

# Maternity Leave Grievance

 [afaalaska.org/committees/benefits/maternity-leave-grievance](http://afaalaska.org/committees/benefits/maternity-leave-grievance)

September 26, 2014



This is an important communication regarding the Maternity Leave provision of the Collective Bargaining Agreement, Section 15.D and Company policy as stated in a newly published Maternity Leave Handbook. **If you are currently on/or beginning MLOA please read this entire article.**

Over a year ago, management reached out to AFA to express concern that Section 15.D.2 (shown below), might be in violation of The Pregnancy Discrimination Act of 1978.

...[A] Flight Attendant may continue to work through the twenty-eighth (28th) week of pregnancy. After the twenty-eighth (28th) week of pregnancy, the Flight Attendant will be presumed disabled due to her pregnancy. After the twenty-eighth (28th) week of pregnancy, or whenever such Flight Attendant's Doctor determines that she is unable to work due to her pregnancy, whichever occurs first, the Flight Attendant will request maternity leave. Management asserts that presuming a Flight Attendant is disabled due to pregnancy after 28 weeks may be discriminatory under Federal Law. Since adoption of the original language in 1994, the Association is not aware of any Flight Attendant who has requested to continue working after 28 weeks of pregnancy. AFA and management had a series of brief discussions regarding a change to the language, which would preserve the intent of the language and eliminate any concern with compliance under the Act. Management proposed much broader changes to the language than AFA felt were necessary and unfortunately the discussions quickly ended.

Management advised AFA that it was considering imposing a new company policy allowing a Flight Attendant to continue working after 28 weeks. AFA responded that an immediate grievance would be filed, due to the clear contract language in Section 15.D.2.

In July 2014, AFA became aware that management had posted a new Maternity Leave of Absence Handbook online, without notice to AFA or communication to the Flight Attendant group. On page 4 of the handbook a single sentence was added,

If you do not intend to continue to fly after the twenty-eighth week of pregnancy, your leave may begin on the date indicated on this form (the first day of the twenty-ninth week of pregnancy).

Based on this change AFA has filed a grievance.

### **Why is this happening now?**

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Setting aside the legal arguments regarding the language, it appears the inflight management became concerned with this language because some Flight Attendants (depending on their respective state laws) qualify for both Short Term Disability and Unemployment. For example, a Flight Attendant could get STD because of her pregnancy, but could also claim unemployment because she was not being allowed to work when she was capable of doing so. In the last year, management has been reporting to Washington State that Flight Attendants are on a voluntary medical leave as opposed to a required leave, or due to disability. Alaska is reporting to the state that Flight Attendants who go out on Maternity Leave are able to perform their duties but are voluntarily choosing not to work. This has resulted in Flight Attendants' having their claims denied and then having to go through the appeals process to obtain unemployment. Most have had to hire attorneys to assist with the process.

State law stipulates the terms of unemployment, and the state (not the employer) ultimately determines if an employee is eligible for benefits. Flight Attendants for many years have qualified due to the unique situation in which they find themselves. They are medically disabled from performing their Flight Attendant duties; however, they are perfectly capable of working in a normal job. It is truly unfortunate that management is making the process more difficult for Flight Attendants. They have changed the way they report a maternity leave status to the state; they have removed the mention of unemployment from the Maternity Handbook; and they have unilaterally implemented a new policy allowing Flight Attendants to continue working after the 28<sup>th</sup> week of pregnancy.

It is very concerning that these changes were made with no notice or communication to the Flight Attendant group. If management is so concerned about correcting what they see as a violation of Federal law why didn't they immediately communicate it to Flight Attendants?

If you are preparing to go out on a Maternity leave, the changed policy requires you to do the following:

- Fill out the Maternity Notification Form (S-131)
  - This notifies the company of your pregnancy
  - It gives you the option of choosing whether you want to continue to fly.

- You may receive an email from your leave coordinator asking when you would like to go out.

If you choose to continue working, you can do so until you elect to go out on leave (sometime after 28 weeks) or until your doctor determines that you are not fit to fly, whichever is earlier. If your doctor allows you to work until delivery, that would be acceptable under this policy.

If you are currently out on a Maternity Leave, there may be benefits to returning to work under this new policy. Please contact your leave analyst to do so:

- Sabrina Blevins (last names A-K) at (206) 392-6124
- Beth Swanson (last names L-Z) at (206) 392- 6122

The bottom line is that AFA does not condone discrimination based on pregnancy. The language in Section 15 was agreed to by the parties and has been in place for decades—through three contracts! It stipulates that Flight Attendants are disabled from performing their Flight Attendants duties, which is directly related to the physical requirements of our daily job and the limitations of advanced pregnancy. We do not agree that Alaska has the unilateral right to change a 20-year-old contract provision without our agreement—especially when its action can have a negative effect on our flight attendants! This is especially true given that we have never had a Flight Attendant raise an objection to the language in 15.D.

This new policy places a tremendous amount of pressure on pregnant Flight Attendants, who are often relatively junior, to continue flying in order to obtain pay and medical coverage. The practical reality is that Flight Attendants may be forced to continue flying, resulting in an increase in sick online due to pregnancy. In the extreme, it could cause a Flight Attendant to risk her health and safety by continuing to fly when she otherwise would not have done so. AFA objects not only to the new policy but the way it has been implemented, with little to no information nor explanation of what choices a Flight Attendant has available to them.

AFA will be providing a list of requested edits to the Maternity Leave of Absence Handbook. In the interim, if you are going out or are currently out on Maternity Leave and have questions, we strongly encourage Flight Attendants to contact their local AFA Maternity Representative for assistance. You'll find contact information at <http://afaalaska.org>, then by selecting your base from the local council menu.

In addition, there will be a Seattle Maternity Roundtable on October 16, 2014 from 12:30 – 3:30. If you are considering starting a family or are currently pregnant, this is an excellent chance to receive important information regarding Maternity Leave.

In solidarity,

Your MEC – Jeffrey Peterson, Brian Palmer, Yvette Gesch, Becky Strachan, Laura Masserant, Cathy Gwynn, Sandra Morrow, Stephen Couckuyt, MEC Benefits Chairperson Terry Taylor and MEC Grievance Chairperson Jennifer Wise-MacColl

