UPDATED!

CHARTING INCOME AND IMPUTATION TERRITORY

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This updated second installment of our chart series[1] is intended to aid your law practice by providing a handy reference – this time for questions about imputation and income available for support. What categories of income are available for child support and spousal support? For example, how do stock options factor into a support analysis? When and to what extent can a court impute income based on earning capacity or investment assets? The rules are certainly difficult to keep straight. This roadmap is designed to jog one's memory of the legal framework governing imputation and income available for support, serving as a springboard to deeper legal research.

The first version of this chart was previously published in the Winter 2009 issue of the ACFLS Newsletter. Since submission of that version, two noteworthy opinions were published in early 2009 that affect the issues of imputation and income available for support. Namely, in *Marriage of Berger* (2009) 170 Cal. App.4th 1070, the Fourth District held that the trial court erred in failing to consider a parent's deferred salary from a start-up company when ordering child support. Then, in *Marriage of Alter* (2009) 171 Cal.App.4th 718, the Sixth District held that courts may consider recurring cash gifts to a parent as income available for child support. What follows is a revised version of our original chart with those two new cases incorporated.

1 Our first chart, "Charting Reimbursement Territory," was published in the Summer 2007 issue of the Newsletter of the Association of Certified Family Law Specialists.

Child Support[2]

Topic	Income Available for Support?	Extent	Exceptions/Limitations	Not Examples	Examples
1. Self-Employment Income	Yes. FC §§ 4060, 4064.	Amount that reflects a fair and representative sampling of past income with the goal of having a reasonable predictor of what each parent will earn in the immediate future. *Marriage of Riddle* (2005) 125 Cal.App.4th 1075, 1081-1082; *County of Placer v. Andrade* (1997) 55 Cal.App.4th 1393, 1396.	Court must arrive at a stable number, even if income does fluctuate from month to month. *Marriage of Hall* (2000) 81 Cal.App.4th 313, 317-318. Court can adjust child support order as appropriate to accommodate seasonal or fluctuating income of either parent. FC § 4064.	A 2-month average of self-employment income is too short a sample in fluctuating financial market. *Marriage of Riddle* (2005) 125 Cal.App.4th 1075, 1083.	Averaging a 12-month period of time of self-employment income is usually appropriate in most cases. *Marriage of Riddle* (2005) 125 Cal.App.4th 1075, 1083.
2. Stock Options	Yes. *Marriage of Cheriton and Fraser* (2001) 92 Cal.App.4th 269.	Employee parent may realize income upon the exercise of stock options, or, at the very latest, when the stock is sold. *Marriage of Cheriton and Fraser* (2001) 92 Cal.App.4th 269, 288.	Cannot exceed family's standard of living. *Marriage of Kerr* (1999) 77 Cal.App.4th 87.	Vested but not exercised stock options. No California case has reached this issue. An Ohio case has held that appreciation in the value of a parent's unexercised but exercisable stock options may be imputed as income for child support. *Murray v. Murray* (Ohio App. 1999) 128 Ohio App.3d 662, 668-670.	Based on realized income. *Marriage of Kerr* (1999) 77 Cal.App.4th 878. Includable even if sporadic or parent is no longer receiving stock options from employment. *Marriage of Cheriton and Fraser* (2001) 92 Cal.App.4th 269, 287. (Courts may deal with sporadic nature by adjusting child support under FC §§ 4060 or 4064.)
3. Potential Employment/ Earning Capacity	Yes. FC §§ 4058(b), 4053(d).	Based on the ability and opportunity to work. *Marriage of Bardzik* (2008) 165 Cal.App.4th 1291, 1302; *Marriage of Destein* (2001) 91 Cal.App.4th 1385, 1391-1392; *State of Oregon v. Vargas* (1999) 70 Cal.App.4th 1123, 1126. "Bad faith" not a prerequisite. *Marriage of Destein* (2001) 91 Cal.App.4th 1385, 1391-1393. Court has discretion to consider parent's earning capacity "in lieu" of income but must consider children's best interests. FC § 4058(b); *Marriage of Mosley* (2008) 165 Cal.App.4th 1375. Earning capacity may be added to parent's unearned income (e.g., disability benefits, trust or royalty income, pension investment distributions). *Stewart v. Gomez* (1996) 47 Cal.App.4th 1748, 1754; *Marriage of Dacumos* (1999) 76 Cal.App.4th 150, 152.	Imputation of earned income must be based on actual evidence, not drawn "from thin air." *Marriage of Cohn* (1998) 65 Cal.App.4th 923, 931; *Marriage of Hubner* (2001) 94 Cal.App.4th 175, 187; *Marriage of Berger* (2009) 170 Cal.App.4th 1070. In a modification, moving party has the burden of showing ability and opportunity to earn imputed income (or lack thereof). *Marriage of Bardzik* (2008) 165 Cal.App.4th 1291, 1304. Moving party not required to prove that other party would have gotten a job. *Id.* at 1305. Limitation in certain public assistance reimbursement cases. Guideline child support reimbursement order cannot be based on employment earning capacity of single nonworking parent who is primary caretaker for a very young child. *County of Yolo v. Garcia* (1993) 20 Cal.App.4th 1771, 1777-1780.	Can't impute income after parent's termination for misconduct unless address opportunity to work and assets available to pay support. *Marriage of Eggers* (2005) 131 Cal.App.4th 695, 701. For incarcerated parent, can't impute income unless show parent's ability and opportunity to work in prison, regardless of nature of parent's crime. *Marriage of Smith* (2001) 90 Cal.App.4th 74; *State of Oregon v. Vargas* (1999) 70 Cal.App.4th 1123. But see, *Brothers v. Kern* (2007) 154 Cal.App.4th 126. Simply showing what someone earned before retiring is not sufficient evidence for imputation. *Marriage of Bardzik* (2008) 165 Cal.App.4th 1291, 1308.	Ex-wife could not choose to pursue her education and spend more time with her children to avoid her obligation to contribute financially to their support. MSA granting mother that choice unenforceable as a matter of law. *Marriage of LaBass & Munsee* (1997) 56 Cal.App.4th 1331. Father's deferred income may be considered as actual income; parent cannot minimize earnings by investing in business while living off substantial assets. *Marriage of Berger* (2009) 170 Cal.App.4th 1070. May even impute earning capacity income based on potential employment to unemployed parent with significant passive investment income. *Marriage of Dacumos* (1999) 76 Cal.App.4th 150, 152; *Kern v. Castle* (1999) 75 Cal.App.4th 1442, 1456. Types of evidence of ability: resume, education, past job performance, past earnings, expert testimony, vocational examination, spouse's testimony. Types of evidence of opportunity: want ads, employment agencies, witness testimony, letters from previous employers, pay scales of available jobs. *Marriage of Bardzik* (2008) 165 Cal.App.4th 1291, 1307.

2 For the purpose of determining child support, "income" is generally defined as the gain or recurrent benefit that is derived from labor, business, or property or from any other investment of capital. *Marriage of Rothrock* (2008) 159 Cal.App.4th 223. Although the statutory child support guideline (Fam. Code § 4058) specifically lists more than a dozen possible income sources for parents, that list is not exhaustive but rather illustrative. Income from other sources should properly be factored into the annual gross income calculation. *Marriage of Williams* (2007) 150 Cal.App.4th 1221. Yet, while expansive, the language of Fam. Code § 4058 is not limitless and generally includes money actually received as opposed to unrealized increases in the value of assets. *Marriage of Pearlstein* (2006) 137 Cal.App.4th 1361, 1372.

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Topic	Income Available for Support?	Extent	Exceptions/Limitations	Not Examples	Examples
4. Ability to Earn from Assets	Yes. *Marriage of Dacumos* (1999) 76 Cal. App.4th 150, 154-155.	Court can consider parent's ability to generate income from income-producing assets and may even impute reasonable rate of return to historically non-income-producing investment assets. *Marriage of Dacumos* (1999) 76 Cal.App.4th 150, 161; *Marriage of Destein* (2001) 91 Cal.App.4th 1385, 1393-1396.	Distinguish assets from income. Assets themselves do not factor into the guideline formula. However, the child support formula may be adjusted upwards to reflect a parent's assets, based on a finding of "special circumstances." *Marriage of Loh* (2001) 93 Cal.App.4th 325, 332; *Marriage of de Guigne* (2002) 97 Cal.App.4th 1353, 1363.	Investment principal, as opposed to investment income. *Marriage of Reynolds* (1998) 63 Cal. App.4th 1373, 1380. Liquidation of preexisting assets. *Mejia v. Reed* (2003) 31 Cal.4th 657, 670.	Interest income is included. *Brothers v. Kern* (2007) 154 Cal. App.4th 126. Imputed rental property income. *Marriage of Dacumos* (1999) 76 Cal. App.4th 150, 154-155. Imputed hypothetical rate of return on certain non-income-producing real estate. *Marriage of Destein* (2001) 91 Cal.App.4th 1385, 1393-1396.
5. Real property	Yes. *Marriage of Dacumos* (1999) 76 Cal. App.4th 150.	If a rentable property, imputed rental income determined by considering both the fair market rental value and the net equity in the real property. Unknown how value exactly determined. *Marriage of Dacumos* (1999) 76 Cal.App.4th 150, 155.	Depreciation of rental property may not be deducted from "annual gross income" in calculating child support. *Asfaw v. Woldberhan* (2007) 147 Cal.App.4th 1407.	Cannot impute rate of return to equity in parent's residence absent showing of "special circumstances" under FC § 4057. *Marriage of Williams* (2007) 150 Cal.App.4th 1221, 1244. Increase in equity value of a parent's residence. *Marriage of Henry and Reismueller* (2005) 126 Cal.App.4th 111, 118-119. Rental value of parent's mortgage-free, personal residence, but could justify deviation from guideline as special circumstance. *Marriage of Schlafly* (2007) 149 Cal.App. 4th 747, 759-760.	Monthly rental income received from a roommate is income for support purposes. *County of Orange v. Smith* (2005) 132 Cal.App. 4th 1434. Income can be attributed to non-income producing real estate, too. *Marriage of Destein* (2001) 91 Cal. App.4th 1385. Reasonable rental value of rent-free housing related to employment benefit or Indian reservation housing benefit. *Stewart v. Gomez* (2006) 47 Cal.App.4th 1748, 1755.
6. Realized Capital Gain from Stock	Yes. *Marriage of Pearlstein* (2006) 137 Cal.App.4th 1361.	Gains from stock can be included to the extent they are realized. *Marriage of Pearlstein* (2006) 137 Cal.App.4th 1361, 1375-1376.	Does not cover gains that are reinvested into other capital assets. *Marriage of Pearlstein* (2006) 137 Cal. App.4th 1361, 1375-1376.	If stock is reinvested, not considered for support. *Marriage of Pearlstein* (2006) 137 Cal.App.4th 1361, 1375-1376. If stock is sold *only* for the purpose of reinvesting the proceeds in income-producing assets, the proceeds are not income. *Marriage of Pearlstein* (2006) 137 Cal.App.4th 1361, 1375-1376.	If stock proceeds are spent or not reinvested, they can be considered for support. *Marriage of Pearlstein* (2006) 137 Cal.App.4th 1361, 1376.
7. Unrealized Increases in the Value of Assets	No. *Marriage of Pearlstein* (2006) 137 Cal.App.4th 1361, 1372.	N/A	Provided the capital assets remain unliquidated, the court's discretion is limited to imputing a reasonable rate of return to those assets. *Marriage of Pearlstein* (2006) 137 Cal. App.4th 1361, 1377.	Market value of unsold shares of stock received by a parent in connection with the sale of a business not income available for support. *Marriage of Pearlstein* (2006) 137 Cal.App.4th 1361, 1375.	Cash proceeds from the sale of a business considered income – even if proceeds spent. *Marriage of Pearlstein* (2006) 137 Cal.App.4th 1361, 1376. Sale transactions deliberately structured to minimize realized income may be treated as income. *Marriage of Pearlstein* (2006) 137 Cal.App.4th 1361, 1375.

Topic	Income Available for Support?	Extent	Exceptions/Limitations	Not Examples	Examples
8. Lottery Winnings	Yes. *County of Contra Costa v. Lemon* (1988) 205 Cal. App.3d 683.	The lump sum is considered income available for support, as opposed to just the interest attributable to the lump sum. *County of Contra Costa v. Lemon* (1988) 205 Cal.App.3d 683, 688, fn. 5.	Possibly limited to government support cases or where exclusion would result in support below the minimum public assistance standard. *Kern v. Castle* (1999) 75 Cal.App.4th 1442, 1450-1451; *County of Contra Costa v. Lemon* (1988) 205 Cal.App.3d 683, 688; Welf. & Inst. Code, § 11452.		Gambling winnings fall within traditional concept of income as return on investment capital. *Marriage of Scheppers* (2001) 86 Cal.App.4th 646, 651; *Marriage of Heiner and Chandler* (2006) 136 Cal.App.4th 1514, 1521.
9. Gifts/ Inheritance	No, unless recurring gifts of cash. *Marriage of Alter* (2009) 171 Cal.App.4th 718; *Marriage of Scheppers* (2001) 86 Cal. App.4th 646; *Kern v. Castle* (1999) 75 Cal.App.4th 1442, 1453; *Marriage of Schulze* (1997) 60 Cal. App.4th 519, 529.	However, inheritance can be considered to the extent it reduces a party's living expenses. *Kern v. Castle* (1999) 75 Cal. App.4th 1442, 1451; FC § 4058(a)(3).	Are includable under *exigent* circumstances: (1) Public assistance cases. *Kern v. Castle* (1999) 75 Cal.App.4th 1442, 1451. (2) Low-income obligor living off parents' wealth. *Marriage of Schulze* (1997) 60 Cal.App.4th 519, 530. Should not be factored into the guideline formula but used as a formula support rebuttal under FC § 4057(b)(5). *Marriage of Loh* (2001) 93 Cal.App.4th 325, 335-336.	Rent subsidy in form of free housing from a parent not income available for support. *Marriage of Schulze* (1997) 60 Cal.App.4th 519, 529; *Marriage of McQuoid* (1991) 9 Cal. App.4th 1353, 1360. But see *Stewart v. Gomez* (1996) 47 Cal. App.4th 1748, 1754-1755 (court considered as income reasonable value of father's rent-free housing on Indian reservation). Even recurrent gifts are arguably not includable as income as they are excluded under federal tax law. *Marriage of Schulze* (1997) 60 Cal. App.4th 519, 529; I.R.C. § 102. But see *Marriage of Alter* (2009) 171 Cal. App.4th 718.	Additional monthly disposable income parent enjoyed after paying off mortgage with inheritance was imputed income. *Kern v. Castle* (1999) 75 Cal.App.4th 1442, 1451. Courts may consider father's recurrent gifts or money from his mother as income available for child support. *Marriage of Alter* (2009) 171 Cal.App.4th 718; see also *Marriage of Schulze* (1997) 60 Cal. App.4th 519, 530. One-time gifts are not income, but interest, rents, dividends, etc. earned from gifts or inheritances are income for support purposes. The court can also impute a reasonable rate of return on an inheritance or gift corpus. *Kern v. Castle* (1999) 75 Cal.App.4th 1442, 1453.
10. Student Loans	No. *Marriage of Rocha* (1998) 68 Cal. App.4th 514.	To the extent that the loan proceeds are subject to repayment, they are not included as income. *Hogoboom & King*, at [608.2], citing *Marriage of Rocha* (1998) 68 Cal. App.4th 514, 517-518.	N/A	Husband's student loan for law school, including amount above cost of books and tuition, not income for child support purposes. *Marriage of Rocha* (1998) 68 Cal.App.4th 514, 517-518.	N/A
11. Debt Reduction	Yes, no child support reduction due to voluntary diversion of income to pay debt. *Marriage of Kirk* (1990) 217 Cal. App.3d 597; *Marriage of Riddle* (2005) 125 Cal. App.4th 1075, 1079.	The amount of voluntary debt repayment that diverted funds from the parent's income still considered income available for child support. *Marriage of Kirk* (1990) 217 Cal. App.3d 597, 606-608.	Provided debt reduction is voluntary. *Marriage of Kirk* (1990) 217 Cal.App.3d 597, 607-608. Court may exercise discretion in treating obligor's preexisting debt burden incurred for living needs (clothing & household items) as a "special circumstance," warranting a FC § 4057(b)(5) formula support reduction. *County of Lake v. Antoni* (1993) 18 Cal.App.4th 1102, 1106.	Not likely for involuntary debt repayment under a judgment or settlement. *Hogoboom & King*, at [6:205.2]; *Marriage of Kirk* (1990) 217 Cal.App.3d 597, 606-608.	Debt cancellation to pay back a loan from husband's employer is a form of income. *Marriage of Kirk* (1990) 217 Cal.App.3d 597, 606-608.

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Topic	Income Available for Support?	Extent	Exceptions/Limitations	Not Examples	Examples
12. Personal Injury Award	Yes. *Marriage of Heiner and Chandler* (2006) 136 Cal.App.4th 1514.	Court may impute portion of personal injury award to the extent it reflects compensation for lost earnings. *Marriage of Heiner and Chandler* (2006) 136 Cal.App.4th 1514, 1524. Trial court must decide how to calculate amount of monthly imputation, taking into account the fact that compensation for lost earnings has been discounted to present value and represents losses over injured party's life expectancy. *Id.* at 1526.	The burden of establishing the allocation of damages for lost earnings is on the party seeking inclusion as income available for child support. *Marriage of Heiner and Chandler* (2006) 136 Cal.App.4th 1514, 1525-1526.	Unallocated lump sum damages. *Marriage of Heiner and Chandler* (2006) 136 Cal.App.4th 1514, 1522. Monthly payments representing undifferentiated damages. *Marriage of Rothrock* (2008) 159 Cal.App.4th 223.	Component of personal injury award intended as compensation for loss of income and loss of earning capacity. *Marriage of Heiner and Chandler* (2006) 136 Cal.App.4th 1514, 1524.
13. Trust Income	Yes. FC § 4058(a)(1).				Income from disabled child's trust set up by mother treated as mother's income in computing child support. *Marriage of Drake* (1997) 53 Cal.App.4th 1139, 1158.
14. Life Insurance Benefits	No. *Marriage of Scheppers* (2001) 86 Cal. App.4th 646, 650-651.	N/A	Possibly a different result if parent/beneficiary paid the premiums on the policy. Arguably, return of investment on death benefit includable. *Marriage of Scheppers* (2001) 86 Cal.App.4th 646, 650.	Life insurance proceeds to parent beneficiary after child died. *Marriage of Scheppers* (2001) 86 Cal.App.4th 646, 651.	Possible imputation for proceeds of policy where parent beneficiary paid policy premiums (return on investment argument). *Marriage of Scheppers* (2001) 86 Cal.App.4th 646, 650.
15. Other Insurance Benefits (e.g., disability, worker's comp, social security, unemployment)	Yes. FC § 4058(a)(1).			Life insurance benefits (see Row 14).	Disability benefits. *Stewart v. Gomez* (2006) 47 Cal.App.4th 1748. Worker's compensation; social security benefits; unemployment benefits. FC § 4058(a)(1).
16. Public Assistance Benefits	*No. County of Yolo v. Garcia* (1993) 20 Cal. App.4th 1771, 1777; FC § 17516.	N/A		No imputation for: – Income from public assistance programs for which eligibility is based on need. *County of Yolo v. Garcia* (1993) 20 Cal. App.4th 1771, 1777. – Benefits paid pursuant to Title XVI of the Social Security Act. FC § 17516. – Supplemental Security Income (SSI) benefits. *Elsenheimer v. Elsenheimer* (2004) 124 Cal. App.4th 1532, 1539-1541.	

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17. Employment perks	Yes. *Marriage of Schulze* (1997) 60 Cal. App.4th 519.	To the extent they reduce a person's living expenses. *Marriage of Schulze* (1997) 60 Cal.App.4th 519.	Can't include as "non-taxable" income. *Marriage of Schulze* (1997) 60 Cal. App.4th 519, 530.	Does not include rent-free housing outside the employment benefit context. *Marriage of McQuoid* (1991) 9 Cal. App.4th 1353, 1360. *Marriage of Schulze* (1997) 60 Cal.App.4th 519, 529.	Meal allowance as part of vocational training program. *Stewart v. Gomez* (2006) 47 Cal.App.4th 1748. Use of company car and company condo at fair rental value. *Marriage of Schulze* (1997) 60 Cal.App.4th 519. Living expenses paid by parent's wholly owned business. *Marriage of Chakko* (2004) 115 Cal.App.4th 104, 109.
18. Overtime	Yes. *County of Placer v. Andrade* (1997) 55 Cal. App.4th 1393, 1396-1397.	Based on past overtime earnings. *County of Placer v. Andrade* (1997) 55 Cal. App.4th 1393.	If likely to be received in the future. *County of Placer v. Andrade* (1997) 55 Cal. App.4th 1393.	Trial court not required to include extra hours wife worked during the holidays and first two months of year, but could take into consideration fact that she changed her work schedule in the spring. *Marriage of Graham* (2003) 109 Cal.App.4th 1321, 1328.	Father's voluntary overtime earnings received during preceding two-and-a-half years properly included as income available for support absent showing that unlikely to receive in future. *County of Placer v. Andrade* (1997) 55 Cal.App.4th 1393.
19. Bonuses	Yes, court must consider future bonuses. FC § 4058(a)(1); *Marriage of Ostler & Smith* (1990) 223 Cal. App.3d 33, 52.	If likely to be received in the future. *County of Placer v. Andrade* (1997) 55 Cal.App.4th 1393.	Percentage of future bonuses may be awarded as additional spousal support. *Marriage of Ostler & Smith* (1990) 223 Cal.App.3d 33.	May not base monthly support amount on the predicted receipt of a large bonus that might never materialize. *Marriage of Mosley* (2008) 165 Cal.App.4th 1375, 1380.	
20. New Spouse	No. FC § 4057.5. *Marriage of Williams* (1984) 155 Cal.App.3d 57.	N/A	Subsequent spouse or non-marital partner can be considered in an extraordinary case. *Marriage of Williams* (1984) 155 Cal.App.3d 57.	Can't consider mortgage interest deduction if it wasn't available to payor because separate tax returns filed by new wife who paid mortgage with her separate property. *Marriage of Carlton and D'Alessandro* (2001) 91 Cal.App.4th 1213.	May consider new mate income to the extent it is available to reduce the payor's personal expenses. *Fuller v. Fuller* (1979) 89 Cal.App.3d 405, 410. However, cannot consider new spouse's ability to earn. *Marriage of Williams* (1984) 155 Cal. App.3d 57, 64.
21. Lifestyle	No, evidence of supporting spouse's new lifestyle not basis for imputation or increase in spousal support. *Marriage of Loh* (2001) 93 Cal.App. 4th 325.	N/A	N/A	Evidence of payor's lavish lifestyle (e.g., photos of lavish lifestyle) does not justify increased support. Tax returns presumptively correct. *Marriage of Loh* (2001) 93 Cal.App.4th 325.	N/A
22. Spousal Support	Yes. FC § 4058(a)(1); *Marriage of Corman* (1997) 59 Cal. App.4th 1492.	Amount of support actually received. FC § 4058(a)(1).	Only spousal support received from a third party. *Marriage of Corman* (1997) 59 Cal.App.4th 1492.	Can't impute spousal support received from former spouse who is a party to the child support proceedings. *Marriage of Corman* (1997) 59 Cal.App.4th 1492.	Only spousal support parent receives from person not party to child support proceeding. *Marriage of Corman* (1997) 59 Cal.App.4th 1492.
23. Child Support	No. FC § 4058(a).	N/A	Although child support received for children from another relationship may not be included, it can affect the determination of a hardship deduction under FC § 4071(a)(2).	N/A	Can't include income from child support payments actually received. FC § 4058(a). Can't include child support received for children from another relationship. FC § 4058(a).

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Spousal Support[3]

Topic	Income Available for Support?	Extent	Exceptions/Limitations	Not Examples	Examples
1. Self-Employment Income	Yes, based on supporting spouse's ability to pay as determined by circumstances at the time of the support hearing. *Marriage of Rosen* (2002) 105 Cal. App.4th 808, 824.	Should be based on a representative sample of fluctuating earnings. *Marriage of Riddle* (2005) 125 Cal. App.4th 1075, 1081-1085.		Error to fix spousal support based on obligor's self-employment income 2 years before support hearing where evidence that substantially lower at time of trial. *Marriage of Rosen* (2002) 105 Cal.App.4th 808, 824.	Averaging a 12-month period of time of self-employment income is usually appropriate in most cases. *Marriage of Riddle* (2005) 125 Cal. App.4th 1075, 1083.
2. Potential Employment/ Earning Capacity	Yes. FC § 4320; *Marriage of Ilas* (1993) 12 Cal. App.4th 1630, 1638.	Income may be imputed to the extent spouse has a *measurable earning capacity:* (i) ability to earn consistent with health, age, education, marketable skills and employment history; and (ii) available employment opportunities. *Marriage of Simpson* (1992) 4 Cal.4th 225, 234; *Marriage of Regnery* (1989) 214 Cal. App.3d 1367, 1372-1373. Should be based on an "objectively reasonable work regimen." *Marriage of Simpson* (1992) 4 Cal.4th 225, 234-236; *Marriage of Serna* (2000) 85 Cal. App.4th 482, 486.	Spouse must be given fair advance notice and opportunity to secure employment. Amount of advance warning depends on circumstances of each case (e.g., whether spouse needs training or already possesses job skills). *Marriage of Schmir* (2005) 134 Cal.App.4th 43, 54, 58. Evidentiary support in the record required for imputed income figure. *Marriage of Cohn* (1998) 65 Cal.App.4th 923, 931.	No imputation of employment income if retired at age 65 or older. *Marriage of Reynolds* (1998) 63 Cal.App.4th 1373.	Not limited to cases of deliberate avoidance of support responsibilities. *Marriage of Stephenson* (1995) 39 Cal.App.4th 71, 76. But see *Marriage of Rosen* (2002) 105 Cal.App.4th 808, 825. Can impute spouse's earning capacity as trained pharmacist, despite good faith decision to leave job in pursuit of medical degree. *Marriage of Ilas* (1993) 12 Cal.App.4th 1630, 1638-1639. But possibly different result if coupled with supported spouse's self-sufficiency potential. *Marriage of Meegan* (1992) 11 Cal. App.4th 156, 160. Can impute income to self-employable professionals. *Marriage of Cohn* (1998) 65 Cal.App.4th 923, 930.
3. Unearned Income	Yes, supported spouse may be awarded percentage of unearned income or prospective earnings. *Marriage of Ostler & Smith* (1990) 223 Cal.App.3d 33, 50.		Percentage of future bonuses may be awarded as additional spousal support. *Marriage of Ostler & Smith* (1990) 223 Cal. App.3d 33.		Wife awarded 15% of husband's future annual cash bonuses as additional spousal support. *Marriage of Ostler & Smith* (1990) 223 Cal.App.3d 33, 50.
4. Future Stock Option Income	Yes, supported spouse may be awarded percentage of future stock option income. *Marriage of Kerr* (1999) 77 Cal.App.4th 87, 94; *Marriage of Cheriton* (2001) 92 Cal.App.4th 269, 305.		Uncapped percentage is an abuse of discretion. Percentage should be capped, based on marital standard of living. *Marriage of Kerr* (1999) 77 Cal.App.4th 87, 95.	Unrealized stock option income. No case to date has held that obligor spouse can be compelled (directly or indirectly) to exercise stock options to generate income for spousal support.	

3 In setting permanent spousal support, the court is required to apply the factors of Fam. Code § 4320, which include under (c) the ability of the supporting party to pay spousal support, taking into account his or her earning capacity, earned and unearned income, assets, and standard of living.

Topic	Income Available for Support?	Extent	Exceptions/Limitations	Not Examples	Examples
5. Assets	No, unless showing of special circumstances. *Marriage of Cheriton* (2001) 92 Cal.App.4th 269, 304-305.	"Highly unusual" for courts to look to assets more than income in setting spousal support. *Marriage of Cheriton* (2001) 92 Cal. App.4th 269, 305.	Court must consider supporting spouse's "substantial assets" in fixing spousal support, especially where enormous financial disparity between the parties. *Marriage of Cheriton* (2001) 92 Cal.App.4th 269, 304-305.		Error not to account for H's more than $45,000 in stock and options in fixing W's support. *Marriage of Cheriton* (2001) 92 Cal.App.4th 269, 304-305. Monthly support of $12,500 fixed primarily on basis of nonworking obligor's $25-45 million in non-income producing assets. *Marriage of de Guigne* (2002) 97 Cal. App.4th 1353, 1366-1367.
6. Investments	Yes. *Marriage of Reynolds* (1998) 63 Cal.App.4th 1373.	The income not the principal should be considered. *Marriage of Reynolds* (1998) 63 Cal.App.4th 1373.	Wife was not obligated to invest her separate assets in a specific manner but the trial court can consider how the separate assets were utilized in determining spousal support. *Marriage of Kennedy* (1987) 193 Cal. App.3d 1633. Wife not obligated to invest house sale proceeds in income producing assets. *Marriage of Kuppinger* (1975) 48 Cal. App.3d 628, 635.	Error for court to impute 10% rate of return to wife's $127,000 that went towards purchase of a house when court also found the house purchase reasonable. *Marriage of Kennedy* (1987) 193 Cal. App.3d 1633, 1641.	Under FC § 4322 (no spousal support where separate estate sufficient for proper support), the estate should be viewed as a whole including the value of actual and reasonable potential income from assets if the estate were "reasonably managed." *Marriage of Terry* (2000) 80 Cal.App.4th 921, 930.
7. Monetary Gifts	Yes, court has discretion to consider monetary gifts. *Marriage of Shaughnessy* (2006) 139 Cal. App.4th 1225.	Amount of gift to consider, if any, is within trial court's discretion. *Marriage of Shaughnessy* (2006) 139 Cal.App.4th 1225, 1244.			Annual gifts of $20,000 from parents. *Marriage of Shaughnessy* (2006) 139 Cal. App.4th 1225.
8. New Spouse	No. *Marriage of Romero* (2002) 99 Cal.App.4th 1436, 1445.	N/A		In determining ability to pay, cannot consider new mate income or additional expenses from new marriage or cohabitation. *Marriage of Romero* (2002) 99 Cal.App.4th 1436, 1445.	
9. Retirement Plan Contributions	Yes. *Marriage of Olson* (1993) 14 Cal.App.4th 1; *Marriage of Schmir* (2005) 134 Cal. App.4th 43.	To the extent spouse can draw on retirement assets without penalty. *Marriage of Schmir* (2005) 134 Cal.App.4th 43, 53. Once participant reaches age where mandatory minimum withdrawals must commence or incur a penalty, court can impute an amount greater than statutorily-mandated minimum withdrawals. *Marriage of Olson* (1993) 14 Cal. App.4th 1, 13.	Requiring withdrawals that would incur penalties and tax implications disfavored. *Marriage of Olson* (1993) 14 Cal.App.4th 1, 13	Courts less likely to impute mandatory contributions (except to the extent eligible for withdrawal) compared with voluntary contributions (although tax deductible). *Marriage of Olson* (1993) 14 Cal.App.4th 1, 12-13. After age-65 retirement, only retirement investment income, not principal is available for support. *Marriage of Reynolds* (1998) 63 Cal.App.4th 1373, 1380.	A court can consider earnings and accruals of a retirement plan, even if not withdrawn. *Marriage of Olson* (1993) 14 Cal.App.4th 1, 13.