

## ***Q & A – Your HIPAA and FMLA Rights***

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***Q: What is HIPAA?***

A: The Federal Health Insurance Portability and Accountability Act (HIPAA) is a law that protects a patient's medical information from being distributed to others without the patient's consent. For example, your doctor can not give your medical information to other individuals or businesses (third-parties), without your written approval.

***Q: Can a representative from Delta or Sedgwick ask me for my medical information?***

A: Yes. HIPAA does not prohibit any individual or business from asking you, directly, for your medical information. You, however, are not obligated under HIPAA to give any medical information to anyone who just asks for it. Any medical information about yourself that you provide is not covered by HIPAA.

Remember that the HIPAA privacy regulations do not create a general federal personal right to privacy. HIPAA does not cover Employers - except when the employer is acting in its capacity as the sponsor of the medical plan. So, requests for doctor's notes or other medical information requested in the context of work rules, absences, and reliability are not covered by HIPAA. An employee can refuse to provide such information or refuse to sign a release authorizing her physician to provide such information, but must be prepared to face the possible consequences of such refusal.

***Q: What is FMLA?***

A: The federal Family and Medical Leave Act (FMLA)\* allows eligible employees to take up to 12 weeks of unpaid, job-protected leave each year for one or more of the following reasons:

1. for the birth and care of the newborn child of the employee;
2. for placement with the employee of a son or daughter for adoption or foster care;
3. to care for an immediate family member (spouse, child, or parent) with a serious health condition; or
4. to take medical leave when the employee is unable to work because of a serious health condition.

***\*NOTE: Currently only our union contract (Section 18 – Leaves of Absence) provides legally binding provisions under the FMLA for flight attendants. AFA has been advocating strongly in***

*Washington D.C. for legal Family Medical Leave for flight attendants. The current FMLA is written in such a way, that it makes it nearly impossible for pilots and flight attendants to qualify under the Act (especially Reserve flight attendants). AFA aims to “legislate, so we don’t have to negotiate” these kinds of rights that are afforded most Americans, so we can concentrate on other areas like pay increases and work rule improvements, in any upcoming negotiations with Delta. Join our efforts and our campaign now at [www.deltaafa.org](http://www.deltaafa.org), to help ensure we continue to have union representation at the new Delta and flight attendant advocacy like this on Capitol Hill.*

***Q: What is the definition of a “serious” health condition?***

A: “A serious health condition is an illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee’s job, or prevents the qualified family member from participating in school or other daily activities.”

“Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than 3 consecutive calendar days combined with at least two visits to a health care provider or one visit and a regimen of continuing treatment, or incapacity due to pregnancy, or incapacity due to a chronic condition. Other conditions may meet the definition of continuing treatment.” (U.S. Department of Labor)

***Q: Can NWA/Delta ask me to verify a serious health condition?***

A: Yes. To help determine whether an ailment rises to the level of a “serious condition,” an employer can require employees to provide sufficient evidence to verify the FMLA “serious condition.” The verification can include information about the facts of the ailment, how long it’s likely to last and more (A sample form from the United States Department of Labor is attached hereto).

***Q: Can NWA/Delta ask me about other medical information?***

A: No. An employer can only ask for information pertaining to the current leave. An employer can not ask for information about an employee’s general health or any other medical condition – if it does not pertain to the current leave (serious condition).

***Q: What types of questions can NWA/Delta ask me for FMLA medical certification?***

A: Examples of what NWA/Delta can ask a Flight Attendant for FMLA Medical Certification include:

- Type of serious health condition

- Medical facts supporting certification (“Such medical facts may include information on symptoms, diagnosis, hospitalization, doctor visits, whether medication has been prescribed, any referrals for evaluation or treatment (physical therapy, for example), or any other regiment of continuing treatment);
- Date the serious health condition began;
- Likely duration;
- Facts concerning need for intermittent leave;

***Q: Do I have to orally respond to these questions?***

**A:** Yes. FMLA regulations specifically allow an employer to request the medical certification information from an employee orally.

***Q: Can my supervisor ask me for this information?***

**A:** No. The federal law “specifies that the employer’s representative contacting the health care provider must be a health care provider, human resource professional, a leave administrator or a management official, but in no case may it be the employee’s direct supervisor.”

***Q: What happens if NWA/Delta determines that my information is incomplete?***

**A:** If NWA/Delta determines a medical certification to be incomplete or insufficient, they must specify in writing what information is lacking, and give you seven (7) calendar days to clear up the deficient information.

***Q: Do we have contractual provisions that pertain to medical documentation of illness, in situations that are not FMLA covered?***

**A:** Yes. Section 15 – Sick Leave of our collective bargaining agreement outlines and controls when the Company may require medical documentation for sick leave and what the doctor’s excuse must include.

***Q: Who should I contact if I have problems with the FMLA process?***

**A:** In addition to your NW Flight Attendant Manager and NW Central Administration contacts, you should also always feel comfortable contacting your Local AFA representatives and AFA EAP representatives for assistance. Your elected union representatives and fellow flight attendant volunteers are here to help!