

A Comparison of Federal ‘Family and Medical Leave Act’ (FMLA) Protections and Those Offered Flight Attendants under the UAL ‘Family Medical Leave’ (UA FML) Policy

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FMLA [Federal]

- An eligible employee is entitled to the **equivalent** of a total of 12 workweeks of leave during any 12-month period. (According to UAL, this equates to 216 Flight Pay Hours of Leave or 318 Duty Time Hours of Leave, calculated by trips missed.)
- One eligibility requirement is to have accumulated 1250 **DUTY TIME** hours in the 12 months prior to having an absence prompting the FMLA application. [With this qualification, the extensive time we spend as crewmembers ‘on duty’ although unpaid is recognized by the D.O.L., exclusive of layover time. As a guideline, Duty Time hours ‘usually’ equal approx half again as many as your Flight Time hours, e.g. 5 hrs FTM = 7-9 DTM hours. Therefore, an 80 hr FTM month would approximately equate to roughly 120-130 Duty Time hours and 10 months of such flying would fulfill the 1250 DTM.]
- Health Care Providers whose certification of illness/injury/condition are acceptable and recognized for purposes of FMLA coverage can include the following: Physicians, Optometrists, Osteopaths, Chiropractors (when manipulating spine to correct subluxation), Podiatrists, Dentists, Clinical Psychologists, Christian Science practitioners, Nurse Practitioners, Nurse Midwives, and Clinical Social Workers, Other providers recognized by the employer or the group health plan as qualified to substantiate a claim for health benefits.
- FMLA coverage is triggered simply by a certification from the employee’s treating physician (see above list) that the employee has a ‘Serious Health Condition’ defined as an “illness, injury, impairment, or physical or mental condition that involves A) inpatient care in a hospital, hospice, or residential medical care facility, or B) continuing treatment by a health care provider...and an absence of at least 3 calendar days due to an inability to perform the duties of your job. Prescription medication qualifies as ‘continuing care’.

FML [UAL]

- Same. [Note: However, there are strict guidelines in the Federal FMLA which defines how many hours of leave an employee is to be given, yet UAL currently does not follow these guidelines, which may allow **more FMLA** leave than is being allocated. These leave hours would be different for each f/a as it is based on each individual’s ‘normal workweek’.]
- The flight attendant must have accumulated 590 **FLIGHT TIME** hours. While the benchmark is lower than to qualify for the Federal FMLA guidelines, the UA FML plan allows much greater arbitrary control of the process by UA Medical and UA Management. The f/a can be covered by UA FML while continuing to accrue Duty Time hours in expectation of eventually achieving the necessary Duty Time hours for coverage under the more beneficial Federal FMLA. UA FML admin has been requiring a f/a to **maintain** the 590 FTM throughout the FML approved period. **FMLA does not.**
- UAMD decides who and what they will accept as a recognized Health Care Provider.
- UAMD arbitrarily and unilaterally may or may not accept the certification of your treating physician. Even if UAMD does accept the diagnosis, it is not unusual for the determination of ‘chronic’ to be overridden arbitrarily or for the determination of need for ‘intermittent absence’ to be accepted only as a ‘single occurrence’ approval.

FMLA [Federal]

- UAL is **prohibited** from unilaterally denying your FMLA application without first requiring the employee to be examined by a second (and even a third) health care provider, completely at UAL expense! The second provider may not be on the payroll of, or do regular business with, UAL. Per DOL \Opinion Letter FMLA-108, *“Under the FMLA certification requirements, the company’s only recourse where it has reason to doubt the validity of the initial certification is to obtain a second opinion at its own expense.”*
- Contesting any aspect of the FMLA application process, denial, or program administration may be best pursued via an uncomplicated complaint process involving the Dept. of Labor. The process is as easy as placing a call to the Wage & Hour Division office governing the area of the country where you are based. From that point on, if warranted, the D.O.L. pursues the investigation.
- If a worker continues to be absent for a condition, an employer may require that the eligible employee obtain subsequent **recertifications** on a reasonable basis. [Per labor attorney Robert M. Schwartz, *“recertifications are **not** subject to the second and third opinion procedure.”*] A recertification involves the treating physician providing a statement that the illness/injury/condition which prompted the FMLA still exists.
- Per the D.O.L. Opinion Letter FMLA2003-5, *“in all circumstances, it is the employer’s responsibility to designate leave, paid or unpaid, as FMLA-qualifying, and to give notice of the designation to the employee.”*
- It is a violation of Federal FMLA to discipline an employee for any aspect of taking FMLA. Thus, if you have a Worker’s Comp injury, **a f/a should also file for FMLA** (if they qualify) as the WC absence then cannot be counted toward ‘dependability’ discipline.
- It is a violation of Federal FMLA to force an employee to take more family leave than what is needed by the employee. [For example, a f/a must drop a 3-day trip when the family leave is only needed for 1 of the affected days. The f/a **must be allowed** to make up the other 2 days so as to not harm their earnings.

FML [UAL]

- UALMD regularly denies Family Leave requests without benefit of a second opinion process.
- The employee must initiate an appeal via a process that directly mimics the contractual Medical Arbitration process, which **requires the employee to share the cost of the arbitrator.** Many times the physician arbitrator has had a working relationship with UAL, as UAMD attempts to use physicians from a list kept by UAMD for such purpose.
- With UA FML, upon the expiration of the arbitrary leave period, **re-application** is necessary....and the process starts all over again even for chronic conditions that repeat themselves within a 12-month period.
- UA Onboard Service Department and UAMD do not comply with this in a timely manner, and rarely follow Federal FMLA procedures even when the employee qualifies.
- UAL uses Worker Comp absence as a ‘dependability’ occurrence which may be used in the disciplinary accounting. [WC absence can not ‘trigger’ discipline, but it **is being used** as an occurrence counting toward discipline.]
- Currently UAL does NOT allow nor provide the ability for the f/a to make up any financial losses due to an absence for family leave purposes. [Please keep in mind that family leave taken to care for a family member is unpaid leave. The same applies to a f/a who chooses not to use their personal sick bank for a family leave absence for their own illness.]