



# Legal Briefs

---

---

## SUPPORT OF DEPENDENTS

### SOLDIER MUST COMPLY WITH COURT ORDERS AND WRITTEN SUPPORT AGREEMENTS

Under Army Regulation 608-99, a soldier is required to provide financial support to family members and to obey court orders on child custody. This obligation exists even if the family is separated geographically because of military service. The dollar amount of this support is measured by what is stated in any court orders or written support agreements. In the absence of a court order or written support agreement containing a financial support provision, a soldier will provide interim minimum financial support which is roughly based upon an amount equal to the soldier's Basic Allowance for Housing (BAH-II) at the with-dependents rate for the soldier's rank.

### INTERIM MINIMUM FINANCIAL SUPPORT

In accordance with AR 608-99, full-time Soldiers will provide interim minimum financial support for their family members until a court order or written support agreement is obtained. The specific amount of the financial support will depend on the number of family members, whether the soldier is supporting more than one family unit, and whether the husband and wife are both in the military.

**Single Family Unit:** If the soldier has only one family unit to support (no children from a prior relationship), then he or she will provide the following financial support:

- If the soldier's family is not living in Government family housing, the soldier will provide financial support equal to the soldier's BAH-II at the with-dependents rate. This will be provided even though the soldier is not receiving BAH-II or is occupying Government family Housing.
- If the soldier's family is living in Government family housing, no financial support is required. When the supported family members move out of Government family housing, support will be provided at an amount equal to BAH-II at the with-dependents rate.

**Multiple Family Units:** For example, if the soldier has been married before and has a current spouse or children from more than one marriage, then each supported family member will receive a pro-rata share of the BAH-II at the with-dependents rate. Each family member's share will be determined by dividing the amount equal to the BAH-II at the with-dependents rate by the total number of supported family members (excluding former spouses). Family members who must be supported include the current spouse, children, and adopted children. Under Kentucky law, a soldier is not required to support step-children when they no longer reside in the soldier's household under his or her supervisory control.

The payment of any pro-rata amount, however, will be paid in the following order and manner:

- First, any court-ordered support will be paid as stated in the decree.
- The remaining family members who do not reside in Government family housing will receive a pro-rata amount of the BAH-II at the with-dependents rate. This will be regardless of the amount of support provided to other family members.

**Soldiers Married to Each Other:** Soldiers do not have to provide financial support to a spouse on active duty in the military unless required by a court order or written support agreement.

## **CHILDREN OF PARENTS WHO ARE BOTH IN THE MILITARY**

**Single Family Units:** If the soldier does not have custody of any child of the marriage, then the soldier will pay an amount equal to the BAH-II at the DIFF rate to the soldier-parent having custody, if the soldier-parent is not living in Government family housing. If the soldier-parent having custody is living in Government family housing, the soldier is not required to provide additional financial support to the military member having custody of the child or children.

If each soldier-parent has custody of one or more children from their marriage, then neither Army member is required to provide financial support to the other.

**Multiple Family Units:** If family members are covered by court orders or financial agreements, financial support will be provided according to the court order or financial agreement. In the absence of a court order or financial agreement, each family member not residing in family quarters will be provided a pro-rata share of an amount equal to the soldier's BAH-II at the with-dependents rate. If the family member is residing in family quarters, the soldier is not required to provide additional financial support. If the soldier's present spouse is on active duty in the military, then the above rules on dual-military couples apply.

## **RELIEF FROM SUPPORT PAYMENTS**

If the soldier wants to reduce the amount of support required by court order, then the soldier must go back to court to get it reduced. If the soldier wants to reduce the amount of support owed under a written support agreement, then the soldier must get it changed by a court order or another written support agreement.

Battalion Commanders may release a soldier under his or her command from the provisions of AR 608-99 in the following situations: the order in question was issued by a court without jurisdiction; a court order is silent as to the obligation of a soldier to provide financial support to his or her family members; the income of the spouse exceeds the military pay of the soldier; the soldier has been the victim of a substantiated instance of physical abuse; the supported family member is in jail; the supported child is in the custody of another who is not the lawful custodian; or the AR-required support has been provided for at least 18 months.

## **METHOD AND FORM OF SUPPORT PAYMENTS**

Unless the court order or written support agreement provides otherwise, financial support will be paid by cash, check, money order, or allotment. The monthly financial support payments are due on the first day of the month following the month for which support is due. If the family members are not residing together, the soldier will ensure each family member receives his or her pro-rata share of interim minimum financial support.

A soldier may comply with AR 608-99 by directly paying nongovernmental housing expenses on behalf of family members. Nongovernmental housing expenses are limited to rent, real property taxes and property insurance due under an escrow agreement, the principal and interest payments due on any outstanding loan secured on the non-government housing, and essential utilities such as gas, electricity and water. Nongovernmental housing expenses do not include other housing costs such as telephone or cable television charges.

A soldier will receive credit for payments to others, on behalf of, and with the agreement of supported family members. If there is a disagreement on the terms of payment to others in an oral agreement which cannot be resolved, then the soldier will continue to make full payments directly to the spouse in cash, check, money order, or allotment. Examples of payments to others include interest on loans, charge accounts, and insurance payments.

## **SUPPORT ARREARAGES**

**Court Orders and Written Agreements:** Soldiers must comply with court orders regarding arrearages (unpaid support). These arrearages could result in involuntary allotments or garnishment of the soldier's pay, contempt of court, or recoupment of BAH-II received by the soldier.

**Interim Minimum Financial Support:** Although a soldier is encouraged to pay back support owed from not complying with the interim support provisions when there is no court order or written agreement, the soldier cannot be ordered to pay back such amount. A soldier who does not comply with the regulation is subject to administrative and

punitive action.

## **MAKING A NONSUPPORT COMPLAINT**

A family member who is not receiving financial support as required by Army regulations can contact the soldier's immediate commander directly. The commander is responsible for investigating the allegation of nonsupport and responding directly to the family member, attorney, or legal assistance attorney. The family member can also contact civilian social services, retain a civilian attorney, or see a legal assistance attorney at the closest military installation for help in nonsupport matters. The soldier's pay can be garnished for failure to pay court ordered alimony or child support. An involuntary allotment can also be initiated if a soldier is behind in child support or child and spousal support payments. Initiation of garnishment or an involuntary allotment requires action by a court or administrative agency.

## **DEPENDENT IDENTIFICATION CARDS**

If a soldier refuses or cannot sign an application for a dependent identification card or the soldier's whereabouts are unknown, then the spouse can go to the ID Card section of his personnel office (or a local one if necessary), which can issue a temporary card. The personnel office can also take action for obtaining a permanent identification card and enrolling the spouse and the children in DEERS for eligibility for medical benefits.

## **PATERNITY CLAIMS**

AR 608-99 does not require soldiers to support a child born out of wedlock unless the soldier either admits the child is his or a court order has determined paternity identifying the soldier as the father of the child.

Paternity complaints can be forwarded to the unit commander who will inform the soldier of the complaint. If the soldier refuses to answer the questions or denies paternity, then the soldier is not required to provide support for the child until a court order has been obtained. If the soldier admits paternity, then he is expected to provide financial support for the child just like any other family member. In Indiana, Local Prosecutors can assist with Child Support issues, additional information can be found at <http://www.in.gov/dcs/2427.htm>. Paternity information can be found <http://www.in.gov/dcs/2482.htm> for both the mother and father.

---

If you have any questions concerning these matters, please call the Office of the Staff Judge Advocate at 317-247-3449 between the hours of 8:00AM and 4:00PM Monday-Friday.

---