



FMLA Must Be Clarified to Cover Full Time Flight Attendants

The Family and Medical Leave Act (FMLA) allows for eligible employees to take job-protected, unpaid leave, or to substitute appropriate earned paid leave, for up to 12 workweeks in any 12 months, to care for a child, family member with a serious health condition or the employee's own health which makes the employee unable to perform the functions of her or his job. Medical benefits continue while the employee is on FMLA and the employee has a right to return to the same position or a position with equivalent pay, benefits and working conditions upon conclusion of FMLA.

Current requirements for FMLA coverage as currently interpreted fail to provide the intended protections to the majority of full time flight attendants at U.S. airlines, whether unionized or not. To be eligible for coverage under the FMLA, the Supreme Court has established a test based on time spent predominantly for the benefit of the company. The FMLA directed the courts to use the Fair Labor Standards Act (FLSA) to calculate the number of hours worked to qualify for coverage. The threshold that has been established for an employee to qualify for coverage is to work 1250 hours in 12 months.

The problem is that flight attendants are not covered by the FLSA. The concept used to determine the 1250 hours does not work for flight attendants because time spent between trips, whether during the day or on overnights, is based on company scheduling requirements but does not count towards their time at work. In 1996, the U.S. District Court for Northern Georgia ruled that Delta flight attendant Rich did not qualify for FMLA because she had not worked the 1250 hours in 12 months required under the Act and using the guidelines established by interpretation of the FLSA. She had worked a normal full-time flight attendant schedule of just over 750 hours of "flight time" (from departure to arrival) a year during the 12 month period prior to her termination following numerous illnesses. **Based on this and the fact that it is very difficult for many flight attendants to satisfy the 1250 hours threshold eligibility requirement, a separate standard, based on a full-time flight attendant schedule, is necessary.**

The current defined requirements for FMLA coverage also do not allow for most flight attendant reserves to qualify. A reserve schedule is created by an airline for flight attendants who are not assigned to specific flights but must be available to work whenever called to duty. A reserve flight attendant may need to be ready for a phone call from the company during specific days, hours or be required to call the night before an assignment. Up to 1/3 of all flight attendants may be on reserve at any one time. A reserve has no control over the number of hours they are allowed to work; it could be a full schedule or few hours at all depending on the carrier's needs. Because the airlines realize that someone on reserve may not be called upon, must be available to the company at a moment's notice and must be ready to report to duty while on reserve, they have guaranteed that a flight attendant on reserve will be paid for a minimum number of hours per month.

One must also recognize that flight attendants spend many hours away from home, not of their own choice, but because of the needs of their employer. These hours spent away from home and family, because technically "off-duty", are also not used to calculate FMLA coverage. The airlines themselves have recognized that reaching the 1,250 hours of service threshold established by the courts through the FLSA is nearly impossible considering a flight attendant's schedule. Some airlines have willingly provided for a lower threshold than the 1250 hours for flight attendant qualification of FMLA coverage. Each carrier has a different calculation and no two carriers are similar. **There is currently no benchmark for hours of qualification in the industry.** This basic legal right should not be left to the whims of an employer and depend on the strength of a union at the bargaining table. Flight attendants, who meet the intended threshold of 60% of a full time flight attendant schedule, should automatically qualify for coverage under the FMLA.

The Association of Flight Attendants – CWA calls upon Congress to pass S. 2059/H.R. 2744 to clarify and technically correct the Family and Medical Leave Act so that all flight attendants, line-holders and reserves, that work a full time schedule at their carrier are covered under the provision of the law.

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