

## EMPLOYMENT ALERT

November 16, 2009

### Airline Flight Crew FMLA Amendments Advance

Last week, the Senate approved FMLA amendments that apply to flight crew members, including flight attendants. The House passed similar legislation in February. Barring unexpected controversy, the legislation — known as the Airline Flight Crew Technical Corrections Act — is likely to become law by year end.

The legislation clarifies the criteria used to determine whether flight crew members qualify for FMLA leave. Typically, leave is available only to an employee who has worked for 12 months and at least 1,250 hours during that time. (The 1,250 hours equates to approximately 60% of a full-time work schedule.) Under the legislation, a flight crew member is deemed to meet this requirement if he or she worked — or was paid for — both (a) 60% of his/her monthly guarantee, and (b) not less than 504 hours in the prior 12 months.

In defining the “applicable monthly guarantee,” each bill differentiates between scheduled and reserve flight crew members. For scheduled employees, the guarantee refers to the minimum hours the employee is scheduled per month; for reserve employees, it means the hours the employer agreed to pay the employee monthly. Both bills authorize the Secretary of Labor to establish a method for calculating leave.

There are some differences between the Senate and House bills. For example, the 60% criterion in the Senate version applies if the employee worked or was paid for 60% of the guarantee “for the previous 12-month period.” Under the House bill, the employee must have worked or been paid for 60% of the guarantee “annualized over the preceding 12-month period.” The Senate bill makes it clear that the 60% and 504-hour criteria count only hours worked for the employer from whom leave is requested. The House bill contains ambiguity on that point. The Senate bill, but not the House bill, authorizes the Secretary to promulgate regulations that require employers to file information about the guarantees.

If you should have any questions about this matter or would like copies of the legislation, please contact any of our [Labor and Employment](#) or [Aviation and Airlines](#) attorneys.

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