



Legal Briefs

From the Fort Knox Legal Assistance Office

SUPPORT OF DEPENDENTS

SOLDIERS 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 financial support in accordance with AR 608-99.

Minimum Required Support:

In the absence of a court order, agreement, or the family member(s) living in government housing, every Soldier owes to each separated dependent an amount equivalent to:

$$\text{Pro-rata share} = \frac{1}{\left[\begin{array}{c} \text{Total number of Supported} \\ \text{Family Members} \end{array} \right]} \times \text{Applicable BAH RC/T - WITH rate}$$

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

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

Exceptions:

- 1) **When a Soldier is stationed overseas:** receives BAH solely on behalf of unaccompanied Family members who reside in the United States, the actual amount of BAH paid to the Soldier on behalf of those dependents will be used to calculate the support requirement for those dependents, if it is greater than the BAH RC/T - WITH rate.
- 2) **Soldier married to another servicemember:** In the absence of a written financial support agreement or court order containing a financial support provision, a Soldier is not required to provide financial support to a spouse on active duty in one of the military services. With regard to a Soldier's child or children (from that marriage or a prior marriage), a Soldier will provide the following financial support in the absence of a written financial support agreement or a court order containing a financial support provision:
 - a) If the Soldier does not have custody of any children, and the children do not reside in Government quarters, the Soldier will provide BAH - DIFF to the military member having custody of the child or children.
 - b) If the Soldier does not have custody of any children, and the children reside in Government quarters, the Soldier is not required to provide financial support to the military member having custody of the child or children.
 - c) If the Soldier has custody of one or more children, the Soldier is not required to provide financial support for a child or the children in the custody of the other military member.

Enhanced Interim Financial Support (EIFS): In addition to the minimum required support mentioned above, every Soldier owes their spouse, if the spouse is not a servicemember, an EIFS amount equal to 25% of the BAH RC/T - WITH for the following periods:

(a) A one-time payment in conjunction with the first 30 days of interim support if the spouse is residing in a location subject to the jurisdiction of a state court able to order financial support.

(b) For all other spouses, the Soldier will make this EIFS payment each month for the period of time that the spouse does not have access to a state court with jurisdiction (Example: U.S. citizen spouse living OCONUS because of servicemember) to order spousal support.

Relief From Required Support:

If the Soldier wants to reduce the amount of court-ordered support, 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.

If support is required in the absence of a court order or agreement, a Battalion-level Commander, or higher, may release a Soldier from the AR required support. The Commander must be satisfied, by a preponderance of the evidence, that the Soldier should be released as a matter of fundamental fairness. Situations which may warrant relief include, but are not limited to, the following:

- The income of the spouse exceeds the military pay of the Soldier;
- The Soldier has been the victim of substantial abuse by the spouse;
- The supported Family member is in jail;
- The AR-required support has been provided for 18 months;
- A court with the jurisdiction to order financial support for the spouse has issued one or more orders, none of which contain a financial support provision;
- The spouse has acted in a manner to cause divorce proceedings to be unreasonably prolonged.

Additionally, the requirement to provide EIFS should routinely be waived when all of the following criteria are met: (1) The Soldier and spouse have lived apart for 30 days and the spouse resides outside the jurisdiction of any state court with jurisdiction to order support; (2) The Soldier has paid the required EIFS for at least one 30-day period; and (3) The spouse is a citizen of the host nation (not the U.S.) or it is otherwise appropriate for a host nation court of competent jurisdiction to order spousal support. (This criterion requires more of a connection to the host nation than mere presence in compliance with military orders).

A Battalion-level Commander, or higher, may release a Soldier from the regulatory requirement to provide child support if all of the following criteria are met: (1) The Soldier is the lawful custodian of the child; (2) The child, without the Soldier's consent, is in the custody of another person who is not the lawful custodian; and (3) The Soldier is diligently pursuing legal means to obtain custody of the child.

Method and Form of Support Payments:

Unless otherwise required by court order or a written support agreement, financial support may be paid by cash, check, money order, Electronic Fund Transfer, allotment or garnishment. The monthly financial support payments are due on the first day of the month following the month for which support is due unless payment is being mailed, in which case it must be postmarked not later than the first day of the month.

A Soldier may comply with AR 608-99 by paying certain non-government housing expenses on behalf of family members. These expenses are limited to rent (including payments to privatized housing on a military installation), principal and interest payments on a mortgage loan, real property taxes and property insurance due under an escrow agreement covering that property, and essential utilities such as gas, electricity and water. Nongovernment housing expenses do not include other housing costs such as telephone, internet, or cable television. All other in-kind expenses paid on behalf of supported Family members require the written approval of the supported Family members to be credited toward the required regulatory support obligation.

Arrearages: Soldiers must comply with court orders regarding arrearages (unpaid support). These arrearages could result in involuntary allotments or garnishment of the Soldier's pay. Further, a failure to pay arrears may subject the Soldier to adverse administrative or punitive action.

Making a Nonsupport Complaint: A family member who is not receiving the required regulatory support can contact the Soldier's Commander directly. The Commander is responsible for investigating the allegation of nonsupport and responding to the complainant. The family member can also consult with a military Legal Assistance Attorney or retain civilian counsel.

Parentage Claims: Legal parentage in the U.S. is determined according to state law. Legal parentage in foreign jurisdictions can be determined by foreign courts which have proper jurisdiction, or by foreign governmental entities whose determination is enforceable by virtue of a U.S. treaty or agreement, or enforced by a U.S. court. Once parentage is determined in one of these ways, the Soldier has a regulatory financial support obligation. If parentage is not determined in one of these methods, the Soldier may terminate financial support at any time, even if the Soldier has admitted parentage.

Disclaimer: This is a product created for the benefit of Fort Knox Soldiers, and is not intended to be used as regulatory guidance in contravention of AR 608-99.

If you have any questions concerning these matters, please call the Legal Assistance Office for an appointment at (502) 624-2771 or visit our website at <https://home.army.mil/knox/index.php/about/Garrison/legal-assistance-office/legal-assistance-division>. Our hours of operation are Monday, Tuesday, Wednesday and Friday, 0900 - 1600, and Thursdays 1300-1600. The Fort Knox Legal Assistance Office is located in Building 1310, Pike Hall at the corner of Knox and Third Street.
