

Dependent Support Regulations of the U.S. Armed Forces

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Military Dependent Support Regulations...why should you care?



- ▶ Efficient means of interim support
- ▶ Protection against excessive command demands
- ▶ Maximizing parties' income
- ▶ Drafting marital separation agreements

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What Regulations Apply?



- ▶ Army: AR 608-99
- ▶ Navy: MILPERSMAN 1754-30
- ▶ Air Force: AFI 36-2906
- ▶ Marine Corps: MCO P5800.16A (chapter 15)
- ▶ Coast Guard: Personnel Manual (section 8M)

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Military Pay



- ▶ Base Pay
- ▶ Basic Allowance for Housing
- ▶ Basic Allowance for Subsistence
- ▶ Special Duty and Incentive Pays
- ▶ Family Separation Allowance

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Basic Allowance for Housing



- ▶ With / without dependents rates
- ▶ Geographical variation
- ▶ Forfeit if receive government housing
- ▶ Directly tied to interim support rates
 - Army / Marine Corps / Coast Guard
- ▶ (BAH Calculator and text of JFTR ch 10)
<http://www.defensetravel.dod.mil/site/bah.cfm>

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Military Pay Information

- ▶ Leave & Earnings Statement
- ▶ DFAS Pay Tables
 - www.dfas.mil
- ▶ DoDFMR Vol 7A
- ▶ JFTR

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Overview: Service Support Requirements



- ▶ “Adequate” support for dependents
- ▶ Court orders / written agreements preferred
- ▶ Nonsupport complaint procedures
- ▶ Interim support amounts
 - Specific amounts or
 - Guidelines
- ▶ Command directed reductions
- ▶ Enforcement

Enforcement of Interim Support

- ▶ Administrative sanctions
- ▶ Administrative discharge
- ▶ Criminal sanctions



Marine Corps Dependent Support

MCO P5800.16A
Legal Administration Manual Chapter 15

USMC Support Requirement

- ▶ Obey court orders
- ▶ Obey separation agreements
- ▶ Interim support standards if
 - No court order
 - No written agreement
 - Receipt of nonsupport complaint

USMC Interim Support

# of Dependents Entitled to Support	Minimum Monthly Spt Per Requesting Family Member	Share of Monthly BAH/OHA Per Dependand
1	\$350	1 / 2
2	\$286	1 / 3
3	\$233	1 / 4
4	\$200	1 / 5
5	\$174	1 / 6
6 or more	\$152	1 / 7

Interim support is the greater of column 2 and 3 up to a maximum of 1/3 gross pay

What about Base Housing?

“...Interim support per supported family member shall be the greater of the fixed amount of support reflected in the center column [of the financial support chart] or the prorated share of whatever BAH or OHA (Overseas Housing Allowance) to which the Marine is currently entitled...*Note that BAH that is credited to the Marine for government housing, but is not actually paid in cash, is not counted for purposes of this order.*” ???

- Use only middle column?
- CO reduction authorization

USMC Dependent Support Enforcement

- ▶ Administrative sanctions
- ▶ Administrative discharge possible
- ▶ Criminal sanctions tied to orders violations to pay specific amounts
- ▶ Recoupment of dependent allowances

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Reduction of Interim Support by SPCMCA

- ▶ *Income of requesting spouse is greater than SM income
- ▶ *SM has provided support for 12 months and has not dodged legal proceedings
- ▶ *SM is victim of spouse abuse
- ▶ SM is paying “regular and recurring obligations...of the family members requesting support of sufficient magnitude and duration as to justify a reduction or elimination of support...”

*Authorizes spousal support reduction but NOT support to a child

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What is NOT grounds for reduction in support

- ▶ Infidelity
- ▶ Desertion
- ▶ Marital misconduct generally
- ▶ Any matter not listed as one of the four exemptions



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On the Horizon??



- ▶ Draft order
- ▶ SPCMCA has authority to reduce support obligation for *Fundamental Fairness Given Totality of the Circumstances*

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Army Support Regulation

AR 608-99

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Army Support Requirement

- ▶ AR 608-99 governs
- ▶ Soldiers MUST
 - Obey court orders
 - Obey written financial support agreements
 - Pay regulatory, interim support in absence of court order or written financial agreement

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Army Support Requirement

- ▶ Soldiers are obligated to support Family members
 - Does not include former spouse
 - Does not include children for which paternity has not been established
 - Does not include present spouse on active duty
- ▶ Command involvement arises when complaint is made concerning non-support
 - Legal Assistance Attorney
 - Inspector General
 - Civilian notification

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Monetary Calculation

- ▶ BAH II-WITH
 - Average of all BAH
 - Re-evaluated every year
- ▶ BAH-DIFF
 - Applies mostly to dual military couples

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Army Interim Support

- ▶ *Single family unit residing off post:* all BAH II-WITH
- ▶ *Single family unit residing in government quarters:* no additional support required
- ▶ *Single family unit w/ members residing in different locations:* each member receives pro rata share of member's BAH
$$\text{Pro rata share} = \frac{1}{\# \text{ family members supported}} \times \text{BAH II-WITH}$$
- ▶ *Dual military without children:* no support required
- ▶ *Dual military with children:*
 - Living off-post: custodial parent receives BAH-DIFF
 - Living in government quarters: no additional support required

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Multiple Family Units

- ▶ Obey court orders in place for Family members
- ▶ Obey written agreements in place for Family members
- ▶ No support to Family member in government quarters
- ▶ Pro rata share to others

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Payment

- ▶ Support is due from the date of separation
- ▶ Payment is due on the 1st of each month; pro rata share for days of separation from prior month
- ▶ No specified format for payment

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"In-Kind" Payments

- ▶ Soldier may comply with regulation by paying non-Government housing expenses
 - Rent
 - Outstanding mortgage
 - Essential utilities
- ▶ Soldier DOES NOT comply by paying non-essential utilities (phone bill, cable, etc.), unless supported Family member gives approval
- ▶ Soldier must still pay bills they are legally obligated to pay (car loan, cell phone)

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Nonsupport Complaints

- ▶ No required format
- ▶ Initially to company commander
- ▶ Two ways to be released from obligation
 - Battalion Commander for listed reasons
 - Special Courts Martial Convening Authority (SPCMCA)
- ▶ Legal review required for all reductions
- ▶ Commander must attempt to contact adversely affected party for input

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Support Reductions: Battalion Level

- ▶ (1) Order issued by court clearly without jurisdiction*
- ▶ (2) Court order silent on issue of support
- ▶ (3) Income of civilian spouse exceeds income of Soldier**
- ▶ (4) Soldier is the victim of substantial abuse**

*Releases soldier from threat of Army sanction but does not shield Soldier from potential civil sanction

**Authorizes reduction of spousal support but NOT child support

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Support Reductions: Battalion Level (cont.)

- ▶ (5) Supported Family member is in jail
- ▶ (6) Regulatory support x 18 months**
- ▶ (7) Child in custody of another who is not the lawful custodian

** Authorizes reduction of spousal support but not child support.

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SPCMCA Reduction Authority

- ▶ May reduce support to a spouse for reasons of "fundamental fairness"
- ▶ Must be proven by a preponderance of the evidence
- ▶ Soldier may be:
 - Released from total payment
 - A reduction in the amount
 - Credit for other payments
- ▶ Must comply with the law, court orders, written agreements, nor otherwise violate AR 608-99

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Army Dependent Support Enforcement

- ▶ Administrative sanctions
- ▶ Administrative discharge possible
- ▶ Criminal sanctions
- ▶ Recoupment of dependent allowances

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Navy Dependent Support

NavPers 15560
Navy Military Personnel Manual section 1754-30

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Navy Support Requirement

- ▶ Obey court orders
- ▶ Obey written agreement
- ▶ Conform to Navy support guidelines

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Navy Interim Support Guidelines

Supported dependents	Guideline support amount
Spouse only	1/3 gross pay
Spouse and 1 minor child	1/2 gross pay
Spouse and 2 or more children	3/5 gross pay
One minor child	1/6 gross pay
Two minor children	1/4 gross pay
Three minor children	1/3 gross pay

"Gross pay" includes base pay & BAH, but not BAS or special duty pay

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Navy Support Waivers

- ▶ Spousal Support
 - Desertion
 - Physical abuse
 - Infidelity
 - Auth: Director, Dependency Claims, DFAS
- ▶ Child Support
 - Location and welfare of child can not be determined
 - Person requesting support doesn't have custody
 - Auth: CO

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Navy Dependent Support Enforcement

- ▶ Administrative sanctions
- ▶ Administrative discharge possible
- ▶ Criminal sanctions (unlikely)

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Air Force Dependent Support

AFI 36-2906

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Air Force Dependent Support Requirement

- ▶ Provide "adequate" support to family members
- ▶ Don't collect allowances for dependents that are not being supported

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Air Force Interim Support Requirement

- ▶ “Adequate” support
- ▶ Virtually no guidance
- ▶ AFI is silent as to amounts and as to waivers/reductions

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Air Force Dependent Support Enforcement

- ▶ Administrative sanctions*
- ▶ Administrative discharge*
- ▶ Criminal sanctions*
- ▶ Recoupment of dependent allowances

How?

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Coast Guard Support Regulation

COMDTINST M100.6A
Coast Guard Personnel Manual Section 8M

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Coast Guard Interim Support

Person(s) Supported	Required minimum level of support
Spouse only	BAH/ diff + 20% base pay
Spouse & 1 minor or handicapped child	BAH/diff + 25% base pay
Spouse & 2 or more minor or handicapped children	BAH/diff + 30% base pay
1 minor or handicapped child	1/6 base pay
2 minor or handicapped children	¼ base pay
3 or more minor/handicapped Children	1/3 base pay

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Spousal support waivers

- ▶ Commandant is waiver authority
- ▶ Grounds
 - Desertion without cause
 - Infidelity
 - Spouse abuse
 - Temporary waiver of compliance with court order for good faith reliance on advice of counsel*

*Does not shield member from potential civil court sanction

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Child Support Waivers

- ▶ Commanding Officer may withhold action against a member for failure to support child when:
 - Member can't ascertain whereabouts or welfare of child, or
 - Person requesting support for child does not have custody of child

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Coast Guard Dependent Support Enforcement

- ▶ Adverse entry into service record for failure to spt 30 days after initial counseling
- ▶ If no acceptable progress after 6 months, more serious adverse service record entry & every 90 days thereafter
- ▶ After 2d entry, make recommendation to CMDT for adsep / denial of reenlistment
- ▶ Criminal sanctions if sufficiently notorious to bring discredit upon the USCG
- ▶ Recoupment of dependent allowances

Implications for Marital Separation Agreements

- ▶ Post separation support
 - No waive or not
 - Amounts
 - Paying marital debt as spousal support
- ▶ Child support
- ▶ Preserving BAH
 - Support at least equal to BAH/diff
- ▶ Family Separation Allowance
 - Plan for recoupment, loss of income

