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The Family Leave application process, as it relates to Federal FMLA versus UA FML:

[The following information applies **ONLY to the Federal FMLA protections**!!! Please remember, if you do NOT qualify for the **Federal** FMLA protections (e.g., lack of qualifying Duty Time hours and/or failing to meet the definition of "serious health condition") then you *may not* be eligible for rights pursuant to the Family and Medical Leave Act of 1993, nor would you be able to pursue a complaint via the Dept. of Labor. If the flight attendant does not qualify for the Federal FMLA and ONLY qualifies for the UA FML, then UAL is able to administrate your family leave according to the company policy in place at the time of leave application, barring any rights and/or restrictions afforded by the Contract.]

When determining a need for Family Leave, it is necessary to enter the application process with as much knowledge as possible of the protections that may or may not be available to your situation. Hopefully the other documents that have been offered previously have been helpful in showing the difference between the United Airlines Family Leave Policy (UA FML), as it relates to UAL Flight Attendants, and the rights/protections afforded by the Federal Family and Medical Leave Act of 1993 (FMLA)…..IF ONE QUALIFIES. *[*Author's contact information is available at the end of this document if interested in obtaining copies of other FMLA information currently offered.]* For your own benefit, you must be proactive in asserting the appropriate rights and protections which the law allows. [To date, barring any grievance decisions won by AFA, the Company is free to administrate the UA FML as it is written at the time of implementation. And the Company's position is that they are free to change the Company Policy FML at any time and in any manner they so choose. However, if you qualify for the Federal protections, the Company is NOT allowed to reduce or limit in any way the protections afforded by the Federal Family Leave Act.] It is critical to keep this in mind as, with a little planning, it may be possible for the f/a to increase their flying (Duty Time) with the intention of qualifying for the Federal FMLA protections. Also of importance to note is the fact that, if one qualifies, the Company MUST adhere to any rights and/or protections that are afforded by more generous STATE Family Leave Laws. Currently, California based flight attendants who qualify are able to take advantage of several family leave protections which are more generous than the Federal FMLA. Other states that have U.S. based UAL flight attendants should check with the Dept. of Labor/Wage & Hour Division office within their state.

Initially, the **most important** aspect of the family leave application process is determining whether or not your situation qualifies for the Federal FMLA protections. While this document relates to the employee's own medical condition/illness/injury, **the same qualifications also pertain to a Family & Medical Leave application submitted to care for an eligible family member**. The two (2) main aspects of qualifications are:

1. **The condition/illness/injury must fit within the parameters of the definition of a 'serious health condition' as it is defined under the Family and Medical Leave Act of 1993.** A 'serious health condition' is defined as the following (taken verbatim from the Family and Medical Leave Act, 29CFR825.114):

(a) For purposes of FMLA, ``serious health condition'' entitling an employee to FMLA leave means an illness, injury, impairment, or physical or mental condition that involves:

(1) Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity (for purposes of this section, defined to mean inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment there for, or recovery there from), or any subsequent treatment in connection with such inpatient care; ***or***

(2) Continuing treatment by a health care provider. A serious health condition involving continuing treatment by a health care provider includes any one or more of the following:

(i) A period of incapacity (i.e., inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment there for, or recovery there from)of more than three consecutive calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:

(A) Treatment two or more times by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care

services (e.g., physical therapist) under orders of, or on referral by, a health care provider;

or

(B) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider.

(ii) Any period of incapacity due to pregnancy, or for prenatal care.

(iii) Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:

(A) Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;

(B) Continues over an extended period of time (including recurring episodes of a single underlying condition); and

(C) May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.).

(iv) A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.

(v) Any period of absence to receive multiple treatments (including any period of recovery there from) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), kidney disease (dialysis).

(a) Treatment for purposes of paragraph (a) of this section includes (but is not limited to) examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations. Under paragraph (a)(2)(i)(B), a regimen of continuing treatment includes, for example, a course of prescription medication (e.g., an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition (e.g., oxygen). A regimen of continuing treatment that includes the taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider, is not, by itself, sufficient to constitute a regimen of continuing treatment for purposes of FMLA leave.

(b) Conditions for which cosmetic treatments are administered (such as most treatments for acne or plastic surgery) are not ``serious health conditions'' unless inpatient hospital care is required or unless complications develop. Ordinarily, unless complications arise, the common cold, the flu, ear aches, upset stomach, minor ulcers, headaches other than migraine, routine dental or orthodontia problems, periodontal disease, etc., are examples of conditions that do not meet the definition of a serious health condition and do not qualify for FMLA leave. Restorative dental or plastic surgery after an injury or removal of cancerous growths is serious health conditions provided all the other conditions of this regulation are met. Mental illness resulting from stress or allergies may be serious health conditions, but only if all the conditions of this section are met.

(c) Substance abuse may be a serious health condition if the conditions of this section are met. However, FMLA leave may only be taken for treatment for substance abuse by a health care provider or by a provider of health care services on referral by a health care provider. On the other hand, absence because of the employee's use of the substance, rather than for treatment, does not qualify for FMLA leave.

(d) Absences attributable to incapacity under paragraphs (a)(2)(ii) or (iii) qualify for FMLA leave even though the employee or the immediate family member does not receive treatment from a health care provider during the absence, and even if the absence does not last more than three days. For example, an employee with asthma may be unable to report for work due to the onset of an asthma attack or because the employee's health care provider has advised the employee to stay home when the pollen count exceeds a certain level. An employee who is pregnant may be unable to report to work because of severe morning sickness. [End of verbatim FMLA passage]

2. **The employee must have accrued at least 1250 DUTY TIME hours in the 12 months immediately preceding the qualifying absence**.
    a. For flight crewmembers, this is our DUTY TIME and not our FLIGHT TIME HOURS. Duty Time is calculated as the accumulation of hours from checkin to debriefing for each duty period, and excludes layover time. [A *very general guideline* is that DTM = 1.5x FTM…therefore an 80 hr. FTM month *should in most cases* approximate 120-130 DTM hours.] UAL uses FTM (Flight Time Hours) to qualify for the UA FML.
    b. An employee must have worked for the employer for at least 1year, although that amount of time does not have to have been continuous employment.

STEP 1: APPLY FOR THE FMLA ONLY AT THE TIME WHEN IT IS INITIALLY NEEDED.

1) Many f/a's are in the habit of applying for family leave "in order to have it on file *should* it be needed". In so doing there is absolutely no way to determine an accurate eligibility of qualification hours and thus the f/a may be unnecessarily limiting their legitimate right to Federal FMLA protections. It is also a possibility that even though an "approved" family leave application is on file, when the actual need for the first absence arises, the company may deny the family leave if the f/a does not have the appropriate number of FTM/DTM hours at the time of the absence! To avoid this dilemma, **WAIT** until there is the "need" for an absence and THEN SUBMIT the application within the prescribed 15 day time period. In so doing it is very easy to determine the number of Flight Time Hours and the number of Duty Time Hours in the 12-month qualifying period **immediately prior to the start of the family leave absence**. Thus it is also obvious as to the 12-month period going forward within which the approved Family Leave may be taken for that injury/illness/medical condition. Keep in mind that once the initial qualifying family leave absence occurs (and the application has been submitted and approved) it is no longer necessary to maintain the 1250 DTM for each subsequent absence. In other words, once you are approved for the (12 month) period of FMLA, you do not have to be concerned about requalifying for each absence related to the qualifying condition in the approved 12 month period. Your DTM accumulation will only once again become relevant when a new application is submitted after the previous 12 month period has concluded, or for a different injury/illness/medical condition and, once again, upon the occurrence of a qualifying absence (not simply when the previously approved 12 months has expired).
2) EXCEPTION: The only exception to this rule is when the need for family leave is KNOWN at least 30 days in advance. In such case, the employee must give 30 days notice of the need for leave. If the employee does not have 30 days foreknowledge, then notice must be given as soon as is practicable. For example, the f/a knows the date of an upcoming surgery that will leave them unable to perform all aspects of their job. As soon as the date of surgery and consequent incapacity are known they must notify the company of the need for FMLA. In this case, the application is submitted prior to the date of absence, but care must be taken to ensure the requisite 1250 Duty Time Hours is attained as of the date of the FMLA absence in order to qualify for the Federal FMLA protections.

STEP 2: CALL THE FASC AND REQUEST YOUR FTM AND YOUR DTM HOURS.

a. You can call the F/A Service Center at any time to track both your Flight Time Hours and your Duty Time Hours. This is recommended in order to better determine whether you are close to qualifying for the more advantageous Federal FMLA protections.
b. But **DEFINITELY** call the FASC **immediately upon beginning the absence** and request a written verification of Duty Time Hours be added to your Work History (FDWH entry).
c. It is also highly recommended that at the end of each month a f/a should print out the final line as well as each of the completed ID's flown during the month and a copy of your DFAP. In so doing, should it be necessary to challenge the Company statistics, the f/a would be able to compare and corroborate their accumulation of Duty Time Hours. Also make notations to your personal DTM totals that denote the Duty Time related to RET, CBT lessons, any Company-mandated meetings, as well as for any mandatory meetings with your supervisor…**these are all**

examples of Duty Time that is currently NOT tracked by UAL or added to your Duty Time calculations, but IS relevant to qualifying for FMLA!

*****THIS IS IMPERATIVE! IN ALL CONVERSATIONS AND INTERACTIONS WITH THE COMPANY, DOCUMENT WHO YOU SPOKE WITH AS WELL AS THE DATE/TIME OF THE COMMUNICATION and/or CONVERSATION. REQUEST AN EMAIL ADDRESS (AND FAX NUMBER) WITH WHICH TO COMMUNICATE DIRECTLY WITH THE SAME INDIVIDUAL TO WHOM YOU SPOKE.** The importance of this cannot be overemphasized. A 'paper trail' of information and communication will benefit you in pursuing any and all challenges should you find that your Federal FMLA rights are not being administrated properly. If the Management personnel refuse and/or fail to provide the requested corroboration in writing within a reasonable amount of time, then it is suggested that you document the content of the conversation, fax/email that account to the relevant Management personnel and ask for corroboration of your accounting of the details. If Management fails to respond to this request, then your written account becomes tacit evidence of the information. For purposes of corroboration and accountability, it is highly recommended to pursue any and all communications **IN WRITING**. Faxed letters and emails will aid in speed and convenience.

REVIEW: STEPS IN PURSUING FAMILY MEDICAL LEAVE -

1) Call the FASC: give notification of need for the absence and that you will be submitting a Family Leave application for the absence. Request that you be designated "ONSL-FMLA PENDING" if the absence is related to your own illness/injury…..or "DNF-FMLA PENDING" if the absence is to care for an eligible family member.

2) When speaking with the FASC personnel, request both your accumulated Flight Time Hours (FTM) AND your Duty Time Hours (DTM) as of that date. This 'should be' the total accumulated FTM/DTM for the 12-month period immediately prior to that date of absence and will thus determine eligibility for either UA FML or Federal FMLA protections. It 'may' be necessary to speak with two different agents: one for ONSL, one for DTM/FTM information.

3) When submitting the Family Leave application, if you know that you do not have the requisite Duty Time Hours (1250 DTM) to qualify for the Federal FMLA but you do have the Flight Time Hours (590 FTM) to qualify for the UA FML, then you must download and submit the UA FML application from Skynet. However, if you have accumulated the necessary 1250 Duty Time Hours, then you may either submit the UA FML application or you may submit the **Federal Form WH-380, Medical Certification**. [This form may be downloaded from the Dept. of Labor/Wage & Hour Division website.] If you are told that you have not yet accumulated enough hours to qualify for the Federal FMLA protections, it is suggested that you request a printout of the trips which the company used to calculate your DTM. Make this request IN WRITING to your Domicile Manager AND to the Family Leave Service Center. You are then able to determine if there has been a miscalculation. (For example, determine if your DTM includes all the hours you were on company business for the year, such as RET and any other company mandated meetings and training. If missing from the Company calculations, this may be enough hours to allow you to meet the 1250 DTM benchmark.) Remember, as a generalization, if a f/a averages approximately 80-85 Flight Time Hours per month, this *should* put them close to qualifying for the Federal and/or State FMLA protections. There are doubts as to the accuracy of DTM numbers calculated by the FASC.

4) Keep in mind that the Company is **obligated** to follow State Family Leave laws, for those flight attendants who qualify and are based in that state, whenever and however those laws may be **more generous** to the employee than any Federal, Company, or contractual family leave provisions. For example, California currently offers its workers various family leave benefits more generous than the Federal FMLA. Therefore, those f/a's based in California, Washington, Massachusetts, Colorado, New York, Illinois, Nevada and Maryland/Washington, D.C. should research any enhanced family leave benefits that may be available to them via State Family Leave

laws. Be prepared to proactively assert knowledge of your protections should they not be followed by the Company.

5) Once your FMLA has been approved, keep track of the Duty Time of the trips missed as this is how your FMLA allowance will be depleted over the ensuing 12 month period. Always verify that your figures coincide with those of the Company.

6) If the physician's certification is questioned by the Company, and you believe your medical condition qualifies under both the DTM (Federal FMLA) benchmark as well as falling within the established parameters of a "serious health condition", then the Company **MUST** pursue the 2nd (and possibly 3rd) medical opinion process PRIOR TO A DENIAL OF FMLA. The entire cost of such appeal is completely borne by the Company, and the physician(s) used may not have any form of business relationship to the Company.

7) If ANY of the (FMLA) family leave process is not adhered to by the Company, the employee may file a complaint with the D.O.L./Wage & Hour Division office presiding over the state/city in which they are based. It is a simple complaint process that may be done in person or over the phone.

IMPORTANT RESTRICTED AND REQUIRED ACTIONS TO KEEP IN MIND:

- It was previously mentioned above that IF a flight attendant believes they would qualify under the Federal FMLA guidelines that they would have the choice of using either the UA FML application (downloadable from 'Skynet') OR they would be able to use the Federal Form WH-380 (downloadable from the Dept. of Labor website). The major difference in the forms is that the Federal application does NOT ask for a Medical Release of Information whereby you give the Company the right to contact your physician/care-provider directly. Be aware – by not allowing such direct contact between the Company and your personal physician you **ARE NOT** refusing to provide medical information. Rather you are only denying **direct** contact between those two parties. The Company is forbidden by law to contact your physician directly if you have not given permission for them to do so. If the Company requests 'more information' about your condition, first **make certain in writing** as to **what specific information is being requested** (it must be more than simply asking for "more information"). Then request (always in writing) that the Company provide you with the specific question(s) as to what is being requested, also informing the Company that you will obtain the answers from your physician, and that you will then forward those answers back to the Company. It is suggested that the EMPLOYEE faxes/mails the application/information to the pertinent Company address rather than having the physician's office do it, because that way the employee will be able to review the information to make certain it is complete, will have a copy of the submitted information, and will be able to confirm that it was done in a timely manner.
- The Company may not force an employee to take more family leave than is necessary. For example, if a flight attendant (who has qualified for and been granted FMLA under the Federal FMLA protections) must miss a 4-day trip which conflicts with an immoveable doctor's appointment, or has a condition/illness/injury that only requires missing part of a trip, then the company MUST ALLOW the flight attendant to make up that time missed that was not specifically for family leave purposes. Furthermore, the Company is prohibited from charging more FMLA than is needed by the employee for any one occurrence (and thus unnecessarily further depleting the employee's FMLA bank of hours). This is most important in the situation where the FMLA is taken to care for a family member and thus is **unpaid** leave. Should the employee not be allowed to make up such time, they would be unnecessarily penalized financially, which is specifically prohibited by the Family and Medical Leave Act of 1993. This would also apply to an employee taking FMLA for their own illness/injury who has chosen not to be paid from their Sick Bank hours, or has no Sick Bank hours remaining. This should not be considered the same as "WOP/GWOP" where the Company may determine whether or not such time can be made up. Such occurrences should be argued and, if necessary, reported to the DOL.

- Since our flight attendant work fits the very definition of having a "variable work schedule", the Company MUST calculate the "normal work week" of each successful FMLA applicant individually. The flight attendant is then allowed to miss the equivalent of 12 "normal work weeks" total number of hours in the ensuing 12-month period. Thus, even when the total number of FMLA allowable hours is taken in one block of time off, the number of trips missed (and the included number of Duty Time Hours of those trips missed) may encompass a period of time longer than a continuous block of 12 calendar weeks.
- When the Company ultimately accepts or denies your FMLA application, the Company MUST notify you directly and IN WRITING. (An entry in your FDWH work history is not considered sufficient notification.) If your application has been denied, the reason for the denial must be given. If your application for FMLA has been accepted, the Company MUST include the total number of FMLA Duty Time hours you will be allowed (based on your individual "normal workweek" calculation, as well as the number of Duty Time hours, if any, that have already been charged to your FMLA bank of allowable leave hours.
- There are time limitations that apply to notifying the Company of the need for FMLA, as well as time limits for submitting necessary paperwork. Keep in mind that IF the employee has attempted to comply within the required time limits but the reasons for not doing so were out of the employee's control, the Federal FMLA does allow flexibility. One example would be if the employee submits the paperwork to the physician for completion but the physician does not return it within the allotted time, the Company MUST take that into consideration and not simply deny the FMLA because it was late. It would be the employee's responsibility to provide confirmation as to the reason for the delay.
- The FMLA is an "employee-friendly" law, BUT keep in mind that the Company DOES HAVE the ability to challenge the application via a 2nd and even 3rd medical opinion process, by a physician who does not have a working relationship with the Company (i.e., the 'company doctor' would be excluded from participating in the arbitration.)
- It is also important to remember that the Company CAN unilaterally determine a condition/illness/injury to be FMLA even if the employee does not request such determination. However, the condition/illness/injury MUST fit all the parameters of an "allowable serious health condition" under the Act, AND the employee must be able to meet the eligibility guidelines under the Act. While this does give the Company the ability to force an employee to use their allowable Family Leave bank of hours, in order to do so, the Company must ensure that all eligibility requirements have been met, and cannot force the use of FMLA on an employee who would not otherwise qualify.
- To the flight attendants' benefit, IF the employee has an on-the-job injury (Worker's Comp claim), the Company may demand, or the employee may elect to co-claim the injury as FMLA. In so doing, **no** Worker's Comp benefits are lost, AND the flight attendant has the benefit of the claim not being used in any disciplinary notation! It is a violation of the Federal Act to discipline an employee for any use of FMLA-approved leave. It has been UAL's practice to include Worker's Comp time-lost in disciplinary actions for "dependability". (Please note that ANY work history notation of Worker's Comp time-lost IS a negative action unless the entry also makes note that the occurrence is non-disciplinary in nature.)
- Should you find it necessary to file a complaint with the Dept. of Labor, please know that it is a very easy process, but you should also ensure that yours is a viable complaint (i.e., you meet the Federal FMLA qualifying criteria.) Be aware that you are most probably speaking to a DOL representative that may be unfamiliar with the varied nature of our flight crew job. Specifically, always reference your DUTY TIME HOURS rather than your Flight Time hours, as the law recognizes our eligibility based on having been 'on duty' in excess of 1250 Duty Time hours. Using Flight Time hours will only serve to confuse the situation and ONLY applies to qualifying for the UA FML, not the Federal FMLA protections.

For comments or further information about this document, other documents about FMLA offered previously by this source, or for any questions regarding Family Leave in general…please feel free to contact me (preferably via email). Ken Kyle KHKYLE@Juno.com DENSW#102722 (303)894-9044/Home
[*Disclaimer: Nothing in this document is meant to convey "legal advice" by the author.]