

PROCEDURES FOR FAMILY LEAVE APPLICATION
[AS APPLICABLE TO FEDERAL FMLA QUALIFICATION]:

***Note:** Please keep in mind that, for the purposes of this discussion, the emphasis is on the rule of law as it applies to Federal FMLA versus Family Leave offered under United Airlines' Company Policy (UA FML) guidelines. If a UAL Flight Attendant does not meet the Federal FMLA qualification criteria, then there is no recourse via the Dept. of Labor to contest a denial of Family Leave Act rights. However, if a UAL Flight Attendant does in fact meet the specific criteria set out within the Family Medical Leave Act of 1993, then the Company **must** administrate Family Leave for that Flight Attendant according to the Federal FMLA guidelines. Should a Flight Attendant be domiciled in a state that offers more generous State Family Leave protections, then the Company **must** administrate Family Leave for that employee under the more generous guidelines. In all cases, while it is the Company's responsibility to know and properly administrate the Federal and/or State Family Leave laws, it is always prudent for the Flight Attendant to know and understand the laws as they apply to their employee group. If at any time in this discussion, you believe these issues and the knowledge of these issues is of benefit to our UAL Flight Attendant population, then please contact your AFA Union Local and MEC elected representatives and advocate for this information to be provided to the entire UAL Flight Attendant population via our Union publications. [Federal FMLA laws do not apply to those flight crews domiciled outside the U.S.A.]

***Further Note:** As a (Flight Attendant) employee, you may hear from various sources some of the following mis-statements; *"Flight Attendants are considered 'part-time employees' and thus do not fall under the Federal FMLA laws"*, or *"the Railway Labor Act exempts airline flight attendant employees from FMLA protections"*, or *"our Flight Attendant contract offers greater protections than does the Federal Family Medical Leave Act"*. To be clear, **none** of the above statements are accurate.

- When the Federal Family Medical Leave Act of 1993 went into effect, the airlines 'successfully' argued that flight crews did not fly enough 'work-time hours' to fulfill the Act's mandated 1250 Work Hours qualification. However, in 1996, a Delta Airlines Flight Attendant filed a lawsuit against Delta Airlines [*Rich v. Delta Airlines*] arguing for flight crews' "Duty Time" to be used as the qualifier rather than "Flight Time". While that flight attendant's personal case was not successful because, using his accumulated Duty Time he still had not flown enough to have 1250 Duty Time hours, what **was** successful was that, based on the arguments put forth by this flight attendant, the Dept. of Labor did agree that the Duty Time of a flight crew's schedule would be the qualifying determinant rather than the more limiting Flight Time totals. Thus, from 1996 forward, the airlines have been responsible for tracking, recording, and qualifying flight crew members' (Flight Attendants' and Pilots') Duty Time hours for the purpose of Federal Family Medical Leave Act (FMLA) determination. [Also of note, the Dept. of Labor has subsequently defined "duty time" as the hours from check-in through debriefing for each duty period worked, and currently (but possibly arguably) specifically excludes layover time.]
- The Railway Labor Act does not exclude Flight Attendants from protections afforded by the FMLA (Family Medical Leave Act), the ADA (Americans with Disabilities Act), or the EEOC (Equal Employment Opportunity Commission) laws.
- Our current UAL/AFA Contract (1996-2010) only refers to UAL Company Policy Family Leave (UA FML) and does not include language that prohibits the Company from changing UA FML at will. The sole reference to Family Leave in our contract is as follows:

Section 23M. Family Medical Leave

1. In accordance with the Company's Family Medical Leave Policy, an eligible Flight Attendant may request family leave due to the serious health condition of the employee, spouse, child or parent or for the birth or placement of a child. **Leave terms and conditions, eligibility criteria and administrative procedures are contained in Company policy, as exists at the time the leave is requested.** [*Emphasis added*]

As you can see, the Company believes it may change its Policy at will, as long as no contractual or legal provisions are violated. The importance of the Federal FMLA protections is that **the Company may not infringe upon or diminish** the Family Leave protections afforded under the FMLA laws (Federal and State) for those Flight Attendants who qualify for the Federal/State FMLA protections. It is therefore of paramount importance that the employees be informed of and understand these protections, and therefore be able to work toward qualifying for these FMLA protections if that is of importance to the employee. [Any arguments the AFA may make, or intends to make, via the grievance process are based on the Company Policy (UA FML) issues. To date, there has been no expressed intention by AFA to argue against the misadministration of the Federal FMLA for those flight attendants who qualify yet have not been afforded their legal rights under the law.]