



Transport Workers Union of America, AFL-CIO  
Air Transport Division  
Local 555  
Southwest Airlines Ramp, Operations, & Provisioning



## Preventing History From Repeating Itself Reminder---Use Care When Using KinCare---Labor Code 233 & 234 November 2009

California-based agents receive access to a benefit called California Kin Care. **Annually**, it affords you the opportunity to use six (6) of the twelve (12) sick days that you can earn annually **to attend to an illness of a child (not necessarily a minor), parent, spouse, domestic partner or domestic partner's child**. It is important to remember that this is intended to be a benefit that is paid from your sick bank and that by requesting it, you are in some ways subject to Southwest Airlines' sick leave policies, rules and regulations because **all conditions and restrictions placed by the employer upon the use by an employee of sick leave also shall apply**, so the knowledge of the standard should be the power that facilitates the usage of this benefit.

Use all resources that are available to you to become more knowledgeable about the use of this benefit.

- Contact Amye Thompson in the Union Office at 1-800-595-7672.
- Review the California Kin Care Key Points to Remember Packet on SWALIFE.COM
- Review the Kin Care Request Form (the last page of the California Kin Care Packet).
- Contact Labor and Employee Resources at 214-792-1391, 214-792-4101 or 214-792-3660.
- Review the CA Labor Code 233 and 234 (in its' entirety, on the backside of this document).
- Contact your local Division of Labor Standards Enforcement (DLSE) who investigates and enforces usage and claims against CA Labor Codes at [www.dir.ca.gov/dlse/DistrictOffices.htm](http://www.dir.ca.gov/dlse/DistrictOffices.htm)

You do not have to be an expert on California Kin Care, but you should know what coverage it provides you and make every attempt to ensure that you are taking Kin Care as permissible by California Labor Code Section 233 and 234. If there is a question as to whether your particular Kin Care absence is being handled properly, please contact the Union Office. Along with initiating the grievance process you may want to file a complaint with California's Division of Labor Standards Enforcement, who is the investigator and final say on whether SWA is acting in accordance with the Kin Care Law as written in the California Labor Code.

Be mindful that, because of perks that the company offers, SWA has a lot of personal information about you and your "kin". Information submitted to the company, including and not limited to; your emergency contacts, users of your flight benefits, and who is covered by your insurance are potential information that could be used to bring your usage of this benefit under scrutiny. Luckily, Section 234 of the Labor Code goes even further to protect the CA employee and speaks to **an employer absence control policy that counts sick leave taken pursuant to Section 233 as an absence that may lead to or result in discipline, discharge, demotion, or suspension is a per se violation of Section 233**. The DLSE will review the validity of complaints and judge whether a violation occurred.

With your help, the Union's Grievance Process and the California DLSE, agents in California can rest assured that the right to use Kin Care as written in the California Labor Code will be protected and defended.

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## **California Labor Code 233 and 234 (California Kin Care)**

233. (a) Any employer who provides sick leave for employees shall permit an employee to use in any calendar year the employee's accrued and available sick leave entitlement, in an amount not less than the sick leave that would be accrued during six months at the employee's then current rate of entitlement, to **attend to an illness of a child, parent, spouse, or domestic partner of the employee. All conditions and restrictions placed by the employer upon the use by an employee of sick leave also shall apply** to the use by an employee of sick leave to attend to an illness of his or her child, parent, spouse, or domestic partner. This section does not extend the maximum period of leave to which an employee is entitled under Section 12945.2 of the Government Code or under the federal Family and Medical Leave Act of 1993 (29 U.S.C. Sec. 2606 et seq.), regardless of whether the employee receives sick leave compensation during that leave.

(b) As used in this section:

(1) "Child" means a biological, foster, or adopted child, a stepchild, a legal ward, a child of a domestic partner, or a child of a person standing in loco parentis.

(2) "Employer" means any person employing another under any appointment or contract of hire and includes the state, political subdivisions of the state, and municipalities.

(3) "Parent" means a biological, foster, or adoptive parent, a stepparent, or a legal guardian.

(4) "Sick leave" means accrued increments of compensated leave provided by an employer to an employee as a benefit of the employment for use by the employee during an absence from the employment for any of the following reasons:

(A) The employee is physically or mentally unable to perform his or her duties due to illness, injury, or a medical condition of the employee.

(B) The absence is for the purpose of obtaining professional diagnosis or treatment for a medical condition of the employee.

(C) The absence is for other medical reasons of the employee, such as pregnancy or obtaining a physical examination. "Sick leave" does not include any benefit provided under an employee welfare benefit plan subject to the federal Employee Retirement Income Security Act of 1974 (Public Law 93-406, as amended) and does not include any insurance benefit, workers' compensation benefit, unemployment compensation disability benefit, or benefit not payable from the employer's general assets.

(c) No employer shall deny an employee the right to use sick leave or discharge, threaten to discharge, demote, suspend, or in any manner discriminate against an employee for using, or attempting to exercise the right to use, sick leave to attend to an illness of a child, parent, spouse, or domestic partner of the employee.

(d) Any employee aggrieved by a violation of this section shall be entitled to reinstatement and actual damages or one day's pay, whichever is greater, and to appropriate equitable relief.

(e) Upon the filing of a complaint by an employee, the Labor Commissioner shall enforce the provisions of this section in accordance with the provisions of Chapter 4 (commencing with Section 79) of Division 1, including, but not limited to, Sections 92, 96.7, 98, and 98.1 to 98.8, inclusive. Alternatively, an employee may bring a civil action for the remedies provided by this section in a court of competent jurisdiction. If the employee prevails, the court may award reasonable attorney's fees.

(f) The rights and remedies specified in this section are cumulative and nonexclusive and are in addition to any other rights or remedies afforded by contract or under other provisions of law.

234. **An employer absence control policy that counts sick leave taken pursuant to Section 233 as an absence that may lead to or result in discipline, discharge, demotion, or suspension is a per se violation of Section 233.** An employee working under this policy is entitled to appropriate legal and equitable relief pursuant to Section 233.

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