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## ***Coronavirus driven layoffs and job losses are triggering dramatic reductions in child support and alimony in Massachusetts and across nation.***



Treasury Secretary Steven Mnuchin has warned that the US unemployment rate [may jump to 20%](#) due to the coronavirus. In the first week of crisis, [7,000 Rhode Islanders](#) filed unemployment claims. The number was [10,000 in Connecticut](#). In Colorado, it was [20,000](#). In Massachusetts this week, [nearly 20,000](#) unemployment claims were filed in a *single day*.

For individuals paying (or receiving) [child support](#) or [alimony](#), a parent becoming

unemployed represents a huge financial blow. Unfortunately, with the [coronavirus](#) causing shutdowns and social distancing across the country, a massive jump in unemployment appears inevitable. With the snowballing layoffs and job loss comes an increasing demand for reductions in child support and alimony orders across the country.

## **When A Parent Paying Child Support or Alimony is Laid Off or Loses His or Her Job**

In normal times, a child support or alimony-paying parent who experiences a substantial loss in income will file a [Complaint for Modification](#) in his or her Probate and Family Court, often coupled with a Motion for Temporary Order seeking an immediate reduction in support. However, the coronavirus crisis has

effectively closed Probate and Family Courthouses to routine motions in Massachusetts, where [Standing Order 2-20](#) provides that most non-emergency motions and hearings have been automatically continued to May 1, 2020 or later.

In addition, the new Standing Order provides the following with respect to new filings:

*Except where matters are deemed essential and necessitate court action, parties shall file new matters by mail or e-filing where available. Filings will be docketed, but no event shall be scheduled before May 1, 2020.*

This lack of immediate access to the courts should not discourage child-support paying parents from taking some action following job loss. To the extent that new Complaints for Modification “will be docketed”, best practices suggest that a child-support paying parent who is laid off should file a Complaint for Modification as soon as possible. In Massachusetts, child support arrears can only be reduced or eliminated in [very rare and narrow circumstances](#). Although Massachusetts judges have [somewhat greater latitude to reduce alimony arrears](#), such relief is generally easier to achieve by individuals who file a Complaint for Modification immediately after losing their job.

The precise method for filing a Complaint for Modification during the coronavirus is likely to vary between individual courts, where Standing Order 2-20 provides:

*The First Justice and Register of each division shall (1) determine how pleadings will be filed; (2) designate essential staffing levels for specific days and times; (3) conduct hearings by videoconference or telephone; and (4) determine how judicial decisions will be communicated and served.*

To the extent that electronic e-filing is available for new modification actions, this is likely to be the preferred filing method, but again, different counties may approach filing issues differently.

## **Addressing Layoffs and Job Loss with the Recipient Parent**

As we have noted elsewhere in our blogs, litigants should always be careful about [what they say in text messages, emails and social media posts](#). In the context of a Complaint for Modification to reduce child support or alimony, any statements made to the opposing party may be used as evidence in an upcoming hearing. Nevertheless, there may be a greater price to pay for support payors who fail to offer respectful, accurate information to the support recipient following

a job loss. To the extent that the loss of child support or alimony could be financially catastrophic to the recipient, many judges expect support paying parties to act with decency, compassion and clarity by informing the recipient of the job loss and the impending financial difficulty.

The appropriate level of detail to share with a support recipient will vary from case to case. However, what almost never varies is the need for support-paying parents and former spouses to share this kind of difficult information with respect and compassion, even if the parties have had strained relations over the years. With the coronavirus crisis leaving Probate & Family Court judges uniquely powerless to influence most cases, it is likely that judges will pay close attention to how parents and former spouses behaved during the crisis, once regular hearings resume. A party who acts with decency and sensitivity towards the extremely difficult circumstances faced by the other party is far more likely to receive the benefit of the doubt from a judge in a future hearing.

In many instances, it will make sense for support-paying parents to inform recipients that they have to file a Complaint for Modification because of the job loss in sympathetic terms.

## **What Happens if Child Support Was Deducted from the Payor's Paycheck?**

In Massachusetts, many parents pay child support through “automated wage deduction” administered through the Massachusetts Department of Revenue (“DOR”). If the support-paying parent is laid off or otherwise loses his or her job, DOR-collected child support payments are likely to stop immediately. However, it is important for child support-paying parents to recognize that their child support obligation does not go away just because DOR no longer has a paycheck to draw from. Child support arrears will continue to accrue for the parent – with continued exposure for a Complaint for Contempt – until and unless a court orders a reduction.

In Massachusetts, child support paying parents can generally only obtain a retroactive reduction in child support going back to the date the party served his or her Complaint for Modification on the recipient. This is why it is so important for child support paying parents to file a Complaint for Modification immediately after losing their job. Although retroactive relief from child support is not *automatically* available going back to the date of the modification, the lack of immediate access to courthouses during the coronavirus crisis is likely to result in more judges ordering retroactive relief once courts re-open. Perhaps more

importantly, parents who fail to file a Complaint for Modification may lose the opportunity to seek retroactive relief at all.

## **Are Unemployment Benefits Subject to Child Support?**

The Massachusetts Child Support Guidelines include unemployment benefits as a source of income from which child support can be paid. Indeed, in many cases in which a parent becomes unemployed, child support is simply re-calculated under the Guidelines based on the amount of weekly unemployment the paying parent receives.

It is important to note that the federal government, as well individual states, appear to be reacting quickly to the impending employment crisis by beefing up unemployment benefits in a variety of ways. This might mean larger unemployment checks or faster processing time. As noted above, it is important for support paying parents to remember that their child support obligation is not automatically reduced because they begin receiving unemployment.

## **Don't Pay Nothing: Avoiding Pitfalls and Traps After Job Loss**

Litigants often ask attorneys, "how much support should I pay?" after experiencing a decrease in income. The right answer to this question varies from case to case. If a parent is truly broke, then paying any amount of child support may be impossible following a job loss. If a parent is receiving unemployment, continuing to pay the prior child support order may be impossible, but voluntarily paying an appropriate amount of his or her unemployment benefits as child support based on the Guidelines formula is often advisable.

What is almost never advisable for parents who have lost a job is to pay *nothing* to the other parent (unless the paying party can demonstrate through financial records that he or she is truly broke). Even a small weekly or monthly payment is almost always better than paying no child support at all when it comes to gaining the favor of your judge. Moreover, a child support recipient who is much more likely to cooperate if he or she feels that the paying party acted fairly following his or her job loss.

It is impossible to speak in absolutes when it comes to what steps support paying parties should take following a job loss. Every case has its own history, unique personalities and judge. In many cases, it will make sense for a parent who

experiences job loss to be transparent with the recipient about when the employment ended, when unemployment is likely to start, and how much of the unemployment benefit the recipient will receive as child support. In other cases, parties will need to be cautious about over-sharing detailed information.

## **Are There Major Differences Between Reducing Alimony and Child Support After Job Loss?**

In Massachusetts, available income for alimony is defined based on the Massachusetts Child Support Guidelines. Moreover, there is substantial overlap between caselaw when it comes to reducing child support and alimony following a loss in income. In both instances, support paying parties file a Complaint for Modification, and are likely to seek a Temporary Order reducing their support payment while the case is pending.

There are some differences between reducing child support and alimony, however. The Child Support Guidelines tend to be applied somewhat formulaically when it comes to reductions in income. In contrast, Massachusetts judges are somewhat more likely to consider an alimony payor's assets as a source of continued support, even if the payor's income has decreased. (So called "[surviving alimony orders](#)" are also largely immune to modification, while Massachusetts courts have generally held that parents cannot [permanently waive the right to modify child support](#) on behalf of children.) These differences are not hard and fast rules, however. Judges may also consider a payor's assets in child support cases, and the state's [Alimony Reform Act](#) allows judges to also [calculate alimony](#) in a somewhat formulaic way.

In general, modifications of child support and alimony are more alike than they are different. In either case, support paying parties are filing similar pleading and making similar arguments. Moreover, it appears that Massachusetts courts are delaying hearings for alimony and child support reductions in similar ways during the coronavirus.

## **Emergency Orders to Reduce Support During the Coronavirus Crisis**

Standing Order 2-20 provides that non-emergency hearings on matters including child support and alimony are automatically continued to May 1, 2020 or later. However, emergency hearings may be granted in cases including:

*Motions for temporary orders where exceptional/exigent circumstances have been demonstrated; and Contempt actions where exceptional/exigent circumstances have been demonstrated.*

What constitutes “exigent circumstances” is a question that Massachusetts attorneys will be aggressively pursuing in the weeks ahead. Moreover, even with the current restrictions, the public should recognize that attorneys will continue to work with courts to pursue alternate means of resolution. Unanswered questions include: Will judges be willing to decide certain issues based solely on written pleadings if both parties agree? Will judges enter written agreements negotiated by attorneys as orders, without the need for hearings?

Attorneys are a very industrious bunch. In Massachusetts, the Trial Court has moved aggressively to outline a plan that balances public safety with legal needs. In the weeks ahead, Massachusetts attorneys will get the chance to stretch their creativity in seeking solutions for clients, both through electronic interaction with the courts and outside of court, between attorneys. We are confident that the tools available to Massachusetts litigants will expand substantially in advance of May 1, 2020, even if Standing Order 2-20 remains in effect until that date.

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## **After the Coronavirus: Rush to the Courthouse to Reduce Support**

It is important for the public to understand that family courts (not just in Massachusetts, or even the US, but all around the *world*) are racing to find ways to service the public while limiting risks associated with crowds and in person hearings. It is important to recognize that court systems are quite likely to begin rolling out telephone and video hearing solutions well in advance of the crisis coming to end. In Massachusetts, non-emergency matters have been continued to May 1, 2020, but it would no be surprising if Courts began announcing the resumption of certain hearings and resources prior to May 1, 2020.

All that said, it seems clear that as soon as courts re-open – or begin offering phone or video hearings on a large scale – there will be a rush to the courthouse

by parents and former spouses seeking to reduce child support or alimony due to job loss. Amidst a crisis, it is easy for parties and attorneys to get tunnel vision. It can be difficult to plan for future events that we all know will occur when the crisis ends.

What we do know is this: Support-paying parties who experience job loss due to the coronavirus who take swift action will likely be rewarded, while those who wait for the crisis to end before taking mitigating steps may pay a steep price.

## **UPDATE (3/26/2020): Unemployment Claims Explode in Massachusetts and Nationwide**

As expected, unemployment claims have continued to explode in Massachusetts with [more than 148,000 filings](#) since the state imposed a mandatory shutdown of nonessential businesses on March 19, 2020. A [poll conducted between March 16 and 19](#) (i.e. more than a week ago) found that 55% of Massachusetts residents polled were already working remotely at that time, while 16% of respondents had already lost jobs and 28% had lost pay due to the crisis. Given that nearly 150,000 Massachusetts residents have filed for unemployment *since the poll was taken*, we can assume that current numbers would be far worse.

Nationwide, [3.3 million people appear to have filed for unemployment](#) in a single week, and there is every reason to believe these numbers will continue to skyrocket as states across the country impose orders shutting down most businesses. Disturbingly, the week's unemployment filings are more than quadruple the [previous record of 695 thousand filings](#) in March 2009 during the great recession.

Although the Congress has responded to the crisis with an [unprecedented \\$2 trillion relief bill](#), it is simply impossible for the government to replicate the level of economic activity that is being impacted by the virus.

## **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)



## A Message to Our Readers Outside of Massachusetts

As a Massachusetts law firm, much of the information provided in our blogs is tailored to Massachusetts law and practices. Although portions of this and our other [blogs covering coronavirus-related issues](#) are likely to be broadly applicable outside of Massachusetts, it is important to note that every state has its own specific body of law and domestic relations best practices that can differ from Massachusetts in important ways. The options available to individuals facing domestic relations concerns during the coronavirus outbreak may also be greatly impacted by [local court closures](#) and government restrictions that are specific to your area, such as state-mandated quarantine and shelter in place orders. Please consult with a legal professional in your state for guidance.

## 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.

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

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