

Presumption of Underemployment – Meaning of "One Hundred Sixty-Seven Times the Federal Hourly Minimum Wage" (IC-C0-00-10) October 31, 2000

Child Support Guidelines, N.D. Admin. Code § 75-02-04.1-07(2)(b)

When applying North Dakota's child support guidelines to determine if an obligor is underemployed, the question has arisen regarding whether the phrase "one hundred sixty-seven times the federal hourly minimum wage" refers to a monthly amount or to an amount for some other time period. The following information regarding N.D. Admin. Code § 75-02-04.1-07(2)(b) is intended to provide an answer to that question.

Question: Does the phrase "one hundred sixty-seven times the federal hourly minimum wage" refer to a monthly amount or to an amount for some other time period as it relates to the determination of whether an obligor is underemployed?

Answer: Monthly amount. A mathematical calculation reveals that someone who works full time (40 hours per week) for 50 weeks per year (allowing for two weeks of unpaid leave) would work 167 hours **per month:**

40 hours per week x 50 weeks per year = 2000 hours per year + 12 months = 167 hours per month

When 167 hours per month is multiplied by the federal hourly minimum wage, which is currently \$5.15 per hour, the result is \$860 per month. Therefore, pursuant to N.D. Admin. Code § 75-02-04.1-07(2)(b), a presumption of underemployment arises if the obligor earns less than \$860 per month. This provision lacks an explicit timeframe but implicitly means monthly income. Common references for pay amounts include amounts per hour, per week, per month, and per year. The calculation required by this provision is such that the result is unreasonable for any amount except per month. For example, \$860 per hour or per week is an unreasonably high standard for underemployment while \$860 per year is an unreasonably low standard for underemployment.

There are other indications that the phrase refers to a monthly amount. A very similar phrase, "one hundred sixty-seven times the hourly federal minimum wage," has been used elsewhere in N.D. Admin. Code § 75-02-04.1-07 since January 1, 1995. Specifically, N.D. Admin. Code § 75-02-04.1-07(3)(a) provides that one of the bases used to determine the amount of monthly gross income to be imputed to an obligor who is unemployed or underemployed is "(A)n amount equal to one hundred sixty-seven times the hourly federal minimum wage." When N.D. Admin. Code § 75-02-04.1-07 is read as a whole, it consistently refers to the calculation of monthly income. See subsections 4, 5, and 9 for examples. In addition, the use of monthly income is such a pervasive part of guidelines calculations that a reference to "income" is generally understood to mean "monthly income" unless another timeframe is specified.