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*Attorney Carmela M. Miraglia explores how enhanced federal unemployment benefits of \$600 per week impact child support obligations.*



With unemployment rising [to 15 percent and expected to hit 25 percent](#) before statistics begin to improve, [Americans have filed for unemployment benefits in unprecedented numbers](#). To help the average family make ends meet, Congress passed the CARES Act, which increased the weekly benefits individuals can receive if eligible for unemployment assistance.

The CARES Act provides an additional \$600 per week from the federal government on top of the base unemployment benefits that a

worker receives from the state. The additional payment can last up to four months, but it is currently scheduled to end on July 31, 2020. This extra money may have an impact on a non-custodial parent's [child support](#) obligations.

## Unemployment Benefits in the Age of the Coronavirus

In Massachusetts, [workers who are eligible for unemployment benefits](#) receive [approximately 50 percent of their lost income](#), subject to a maximum, or “cap,” of \$823 per week. They also get an additional \$25 per week for each of their dependent children. These benefits can last up to 30 weeks in Massachusetts, just over 6 months, or until the individual turns down an eligible job offer.

As millions of Americans were faced with the loss of work due to the novel Coronavirus, the federal government quickly passed legislation designed to

bolstered the unemployment system through the Coronavirus Aid, Relief, and Economic Security Act, also known as the CARES Act. This legislation added a flat \$600 per week to the unemployment benefits provided by states, [up to a maximum of 39 weeks](#).

In Massachusetts, unemployed workers who receive the state's maximum of \$823 per week in state unemployment assistance can receive a total of \$1,423 per week with the additional federal support of \$600 week. Annualized, this is a maximum of \$73,996, plus an additional \$1,300 in dependency benefits per child.

For some people, these augmented unemployment benefits are close to what they were making before they lost their jobs. For lower earning workers, however, the temporary unemployment income may exceed the employment income they were making prior to their job loss.

In either case, the change in income can affect a parent's child support obligations.

## Unemployment Benefits are Considered Income for Child Support

Child support obligations [are based on the parents "income."](#) What constitutes "income," though, is not always straightforward, especially for people who are not making a regular salary, or who have multiple streams of revenue.

In Massachusetts, however, the law is clear on this point: [Unemployment benefits are considered "income"](#) for the purpose of determining a child support obligation.

Although unemployment benefits are unquestionably income for child support purposes, the temporary nature of the \$600 per week in federal benefits creates some practical issues for child [support recipients](#) seeking a share. Among these concerns is that Massachusetts courts remain [closed for many non-emergency matters](#) through at least July 1, 2020 – and the federal CARES benefit is scheduled to end on July 31, 2020. If the federal supplement is extended beyond this date, it will improve recipients' chances to seek a share of the benefit as child support.

## Parents Who Have Lost Income from Unemployment

Most individuals who have lost their job or seen a significant reduction in their working hours (making them eligible for unemployment benefits), have seen a decrease in their income despite the robust unemployment package. The loss of income can put these parents in a bind. Without a [Complaint for Modification](#), their income will have dropped, but their child support payments will continue to stay the same and arrears will accrue. This can threaten the paying parent's financial well-being and their livelihood.

However, with [court closures during the coronavirus pandemic](#), filing a Complaint for Modification and scheduling a hearing for temporary orders can be a struggle. Massachusetts courts are allowing laid off parents to [file requests for child support reductions](#), but as of the date of this blog, few such non-emergency motions have been heard since the court system largely shutdown in mid-March. Accordingly, child support paying parents who have seen their income decrease have been required to wait anxiously for their chance in court. Presumably, upon reopening, Massachusetts courts will make child support reductions retroactive, at least to the date a parent's Complaint for Modification was filed or served, but until attorneys and litigants see this process in action, questions and concerns remain for parents who have experienced a job loss.

## Parents Who Get More Through Unemployment Than Their Old Job

The issue becomes even more complicated for support-paying parties who have been laid off but who are now receiving more income with their unemployment benefits than they did while gainfully employed. Unlike parents who have lost income, parents who have gained income through unemployment may not benefit by filing for a [modification to change their child support obligation](#), at least while the unemployment benefits continue.

Having lost their job, many parents may be tempted to file a Complaint for Modification immediately, on the grounds that federally boosted unemployment benefits are only temporary. As noted above, however, Massachusetts may be re-calculating child support retroactive to the date of the filing or service of the Complaint. For child support paying parents whose incomes actually *increased* after the layoff, such a retroactive order could result in a greater child support payment for the recipient.

(That said, many recipients are likely to find it procedurally and substantively challenging to properly plead a request for a retroactive increase in temporary

child support through the other party's Complaint for Modification. Such arguments are not impossible but are certainly tricky and fraught with pitfalls.)

For a typical child support paying parent, whose income temporarily increases due to enhanced unemployment benefits, the soundest strategy is likely to involve waiting until enhanced benefits end, or about to end, before filing their Complaint for Modification. Of course, complicating this strategy is the dysfunctional state of the U.S. Congress, which could easily vote to extend the enhanced benefits just as the July 31<sup>st</sup> deadline approaches – or even a week or two later. (Congress allowed the funds for another component of the CARES act, the Paycheck Protection Program, to run out, before voting to [extend and replenish the program](#) several weeks later.)

Under current Massachusetts law, retroactive child support reductions are not available for the [period prior to the filing of a Complaint for Modification](#). This will likely remain the case despite the Covid crisis. Accordingly, child support paying parents whose enhanced unemployment benefits have temporarily increased their income will need to think carefully about the timing of a Complaint for Modification. Wait too long, and the original child support order may stay in place for a period after the enhanced unemployment benefits expire. File too early, and the opposing party may seek a portion of those very same enhanced unemployment benefits in an order for a retroactive or temporary increase in child support.

## Enhanced \$600 Per Week Benefits Create Biggest Income Bump for Lowest Earners

The enhanced unemployment benefits under the CARES act are having the biggest impact on workers who earned less \$900 per week prior to the virus. These are the workers who are likely to be earning more in unemployment benefits than through their prior employment. Indeed, the lower a worker's income was prior to receiving unemployment benefits, the more disproportionately high his or her unemployment benefits will be, thanks to the CARES Act.

A worker with two dependent children earning \$200 per week through their employment prior to their layoff would likely receive \$750 per week in unemployment benefits (\$100 per week benefit rate through Massachusetts' unemployment, \$50 per week from the state for the two dependents, plus the \$600 per week from the federal CARES Act). That is a substantial difference that raises the stakes for child support payments.

Theoretically, the worker's artificially high unemployment income should be "easy pickings" for increased child support, but again, the timing here is key. If the recipient parent does not have the opportunity to ask for a share of the federal benefit until the program has expired – and the funds spent by the other parent – a judge may not retroactively divvy the benefit as child support, even if the recipient makes a procedurally perfect argument.

## Should Child Support Recipients File a Complaint for Modification Seeking Increased Child Support Based on the CARES Benefit?

As noted above, many child support-paying parents who receive more in unemployment than they were paid in their prior job are likely to delay filing a Complaint for Modification, at least until the enhanced benefit runs out. Does this mean that child support recipients should file their own Complaint for Modification, seeking an increase in child support, if they believe the other parent is receiving extra income through unemployment? Again, the answer is murky. The child support recipient faces the mirror image of many of the same timing issues that impact the paying parent. Even if the recipient files a timely Complaint for Modification, then properly pleads his or her request for a temporary retroactive increase, questions remain about whether judges will order retroactive sums after courts reopen, the CARES program ends, and the funds are spent.

If a child support paying parent files a Complaint for Modification seeking a reduction in child support through a Complaint for Modification, recipient parents may consider filing a Counterclaim for Modification seeking a retroactive payment based on the recipient's temporary increase in income. However, it is important for recipients to remember the broader economic context for such a filing. Even if the unemployment parent received a temporary windfall under the CARES act, that parent's fortunes may sink soon after, as the generous federal benefit is replaced with far stingier state benefits and the historic unemployment rate makes finding a new job difficult.

## The CARES Act is a Temporary Band Aid for a Bad Labor Market

While it may be easy to view unemployed parents who receive a temporary bump in income under the CARES Act as "lucky ducks" who have avoided

work while collecting increased income, we should remember that the federal benefit is temporary. The perceived “good times” for such workers will not last. Once the additional \$600 per week dries up, whatever temporary advantage that unemployment parents received through the program are likely to be quickly forgotten as the grim reality of long-term unemployment takes hold.

Indeed, if the state and national economy are unable to rebound strongly in the summer of 2020, the economic fallout for many parents will be severe by the fall. Just as enhanced unemployment benefits under the CARES Act are scheduled to end on July 31, 2020, many states are preparing to end rules that gave laid off workers a temporary reprieve from paying their monthly rent or mortgage, as well as temporary rules preventing evictions or foreclosures during the crisis. The combination of drastically reduced unemployment benefits, unpaid rent/mortgage payments and a wave of evictions could spell harsh times ahead for parents across the country.



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Carmela M. Miraglia  
Senior Associate Attorney

## More Coronavirus Coverage from Lynch & Owens

The attorneys of Lynch & Owens have been blogging about the impact of the coronavirus on divorce and family law issues, as well as Massachusetts Probate & Family Courts, since the earliest days of the pandemic. Our coverage has been featured in the [New York Times](#) and the [Boston Globe](#). Check out the links below for more Covid-19 coverage from Lynch & Owens.

### *Coronavirus Impacts on Family Law:*

- [Nine Ways to Plan for Divorce During Quarantine \(5/13/20\)](#)
- [Ask Our Attorneys: How has the Coronavirus Impacted Family Law in Massachusetts? \(5/6/20\)](#)
- [Coronavirus News: Enforcing Child Support and Alimony Orders During the Crisis \(4/7/20\)](#)
- [Massive Coronavirus Layoffs Trigger Child Support and Alimony Reductions Across MA and US \(3/19/20 with updates\)](#)

- [Coronavirus Court Closures: How Covid-19 is Shutting Courts in Divorce and Family Law Cases](#) (3/14/20 with updates)
- [Can Coronavirus Fears Allow Parents to Cancel Court-Ordered Visitation?](#) (3/2/20 with multiple updates)

#### *Massachusetts Probate & Family Court Updates:*

- [Coronavirus News: Mass. Probate & Family Courts Release Tidal Wave of New Rules](#) (4/9/20 with multiple updates)
- [Coronavirus News: County-by-County Info for Massachusetts Probate & Family Courts](#) (3/26/20 with multiple updates)
- [Massachusetts Trial Court Announces Comprehensive Response to Coronavirus for MA Courts](#) (3/15/20 with updates)

#### *Mediation and Coronavirus:*

- [Mediation is the Best Divorce Option During the Coronavirus Crisis](#) (4/15/20)
- [Court Filings and Covid-19: How to File Agreements in MA Probate & Family Courts During Crisis](#) (4/9/20)
- [Surviving Coronavirus: Video Mediation for Divorce and Family Law Issues](#) (3/19/20)

#### *Other media featuring Lynch & Owens and coronavirus:*

- [NY Times: For Divorced Parents, Navigating Coronavirus Is a Balancing Act](#) (3/27/20)
- [Boston Globe: For divorced couples with children, coronavirus creates added challenges](#) (4/10/20)

### **Coronavirus Related Legal Services at Lynch & Owens**

Lynch & Owens has adjusted our service delivery model in response to the coronavirus crisis. In addition to providing traditional divorce and family representation, during the outbreak, we are focused on delivering rapid-response legal services (including same-day service) to clients facing emergency financial and child-related issues, as well as assisting self-represented clients with document preparation and filings while the courts are closed for most regular business.

Clients can schedule same-day, 1-hour paid consultations with our attorneys by phone and we are accepting retainers as low as \$750 for additional consultation services. We are also offering same-day video mediation for parents, spouses and former spouses who are seeking to mediate coronavirus-related issues such as visitation, parenting time, and child support and alimony orders impacted by layoffs and unemployment. Our staff and attorneys have full remote access to all our office's resources in the event of mandatory quarantine or shelter-in-place order.

Please see our dedicated [Coronavirus Legal Services page](#) and [Coronavirus Mediation Services page](#) for more about services provided by Lynch & Owens and South Shore Divorce Mediation during the coronavirus crisis.

**About the Author:** [Carmela M. Miraglia](#) is a Massachusetts divorce lawyer and Cape Cod family law attorney for Lynch & Owens, located in [Hingham](#), Massachusetts and [East Sandwich](#), Massachusetts. She is also a mediator for [South Shore Divorce Mediation](#).

**Schedule a free consultation with [Carmela M. Miraglia](#) today at (781) 253-2049 or send [her an email](#).**

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