description" that is a shorter and more readable version of the comprehensive plan document. Prior to retirement, it is wise for pensioners to work directly with their employers and plan administrators to understand the precise method of calculation of their expected monthly pension benefit.



Roads Less Traveled

Pennsylvania's little known Private Road Act was created in colonial times. The Act gives the owner of a landlocked property the right to put a private road across adjacent property owned by someone else. Based on the assumption that all landowners must have access to public roads, the Act recognizes that a public benefit flows from the guarantee that all parcels of land will have access to public roads. The Act was created, and amended several times, during the period when land grants in the Pennsylvania wilderness abutted each other with no public or private roads identified. In modern times, the Act is not frequently used, since title searches and a long history of land development protect real estate purchasers from the troublesome discovery that their land is landlocked.

Recently, however, a western Pennsylvania man found that a parcel of land he owned had no road access. He sued under the Private Road Act to secure access to the closest public road by constructing a private road through the land of a nearby homeowners association and part of one residential lot.

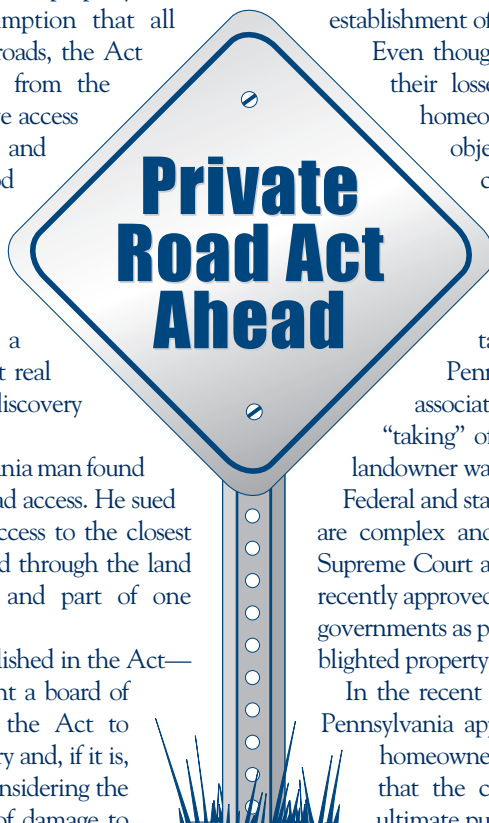
The man followed the procedure established in the Act—he petitioned the county court to appoint a board of examiners. Examiners are required by the Act to determine if the requested road is necessary and, if it is, to lay out the best ground for the road, considering the shortest distance and the minimization of damage to

the other landowner. The examiners are also charged with the duty of determining the loss in value to the landowner whose private property is “taken” for the establishment of the road.

Even though they were entitled to compensation for their losses, the homeowners association and the homeowner whose land was to be used for the road objected to the creation of the road. They challenged the constitutionality of the Act, claiming that no one's land should be taken without the owner's consent. They also raised objections that a taking of land should be limited to takings for public uses. Relying on the Pennsylvania Constitution, the homeowners association and the homeowner argued that the “taking” of their land for the benefit of one private landowner was unconstitutional.

Federal and state laws regulating the taking of private land are complex and often conflict. Both the United States Supreme Court and the Pennsylvania Supreme Court have recently approved the taking of “blighted” properties by local governments as part of redevelopment plans, even where the blighted property is then transferred to private owners.

In the recent case involving the Private Road Act, the Pennsylvania appeals court rejected the objections of the homeowners association and the homeowner, finding that the creation of a purely private road has an ultimate public benefit recognized by the Act.



Unemployment Compensation in Pennsylvania

Quitting your job usually means that you are not eligible for unemployment compensation. Employees who “voluntarily leave work” cannot collect unemployment benefits unless they can prove that they left for “necessitous and compelling reasons.” Just like the words sound, necessitous and compelling reasons do not arise from ordinary circumstances—only remarkable and unusual facts amount to necessitous and compelling circumstances.

In a recent Pennsylvania case, a full-time comptroller for a small corporation quit her job and won the right to unemployment benefits. The comptroller was promised health insurance benefits over an eight-month period, but the employer never actually gave her the benefits. Previous owners of the company had provided health insurance benefits. After the company was purchased by a new owner, benefits were terminated, and the new owner never managed to restore a benefit plan to the company employees. The comptroller finally quit, claiming that she found the terms and conditions of employment unacceptable, the lack of benefits unacceptable, and the workload unmanageable due to generalized stress, excessive hours, and lack of competent help.

The court did not address the comptroller's general concerns, finding instead that, because nearly eight months had passed without the new owner's reestablishing health insurance, the comptroller had shown a necessitous and compelling reason for quitting and, therefore, was eligible to collect unemployment benefits.

It is well settled Pennsylvania law that an employer's imposition of a substantial unilateral change in the terms of employment constitutes a necessitous and compelling cause for an employee to terminate his or her employment. What is “substantial” is always a question decided on the particular facts of each case. It is important to note that the comptroller's general dissatisfaction with her job conditions was not enough to support her claim for unemployment benefits. An employee's general unhappiness does not amount to necessitous and compelling circumstances. But when an investor buys a new business, or an existing employer considers making changes in the terms of employment, it is always possible that employees unhappy enough to quit may be awarded unemployment compensation.

Therapy for Private School Students

Disabled Pennsylvania school children can qualify for occupational therapy even if they choose to attend private school.

The Pennsylvania Supreme Court recently addressed this entitlement in a lawsuit brought by the parents of a kindergarten student who suffers from muscular and visual impairments. The local public school district evaluated the child and decided that he was “handicapped” and was therefore entitled to certain federally mandated services, which included “occupational therapy.” The therapy would have included one 30-minute session each week, with additional “teacher consultations and related accommodations.”

The child’s parents then enrolled the child in a private school, in part due to the fact that the private school offered full day kindergarten and the public school district did not. But in order

to qualify for the occupational therapy, the parents opted for a “dual enrollment,” enrolling the child in both the private school and the public school, with the intention that the child would actually attend the private school only. The public school then denied the occupational therapy services, claiming that they were only available to children “attending” the school.

On appeal, the Pennsylvania Supreme Court ruled in favor of the disabled child, ruling that enrollment is enough to qualify a student for certain federally mandated services for disabled students—and that the disabled student need not actually attend the school to qualify. In fact, as the court emphasized, the federal mandates actually require that public schools undertake actively to seek out and identify qualified handicapped students who are not enrolled and inform them and their parents of all of the services that are available to them.

Outlaw vs. Rule of Law

Recently, court documents were uncovered from a successful civil case involving some notorious nineteenth-century defendants who were better known for avoiding the legal consequences of their acts: Jesse and Frank James.

Not surprisingly, the case against the James brothers stemmed from one of their signature activities, a bank robbery. During an attempted bank robbery by the brothers in Gallatin, Missouri, in 1869, Jesse James killed a cashier. As the brothers made their getaway, Jesse was thrown from his horse, which he left behind in favor of doubling up on Frank’s horse. Soon thereafter, the brothers happened upon the unfortunate Dr. Smoote, who was also on horseback. Jesse relieved Smoote of his horse, at gunpoint, and continued the escape.

Smoote was not the first or the last victim of the James brothers, but he was unusual in then bringing, and winning, a lawsuit against them for the full value of the horse, saddle, and bridle that they had stolen.

One might expect the outlaws to have ignored the lawsuit altogether, but the brothers answered the lawsuit by arguing that they were not personally served with notice of it. Although a sheriff testified that he had delivered the papers to the James

family farm (pity the process server charged with serving a summons on Jesse James!), the case was dismissed on that technicality. That might have been the end of the litigation, were it not for Jesse’s decision to publish a letter in a newspaper declaring himself innocent of the holdup and murder.

Correctly pegging Jesse James as a newspaper reader, Smoote’s attorney cleverly won the court’s approval to file a notice of service in the classified section of a local newspaper, thus giving Dr. Smoote another bite at the apple. Again, through their attorney, the James brothers initially fought the lawsuit, but soon they withdrew from the suit and allowed a judgment to be entered against them for \$223. The judgment was satisfied when Smoote took possession of the horse which Jesse had left behind at the robbery.

Yes, Dr. Smoote had to endure the dreaded prospect of one day staring down the barrel of Jesse James’s weapon, but in dollars and cents he fared well.

The horse he now had, which Jesse had bought with cash gained from some of his successful robberies, was believed to have been from Kentucky racing stock and was valued at \$500 (a considerable sum for the time).



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Andrew P. Dollman Joins Staff

Andrew P. Dollman (Andy) has joined the staff of Johnson Duffie as an Associate. He practices general litigation with an emphasis on automobile and premises liability. He worked for Bankers Life and Casualty and Progressive Insurance before entering the legal profession.



Andrew P. Dollman

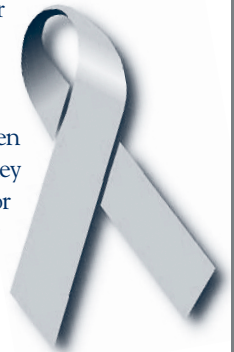
Andy is admitted to the bar of the Supreme Court of Pennsylvania and the United States District Court for the Middle District of Pennsylvania. He is a member

of the Cumberland County Bar Association, Dauphin County Bar Association and the Pennsylvania Bar Association.

Andy is a member of Mechanicsburg Brethren in Christ Church where he has served in various ministries. He resides in Mechanicsburg with his wife, Krista, and their three children, Jacob, Isaac and Madison.

Duffies Raise 20K for Breast Cancer

Megan Duffie Flor, an agent for Lawyers Realty, together with brothers Mark and Brian Duffie, walked 60 miles in three days for the Breast Cancer 3-Day, Susan G. Komen event in Philadelphia. In addition, they also hosted the 1st Annual Brews for Boobies at the Appalachian Brewing Company and the Annual Breast Cancer Tournament at Range End Golf Club. Their combined efforts raised over \$20,000 for breast cancer research and community outreach programs. Johnson Duffie and Lawyers Realty are proud of the siblings' important contribution to this worthwhile cause.



Thank You!

Thank you for choosing Johnson Duffie for your legal needs. We hope that you will continue to count on us when you need legal help. We are just a phone call away.

We also appreciate the trust that you have placed in our firm by referring your friends, family, and associates to us for legal services. Thanks!