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Retroactive Child Support in New Mexico Paternity Actions

In New Mexico, the district court retains jurisdiction over child support until the child is 18 and can continue past the age of 18 if the child is still in high school. The child support statute also allows either party to petition the court for a modification of child support when a change of circumstances has occurred that will result in an increase or decrease in child support of at least 20%. A motion modify child support may be filed with the district court that issued your original child support order.

The change in circumstances required to support a child support modification can be a variety of things, like one party losing their job, or getting a raise or the parties substantially changing their visitation schedule. If you are faced with a situation that you think will change your child support award, it is very important that file the motion to modify as soon as possible because the new child support award will only go back to the date the motion to modify was filed. For example, if a party loses their job in September but then waits to file a motion to modify until November, then the reduced child support amount will only apply from November on and the party will be responsible for paying the higher amount for September and October.

The only exception to this rule about retroactive child support applies when a party files a petition to establish paternity under the New Mexico Uniform Parentage Act. In that case, the Court can order child support back to the date of the child's birth, but not more than 12 years unless the court makes a finding that a paternity action could not have been filed before the child turned 12. When deciding the amount of retroactive child support and child support arrearages the Court will consider factors like the mother's ability to locate the father and any equitable defenses raised by the father. Whether a child support action is brought as a modification of an existing order or as a new award, parties to a child support action should seek legal counsel immediately.

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