

From: DeLucia, Rob [<mailto:RDelucia@airlines.org>]
Sent: Wednesday, November 30, 2016 9:20 AM
To: Chief Evaluation Office
Subject: Obtaining Information Collection Request

To Christina Yancey:

My association may file comments on the Agency Information Collection Activities notice that was published on October 28, 2016. (DOL_FRDOC_0001).

Would you please email me a copy of the proposed Information Collection Request (ICR)?

Many thanks,

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**BEFORE THE
DEPARTMENT OF LABOR
OFFICE OF THE SECRETARY
WASHINGTON, DC**

In the matter of:

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Agency Information Collection Activities :

Family and Medical Leave Act :

Wave 4 Surveys :

OMB Control Number 1205-0NEW

AIRLINES FOR AMERICA COMMENTS

Airlines for America¹ (“A4A”) appreciates the opportunity to comment on the Department of Labor’s (“DOL” or “Agency”) proposed Wave 4 survey of employers and employees on “The Family and Medical Leave Act” (“FMLA”) 81 Fed. Reg. 75161 (October 28, 2016) (the “Proposal”).

A4A is the principal trade and service organization of the U.S. scheduled airline industry. It is the nation’s oldest and largest airline trade association. A4A’s member airlines employ approximately 515,000 employees, including over 120,000 Flight Attendants and Pilots (Flight Crew Members or “FCMs”).

Like other transportation industry workers, FCMs do not work at single locations, and have non-traditional schedules. The transportation industry, including airlines, has unique issues related to reinstating FCMs after an intermittent FLMA leave. Once a flight has departed, it is physically impossible to reinstate the FCM to the scheduled trip. A4A member air carriers also have invaluable experience implementing and administering the FMLA.

A4A and our member carriers have reviewed the 2012 FMLA Employer Survey that DOL used for the Wave 3 Survey, as the 2012 Survey Form will be the template for the questions in the Wave 4 Survey. Assuming the DOL will want to capture the views of major transportation industry employers, such as airlines, when it conducts the Wave 4 Surveys, A4A would offer the following recommendations:

- Employers should have the option to answer the Survey on a nationwide basis, rather than just a single work location.

The Wave 3 Survey required employers to respond for only a single location. However, given the fact that 40% of a typical airline’s workforce - our FCMs - routinely travel from one state to another on daily basis, most airlines administer and track FMLA usage on a nationwide basis. In addition, unionized airlines employees are subject to

¹ A4A airline Members are: Alaska Airlines, Inc.; American Airlines, Inc.; Atlas Air, Inc.; Federal Express Corporation; Hawaiian Airlines; JetBlue Airways Corp.; Southwest Airlines Co.; United Continental Holdings; and United Parcel Service Co. Air Canada is an A4A associate member.

nationwide collective bargaining agreements, and non-union workers are covered by companywide Personnel Manuals. Consequently, in most instances, airlines administer the FMLA and collect data primarily, if not exclusively, on a companywide basis.

- Employee Eligibility Minimums for Flight Crew Members.
While airline ground employees must work the standard 1,250 hours during a 12 month period to qualify for FMLA, the Airline Flight Crew Training Technical Corrections Act (“AFCTCA”) provides that our FCMs need only be paid for 504 hours (excluding paid sick and vacation) to qualify. The Wave 3 Survey form question 9 should be modified for airline flight crews.
- Time Increments of one day for recording usage.
Question 10 in the Wave 3 Survey limits employer responses on time increments to minutes or hours. However, because of the impossibility of restoring an employee to a flight that has already departed, the Department of Labor regulations permit air carriers to charge FCMs with usage in increments of one day. Question 22 on letting employees rejoin the shift fails to account for the physical impossibility reality that confronts all transportation companies, including airlines. The Wave 4 Survey questions should be modified accordingly.
- Replacement Worker Costs related to FMLA Usage.
Question 49 references possible costs that employers may incur when employees take FMLA, including administrative costs and continuing benefits. A4A recommends that the list of possible costs be expanded to include mandatory overtime and other supplemental wages for replacement workers triggered by intermittent FMLA use. The experience of the airline industry is that most FMLA usage is on an intermittent basis. When employees take incremental FMLA leave on short notice, air carriers often have to pay overtime and/or other extra pay to the replacement workers who are required to cover the trip or shift for the employee out on FMLA.
- Disciplinary policies instead of individual events.
In Question 43, the employer is asked to describe the disciplinary action “taken for the most recent case of FMLA misuse.” However, at large companies, like airlines, that have tens of thousands of workers, a response limited to an isolated or single incidence of employee abuse might provide a misleading picture. A4A would suggest that the Survey be amended to include the option for general disciplinary policies on FMLA abuse/fraud.

A4A appreciates the opportunity to comment on the Proposal. A4A urges the Department to adopt final regulations in accordance with the points made herein.

We would be happy to discuss our comments or answer any questions.

Respectfully submitted,

AIRLINES FOR AMERICA



Robert J. DeLucia
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December 26, 2016