



TRAVERSING THE CHANGING TIDES OF CHILD SUPPORT

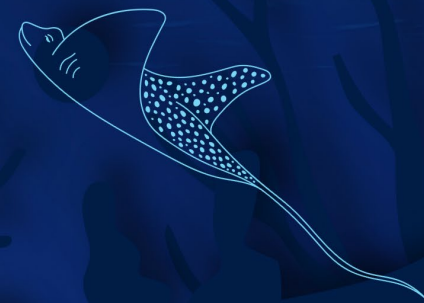


CHILD SUPPORT DIRECTORS ASSOCIATION



DOCK-UMENTING EARNING CAPACITY

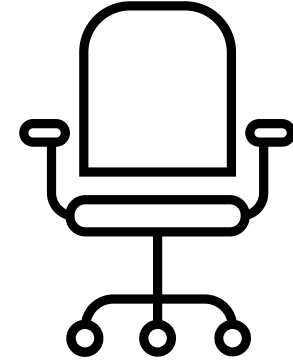
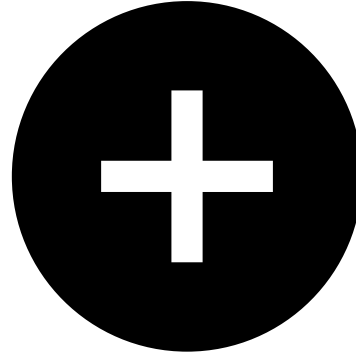
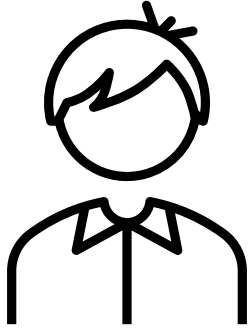
Preparing and Presenting Your Case for
a Proper Hearing



CHILD SUPPORT DIRECTORS ASSOCIATION



Earning Capacity Workflow



⚓ Presenting an earning capacity argument has two main elements – Ability and Opportunity





Earning Capacity Workflow



- ⚓ The Department must be prepared to show that there is an employer that is willing to hire. (*In re Marriage of Regnery* (1989) 214 Cal.App.3rd 1367)
- ⚓ Opportunity to Work exists “when there is substantial evidence of a reasonable likelihood that a party could, with reasonable effort, apply his or her education, skills and training to produce income”. (*In re Marriage of Smith* (2001) 90 Cal.App.4th 74 citing *In re Marriage of Cohn* (1998) 65 Cal.App.4th 923, 930.)





Earning Capacity Workflow



Showing jobs are available

CalJOBS; Indeed.com; Monster.com,
LinkedIn.com, Glassdoor.com,
Ziprecruiter.com, USAJobs.gov

Search in the local area of the obligor

Must be about the obligor's "current
circumstances" (no distinct cut-off)



Producing statistical information about obligor's area

Employment Development Department
(EDD)

Bureau of Labor Statistics (BLS)

Workforce Development Boards/ Areas





Earning Capacity Workflow



- ⚓ Always be thinking about whether you will be able to admit the evidence!
- ⚓ Some information might only lead to admissible evidence.
- ⚓ You don't have to prove that the obligor would have obtained the job if they had applied.



Barista- HIRING FOR ALL Locations

Makenna Koffee
Ventura County, CA

⚡ Typically responds within 1 day

\$16.50 - \$25.00 an hour

Full-time +3

Monday to Friday +13

Flexible schedule

➤ Easily apply

Stocker

Walmart
Ventura, CA 93003 (Thille area)

\$17 - \$30 an hour

Part-time

Overnight shift

Military leave

Parental leave

401(k)

Health insurance

Paid time off

View similar jobs with this employer ➔

S

Power & HVAC Technician - Level 1

Sunbelt Rentals • Ventura, CA • Today

\$23.06-\$33.14 Per Hour ↕

Apply

Description

Job Description

Join Our Team!

Sunbelt Rentals strives to be the customer's first choice in the equipment rental industry. From pumps to scaffolding to general construction tools, we aim to be the only call needed to outfit a job site with the proper equipment. Not only do we offer a vast fleet that ranks among the best in the industry, we pair it all with a friendly and knowledgeable staff. Our employees are our greatest asset, and although we present a comprehensive equipment offering, our expertise and service are what truly distinguish us from the competition.

SAS Retail Services

Merchandiser & Display Installer

SAS Retail Services

Camarillo, CA • On-site

\$17.28/hr

Part-time

Medical, Dental, Vision, Life

Posted 3 days ago

Apply



Opportunity

- ⚓ Help Wanted ads are not hearsay when offered to show that “offers to bargain” exist.
 - ◆ *Marriage of LeBass and Munsee* (1997) 56 Cal.App.4th 1331
- ⚓ Testimony from prior employers
- ⚓ Obligor’s resume / social media / LinkedIn profile?
- ⚓ Qualified opinion testimony / vocational examination





Opportunity

Historically Self-Employed Obligators

⚓ Courts have found that self-employed individuals have an opportunity to work so long as there is a substantial likelihood that they can produce income by applying marketable skills.

◆ *In re Marriage of Cohn* (1998) 65 Cal.App.4th 923





Opportunity



⚓ “NO INFO” Cases – Shift the burden

⚓ Bureau of Labor Statistics

- ◆ Pages and pages and pages of data!
- ◆ Very difficult to find the first time – save your hyperlink!!!
- ◆ Really easy to use once you’ve found it.

⚓ It is important to know how the government defines specific areas.





Regional Definitions



- ⚓ County – Local Government (58 total)
- ⚓ Metropolitan Statistical Area (MSA)– Consist of the county or counties associated with at least one urban area of at least 50,000 population, plus adjacent counties having a high degree of social and economic integration. Defined by the Office of Management and Budget. (28)
- ⚓ Metropolitan Division – if an MSA has a single core with a population of 2.5 million or more, it is subdivided to form smaller groups. (5)
- ⚓ Micropolitan Statistical Area – urban clusters of more than 10k, but less than 50k, with a high degree of social and economic integration. Data is identified by the County and not Micropolitan Statistical Area (8)



Using BLS.GOV



U.S. BUREAU OF LABOR STATISTICS

HOME ▾

SUBJECTS ▾

DATA TOOLS ▾

PUBLICATIONS ▾

ECONOMIC RELEASES ▾

CLASSROOM ▾

BETA ▾



Payroll employment increases by 139,000 in May; unemployment rate unchanged at 4.2%

Total nonfarm payroll employment increased by 139,000 in May, and the unemployment rate was unchanged at 4.2 percent. Employment continued to trend up in health care, leisure and hospitality, and social assistance. Federal government continued to lose jobs.

[HTML](#) | [PDF](#) | [RSS](#) | [Charts](#)

- 06/05/2025 **Productivity decreases 1.5% in Q1 2025; unit labor costs increase 6.6% (annual rates)**
- 06/04/2025 **Santa Clara, CA, has largest county 4th quarter over-the-year wage gain at 15.0%**
- 06/03/2025 **April job openings, hires, and total separations change little**
- 05/29/2025 **Labor productivity increases in 32 of 46 wholesale and retail trade industries in 2024**

[All Releases >>](#)

Northeast	Mid-Atlantic	Southeast	Midwest
Southwest	Mountain-Plains	West	

Geographic Information

BLS offers many types of data for regions, states

BEYOND



The i
of st

This a
prices
in Mar
[read m](#)



Data Retrieval Tools >>

BLS Popular Series

Series Report



Top Picks, One Screen, Multi-Screen,
and Maps

Data Finder

Public Data API

Charts and Applications >>

Charts for Economic News Releases

CPI Inflation Calculator

Injury and Illness Calculator

Pay Measure Comparison

Demographic Data Sources

COVID-19 Economic Trends

Industry Productivity Viewer

Employment and Wages Data Viewer

Employment

Database Name	Special Notice	Top Picks	Data Finder	One Screen	Multi-Screen	Tables	Text Files
Monthly							
Employment, Hours, and Earnings - National (Current Employment Statistics - CES)	 SPECIAL NOTICE	 TOP PICKS	 DATA FINDER	 ONE SCREEN	 MULTI SCREEN	 TABLES	 TEXT FILES
Employment, Hours, and Earnings - State and Metro Area (Current Employment Statistics - CES)	 SPECIAL NOTICE	 TOP PICKS	 DATA FINDER	 ONE SCREEN	 MULTI SCREEN	 TABLES	 TEXT FILES
Labor Force Statistics (Current Population Survey - CPS)		 TOP PICKS	 DATA FINDER	 ONE SCREEN		 TABLES	 TEXT FILES
Job Openings and Labor Turnover Survey (JOLTS)	 SPECIAL NOTICE	 TOP PICKS		 ONE SCREEN	 MULTI SCREEN		 TEXT FILES



1 Select one or more States ?

Search

- 00 All States
- 01 Alabama
- 02 Alaska
- 04 Arizona
- 05 Arkansas
- 06 California
- 08 Colorado
- 09 Connecticut
- 10 Delaware
- 11 District of Columbia

2 Select one or more Areas ?

Search

- 32900 Merced, CA
- 33700 Modesto, CA
- 34900 Napa, CA
- 36084 Oakland-Fremont-Berkeley, CA Metropolitan Division
- 37100 Oxnard-Thousand Oaks-Ventura, CA
- 39820 Redding, CA
- 40140 Riverside-San Bernardino-Ontario, CA
- 40900 Sacramento-Roseville-Folsom, CA
- 41500 Salinas, CA
- 41740 San Diego-Chula Vista-Carlsbad, CA

3 Select one or more Supersectors ?

Search

- 00 Total Nonfarm
- 05 Total Private
- 06 Goods Producing
- 07 Service-Providing
- 08 Private Service Providing
- 10 Mining and Logging
- 15 Mining, Logging, and Construction
- 20 Construction
- 30 Manufacturing
- 31 Durable Goods

4 Select one or more Industries ?

Search

- 05000000 Total Private



Data extracted on: June 9, 2025 (2:25:38 PM)

State and Area Employment, Hours, and Earnings

Series Id: SMU063710005000000002
Not Seasonally Adjusted
State: California
Area: Oxnard-Thousand Oaks-Ventura, CA
Supersector: Total Private
Industry: Total Private
Data Type: Average Weekly Hours of All Employees

Download:  [xlsx](#)

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2015	34.5	35.5	35.4	34.9	34.6	34.9	35.3	35.5	34.2	34.5	34.4	34.1
2016	34.5	34.2	34.6	34.5	34.6	34.0	33.8	34.4	34.5	35.0	34.4	34.2
2017	33.8	33.2	33.3	34.5	33.9	34.1	34.5	34.4	34.1	34.2	34.0	33.7
2018	32.8	33.7	33.3	34.5	33.9	34.2	34.5	33.9	34.5	34.0	33.8	34.8
2019	33.1	33.1	34.0	34.3	34.2	34.8	33.5	34.2	34.6	34.3	34.2	34.8
2020	33.5	34.5	33.8	33.0	34.1	34.6	33.9	34.9	33.8	34.3	34.7	34.3
2021	34.5	34.2	33.3	34.1	34.5	33.8	34.2	34.3	33.3	32.9	33.0	32.9
2022	32.7	32.5	32.7	32.4	33.1	33.2	32.9	33.2	33.1	33.6	32.5	32.9
2023	33.2	33.4	33.0	33.3	32.8	32.6	33.1	32.4	31.7	32.8	31.9	31.5
2024	31.2	31.4	31.6	30.7	30.6	30.9	30.7	30.6	31.1	31.0	30.7	31.6
2025	30.3	31.5	31.3	31.2(P)								
P : Preliminary												

Data extracted on: June 9, 2025 (2:25:38 PM)

State and Area Employment, Hours, and Earnings

Series Id: SMU063710005000000002

Not Seasonally Adjusted

State: California

Area: Oxnard-Thousand Oaks-Ventura, CA

Supersector: Total Private

Industry: Total Private

Data Type: Average Weekly Hours of All Employees

Download:  [xlsx](#)

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2015	34.5	35.5	35.4	34.9	34.6	34.9	35.3	35.5	34.2	34.5	34.4	34.1
2016	34.5	34.2	34.6	34.5	34.6	34.0	33.8	34.4	34.5	35.0	34.4	34.2
2017	33.8	33.2	33.3	34.5	33.9	34.1	34.5	34.4	34.1	34.2	34.0	33.7
2018	32.8	33.7	33.3	34.5	33.9	34.2	34.5	33.9	34.5	34.0	33.8	34.8
2019	33.1	33.1	34.0	34.3	34.2	34.8	33.5	34.2	34.6	34.3	34.2	34.8
2020	33.5	34.5	33.8	33.0	34.1	34.6	33.9	34.9	33.8	34.3	34.7	34.3
2021	34.5	34.2	33.3	34.1	34.5	33.8	34.2	34.3	33.3	32.9	33.0	32.9
2022	32.7	32.5	32.7	32.4	33.1	33.2	32.9	33.2	33.1	33.6	32.5	32.9
2023	33.2	33.4	33.0	33.3	32.8	32.6	33.1	32.4	31.7	32.8	31.9	31.5
2024	31.2	31.4	31.6	30.7	30.6	30.9	30.7	30.6	31.1	31.0	30.7	31.6
2025	30.3	31.5	31.3	31.2(P)								

P : Preliminary

<https://data.bls.gov/dataViewer/view/timeseries/SMU064202005000000002>



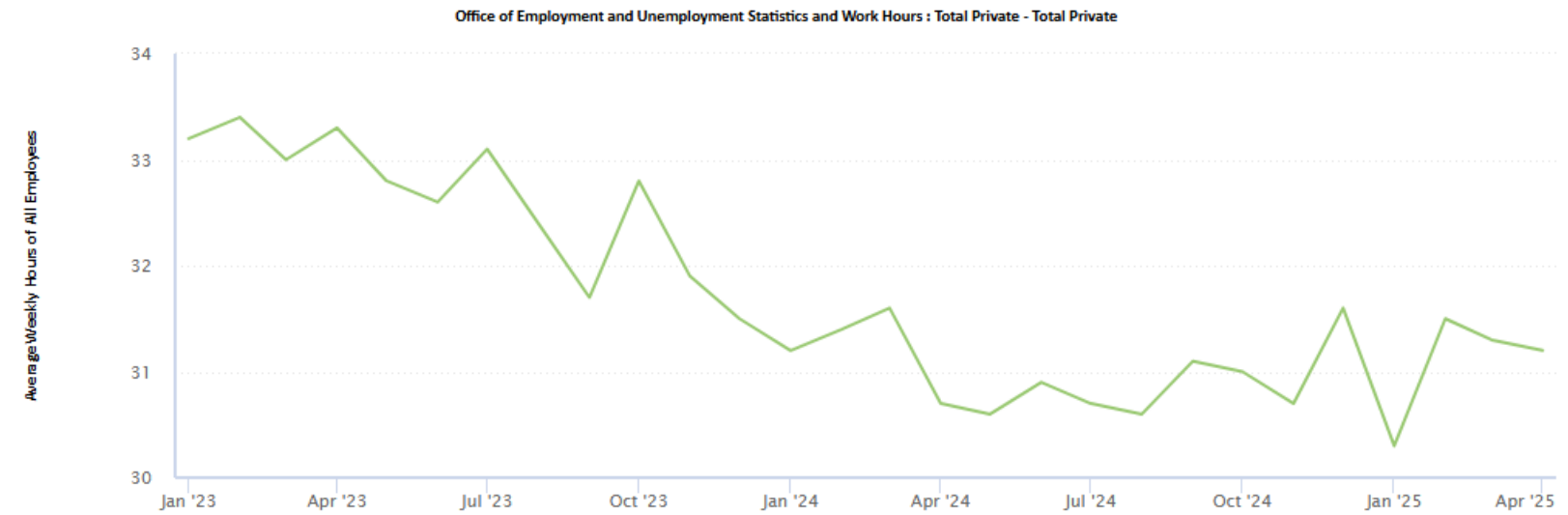
BLS Data Viewer

Permalink

Time Period: Start Year: 2023 End Year: 2025

- Net Monthly Changes:
- ☐ 1-Month Net Change
- ☐ 3-Month Net Change
- ☐ 6-Month Net Change
- ☐ 12-Month Net Change
- Percent Monthly Changes:
- ☐ 1-Month % Change
- ☐ 3-Month % Change
- ☐ 6-Month % Change
- ☐ 12-Month % Change

Update



Data extracted on: Jun 9, 2025 (2:30:35 PM)

State and Area Employment, Hours, and Earnings

Series Title : Office of Employment and Unemployment Statistics and Work Hours : Total Private - Total Private

Series ID : SMU063710005000000002

Seasonality : Not Seasonally Adjusted

Survey Name : [State and Area Employment, Hours, and Earnings](#)

Measure Data Type : Average Weekly Hours of All Employees

Industry : Total Private

Sector : Total Private

Area : Oxnard-Thousand Oaks-Ventura, CA

Latest Observation:

April 2025

31.2

Jan 2023 - Apr 2025

Minimum Value: January 2025
30.3

Maximum Value: February 2023
33.4

Data Availability:

2007 - 2025





Evidentiary Issues



- ⚓ Official Records exception - Evidence Code section 1280 (Record by public employee)
 - ◆ Writing made by and within the scope of duty of a public employee
 - ◆ At or near the act, condition, or event
 - ◆ Sources of information and method and time of preparation were such as to indicate its trustworthiness.





Evidentiary Issues



- ⚓ Section 1280 does not require testimony as to the identity or mode of preparation of the writing .
- ⚓ The Court can take judicial notice of the identity of the record itself.
- ⚓ Evidence Code 664 – Official duties are presumed to be regularly performed.





Other Sources of Data



- ⚓ CSE Income List – Can lead to admissible evidence, but is not to be printed out itself
- ⚓ EDD Statements/ UIB Benefit Statements
- ⚓ SSI/SSDI Benefit Statements
- ⚓ 1099 Income
- ⚓ Income and Expense Declarations





Other Sources of Data



⚓ Judicial Notice of prior court filings

- ◆ The Court can take judicial notice that a document exists or of prior court orders, but ***the truth of the contents is not established by judicial notice.***
- ◆ This creates a hearsay problem.
 - Declarations against interest: EC §1230 (Obligor must not be available.)
 - Admission by Party: EC §1220 (Can be used for prior I&Es from this or other cases)
- ◆ Compulsory Judicial Notice (EC §451) vs Discretionary Judicial Notice (EC §452) vs Compulsory Judicial Notice upon Request (EC §453)





Final Thoughts



- ⚓ Limitations – *Mendoza v Ramos (2011) 182 Cal.App.4th 680*
- ⚓ Every earning capacity argument revolves around the child's best interests. Be sure to mention that an imputation is in the best interests of the child – both parents have an equal duty to support their child.
- ⚓ Questions? Comments? Concerns?





Thank You!

Jim Allen, Senior Attorney, Ventura County DCSS

Jim.Allen@VenturaCounty.gov

Please be sure to fill out the session feedback on the mobile app Whova!



CHILD SUPPORT DIRECTORS ASSOCIATION