Airlines for America®

We Connect the World

February 21, 2024

The Honorable Michael Nelson
Chair, House Labor and Industry Finance and Policy Committee
585 State Office Building
St. Paul, MN 55155

Re: Rep. Berg amendment (HF 3882 A1) repealing the airline flight crew exemption from the Minnesota Earned Sick and Safe Time law

Dear Rep. Nelson:

Airlines for America® (A4A) [1] is the principal trade and service organization of the U.S. airline industry. On behalf of A4A and our member carriers, I am writing to oppose the above referenced proposed amendment because it does not recognize that federal law preempts cities and states from applying paid sick leave legislation to airlines. In order to avoid a conflict with federal law, the exemption must remain in place.

A4A member airlines have a proven track record of investing in their workforce, including providing generous paid sick leave to airline employees. The U.S. airline industry is one of the most heavily unionized private industries in the nation. As a result of our nationwide Collective Bargaining Agreements (CBAs) under the Railway Labor Act, as well as the personnel policies of our non-union carriers, airlines already provide substantial paid sick leave benefits to their employees. These plans include generous annual paid sick time accruals and maximum carryovers. The range of maximum accrual in an employee's bank of paid sick leave runs from 168 to 2,000 hours.[2]

The federal government and the airline industry both recognize that a reliable, national airline network cannot allow a patchwork of state and local sick leave laws as it threatens the industry's ability to keep planes on time and get passengers to their destinations. If each carrier had to adjust its sick, vacation and other benefit policies to accommodate state and local statutes, the system-wide pattern of benefits administration would break down. As such, airlines and our employees have carefully crafted generous paid sick leave benefits that work hand-in-hand with reliability and attendance programs to ensure

[1] The members of the association are Alaska Airlines, Inc.; American Airlines Group, Inc.; Atlas Air, Inc.; Delta Air Lines, Inc.; Federal Express Corporation; Hawaiian Airlines; JetBlue; Southwest Airlines Co.; United Airlines Holdings, Inc.; and United Parcel Service Co. Air Canada is an associate member.

[2] At some airlines, an employee's sick time allotment is included within the company's paid time off program.

that employees can take time off for medical reasons while also ensuring airline operations are not disrupted by a myriad of state-by-state policies. Among other considerations:

- Reliability of employee attendance is the most fundamental key to airline operations.
- Airlines operate a national network of flights 24 hours per day, 365 days per year. Our passengers expect that their flights will take off on time, the plane will be cleaned and catered when they board, and their bags will be delivered promptly when they arrive at their destination.
- Passenger demand for our services often peaks on holidays and weekends.
- To ensure passengers' flights operate as seamlessly as possible, airlines rely on customer service agents to be at the airport to check the passenger in and board them at the gate. Carriers also rely on cleaners, fuelers and catering employees to clean, fuel and cater the aircraft. Furthermore, baggage handling employees have to be in position to load and unload the aircraft. And, maintenance technicians need to be present to maintain the aircraft and fix any broken items on the aircraft.

Beyond the practical impact of the proposed amendment on airline operations, our request for an airline exemption stems from legal considerations:

- The nationwide pattern of bargaining and employment policies distinguishes airlines, railroads and other entities covered by the RLA from most US employers, who are subject to the National Labor Relations Act ("NLRA"). Under the NLRA, the prevailing pattern is local bargaining units with local CBAs.
- As one of the most heavily unionized private sector industries, our member airlines – along with regional airlines – have well over 100 collective bargaining agreements with more than 15 different unions. Unlike workforces covered by the NLRA, airline labor unions negotiate contracts establishing pay, benefits and work rules for the entire nationwide workgroup. Amending nationwide CBAs to address the respective sick leave laws of each state or locality is both legally questionable and practically unworkable from a labor relations perspective.
- Recognizing the operational reality that airline and railroad operations span state boundaries every day, innumerable state laws exempt RLA entities from their scope. Even the federal Fair Labor Standards Act ("FLSA") specifically exempts rail and air carrier employees from the overtime provisions. (See 29 U.S.C. §§213(b)(2)(3))
- The application of state and local paid sick leave laws to airline employees, including pilots and flight attendants, is currently the subject of litigation in federal court. On September 15, 2023, A4A filed suit challenging the application of Colorado State's paid sick leave law to airline employees. (*Air Transport Association v. Scott Moss*, Case No. 1:23-cv-02421 (D.C. Colo.))

Notably, there have been significant recent court decisions which further validate this federal preemption issue. Most notably, the proposed law has many features of another law a federal court recently held preempted by the Airline Deregulation's Act's (ADA)

express preemption provision, which prohibits state and localities from enforcing a law against an airline if it has a significant impact on a carrier's prices, routes or services.

The Massachusetts paid sick leave law that the court found preempted contained features typical of state sick leave laws, including minimal accrual of paid time off, prohibition on use of carrier's attendance control policies, and restrictions on the ability to require medical documentation of illness. The court determined that the state paid sick leave law increased employee sick calls for three reasons: "increases the number of permissible uses of sick leave," "prohibits airlines from enforcing their points-based attendance policies," and "restricts the scenarios wherein airlines can require employees to provide a doctor's note to support their use of sick leave." These increased sick calls in turn had a significant impact on the Airlines' services. As such, and after five years of litigation and nine days of trial, the federal court held that the law was preempted.

The reaching its decision, the court noted numerous, non-exhaustive evidence of the law's impact on airline services. For example, flight attendant sick rate data provided by one carrier noted marked increases in sick calls once state paid sick leave became available to flights attendants in January 2016.

The court also noted a pronounced increase of sick rates around holidays such as Halloween, Thanksgiving, Christmas, New Years and the Super Bowl, as well as otherwise unexplained spikes in sick calls on weekends. The Court identified numerous individual instances that pointed to sick leave usage impacting airline operations, including:

- A Halloween weekend in 2021, where high flight attendant sick rates, systemwide, caused a single airline to cancel 254 flights on Saturday and 1,000 flights on Sunday.
- An instance in December 2020, where so many ground employees called out sick that the carrier had to cancel four flights because there were not enough employees to complete the necessary services. (Note that all A4A members tracked absences for COVID separately than absences for other types of sick leave. These December 2020 calls were not related to COVID.)
- Analysis of data reflecting the sick rates for pilots and flight attendants found that sick rates peaked on Saturdays and Sundays and were at their lowest during the middle of the week (i.e., Tuesdays, Wednesdays, and Thursdays).
- Credible witness testimony regarding numerous likely instances of sick leave abuse by employees. Examples include a Boston Logan Airport-based American ground employee who repeatedly used sick leave to be absent during the Christmas holiday in 2016, 2017, and 2019, and another ground employee, also based at Logan, who consistently used MESTL to ensure time off over holidays including Thanksgiving and the Super Bowl.

- These individual instances of abuse reflected a pattern seen in broader data. An economic expert witness testified that the data reflecting the sick rate of one carrier's ground crew had an otherwise unaccounted for spike on Super Bowl Sunday in 2015, 2016, 2017, and 2018 relative to other Sundays in January and February, which further substantiated his opinion that the spikes were caused by sick leave abuse.

Based on this clear evidence of impact of the paid sick leave law, the federal court found the law was preempted by the ADA. The proposed amendment includes the same features that will cause a spike in absenteeism and would therefore be preempted under federal law.

Nor is the Massachusetts case an outlier; a similar New York City law was found to be preempted because of its impermissible impact on airline operations in 2021, and a similar law is under challenge in Colorado.

For these operational and legal considerations, A4A respectfully requests that the proposed amendment be rejected.

If you have any questions, I would be glad to respond.

Sincerely,

Sean Williams
Vice-President, State and Local Government Affairs
swilliams@airlines.org