
# Legal Alert: Sixth Circuit Provides Some Clarification on Calculating Flight Attendant Hours for FMLA Eligibility

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The Sixth Circuit recently issued a decision involving computation of flight attendant hours for purposes of determining whether the 1,250-hour requirement of the Family and Medical Leave Act (FMLA) has been met. *See Staunch v. Continental Airlines* (6th Cir. Jan. 8, 2008).

*Staunch* involved a flight attendant who requested, and was granted, intermittent FMLA leave while she was pregnant. On four occasions during her pregnancy, she called off sick after being given an assignment while on reserve. After she returned from her pregnancy, she had several other sick calls after assignments, as well as other sick calls, and was given a termination warning. A few months later, it was discovered that she was flying without an updated safety manual. The company decided to terminate Staunch based on a combination of poor performance and dependability issues. On the latter point, the termination letter referenced the four instances when she had called in sick while pregnant. If those sick calls were covered by the FMLA, the employer could not rely on these absences as part of the basis for disciplinary action. The flight attendant subsequently sued, challenging her termination on several grounds, including interference with, and retaliation for, her exercise of her rights under the FMLA.

The airline asserted that the intermittent leave was not covered by the FMLA because the flight attendant was not an eligible employee at the time she requested such leave, in that she had not worked 1,250 hours during the 12 months prior to her request. The district court declined to rule on the issue, deciding in the airline's favor on other grounds. On appeal, however, the Sixth Circuit did address the eligibility question.

In determining if an employee has worked the required 1,250 hours to be eligible for FMLA coverage, courts examine the principles for determining hours of service under the Fair Labor Standards Act (FLSA). The determining factor is the number of hours an employee has worked for an employer within the meaning of the FLSA. Any accurate accounting of actual hours worked may be used, but if an employer does not maintain accurate records of hours worked, it has the burden of clearly demonstrating that the employee has not worked the requisite hours.

The evidence presented by the airline showed that the flight attendant had worked 1,127 hours (and 41 minutes) in the 12 months prior to her request for intermittent leave. This figure included flight time (block hours), check-in time, ground time, de-brief time, and training time. The flight attendant claimed that

she had worked over 2,300 hours, based on her own recollection.

The Sixth Circuit held that the airline did not maintain a record of the actual hours spent by the flight attendant in performing all of her duties, because some of her duties took place outside the flight hours on which her compensation was based (such as reading items placed in employee files, reviewing briefing books, meeting with supervisors for disciplinary meetings, and going through customs), and no record was kept of the time actually spent on those matters. Thus, the airline had the burden of showing that the flight attendant did not work the 1,250 hours.

The Sixth Circuit held that the airline met that burden through the affidavit of its Manager of Human Resources, which established the flight attendant's actual hours worked by compiling the flight attendant pay registers detailing each flight the flight attendant worked and adding time required by the collective bargaining agreement for check-in, de-briefing, training time, and ground time. The flight attendant's "undated, generalized list" of other duties was not sufficient to refute the airline's records. Accordingly, the court found that she was not an eligible employee under the FMLA at the time she requested FMLA leave.

**Employers' Bottom Line:**

This decision provides some additional guidance on the difficult question of how to compute the hours of pilots and flight attendants. It also points out how important it is not to assume that an employee meets the FMLA's 1,250-hour threshold, but to check whether that is the case each time leave is requested.

If you have any questions regarding this case or other labor or employment related issues in the airline industry, please contact the author of this Alert,Doug Hall a partner in our D.C. office at dhall@fordharrison.com or 202-719-2065 or the Ford & Harrison attorney with whom you usually work.