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Military Separation

In the event of a marital separation, the military imposes specific obligations on a couple where at least one person is a servicemember. This article will outline some of the issues regarding separation with each branch of the military, particularly interim support of dependents in the absence of a court order or written separation agreement. This is simply an overview and each case will differ depending on the facts presented.

Please keep in mind that, in Hawaii, a legal separation is not a prerequisite for filing for divorce. To determine a servicemember's interim support obligations, always look first for a court order (or its functional equivalent such as an administrative child support enforcement order), then to any written agreements between the parties, then finally to the military branch regulations.

Court orders will always take precedence over any written separation agreements that the parties have agreed to on their own. The military branches can determine how they will interpret those court orders which may or may not specifically include orders for spousal support or child support.

Absent a court order, written separation agreements signed by the parties will typically be enforced by the command. These separation agreements may include provisions for spousal support and support of any children. Generally, however, child support cannot be waived in a separation agreement.

In the absence of a court order or a written separation agreement, each branch of service has regulations for the support of dependents. Any guidelines provided by the branch of service is not meant to serve as a guide for court ordered support and may not provide adequate support in all cases.

ARMY

Army Regulation (AR) 608-99 governs a Soldier's duty to support his or her dependents in the event of separation. This includes a present spouse, minor children from the present marriage, and any biological or adopted children from a previous marriage. Additionally, this regulation also covers minor children born out of wedlock to a female Soldier, or to a male Soldier, if evidence by a court order (or functional equivalent) that identifies the Soldier as the father, or the Soldier is providing support to the child under this regulation. Finally, the regulation covers any other person the Soldier is obligated to support by applicable state law (this may include step-children).

AR 608-99 applies to all members of the active Army, including cadets at the U.S. Military Academy (West Point), members of the U.S. Army Reserve on active duty for 30 days or more, and members of the National Guard on active

duty (Title 10 or 32) for 30 days or more. National Guard Soldiers on Title 32 for 30 days or more do not fall within the regulation's punitive provisions.

The amount of support required under AR 608-99 depends on whether the supported family members continue to live in government family housing, if living off-post whether the Soldier continues to pay for the housing and its related expenses, whether the family is a dual-military family, and whether there is a blended family involved. Each situation offers a different scenario in properly calculating the amount of support required per dependents.

If no court order or separation agreement exists, then the Army utilizes the [Basic Allowance for Housing II](#) (Reserve Component/Transit) (BAH II (RC/T)) chart as a guide in determining a Soldier's interim support obligation under AR 608-99. Actual receipt of basic allowance for housing (BAH) is not a prerequisite for providing interim support. This chart is not dependent on location, therefore the same support amounts would apply in Texas as in Hawaii. Simply find the Soldier's grade and look to the "With Dependents" rate. This amount may be pro-rated depending on the total number of dependents that the Soldier has.

Finally, paragraph 2-14 of AR 608-99 provides very limited situations where a Soldier may be relieved of interim support. Battalion commanders and above may relieve a Soldier of the interim support requirements where:

- An order was issued by a court without jurisdiction;
- A court order does not contain a financial support provision;
- The spouse's income exceeds the Soldier's military basic pay;
- The Soldier has been the victim of a substantiated case of documented abuse;
- The supported spouse is in jail;
- Regulatory support has been provided to the spouse for 18 months; or
- The supported child is in the custody of another who is not the lawful custodian.

Please note that this would only relieve the Soldier from support of the spouse and an obligation remains to support any children that are not in the custody of the Soldier.

AIR FORCE

Air Force Instruction 36-2906 governs interim support of family members for the Air Force. It is the Air Force's policy that "the Air Force has no authority to arbitrate disputed cases of nonsupport or personal indebtedness." Members of the Air Force, however, are expected to support their dependents and financial irresponsibility can result in administrative or disciplinary action.

If any Air Force member refuses to support their family members, and they receive BAH at the with-dependents rate, then the member could have their BAH-with terminated and the Air Force may recoup the BAH-with rate for any periods of non-support.

Marine Corps

The Marine Corps Manual for Legal Administration (LEGADMINMAN), Chapter 15, governs interim financial support for family members. Marines will comply with separation agreements and court orders that address support of family members. Absent a court order or separation agreement, interim support is addressed through the LEGADMINMAN. The following chart is the interim support standards used by the Corps:

Total # of Family Members Supported	Minimum Amount of Monthly Support per Requesting Family Member	Share of Monthly BAH/OHA per Requesting Family Member
1	\$350	1/2
2	\$286	1/3
3	\$233	1/4
4	\$200	1/5
5	\$174	1/6
6+	\$152	1/7, 1/8, etc.

Like the Army, the Marine Corps provides a mechanism for reducing or eliminating interim support under specific circumstances. These include the following:

- Gross income of the spouse exceeds the gross military pay of the Marine. This includes any allowances received;
- Interim support has been provided to the spouse for a continuous, uninterrupted period, of twelve months;
- The Marine has been the victim of substantiated physical abuse by the spouse requesting support; or
- The Marine is paying regular and recurring obligations, such as debts, of the family members requesting support in such an amount as to justify reducing or eliminating support.

Please note that this would only relieve the Marine from support of the spouse and an obligation remains to support any children that are not in the custody of the Marine.

NAVY

MILPERSMAN 1754-030 governs interim support of family members for the Navy. It is the Navy's policy that Sailors will provide adequate and continuous support of their family members, and that any failure to do so that brings discredit upon the Naval Service may be grounds for administrative or disciplinary action. The following guide is used in the absence of a court order or separation agreement:

Requesting Support	Amount
Spouse only	1/3 of gross pay
Spouse and one minor child	1/2 of gross pay
Spouse and two to three minor children in the same household	3/5 of gross pay
Spouse and four or more children	Moral obligation to pay more than 3/5 of gross pay
One minor child (no spousal support)	1/6 of gross pay
Two minor children (no spousal support)	1/4 of gross pay
Three minor children (no spousal support)	1/3 of gross pay

Per the Navy guidelines, “gross pay” includes basic pay and BAH but does not include basic allowance for subsistence (BAS), hazardous duty pay, sea or foreign duty pay, or incentive pay.

Like other branches of service, a Sailor can request a waiver of interim spousal support, but not child support, based on certain conditions:

- Desertion by the spouse without cause;
- The Sailor is a victim of physical abuse; or
- Infidelity on the part of the spouse.

COAST GUARD

COMDTINST M1600.2, Chapter 2E provides guidance on interim support of family members in the absence of court orders or a separation agreement. Much like the other military branches, members of the Coast Guard are expected to provide adequate and continuous support of their family members, and that any failure to do so that brings discredit upon the Coast Guard may be grounds for administrative or disciplinary action. If, however, a member of the Coast Guard, acting on good faith and on the express advice of qualified legal counsel disputes a claim of non-support based on a court order, a commanding officer may withhold disciplinary or administrative action against the member for a reasonable length of time.

The following table are the Coast Guard's guidelines for interim support in the absence of a court order or separation agreement:

Spouse only	BAH-Diff plus 20% of basic pay
Spouse and one minor or handicapped child	BAH-Diff plus 25% of basic pay
Spouse and two or more minor or handicapped children	BAH-Diff plus 30% of basic pay
One minor or handicapped child (no spousal support)	16.7% (1/6) of basic pay
Two minor or handicapped children (no spousal support)	25% (1/4) of basic pay
Three or more minor or handicapped children	33% (1/3) of basic pay

The Coast Guard does have a special provision whereby a commanding officer can withhold action against a member for failure to support a child in limited circumstances. These are:

- Where a member cannot ascertain the whereabouts and welfare of the child; or
- The person seeking payment does not have actual physical custody of the child.

Additionally, the Coast Guard Commandant may grant an exception to interim support to the spouse (but not the children) under the following circumstances:

- Desertion without cause;
- Infidelity on the part of the spouse;
- Spousal abuse inflicted on the member.

Conclusion

As you can see, each branch of the military shares some similarities in approaching interim support of family members in the absence of a court order or separation agreement and some nuanced differences. Each case is unique, so if you have questions about your specific case, or would like a support agreement drafted on your behalf, please feel free to contact me at levi@hookanolaw.com and I will work with you on crafting an agreement that best fits your needs.