



SUPERIOR COURT OF CALIFORNIA

COUNTY OF TULARE

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ABILITY TO EARN

Forms included in this packet:	
READ	This instructional packet
COMPLETE, FILE, & SERVE	Declaration of Earning Capacity
	Summary of Job Postings
	FL-302 – Earning Capacity Factors Attachment
FILE AFTER SERVICE	FL-330 – Proof of Personal Service
	FL-335 – Proof of Service by Mail

Ability To Earn

This is an instructional guide to filing your paperwork regarding the other parent's ability to earn. Read these instructions in its entirety before you start filling out your forms.

Completing Forms:

Fillable, printable pdf versions of the Judicial Council forms contained in this packet are available online at <https://www.courts.ca.gov/forms.htm>. You can type the forms and print them out for filing.

The local forms contained in this packet are available on the Tulare County Superior Court's website at: <https://www.tulare.courts.ca.gov/forms-filing/local-forms-information-filing-instructions>.

Self Help Resource Center:

If you do not have an attorney representing you, free assistance is available. Please contact the Self-Help Resource Center, also known as the Office of the Family Law Facilitator. The Self-Help Resource Center will provide instructions on how to complete the forms and how to properly serve notice on all the necessary parties. They can answer your procedural questions and explain the court process but **CANNOT** provide legal advice, represent you in court, or complete forms for you. The Self-Help Resource Center can be reached at (559) 737-5500 and selfhelp@tulare.courts.ca.gov, and offices are located at:

- County Civic Center: 221 S. Mooney Blvd., Room 203, Visalia CA 93291
- South County Justice Center: 300 E. Olive Ave., Porterville, CA 93257

Other Resources:

If you have further questions or concerns, you may wish to consult with an attorney or use the assistance of a paralegal or typing service. You may also conduct self-research at:

- California Courts' Self-Help website: <https://selfhelp.courts.ca.gov/>
- Tulare County Law Library: <https://tularecounty.ca.gov/lawlibrary/>
 - The Tulare County Law Library is located on the ground floor of the County Civic Center, and Law Library computer terminals are available in the Self-Help Resource Center in the South County Justice Center.
- Sacramento County Public Law Library: <https://saclaw.org/>

INSTRUCTIONS: ABILITY TO EARN

Generally, the Court must base a child support order on a parent's actual income. However, if the parent has little or no income, the Court may base a child support order on the parent's earning capacity, or ability to earn, by imputing income to the parent. California Family Code § 4058(b)(1)(B) states in part: "...the court may, in its discretion, consider the earning capacity of a parent, in lieu of the parents' income, consistent with the best interests of the children..."

"Imputing" means that when the Court is calculating child support, it uses the amount of money the parent **could earn** each month by working. The court can impute income to either parent or both parents.

IMPUTATION FACTORS:

For the Court to impute income to a parent, it must decide (or "find") that:

1. The parent has the **ability** to work,
2. The parent has the **opportunity** to work, and
3. Imputing income to one or both parents results in an order that is **in the best interest of the child or children**.

The imputed income must be based on the specific circumstances of the parent, and the court must consider several ability and opportunity factors (Family Code § 4058(b)(2)), including:

- Parent's assets
- Residence
- Employment and earning history
- Job skills
- Education
- Literacy
- Age
- Health
- Criminal record
- Record of seeking work
- Local job market
- Employers willing to hire
- Prevailing earnings
- Other relevant background factors or employment barriers

BURDEN OF PROOF:

The party who is asking the court to consider the other parent's earning capacity has the "burden of proof." This means they must prove the imputation factors to the Court that the other parent has the ability and opportunity to work, and that an order based on imputed income is in the children's best interest.

THE PROCESS:

All the forms you need to ask the court to impute income to the other parent are included in this packet, and detailed steps are provided below. The party starts this process by filing a **Declaration of Earning Capacity** with the Court stating the other parent's job qualifications, explaining their ability to work, and listing jobs within 50 miles of the other party's home that are both currently available and match the other party's qualifications. At the hearing the Court will review your declaration and job listings in deciding whether income should be imputed to the other party.

The Court can impute income even if the parent is not using their unemployment or underemployment just to avoid paying child support. However, if a party is unwilling to work even though there are appropriate jobs available, the Court can consider that fact in deciding whether to impute income in calculating child support.

STEP 1: LOOK FOR AVAILABLE JOBS

It is your responsibility to locate jobs that are currently available, and that you believe the other party is qualified for and able to perform, located within 50 miles of the other parent's place of residence. You can look for open job postings anywhere, but here are some suggestions:

- Newspaper want ads
- Indeed: <https://www.indeed.com/>
- Monster: <https://www.monster.com/>
- Employment Development Department: https://edd.ca.gov/en/Find_a_Job

STEP 2: COMPLETE YOUR FORMS

After you've found jobs that you believe the other parent is qualified for, start completing the following forms, included in this packet:

- Declaration of Earning Capacity
- Summary of Job Postings
- FL-302 – Earning Capacity Factors Attachment (*Optional*)

Declaration of Earning Capacity

- **Top of page:** Add your name, address, and phone number.
 - Select the appropriate box for court location.
 - Add the court case name and case number.
- **Middle of page:** Add your name and mark the appropriate box for Petitioner, Respondent, or Other Parent.
- **Items 1 through 5:** Enter details about the other parent's age, education, work history, job skills, and health.
- **Item 6:** Enter the date you searched for jobs, and add the source of those jobs.
- **Item 8:** Mark the box if you are attaching the **FL-302 – Earning Capacity Factors Attachment** (see below for additional information).
- **Bottom of page:** Add the date, print your name, and sign.

Summary of Job Postings

This form must be attached to the **Declaration of Earning Capacity** (see item 7).

- **Top of page:** Add the court case name and case number.
- Enter details of each job you found that you believe the other parent qualifies for, including: (1) Job title, (2) Employer name, (3) Experience required, (4), Duties, (5) Location, (6) Distance from the other party's residence, (7) Pay rate, and (8) Job start date.
- You ***MUST*** attach complete copies of the job postings included in your summary in order for the court to consider those jobs.
 - Each posting must include: location, part-time or full-time, hourly pay rate, necessary qualifications, and job requirements.

FL-302 – Earning Capacity Factors Attachment

This is an optional form that you may attach to the **Declaration of Earning Capacity**. It covers the specific circumstances of the other parent under Family Code § 4058(b)(2).

- **Very top of page:** Add the court case name and case number.
- **Top of page 1, under Attachment to:** Mark the box for **Other (*specify*)**, and enter ***Declaration of Earning Capacity***.
- **Item 1:** Add the name of the other party for whom the earning capacity factors are for.
 - Mark box (b), and mark the appropriate box for each party.
 - Enter the monthly income that you claim the other parent has the capacity to earn.
- **Item 2(a) through 2(o):** Enter as many details as you can regarding the other parent's special circumstances. This will assist the court in making findings regarding the other parent's earning capacity.

STEP 3: FILE YOUR FORMS

Once you have completed your forms, you need to make copies for yourself, the other parent, and the Department of Child Support Services (DCSS) if there is an open DCSS case.

- **If there is an open DCSS case:**
 - Return the original and copies of your forms to either DCSS office: In Visalia at 8040 W. Doe Ave., Visalia, CA 93291, (559) 713-5800, or in Porterville at 259 N. Main St, Porterville, CA 93257, (559) 713-5800.
- **If there is no open DCSS case:**
 - Return the original and copies of your forms to the Visalia Courthouse, Clerk of the Court, located at 221 S. Mooney Blvd, Room 201, Visalia, CA 93291, or the South County Justice Center, Court Clerk’s window, located at 300 E. Olive Ave, Porterville, CA 93257.

The clerk will keep the originals and give you back copies for you, the other parent, and DCSS (if needed).

STEP 4: SERVE YOUR FORMS

Now that you’ve filed your paperwork, you need to serve a copy of these documents on the other parent and DCSS if there is an open DCSS case. “Service” means someone 18 years or older, other than you, will deliver the forms to the other parent or DCSS in person or by mail. The person who serves the forms (called the “server”) must complete and sign the appropriate **Proof of Service** form, stating who, when, where, and how the service took place. The server will complete either form **FL-330 – Proof of Personal Service**, or form **FL-335 – Proof of Service by Mail**, and will list all forms that were served on the other parent.

STEP 5: FILE THE PROOF OF SERVICE

Make one copy of the completed **Proof of Service**. Return the original and copy of the **Proof of Service** to the Clerk of Court, at the same court location you filed your forms in Step 3. The clerk will give you back a copy of the **Proof of Service** for your records

STEP 6: ATTEND THE HEARING

Bring copies of all filed documents with you to the hearing. Both parties will have the opportunity to speak. After reviewing all evidence, the court will rule on your request to impute income to the other parent.

ATTORNEY OR PARTY WITHOUT ATTORNEY (<i>Name, State Bar number, & address</i>): TELEPHONE NO.: E-MAIL ADDRESS (<i>Optional</i>): ATTORNEY FOR (<i>Name</i>):	FOR COURT USE ONLY CASE NUMBER:
SUPERIOR COURT OF CALIFORNIA, COUNTY OF TULARE <input type="checkbox"/> County Civic Center: 221 S. Mooney Blvd., Visalia CA 93291 <input type="checkbox"/> South County Justice Center: 300 E. Olive Ave., Porterville, CA 93257	
PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	
DECLARATION OF EARNING CAPACITY	

I, _____, declare as follows:

I am the Petitioner Respondent Other Parent in this action. I have personal knowledge of the facts I am stating in this Declaration and if called to testify in court, I could and would competently and truthfully do so. I am filing this Declaration in support of my request for the court to make child support orders based on the other party's earning capacity. To the best of my knowledge, these are the accurate facts about the other party's ability to work:

1. Age: _____ Education: _____
2. Usual type of work: _____
3. Previous work experience: _____
4. Job skills: _____
5. Health: Excellent Good Fair Poor. Explain: _____
6. On (*date*) _____, I searched for listings for appropriate jobs within fifty (50) miles of the other party's residence. I searched the following sites:
 - Newspaper want ads in the following newspapers: _____
 - Indeed.com
 - Monster.com
 - Employment Development Department
 - Other (*specify*): _____
7. Attached to this Declaration is a *Summary of Job Postings*, and a **copy of each job posting**.
8. I have attached an *Earnings Capacity Factors Attachment* (Judicial Council form FL-302).

I declare under penalty of perjury under the laws of the State of California that the foregoing and the attached information is true and correct.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE OF DECLARANT)
 Attorney for Petitioner Respondent
 Other: _____

PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	CASE NUMBER:
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SUMMARY OF JOB POSTINGS
 (Attach to *Declaration of Earning Capacity*)

A copy of the job posting for each job listed below is attached:

1. Job title: _____ . Employer: _____ .
 Experience required: _____ .
 Duties: _____ .
 Location: _____ . Distance from other party's residence: _____ miles.
 Pay: \$ _____ per hour week month. Job start date: _____ .

2. Job title: _____ . Employer: _____ .
 Experience required: _____ .
 Duties: _____ .
 Location: _____ . Distance from other party's residence: _____ miles.
 Pay: \$ _____ per hour week month. Job start date: _____ .

3. Job title: _____ . Employer: _____ .
 Experience required: _____ .
 Duties: _____ .
 Location: _____ . Distance from other party's residence: _____ miles.
 Pay: \$ _____ per hour week month. Job start date: _____ .

4. Job title: _____ . Employer: _____ .
 Experience required: _____ .
 Duties: _____ .
 Location: _____ . Distance from other party's residence: _____ miles.
 Pay: \$ _____ per hour week month. Job start date: _____ .

5. Job title: _____ . Employer: _____ .
 Experience required: _____ .
 Duties: _____ .
 Location: _____ . Distance from other party's residence: _____ miles.
 Pay: \$ _____ per hour week month. Job start date: _____ .

6. Job title: _____ . Employer: _____ .
 Experience required: _____ .
 Duties: _____ .
 Location: _____ . Distance from other party's residence: _____ miles.
 Pay: \$ _____ per hour week month. Job start date: _____ .

7. Job title: _____ . Employer: _____ .
 Experience required: _____ .
 Duties: _____ .
 Location: _____ . Distance from other party's residence: _____ miles.
 Pay: \$ _____ per hour week month. Job start date: _____ .

PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	CASE NUMBER:
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EARNING CAPACITY FACTORS ATTACHMENT

Attachment to:

- | | |
|--|---|
| <input type="checkbox"/> Child Support Information and Order Attachment (form FL-342)
<input type="checkbox"/> Request for Order (form FL-300)
<input type="checkbox"/> Judgment Regarding Parental Obligations (form FL-630)
<input type="checkbox"/> Notice of Motion (form FL-680) | <input type="checkbox"/> Summons and Complaint or Supplemental Complaint Regarding Parental Obligations (form FL-600)
<input type="checkbox"/> Declaration for Amended Proposed Judgment (form FL-616)
<input type="checkbox"/> Other (specify): |
|--|---|

This form is intended to be used for considering the earning capacity of one party. Attach a separate form FL-302 for each party whose earning capacity needs to be considered.

1. Earning capacity factors for (enter name of party): **under Family Code section 4058(b).**

- a. **Attachment to judgment or court order (to be completed by court only).**
 The court determines that petitioner respondent other parent/party has the capacity to earn \$ _____ per month. This determination is in the best interests of the children, taking into consideration their overall welfare and developmental needs, and the time that parent spends with the children. The factors the court considered are listed below in item 2.
- b. **Attachment to request (to be completed by party).**
 Petitioner Respondent Other parent/party request the court determine that the petitioner respondent other parent/party has the capacity to earn \$ _____ per month.
 This request is in the best interests of the children, taking into consideration their overall welfare and developmental needs, and the time that parent spends with the children. The factors that the court is being asked to consider are listed below in item 2.

(If this form is attached to a request or declaration that is made under penalty of perjury, all statements in this attachment are made under penalty of perjury.)

2. Specific circumstances.

The specific circumstances of the parent that demonstrate why the parent has the capacity to earn the amount listed in item 1 are (specify all that apply):

- a. The parent's assets (describe):

PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	CASE NUMBER:
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2. b. The parent's residence (*describe*):

c. The parent's employment and earnings history (*describe*):

d. The parent's job skills (*describe*):

PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	CASE NUMBER:
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2. e. The parent's education (*check all that apply*):

- (1) Parent completed high school or the equivalent.
- (2) Parent attended college.
 - (a) Number of years of college completed (*specify*):
 - (b) Degree obtained, if any (*specify*):
- (3) Parent attended graduate school.
 - (a) Number of years of college completed (*specify*):
 - (b) Degree obtained, if any (*specify*):
- (4) Parent has a professional or occupational license (*specify*):
- (5) Parent has vocational training (*specify*):
- (6) Other (*describe*):

f. The parent's ability to read and write (*check all that apply*):

- (1) Parent is unable to read write.
- (2) Parent is able to read write in English.
- (3) Parent is able to read write in another language (*specify*):
- (4) Other (*describe*):

g. The parent's age (*describe*):

h. The parent's health (*describe*):

PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	CASE NUMBER:
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2. i. The parent's employment barriers due to incarceration (*describe*):

j. The parent's other employment barriers (*describe*):

k. The parent's record of seeking work (*describe*):

l. The local job market (*describe*):

PETITIONER: RESPONDENT: OTHER PARENT/PARTY:	CASE NUMBER:
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2. m. The availability of employers willing to hire the parent (*describe*):

n. The average earnings in the local community (*describe*):

o. Other relevant background factors affecting the parent's ability to earn (*describe*):

ATTORNEY OR PARTY WITHOUT ATTORNEY OR GOVERNMENTAL AGENCY (under Family Code, §§ 17400, 17406) <i>(Name, State Bar number, and address).</i> TELEPHONE NO.: _____ FAX NO.: _____ ATTORNEY FOR <i>(Name)</i> : _____	FOR COURT USE ONLY CASE NUMBER: _____ <i>(If applicable, provide):</i> HEARING DATE: _____ HEARING TIME: _____ DEPT.: _____
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	
PROOF OF PERSONAL SERVICE	

1. I am at least 18 years old, not a party to this action, and not a protected person listed in any of the orders.
2. Person served *(name)*:
3. I served copies of the following documents *(specify)*:

4. By personally delivering copies to the person served, as follows:
 - a. Date: _____ b. Time: _____
 - c. Address: _____

5. I am

<ol style="list-style-type: none"> a. <input type="checkbox"/> not a registered California process server. b. <input type="checkbox"/> a registered California process server. c. <input type="checkbox"/> an employee or independent contractor of a registered California process server. 	<ol style="list-style-type: none"> d. <input type="checkbox"/> exempt from registration under Business & Profession Code section 22350(b). e. <input type="checkbox"/> a California sheriff or marshal.
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6. My name, address, and telephone number, and, if applicable, county of registration and number *(specify)*:

7. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
8. I am a California sheriff or marshal and I certify that the foregoing is true and correct.

Date:

_____ _____
 (TYPE OR PRINT NAME OF PERSON WHO SERVED THE PAPERS) (SIGNATURE OF PERSON WHO SERVED THE PAPERS)

ATTORNEY OR PARTY WITHOUT ATTORNEY <i>(Name, State Bar number, and address):</i> TELEPHONE NO.: _____ FAX NO. <i>(Optional):</i> _____ E-MAIL ADDRESS <i>(Optional):</i> _____ ATTORNEY FOR <i>(Name):</i> _____	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PETITIONER/PLAINTIFF: RESPONDENT/DEFENDANT: OTHER PARENT/PARTY:	CASE NUMBER: <i>(If applicable, provide):</i> HEARING DATE: HEARING TIME: DEPT.:
PROOF OF SERVICE BY MAIL	

NOTICE: To serve temporary restraining orders you must use personal service (see form FL-330).

1. I am at least 18 years of age, not a party to this action, and I am a resident of or employed in the county where the mailing took place.
2. My residence or business address is:

3. I served a copy of the following documents *(specify)* :

by enclosing them in an envelope AND

- a. **depositing** the sealed envelope with the United States Postal Service with the postage fully prepaid.
- b. **placing** the envelope for collection and mailing on the date and at the place shown in item 4 following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

4. The envelope was addressed and mailed as follows:

- a. Name of person served:
- b. Address:

- c. Date mailed:
- d. Place of mailing *(city and state)*:

5. I served a request to modify a child custody, visitation, or child support judgment or permanent order which included an address verification declaration. *(Declaration Regarding Address Verification—Postjudgment Request to Modify a Child Custody, Visitation, or Child Support Order (form FL-334) may be used for this purpose.)*

6. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

_____ _____
 (TYPE OR PRINT NAME) (SIGNATURE OF PERSON COMPLETING THIS FORM)