

Workers Compensation Flight Attendant Rights

Dear Envoy Flight Attendant,

Following an unusual increase in the amount of workers' compensation inquiries AFA has received recently, I thought it best to write this article and attempt to provide you a basic knowledge of your rights. Other than the reference that workers compensation will be paid in accordance with state law, our collective bargaining agreement does not contain any special provisions concerning workers' compensation. Each state has its own separate and distinct set of workers' compensation laws, administered by an agency set up by the state. The agency may be able to help you understand the law and your rights and responsibilities, but should legal enforcement be necessary, you should consider retaining the services of an attorney specializing in workers' compensation in the state in which your domicile is located. Because workers compensation rights arise under state law, and not the collective bargaining agreement, the union is not charged with the enforcement of your rights under the law.

What is Workers' Compensation?

It is a no fault system under which if an employee is injured while engaging in activities in the course of her/his employment, medical care and partial wage replacement will be provided. All employees, including those on probation, are covered. Each state has its own program. These programs often vary considerably.

What Should I do first if I am injured?

- • **Get medical care** up to and including emergency medical treatment if necessary. If you are on an overnight, this may require you to go to a hospital or emergency care facility ("Doc in a Box").
- • **Notify the company.** Contact your in-flight manager as soon as possible. Some states may have a time limitation within which, you must notify your employer. Your manager is required to go over the incident with you and explain the required paperwork. You will be asked to explain what occurred. When you complete the required paperwork, be accurate but do not volunteer unnecessary information. Make sure you read and understand all documents given you by the company.

AFA has received reports that some in-flight managers have advised Flight Attendant's that their situation is not covered by workers' compensation. Your manager has no authority under the law to determine what does and what does not constitute a legal claim.

- • **File a State claim.** Filing with the company is not the same as filing a workers' comp. claim with the state. Each state has a deadline for filing. Make sure you don't miss it. While the company normally files this claim (called an "Employee's First Report of Injury), make sure this has been done. If it has not been done, you can file the claim yourself with the agency in the state where your domicile is located.

- • **Keep a daily log and a complete file.** Write down the details of your injury or illness daily. Only you know how you feel. Keep a record of every contact or medical appointment. Keep a phone log of every person you spoke to (ARC, In-flight manager, doctors, case workers etc.) and a brief description of the conversation. Save all paperwork related to the claim, including e-mails messages. If you are required to fax any documents, keep a copy of the fax transmittal log for your records as well.

What Benefits are Available to Me?

- • **Medical Benefits.** In general, 100% of your medical costs for work related injuries or illnesses are covered. However, most states control costs through methods such as benefits ceilings. Who selects your doctor (you or the company) is determined by state law. State laws also treat rehabilitation and special needs (e.g. loss of limb etc.) in different ways.
- • **Income Replacement.** While each state has a different formula for determining the amount you receive, most guarantee about two-thirds of your total weekly earnings up to a state set ceiling. You do not become eligible until you have been out for a specified number of days—usually from three days to a week (during which you can use sick leave). Sick leave taken under this premise may not be used as chargeable occurrences for purposes of company discipline.
- • **Permanent Disability.** Once the appropriate doctor(s) determine you have reached maximum medical improvement, you may be able to return to work as a Flight Attendant, able to perform other work, or unable to work. If you can return to some form of work but are permanently partially disabled, you are probably eligible for partial disability payments. If you are partially disabled but cannot return to work as a flight attendant, some states (such as California) have state funded vocational rehabilitation programs which will re-train you for a new career, at no cost to yourself. If you are permanently totally disabled, you should be eligible for benefits. Depending on the state, these benefits may have a ceiling.

What Injuries and Illnesses are Covered?

The basic question is whether the problem is work-related. Did the injury or illness occur “in the course of” or “as a result of” employment? In general, this means activities while on duty. It usually also covers injuries occurring during company-required layovers and deadheads.

Where Should I file?

State eligibility can be determined by a variety of factors—the location of your domicile, where the company is headquartered, where you were injured, where your check comes from, or even where you live in limited circumstances. Generally at Envoy, you will file in the state where your domicile is located.

If you might be eligible in more than one state, find out if there is a significant difference in both income replacement levels and medical benefit levels and procedures.

Texas: <http://www.tdi.texas.gov/wc/employee/index.html>

What if My Application for Workers' Comp. is Denied?

- • **Call your Union.** Your Local union leadership may be able to help you understand the workers' comp. bureaucracy, give you direction and/or advise you that you may need an attorney.
- • **Contact the State Office.** Each state law is administered by a state agency, which can help you understand the law and your rights and responsibilities under it. Most states contain an appeal process that may be followed if the company denies your claim.
- • **Consult an Attorney.** If all goes well, (you receive your medical and income replacement payments and there are no disputes with the company) you may not need an attorney. But if you do need an attorney, the initial consultation is usually free. Most Flight Attendants are concerned about the cost of hiring an attorney. Most states provide that attorney fees for workers compensation cases are deducted from your benefits.
- • **Be Prepared to Help Them Help You.** Your union and/or attorney can help you, but you still have many responsibilities. You need to provide information in a timely manner, sign releases and other forms and generally respond to their requests. At the same time, you may simply need to talk about your problem—because you are angry or stressed or are having financial problems. If this is the situation, call an AFA Employee Assistance Program (EAP) representative. Assisting you with these problems is their responsibility.

What if I Don't Qualify for Workers Comp?

Assume that you are eligible for workers compensation. However, if you are found to be ineligible or while a denial of benefits is in the appeal process, other benefits are available. You may be able to receive payments under short or long term disability if you have taken this option under the company's insurance program. Under federal/state laws you may be eligible for Social Security disability and/or unemployment insurance.

Can I Be Terminated Because I Reported an Accident?

It is against the law for the company to harass, discharge, or refuse to rehire or in any way discriminate against an employee for exercising his/her rights under the law, including filing a workers compensation claim in good faith. However, if the company believes it has a legitimate reason to discipline you, you may be subject to the company's progressive discipline policy.

Can I Be Disciplined While Out on Workers' Compensation?

The company may not discipline or terminate you just because you filed for or are receiving workers' comp. But if they believe a legitimate reason exists to discipline you, you may be subject to the company's disciplinary policy even while out on leave.

What is Light Duty?

Once you have reported an injury on duty, your in-flight manager may make you an offer of employment, also known as "Transitional Duty." This transitional duty is often referred to as "Light Duty." It is not mandatory that the company offer transitional duty assignments, however once offered and accepted by a Flight Attendant, the assignment should not exceed 13 weeks in duration, unless given approval for extension by the Human Resources department and Director of Flight Service. Pursuant to company policy, a Flight Attendant will be compensated as follows:

1. a) A Flight Attendant will paper bid. F/A will receive scheduled block time and per diem for the line she/he could have held. Paper bid must be received prior to bid closure or F/A will receive guarantee and 200 hours of per diem.
2. b) Full time hours are 0800 to 1630 Monday through Friday. Hours may be "flexed: provided the F/A works an eight and one half hour day to allow for a half-hour lunch.
3. c) If a F/A is medically restricted to part time hours they will receive a 37.5 hour guarantee and 100 hours of per diem.
4. d) Part time hours are 20 hours per week. Based on Physicians' instructions, the F/A may work four hours per day Monday through Friday or they may work two to three days per week adjusting their hours accordingly.

Can the Company Force Me to Perform Light Duty?

Many Flight Attendants have reported being told that if they refuse to perform light duty, they will not receive workers' comp. income replacement. Therefore they feel forced to work in these light duty positions. The company **may not** force you to do light duty. You may decline. However, the company is entitled to withhold income replacement if you decline their offer of light duty. It is also important to remember that a physician will determine the amount of light duty you are able to perform. Your condition may be such that severe medical restrictions are necessary and you are unable to meet the company's requirements needed to perform light duty. If this is the case and your physician has medically restricted you to the point that you are unable to perform light duty, the company **may not** withhold income replacement. It is also possible that you may be able to perform light duty, but on a limited basis only. The amount of light duty you will be able to perform, any necessary medical restrictions or any other limitations, will be determined by your physician, not the company.

After Sustaining an Injury on Duty, I Received a Letter From the Company Entitled "I'm Concerned About Your Safety." What is this?

The company has stated that this letter is issued to Flight Attendants who Envoy believes may not be using safe habits at work or at home. The Association believes that the purpose of the letter may be to intimidate or discourage Flight Attendants from the lawful

reporting of injuries on duty and may be the first event leading to potential or future discipline.

Nonetheless, if you receive this letter, you should take it seriously. Contact a union representative immediately. AFA recommends you review the company's entries into your personnel file and write a rebuttal letter, which is your contractual right provided by Section 27 "General", paragraph D of the collective bargaining agreement. This letter will become a permanent part of your file and will give you the opportunity to detail your side of the story.

A Final Note of Caution

Be careful what you say or sign for the company or for the state. The truth is essential, but do not volunteer information that is not required. Information, which may hurt your case, should be discussed with your union or your attorney before taking action you could later regret.

Remember you are entitled to a union representative during meetings with the company. If you have questions, problems or you just don't know where to begin - Call your union.

Updated documented originally written by Deb Sutor.