



AFA FMLOA Q & A

Updated May 2010

QUESTION:

What eligibility criteria must I meet before qualifying for FMLA?

ANSWER:

- Effective December 21, 2009, Federal Law was amended and now requires that you must have worked or been paid for not less than 504 hours (not counting personal commute time or time spent on vacation leave or medical or sick leave) during the 12 months immediately preceding the start of the Family Leave for both regular block and intermittent leave.
- You must also have worked as an active employee for American Eagle or an AMR subsidiary for at least 12 months or 52 weeks (the period does not need to be consecutive).
- You must be medically certified for the leave.

QUESTION:

I am on Reserve and I haven't flown 504 hours in the past 12 months. How will I ever become eligible for FMLA?

ANSWER:

The amended law was designed to address the unique way in which airline personnel's hours of work are counted. For purposes of determining eligibility, the hours cited in the new law are **paid** hours. Therefore, if you are on Reserve, the number of hours you are paid is what determines your eligibility, not the amount of hours you fly. Under our collective bargaining agreement, you are paid 75 hours a month (or as adjusted due to things like drops, etc.). Although you may have flown only 35 hours in a given month, you are still paid for 75 hours. Therefore 75 hours, is the figure you will use when calculating your paid hours for eligibility purposes. Remember that paid hours for vacation, medical and sick leaves do not count.

QUESTION:

I've been on active military duty for the last year. Now that I've returned from leave, I need to apply for FMLOA. Do I still qualify since I did not work at American Eagle, for the 504 hours required under Federal Law?

ANSWER:

Updated May, 2010

Yes, provided you meet the remaining criteria and were an active employee for 12 months and have been medically certified. Under USERRA (Uniformed Services Employment and Reemployment Act), American Eagle should count the months and hours that you would have worked had you not been called up for military service, towards your FMLOA eligibility. These months and hours should be combined with any months and hours actually worked at American Eagle, when determining if you meet the eligibility requirement of 504 paid, worked in the 12 months preceding the start of the Family Leave.

QUESTION:

For what reasons may I take FMLOA?

ANSWER:

- For a serious health condition that makes you unable to perform your job.
- To care for a seriously ill child, spouse or parent.
- For childbirth or to care for a newborn child up to age one.
- For the placement of a child with you for adoption or foster care.
- Any qualifying exigency arising out of the fact that your spouse, son, daughter or parent is on active military duty, or has been notified of an impending call to active duty status, in support of a contingency operation.

New-Effective January 28, 2008

QUESTION:

What constitutes a serious health condition?

ANSWER:

To qualify for FMLOA medical leave, your absence must be due to a “serious health condition.” Under DOL regulations, a serious health condition is an illness, injury, impairment, or physical or mental condition that involves one or more of the following:

- Inpatient hospital care (i.e., an overnight stay at a hospital or similar facility).
- An injury, illness, or other condition lasting more than three consecutive days that involves continuing treatment by a health care provider.
- Pregnancy.
- A chronic serious health condition.
- A long-term or permanently disabling health condition.
- A condition requiring multiple treatments to prevent a period of incapacity of more than three consecutive calendar days.

QUESTION:

Can I take FMLOA leave for substance abuse?

ANSWER:

FMLA can only be taken if you are under treatment by a health care provider. However, if you are found to be under the influence of drugs or alcohol during a Department of Transportation or Company mandated test, you are not eligible to take FMLA for subsequent treatment of substance abuse or any other serious health condition unless any of the following occur:

- You are conditionally reinstated.
- You are placed in a company approved rehabilitation, after care, and/or educational program following medical review.
- You are medically cleared, as applicable, per Company policy.

QUESTION:

How do I apply for FMLOA?

ANSWER:

You can obtain the most current forms and information on <http://jetnet.aa.com>. First click on the “Policies and Procedures” tab, then click on the tab to the left hand side marked “LOA/FMLA Leave Center”. FMLA forms will be available under this section. It is always a good idea to periodically check JetNet to ensure you have the most up to date information.

QUESTION:

What do I do with my completed forms?

ANSWER:

Do not give them to your In-Flight manager. All documentation of any health conditions must remain confidential. Send pertinent documents to AA Medical directly.

QUESTION:

Can American Eagle refuse to grant me FMLOA leave?

ANSWER:

If you are an “eligible” employee who has met FMLA’s notice and certification requirements (and you have not exhausted your FMLOA leave entitlement for the year), you may not be denied FMLA leave.

QUESTION:

American Eagle has denied my request for FMLOA because they said I didn’t fill out Line 13 properly. Is this legal?

ANSWER:

AFA has received many complaints by Flight Attendants reporting that their FMLOA has been denied because the Company was not satisfied with the way line 13 was filled out. Line 13 of the Company’s application for Family Leave requires your Health Care Provider to list the probable duration of the condition

and must provide his/her estimate of the likely duration of the illness. By using the word "probable" the Family Medical Leave Act does not require that a health care provider state with certainty the exact duration of the illness. Such a requirement is impossible for any doctor or health care professional to satisfy. Nonetheless, this appears to be exactly what AMR is attempting to do.

If you have been denied Family Leave as a result of difficulties with the infamous "line 13" or if the company is playing the constant delay game with you because they don't seem to be satisfied with the way your health care provider filled out "line 13," please contact the U.S. Department of Labor – Wage & Hour Division and notify AFA immediately. It is unlawful for Company to deny you Family Leave unless you do not meet the eligibility criteria.

Please note that in addition to contacting AFA, if your issue deals with an application of law, you should contact the Department of Labor-Wage & Hour Division office that covers your respective domicile. (See Attachment A to view the contact list for the Wage and Hour Offices covering the American Eagle Flight Attendant domiciles)

It is important to remember that even if the Company is playing the delay game with your Family Leave application, your leave will have commenced retroactively to the date you indicated on your originally submitted leave paperwork.

QUESTION:

Can American Eagle require me to obtain a second opinion regarding my own medical certification?

ANSWER:

If American Eagle has a legitimate basis to doubt the accuracy of a certification, it can require a Flight Attendant to be examined by a second health care provider, at American Eagle's cost. If the second opinion concurs with the first, the analysis ends. If the second opinion contradicts the first, American Eagle may request the flight attendant to be examined by a third health care provider, again at American Eagle's expense. The third health care provider must be selected by mutual agreement of American Eagle and the Flight Attendant. Neither the second or third health care providers rendering an opinion can be employed by American Eagle or perform regular service for American Eagle (such as a contract medical facility that are used at some stations).

Question:

The Company denied my request for FMLOA because they said my condition/illness does not qualify. Can they do this?

Answer:

According to the Department of Labor, the company may not categorically deny your request for FMLA because they think your condition does not qualify. Under

the law, it is assumed that your condition does qualify as your physician has certified that it does when he/she completes the required application. Therefore, the company's only course of action should they doubt the accuracy of a medical certification is to require that an employee be examined by a second health care provider at the company's expense. The company may choose the second party health care provider, but that provider is not supposed to be one on contract with AMR or have any regular business dealings with the company. If the second opinion conflicts with your health care provider's, you may be required to attend an examination by a third health care provider, again at the company's expense. This third provider must be chosen jointly by the employee and the company.

If the third provider says that you are able to do your job, or denies that your condition is serious, the company can deny the leave or if absences have occurred, take disciplinary action.

The company may not deny a completed medical certification if it does not utilize the second and third opinion procedure. If this occurs, a complaint with the Department of Labor should immediately be filed. It is critical that your application be filled out correctly by your health care provider. The DOL informed AFA that often times when the actual application is reviewed, the reason for denial is because the health care provider did not indicate the condition as serious or chronic on the initial FMLOA application.

QUESTION:

Can American Eagle require me to recertify my leave?

ANSWER:

You can be asked to recertify a medical leave. Re-certifications are not subject to the second and third opinion procedures discussed above. If you do not provide a requested recertification, your FMLOA can be canceled. Ordinarily, a recertification cannot be demanded more often than once every 30 days. A recertification can be requested earlier however, if either of the following occur:

- American Eagle receives information that casts doubt on your absence.
- There is a significant change in your condition such as surgery, the development of complications, or a greater number of absences than predicted in the original certification.

QUESTION:

What type of notification do I need to provide to American Eagle to obtain an FMLOA?

ANSWER:

You must provide American Eagle with sufficient facts so that the company can either make a determination that you are entitled to FMLOA or sufficient

information such that American Eagle should inquire further to determine if FMLOA is due.

A Flight Attendant is not required to use the words “Family Medical Leave” or “FMLOA.” She/he need only convey sufficient information to put American Eagle on notice that FMLOA may be due.

1. Example: I am calling in sick. (This would not be sufficient to qualify for FMLOA).
2. I am calling in sick because I had a cold on my days off. It has gotten worse. I went to the doctor and have learned I have pneumonia *or* “I am going to the doctor because I think this may be more serious than just a cold (and Flight Attendant subsequently learns she has developed pneumonia. (This would be sufficient to qualify for FMLOA).

In the second example, American Eagle could “provisionally” grant FMLOA. The Flight Attendant must then subsequently provide documentation that she/he suffers from the serious health condition.

QUESTION:

Is there any advance notice required for FMLA leave?

ANSWER:

Yes, there are three. Failure to provide the required notice could result in the leave being denied (as FMLA leave) or delayed.

1. If the need for the leave will be foreseeable (such as for a pre-planned medical procedure; birth of a child, etc.), the employee must provide at least thirty days notice of the date, duration and circumstances. These items (date, duration and circumstances) can be changed by providing oral notification within two business days of learning of their changes due to unforeseen developments.
2. If the need for the leave is not foreseeable (i.e. an emergency), the notice must be given as soon as “practicable.” This normally means two business days, absent extenuating circumstances.
3. If the flight attendant has taken sick leave and subsequently learns, she/he has a “serious health condition” covered by FMLA, the flight attendant must provide notice to American Eagle within two days of learning that she/he suffers from a serious health condition. The absence will then be protected by FMLA.

QUESTION:

What type of notification must American Eagle provide a Flight Attendant?

ANSWER:

If a Flight Attendant has identified sufficient facts to put American Eagle on notice either that the leave is FMLA qualifying or that American Eagle should conduct further inquiry to determine whether the leave is FMLA qualifying, American Eagle is required to either send out, or personally hand the Flight Attendant a notice designating the leave as FMLA-qualifying. This notice must also list the Flight Attendant's specific rights and responsibilities:

- Whether the absence will be applied to FMLA entitlement;
- Whether the flight attendant must submit medical certification, as well as the consequences of failing to do so (the leave will not count as FMLA)
- Whether the flight attendant can substitute paid leave (i.e. vacation, sick time, etc.).
- Any requirement to continue payments to maintain health benefits
- Any requirement to present a medical clearance before returning to work;
- Right to reinstatement.
- Potential liability for health benefit premiums if the flight attendant fails to return to work

QUESTION:

Does American Eagle have to notify me if I am ineligible to take FMLA?

ANSWER:

As discussed previously, you are not eligible for FMLA leave if you have been employed for less than 12 months or have worked less than 504 paid hours (certain exclusions apply) within the previous 12 months. The Department of Labor regulations requires employers to notify employees when they are ineligible for FMLA leave. If you are ineligible at the time your request for future FMLA leave, American Eagle must either:

1. Approve your leave based on an estimation that you will be eligible on the day your leave will start.
2. Notify you that you need additional months, week, or hours of employment in order to be eligible for FMLA leave.

Future Leave: If American Eagle fails to advise you in either manner before the date your requested leave is to begin, you are "deemed eligible" to take protected FMLA leave, even though you may still lack 12 months employment or 504 paid hours of service.

Unexpected Absence: If you lack 12 months of employment or 504 paid hours of service when you inform American Eagle of an unexpected absence for FMLA

reasons, they must advise you within two business days that you are ineligible for FMLA leave. Without such notice, your absence is protected by the FMLA.

QUESTION:

Will the Company make my FMLA leave retroactive in the event, AA Medical fails to process my FMLA papers in a timely manner?

ANSWER:

Management has assured AFA the answer is, YES.

QUESTION:

How much time off am I entitled to receive when taking FMLOA?

ANSWER:

- You will be entitled to the use of up to 84 days for a regular or block leave in a rolling calendar year.
- You will be entitled to the use of up to 60 days for intermittent leave in a rolling calendar year.
- You will be entitled to up to 26 weeks of leave in a single 12-month period to provide care for a military service member who is recovering from a serious illness or injury sustained in the line of duty on active duty, provided you are the spouse, son, daughter, parent or next of kin of the covered servicemember.

QUESTION:

I am currently certified for intermittent FMLA but my condition has worsened. May I take regular or block leave?

ANSWER:

Yes, you may change your leave from intermittent to regular or block or vice versa. You will need to qualify both administratively and medically. Both leaves will need to be medically certified and separate paperwork must be completed for each leave. In the scenario above, you would then be entitled up to a maximum of 84 days leave to be combined with any days previously taken intermittently. You are entitled to the maximum amount of available time off.

QUESTION:

Which family members are covered under the phrase “serious health condition of a family member?”

ANSWER:

Under either the federal law or the American Eagle corporate policy, the family members that would enable a flight attendant to take FMLA leave must be a parent, child or spouse of the Flight Attendant.

A parent is your biological parent or the person who serves or served the role of a parent. An employee can take a leave to care for a sick aunt, uncle, grandparent, or other family member or non-relative PROVIDED that person served as his/her parent and had raised the employee. You may not take FMLA to care for your parent-in-law unless permitted by law in the state in which you work.

A child is your natural, step, adopted or foster child under the age of 18 for whom you have day to day parenting responsibility. You may be eligible for FMLOA for a child over the age of 18 if that child is “incapable of self care because of a mental or physical disability.”

Moreover, if the leave is requested to care for a family member, the Flight Attendant must be the *primary* caregiver for that family member.

QUESTION:

What hours do not count towards that eligibility?

ANSWER:

Hours paid but not actually worked, such as vacation, sick and PVD will not count towards the necessary 504 hours needed for eligibility of FMLA.

QUESTION:

Will I continue to accrue seniority while out on FMLA leave?

ANSWER:

Yes, you continue to retain and accrue all forms of seniority. (Company, Classification & Occupational) Although the contract states you will only retain Classification seniority, an agreement has been reached between the Company and AFA that ensures you will continue to retain and accrue all seniority.

QUESTION:

Will I continue to accrue sick time and vacation pay while I’m on FMLA leave?

ANSWER:

No. The contract requires you to work in an active service status in order to accrue this time.

QUESTION:

If I am taking FMLA leave for myself am I required to use all of my “available sick and vacation time” prior to taking any of the time off as unpaid?

ANSWER:

No. American Eagle may not force you to use accrued vacation or sick time while on a leave for yourself. However, you have the right to choose to take the time off as “paid time” by using your available sick or vacation time. Since our contract contains a provision that affords a Flight Attendant the right to the use of unpaid

sick time, it is not required that you use all available paid sick time prior to taking the time off as unpaid. You have the right to choose what is best for your needs.

QUESTION:

I am on an intermittent leave and will need to use FMLA for my next trip. Do I have to tell Crew Scheduling the nature of my illness?

ANSWER:

No. It is only necessary to notify Crew Scheduling that you will not be able to work your next trip sequence and you will be using your FMLOA entitlement. You do not have to give them or your In-Flight Manager any details about the nature of your illness. Your absence will be coded as a "UA" by Crew Scheduling. You will need to contact the company's FMLA coordinator no later than two (2) days after returning to work from that absence. You will also need to advise the FMLA coordinator how to code the absence.

Codes for FMLA:

VF – Vacation (current year)

SF – Paid Sick Time

IF – Unpaid

F6 – PVD (this can only be used once your current years vacation has been depleted)

QUESTION:

I know that it is my responsibility to contact American Eagle within 2 days after returning to work from my absence but how do I accomplish this?

ANSWER:

You will need to reference the company's website for the most current policy in this matter at: www.jetnet.aa.com. You will most likely contact the company's FMLA coordinator via an electronic form placed on that website.

QUESTION:

I am taking FMLA leave to care for a family member. Am I required to use all of my "available vacation time" prior to taking any of the time off as unpaid?

ANSWER:

While the law permits the Company to force the use of available vacation time, AFA has prevailed in arbitration challenging the company's practice in this area. You will no longer be required to burn you unused vacation time when taking FMLA to care for a family member. However you will have to option to substitute the time off with any unused accrued vacation, if you so choose. The contract secures the right of Flight Attendants to select their own vacation schedules.

QUESTION:

I am taking FMLA leave to care for a family member. Can I choose to use my “available paid sick time” so that some of the leave will be paid time off?

ANSWER:

No. Pursuant to company policy, sick time is to be used only for you. However, the states of California and Washington allow employees to use paid sick time to care for an eligible family member.

QUESTION:

Does American Eagle have to pay bonuses if I have been out on FMLA leave?

ANSWER:

The FMLA requires that employees be restored to the same or an equivalent position. If an employee would be eligible for the bonus before taking FMLA leave, the employee would be eligible for the bonus upon returning to work. The FMLOA leave may not be counted against the employee.

QUESTION:

Can American Eagle force me to perform “light duty?”

ANSWER:

No. The DOL has concluded that employees eligible for Family leave cannot be required to accept modified or light duty job assignments. According to the DOL, if an employee qualifies under FMLA for job-protected leave, the employee may not be forced, before the FMLA job protected leave entitlement has expired, to return to work in a “light work” position, instead of continuing FMLA leave until the entitlement has been exhausted.

QUESTION:

What is the minimum increment of intermittent leave I can take?

ANSWER:

The minimum increment of intermittent leave time a Flight Attendant may take is one round trip.

QUESTION:

I am currently certified for FMLA and I have also incurred an injury on duty. I have been advised I will have to use my 60/84 day FMLOA entitlement while out on IOD. Is this true?

ANSWER:

Yes. Flight Attendants out on a compensable Injury on Duty will have their 60/84 day FMLOA allotment reduced by one day for each day off work on the IOD status and/or until such time as the individual is cleared back to work.

QUESTION:

Per the contract I am entitled to be paid on a “trips missed basis” for sick leave and vacation time. If I am out on FMLA and use the “paid time” provisions, but have no actual monthly schedule, how will I be paid?

ANSWER:

A Flight Attendant who is off work on FMLOA, either for themselves or to care for eligible family members, and who has no scheduled trips will be afforded the opportunity to paper/shadow bid for pay purposes. Please see your In-Flight Manager.

QUESTION:

Can I file a grievance over FMLA violations?

ANSWER:

Filing a grievance is appropriate if the violation deals with a contractual issue. If the issue deals with an application of the law, you should contract the Department of Labor-Wage & Hour Division office that covers your domicile. If you are in doubt as to whether a legal issue is involved, this too can be directed to the Wage & Hour office. Please see Attachment A of this document for a list of offices that cover the American Eagle Flight Attendant domiciles.

QUESTION:

Can management fire me for complaining about a violation of FMLA?

ANSWER:

No. Nor can your employer take any other adverse employment action on this basis. It is unlawful for any employer to discharge or otherwise discriminate against an employee for opposing a practice made unlawful under FMLA.

State Leave Laws

Ten states and the District of Columbia have enacted family and medical leave laws. Some of these laws include features that are superior than the federal FMLA. Where a provision in a state law provides greater leave rights than the FMLA, the state provision takes precedence. What follows is a list of some state provisions that are more favorable to workers than the FMLA.

California:

California allows employees to take new-child leaves on an intermittent basis. Employers may not require second or third opinions regarding medical conditions of family members. Employees may sue for emotional distress and punitive damages. Family-care leave can be taken for a registered domestic partner, or child. Employers must allow leaves of up to 4 months because of pregnancy or childbirth disability. A state program funded by payroll deductions pays up to 6 weeks of partial wages during new-child and family-care leaves. Enforcement is by the Department of Fair Employment and Housing (510-622-2973)

The state of California also provides for some school related leaves. The Family School Partnership Act (FSPA) provides eligible employees with up to 40 hours of leave in a calendar year to participate in planned activities of their child's school or licensed child day care facility.

The School Suspension Leave (SSL) entitles an employee to time off work when he or she is required to attend a portion of a school day in a classroom from which the employee's child has been suspended. A teacher may require the parent, guardian, or custodial grandparent of a child to attend a portion of a school day in a case where the child has been suspended from one or both of the following reasons:

- 1.** Committing an obscene act or engaging in habitual profanity or vulgarity.
- 2.** Disrupting school activities or otherwise willfully defying the valid authority of supervisors, teachers, administrators, school officials, or other school personnel engaged in the performance of their duties.

When a teacher suspend a child for one of the two above reasons, the school's principal is required to send written notice to the parent or guardian stating that attendance by the parent, guardian, or custodial grandparent is required by law. The written notice will specify when to attend a portion of the child's school day.

Flight Attendants domiciled in the state of California may obtain the necessary information and forms for these leaves from their In-flight Manager.

Illinois:

The state of Illinois allows parents up to eight (8) hours off during any school year, and no more than four (4) hours of which may be taken on any given day, to attend school conferences or classroom activities related to the employee's child if the conference or classroom activities cannot be scheduled during non-work hours. The time can only be taken if the employee has exhausted all accrued leave time, except sick leave or disability. The leave permitted is not paid time.

Illinois also allows employees to take up to thirty (30) days leave to visit spouses and children on active military duty.

Massachusetts:

The state of Massachusetts allows employees a total of twenty-four (24) hours of leave during any 12-month period, in addition to leave under the federal act to:

1. participate in school activities directly related to the educational advancement of a child, such as parent-teacher conferences or interviewing for a new school.
2. accompany the child to routine medical or dental appointments, such as check-ups or vaccinations.
3. accompany an elderly relative to routine medical or dental appointments or appointments for other professional services related to the elder's care, such as interviewing at nursing or group homes.

Attachment A-DOL Wage & Hour Division Information

Boston District Office

U.S. Department of Labor
ESA Wage & Hour Division
John F. Kennedy Federal Building
Room 525
Boston, Massachusetts 02203

Telephone: (617) 624-6700
FAX: (617) 624-6701

Chicago District Office

U.S. Department of Labor
ESQ Wage & Hour Division
120 S. Dearborn Street, Room 412
Chicago, Illinois 60604-1761

Telephone: (312) 596-7230
FAX: (312) 596-7251

Dallas District Office

U.S. Department of Labor
ESQ Wage & Hour Division
The Offices @ Brookhollow
1701 E. Lamar Boulevard, Suite 270, Box 22
Arlington, Texas 76006-7303

Telephone: (817) 861-2150
FAX: (817) 861-5085

Los Angeles District Office

U.S. Department of Labor
ESA Wage & Hour Division
300 S. Glendale Avenue, Suite 400
Glendale, California 91205-1791

Phone: (818) 240-5274
(213) 894-6375

FAX: (213) 894-6845

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Miami District Office

U.S. Department of Labor
ESA Wage & Hour Division
Sunset Center
10300 Sunset Drive, Room 255
Miami, Florida 33173-3038

Telephones: (305) 598-6607
(305) 596-9874

FAX: (305) 279-8393

New York City District Office

U.S. Department of Labor
ESA Wage & Hour Division
26 Federal Plaza, Room 3700
New York, NY 10278

Telephone: (212) 264-8185
FAX: (212) 264-9548

San Juan-Caribbean District Office

U.S. Department of Labor
ESA Wage & Hour Division
7 Tabonuco Street
San Patricio Office Center, 4th Floor
Guaynabo, Puerto Rico 00968

Telephone: (787) 775-1924
FAX: (787) 775-1906