

## Military Leave Orders - Requests For Documentation

There seemed to be a conflict of opinion as to if or when an employer could always require written proof of duty orders for the usual military leave, but under the FMLA leave provisions you can request documentation under the following guidelines:

### What This Means For Counties

Counties can use the following as a written policy.

### Certification of Leave (29 CFR §825.309)

The employee should complete the form, Certification of Qualifying Exigency for Military Family Leave (UWS 84), to certify reason for leave.

An employer **may** do any of the following to confirm the exigency.

- Require a copy of the military orders or other official documentation of active duty service.

- Request any available supporting documentation.

- Contact third parties to verify meetings/ appointments (how would you know whom to contact and if given the contact information, how would you know they had the proper military authority to speak to the issue of unwritten orders? Since this says “may” it seems optional to an employer’s policy and I would omit it as a possibility except for very short notice situations and that is why they made faxes or emails.)

An employer **may** do any of the following to confirm the reason for the family member care military FMLA leave.

- Require an employee to obtain a certification from an authorized health care provider of the service member. An authorized health care provider

is one of the following:

- US Dept of Defense (DOD) health care provider

- US Dept of Veterans Affairs (VA) health care provider

- DOD TRICARE network authorized health care provider

- A DOD non-network TRICARE authorized private health care provider

- Require certification of the military status of the service member

- Require certification of the employee’s relationship to the service member

In lieu of certification, an employer **must** accept “invitational travel orders” (“ITOs”) or “invitational travel authorizations” (“ITAs”) issued to any family member to join an injured or ill service member at his or her bedside.

- Providing an ITO or ITA is sufficient certification for the specified time for an employee to take leave on a continuous or intermittent basis, regardless of whether the employee is named in the ITO or ITA.

- When certification or an ITA or ITO is provided, employers may not require a 2nd or 3rd medical opinion, nor may an employer require periodic recertification. However, the employer may seek authentication and/or clarification

For more information, contact CTSI at 303-861-0507.