**Arguments contesting Federal FMLA information within the UAL-issued document, dated 10/9/2006 entitled *"Family Medical Leave Policy Changes and FMLA Administration for Flight Attendants Effective October 30, 2006"*** and subsequently distributed to the f/a population via Company mailboxes [For any questions and/or discussion please contact: Ken Kyle DENSW#102722 KHKYLE@JUNO.COM ]

**Bullet Points:**

- ELIGIBILITY – FMLA: Lacking clarification of the specific qualifying time period for the 1250 Duty Time hours. (***See #1, below***)
- USAGE - FMLA: Incorrect calculation of allowable FMLA hours missed during approved FMLA 12-month period. Also incorrect allocation of block usage time off. (***See #2, below***.)
- CHECKING ELIGIBILITY – FMLA: Lacks clarification of Company responsibility in this regard. (***See #3, below***.)
- SECOND OPINION – FMLA: Inaccurate depiction of Company's primary responsibility should there be a question concerning the eligibility of a FMLA request. (***See #4, below***.)
- DOCUMENTATION – FMLA: Inaccurate depiction of Company's allowable oversight and rights to documentation. (***See #5, below***.)

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**Explanations:**

**1)** Under "FMLA - ELIGIBILITY", where it states for Standard Eligibility Formula = "*1250 hours in the previous 12 months*", it is critical to remember that the 12-month qualifying period for which the employee must have accrued the 1250 Duty Time hours is the 12 months prior to **the date** of the FMLA-qualifying **absence**… (not simply from the date of the FMLA application, or from when the application is reviewed by the FML Service Center) ...and that once approved for the Federal FMLA, it is **not necessary to maintain** the 1250 Duty Time hours during the ensuing 12-month FMLA period. The 1250 Duty Time qualification will only again become relevant for **future** FMLA applications, once the current 12-month approval period has expired. It is also important to point out that, except in cases where FMLA is needed for a future specific date (as but one example, for a scheduled medical procedure) that the FMLA application should only be submitted in conjunction with, **and at the time of**, an actual absence. In so doing, there is no question as to the 12-month period (looking backward) that defines the determination of qualifying Duty Hours, nor to the 12-month period (looking forward) for which the FMLA usage is approved. (This is a departure from past (and current) practice where flight attendants would apply for FML simply because their previously-approved 3 or 6-month FML period had expired, regardless of whether or not there was an eligible absence involved.)

**2)** Under "FMLA - USAGE", the Company has stipulated the following as the calculated allocation of allowable Family Leave.

**Calculation:**
113.50 (average monthly duty hours)
X 2.8 months = 318 duty hours
*12 weeks for block usage

This allocation is problematic, and in many cases may be insufficient, in that it does not take into account differences found among each and every flight attendant applying for Federal Family Medical Leave (FMLA) in relation to their individual duty time totals and the appropriate and necessary calculation of each flight attendant's "normal work week". Such is necessary when an employee (such as flight crew members) have a **variable** work schedule. This is specifically addressed within the Federal FMLA statute, and seems to be ignored in the Company explanation and practice.

To serve as an example, if Employee 'A' has a "normal workweek" of 40-hours per week and they qualify for Federal FMLA, then they are entitled to 12 '40-hour-workweeks' of Family Leave, which would equal 480 hours of Leave. If Employee 'B' has a "normal workweek" of **50** hours per week, that employee is not limited to the same hours of leave as Employee 'A'. Rather, Employee 'B' is allowed 12 workweeks of their normal workweek hours, which would total 600 hours of Leave. *The same is true for all employees, such as flight crew members, who have variable work schedules. [It is possible, for example, that a flight attendant who has 100 hours of FTM with equivalent 150 Duty Time hours (and they normally fly high-time months), that they will then be eligible for 450 Duty

Time hours of FMLA rather than the UAL-defined cap of 318 Duty Time hours of FMLA….quite a substantial difference that dramatically benefits the flight attendant.]

In order to calculate the 'normal workweek' of flight crew members, it is necessary to determine each crewmember's "normal workweek" following a formula specified in the Act. The duty time hours of the 12 weeks prior to the FMLA-qualifying absence are averaged to thus determine their personal "normal workweek". The resulting norm is then multiplied by 12 in order to determine the total number of duty hours that the flight attendant may be eligible to use for Family Leave in the ensuing 12-month period.

The allocation that the Company has stipulated is not based upon the applicable rulings within the Federal Family Medical Leave Act and would harm any qualifying flight attendant who averages more than 113.50 Duty Time hours per month (UAL's determination of what is an 'average monthly Duty Time' and is roughly equivalent to 80-83 Flight Time hours) by not allowing them to use all the Family Leave hours to which they are entitled.

Also, the chart specifies *"*12 weeks for block usage"* , however, as explained above, the first determination made by the Company should be the "normal workweek" calculation for the affected flight attendant FMLA applicant, and for block usage that employee would be allowed the equivalent of 12 "normal workweeks" of absence. Depending on the flight schedules that would be bid by that flight attendant, their time off *may* be extended due to the duty time of the trips missed during that FMLA time off taken in that extended block period and actually encompass more than 12 calendar weeks.

**3)** Under "FMLA - CHECKING ELIGIBILITY", the chart states that *"The flight attendant must first call the Service Center to check eligibility hours"*. While it would always be prudent for the flight attendant to keep track of their eligibility hours in order to know whether they have enough Duty Time hours to qualify for the Federal FMLA protections, by statute it is the Company's responsibility to determine eligibility and to notify the employee of the protections available to them, and to inform the employee as to whether a certification is necessary for the absence. The employee's responsibility is simply to inform the Service Center that they have a condition/circumstance that requires them to use Family Leave. This is especially important to flight attendant FMLA applicants because of the difficulties that have been experienced in obtaining accurate, up-to-date Duty Time Hour totals. Many times phone calls or emails to the Family Leave Service Center are not returned in a timely manner (or at all) and thus the flight attendant is without one of the key pieces of information that is necessary for them to know in order to determine their qualification for FMLA protections. By comparison, the Company has made 'real-time' Flight Time (FTM) hours immediately available upon request, the Duty Time calculations are not available current 'real-time' (in some cases due to the calculations being performed twice-monthly, the statistics may be more than two weeks old.) Where a flight attendant is close to achieving the 1250 Duty Time qualification, not having 'real-time' Duty Hour calculations serves to disadvantage that employee.

It is equally disturbing that currently there remains no hardcopy corroboration of the Company's calculation of either Flight Time Hours or Duty Time Hours. Thus, if an employee believes that the Company's determination of non-eligibility due to a shortage of work hours is in error, there is no means by which to check those statistics. Under the Federal Act, it is the Company's responsibility to keep and maintain such records as will be used to make these eligibility determinations, and is the right of an employee to have access to these aspects of their personnel records. There is also a question as to whether the Company is inappropriately failing to count the Duty Time Hours associated with any and all flight attendant training, such as RET/IST/Purser Training/etc., as these hours too would be applicable for the Duty Time totals relevant to qualifying for Federal FMLA leave. Without a hardcopy record, available to the employee, it is exceedingly difficult for the employee to argue their FMLA eligibility and is a violation of the Act as it is unlawful for an employer to *"interfere with, restrain, or deny the exercise of any right provided under FMLA."*

**4)** Under "FMLA - SECOND OPINION", it is stated that *"If UA Medical determines that a flight attendant's condition does not qualify, a second opinion may be requested."* This misrepresents the Company's role in that the Federal Act explicitly states that should the employer question the certification made by the employee's treating physician, the employer is prohibited from denying the FMLA **without first** entering the 2nd Opinion Process, and further, if the 2nd medical opinion differs from that of the treating physician (not that of UA Medical), then the certification will be reviewed by a 3rd medical opinion. Neither the 2nd or 3rd medical opinions may be performed by medical practitioners that have a working relationship with the Company. Any and all costs associated with obtaining both opinions are borne by the Company. Thus, it is not that "a second opinion *may* be requested", but rather a second opinion **is mandated** within definitive guidelines by the FMLA.

**5)** Under "FMLA - DOCUMENTATION", the following is stated: *"…if an absence due to illness exceeds 6 calendar days, the flight attendant will be required to submit an absence certificate from her/his physician, or go to United Medical or a United Medical designee, within 3 calendar days following the 6th day of the absence."* This requirement directly conflicts with specific language within the FMLA statute that clearly delineates the limitations on any company placing too great a burden on an employee and sets specific parameters on recertification of an FMLA-qualifying condition that has already been approved. In short, unless the Company has some reason to question what has already been approved (in other words, they suspect fraud and must show some basis for that suspicion), they are restricted from requiring a recertification any more frequently than once every 30 days (in conjunction with an absence.) It has also been determined by the Dept of Labor that an FMLA-qualifying condition, once approved, does not require a visit to the physician for every absence. To make a 'blanket requirement' of the need for what is in essence a 'recertification' for any absence over 6 calendar days, even though it is already approved FMLA, places an arguably undue and unnecessary burden on the employee and is counter to the intent and the letter of the Federal Act.

If unilaterally imposed, all of the above 'disputed language' may be argued as violations of the Family Medical Leave Act of 1993. At the very least UAL as a Company has the responsibility to put forth an accurate depiction of the protections afforded their employees under the FMLA, as well as to accurately and fully note the responsibilities and requirements allowable and mandated under the Law.

**The UAL document in question is completely silent as to the obligation of the Company to recognize and adhere to any State FMLA laws that offer more generous protections to those employees based in that state.** This would be applicable to those flight attendants based in California, Washington (State), Colorado, Illinois, Hawaii, Massachusetts, New York, and Maryland/Washington, D.C.

And finally, wherever the UAL document states that *"FMLA will be imposed"* by the Company, it should be remembered that can only be done if all the requirements are met that are necessary for an FMLA-qualifying condition (i.e., requisite Duty Time hours, as well as appropriate determination of a "serious health condition" as defined by the Family and Medical Leave Act of 1993). Therefore, your allowable FMLA bank of hours may **not** be diminished at the whim of the Company, and may only be imposed for qualifying conditions under the law.

The one-sheet 'synopses' which UAL management has now disseminated should not be considered anything close to a complete disclosure of responsibilities, protections and guidelines relevant to Family Leave as it applies to the Federal Family Medical Leave Act. As soon as possible, this should be made very clear via a rebuttal to the entire UAL Flight Attendant population. For those who qualify for Federal FMLA, these protections can be very relevant to alleviating unnecessary stress associated with the Company's disciplinary policy. Flight Crew members have come under the protection of the Federal FMLA since 1996 when a DOL ruling determined that our Duty Time Hours (exclusive of Layover Time) rather than simply our Flight Time Hours would be a qualifying factor. It has been 10 years and the Company is only now disseminating FMLA information to flight attendants, and as shown above, even the little information we are now getting is lacking in proper detail and accuracy. It would benefit any flight attendant in need of these Family Leave protections to be informed of and to know the full extent of the protections to which they are entitled under the law. [info revised as of 16 June 2007