



ASA DIX LEGAL BRIEF

A PREVENTIVE LAW SERVICE OF THE JOINT READINESS CENTER LEGAL SECTION
UNITED STATES ARMY SUPPORT ACTIVITY DIX
KEEPING YOU INFORMED ON YOUR PERSONAL LEGAL NEEDS

FAMILY SUPPORT

Q: WHAT ARMY REGULATION PROVIDES GUIDANCE FOR FAMILY SUPPORT? Army Regulation (AR) 608-99 prescribes Army policy on financial support of family members, child custody, visitation, paternity, and related matters.

Q: WHAT ARE A SOLDIER'S OBLIGATIONS UNDER THE REGULATION? A soldier's obligation includes:

- (1) maintaining reasonable contact with family members so that their financial needs and welfare do not become official matters of concern for the US Army.
- (2) conducting themselves in an honorable manner with regard to parental commitments and responsibilities.
- (3) providing adequate financial support to family members.
- (4) complying with all court orders.

Q: WHO IS RESPONSIBLE FOR ENSURING THAT SOLDIERS ARE INFORMED OF THE ARMY POLICY ON SUPPORT OF FAMILY MEMBERS AND ENFORCING IT? Commanders and their staff are responsible for ensuring that soldiers know about and comply with the policy when consistent with other military requirements and ensuring that any action or non-action on their part does not encourage or facilitate violations of court orders or AR 608-99 or avoidance of a judicial resolution of issues relating to paternity, child custody, or support by soldiers and family members.

Q: IF A SOLDIER FAILS TO MEET THE REQUIREMENTS ABOVE, WHAT CAN THE COMMANDER DO? The commander can consider:

- (1) Taking adverse administrative actions (i.e. letter of admonishment, letter of reprimand).
- (2) Issuing the soldier an Article 15 (non-judicial punishment).
- (3) Issuing a bar to re-enlistment.
- (4) Preferring formal charges under the Uniform Code of Military Justice (UCMJ).

Q: IF THE SOLDIER FAILS TO MEET THE REQUIREMENTS, CAN THE ARMY DEDUCT MONEY FROM THE SOLDIER'S PAY? The Army has no legal authority to deduct money from a soldier's pay without the soldier's consent unless a civilian court has ordered garnishment or involuntary allotment. If there is an order for garnishment or involuntary allotment, the Defense Finance and Accounting Service (DFAS) can deduct money directly from the soldier's pay. Depending on the specific circumstances, a maximum of 50 to 65 percent of the soldier's pay may be withheld to satisfy the child support obligation. DFAS will only garnish military pay (not allowances); however, the civilian court, in calculating child support, may consider all pay and allowances.

Q: HOW DOES THE ARMY DETERMINE ADEQUATE SUPPORT FOR FAMILY MEMBERS? The Army prefers that a separated soldier and his or her spouse enter into a written separation agreement which specifies an agreed-upon level of support. If the parties cannot agree, they should resolve the matter in a civilian court by obtaining a court order specifying the amount of support to be paid. In either case, the support amount agreed upon in either the written separation agreement or court order controls.

Q: IN THE ABSENCE OF A COURT ORDER OR WRITTEN AGREEMENT, HOW DOES THE ARMY DETERMINE ADEQUATE SUPPORT FOR FAMILY MEMBERS? In the absence of a court order or written agreement, and until such an order or written agreement is obtained, the Army has established minimum support measures for single and multiple family units, as indicated in AR 608-99, Chapter 2, section 2-6. This minimum amount is based upon the soldier's Basic Allowance for Housing (BAH)-II-WITH-rate. BAH-II does not change based upon geographic location. To view the BAH-II chart, link to <http://www.defenselink.mil/militarypay/pay/bah/02types.html>.

Q: IF I AM THE SPOUSE OF A SOLDIER IN A SINGLE FAMILY UNIT [HUSBAND AND WIFE OR HUSBAND, WIFE, AND CHILD] AND LIVING OFF POST, WHAT IS THE MINIMUM SUPPORT THAT I CAN RECEIVE? In the absence of a court order or written agreement, the soldier must provide support of an amount equal to his or her BAH-II-WITH-rate.

Q: IF I AM THE SPOUSE OF A SOLDIER IN A SINGLE FAMILY UNIT AND LIVING IN GOVERNMENT QUARTERS ON POST, WHAT IS THE MINIMUM SUPPORT THAT I CAN RECEIVE? In the absence of a court order or written agreement, if the single family unit resides in government quarters on post, the soldier is not required to provide additional financial support under AR 608-99. If the supported family members move off post, the soldier is required to provide support at the BAH-II-WITH-rate in the absence of a written agreement or court order.

Q: IF BOTH MY SPOUSE AND I ARE IN THE MILITARY, WHAT IS THE MINIMUM SUPPORT THAT I CAN RECEIVE? In the absence of a written agreement or court order, the soldier is not required to provide financial support to a spouse on active duty in one of the military services. With regard to the soldier's child or children, he or she will provide the following financial support in the absence of a written financial support agreement or a court order containing a financial support provision:

- (1) 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.
- (2) 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.
- (3) 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.

Q: IF THE SOLDIER'S RANK INCREASES, AM I ENTITLED TO AN INCREASE IN CHILD SUPPORT? If there is no written agreement or court order, the soldier is required to pay BAH-II-WITH rate consistent with his or her current rank. However, if there is a written agreement or court order for support, an increase in rank will not result in an automatic increase in support. Rather, the written agreement or court order must be formally modified in order to increase or decrease the amount of support due.

Q: WHEN A SOLDIER HAS SEPARATED OR REMARRIED AND HAS TO SUPPORT MULTIPLE FAMILY UNITS (2 OR MORE FAMILIES OR SETS OF DEPENDENTS) THAT LIVE OFF POST, HOW DOES THE ARMY DETERMINE WHAT SUPPORT THE SOLDIER OWES? In multiple support situations, the amount of support due to each supported family member is determined by calculating a pro-rata share, as follows:

$$\text{Pro-rata share} = \frac{1}{\text{Total number of supported family members (not counting the military member)}} \times \text{Applicable BAH II-WITH rate}$$

For example, if a soldier has one child from one relationship and subsequently has two more children from a second relationship, the soldier has a total of three dependents that he is required to support (assuming the soldier is only legally obligated to support the children and not the parent of the children). In the absence of a written agreement or court order for support, the soldier must pay 1/3 of his or her BAH-II-WITH rate to each of the three dependents.

Q: CAN THE AMOUNTS OF SUPPORT PROVIDED BY AR 608-99 BE INCREASED? Yes, these guidelines exist to ensure that some minimal support is received by family members while a separation agreement, court order, or judicial decree is obtained stating the proper amount of support to be paid by the soldier. Once an agreement, court order or decree is obtained, it is the controlling document, not AR 608-99.

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