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BY EMAIL

March 20, 2024

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

Re: HF 4818

Dear Chair Nelson,

We write in strong opposition to HF 4818 on behalf of our client Airlines for America (A4A). The proposed legislation is unnecessary in light of the Affordable Care Act and A4A members' already-generous employer-provided health insurance benefits. This legislation would also be federally preempted by the Railway Labor Act (RLA), the Employee Retirement Income Security Act (ERISA), and the Airline Deregulation Act (ADA). For the reasons set forth below, A4A believes the MN House Labor Committee should not move this legislative proposal forward.

A4A Members' MSP Operations

A4A is the principal trade and service organization of the United States-scheduled airline industry. Its members and affiliates, which include the majority of the airlines that serve Minneapolis/St. Paul International Airport (MSP) such as Southwest Airlines, United Airlines, American Airlines, Alaska Airlines, Delta Air Lines, Jet Blue Airlines, FedEx, and UPS among others. A4A members account for more than 90% of the passenger and cargo traffic that United States-scheduled airlines carry annually and 86% of total market share at MSP. Together, A4A members employ thousands of employees at MSP. A4A is thus well positioned to provide information on the impact of laws and regulations on airline workers at MSP, including benefits laws.

A4A Members' Health Insurance Benefits For MSP-Based Employees

A4A members provide well-paying jobs with generous benefits to employees in every state in the Nation, including in Minnesota. These benefits include extensive health and welfare benefits. Many of these benefits are collectively bargained on a nationwide basis with agreed-upon benefits and service offerings. Similarly, A4A members' non-collectively bargained health insurance plans are also typically offered on a nationwide basis. The health insurance offerings include significantly subsidized single-coverage and dependent/family-coverage to employees under the above-described collective bargaining agreements and ERISA plans. In other words, A4A members' MSP-based employees have ample access to comprehensive, low-cost health insurance for themselves and their family members.

Proposed Minnesota Legislation, HF 4818

The proposed legislation applies ***only*** to employers operating at and employees working at MSP. It applies equally to full-time and part-time employees. Under the proposed bill, all employers must "provide an employee who enrolls in an employer benefit plan and who is employed at [MSP] an hourly supplement at the health and welfare benefits rate." *See* HF 4818 at Lines 2:20-2:22. The "hourly supplement" aligns with the rate set by the federal government under the Service Contract Act (SCA)—currently $4.98 per hour—and will be adjusted annually to follow updated SCA rates. *Id.* at Lines 2:11-2:17. The bill further states that the $4.98 must be provided "toward the cost of minimum essential coverage under an employer-sponsored plan" as defined in 26 CFR § 1.5000A-2(c). *Id.* at Lines 2:11-2:14.

HF 4818 Is A Solution In Search Of A Problem

As explained above, a substantial percentage of MSP workers are A4A members' employees who already receive generous health insurance benefits, in many cases more generous than found in other industries in Minnesota that are not included in this proposed legislation. There is no need to increase A4A member employees' health insurance value. And, with respect to all MSP workers, the federal Affordable Care Act already requires employers to offer affordable coverage, defined under the ACA as an employer charging a premium not to exceed 9.5% of the employee's adjusted gross income. *See* Internal Revenue Code Section 4980H(b).

There certainly is no need for the legislation to value health insurance at the SCA fringe benefit rate. To start, it is inappropriate to graft a national rate like the SCA fringe benefit rate onto the operations of certain business sectors, at one airport, in a single state, especially when the rate does not apply to other industries or sectors within the same state. The SCA "minimum rate for … benefits, such as insurance, pension, etc. … [is] based upon the sum of the benefits contained in the U.S. Bureau of Labor Statistics, Employment Cost Index (ECI), for all employees in private industry, nationwide (and excluding ECI components for supplemental pay, such as shift differential, which are considered wages rather than fringe benefits under SCA). 29 CFR 4.52(a); *see also* All Agency Memorandum ("AAM") No. 243 ("[T]his benefit rate is derived from the latest Bureau of Labor Statistics Employment Cost Index summary of Employer Cost for Employee Compensation."). Because of this, the SCA rate is much higher than the value of average single-coverage health insurance plans throughout the United States.

According to the Kaiser Family Foundation, the average premium for single health insurance coverage in 2023 was around $8,400. *See* 2023 Employer Health Benefits Survey (available at: https://www.kff.org/report-section/ehbs-2023-section-1-cost-of-health-insurance/#:~:text=PREMIUMS%20FOR%20SINGLE%20AND%20FAMILY,per%20year%20%5BFigure%201.1%5D) (last viewed on Mar. 17, 2024). For family coverage, it was around $24,000. *Id.* Assuming a covered employee under HF 4818 works 40 hours per week, the required employer subsidy under the bill would come out to around $10,400—well in excess of the average cost of single coverage.

There is also no need for Minnesota to require MSP employers to subsidize single coverage at more than 100% of the average single-coverage health insurance plan. Most United States employers subsidize health insurance at 83% of the cost of single coverage on average and at around 71% of the cost of dependent coverage on average. *See id.* at https://www.kff.org/report-section/ehbs-2023-summary-of-findings/ (last viewed on Mar. 18, 2024). These employers do not

subsidize employees' cost of insurance at more than 100% like HF 4818 contemplates for single coverage.

The RLA, ERISA, And ADA Would Preempt HF 4818

If HF 4818 were to become law, it could not survive legal challenge because it will be preempted by multiple federal laws.

1. *The RLA preempts HF 4818 because the HTL would interfere with negotiation of benefits.*

The RLA promotes the stability of labor relations in the air and rail industries by providing a federal framework for resolving labor disputes, including the negotiation of labor contracts. *See, e.g., Atchison, T. & S.F.R. Co. v. Buell*, 480 U.S. 557, 562 (1987). As the Supreme Court explained in *Lodge 76, Int'l Assoc. of Machinists and Aero. Workers v. Wisconsin Employment Relations Comm'n*, 427 U.S. 132, 147-48 (1976) ("*Machinists*"), this federal framework leads to the preemption of state and local labor laws that regulate in areas that Congress left to be controlled by the free play of economic forces. The negotiation of benefits provisions is one such area.

A4A members' labor contracts contain provisions for generous health insurance, negotiated with unions, and approved by employees. These provisions are the product of carefully negotiated language, much of which the parties arrived at in exchange for other items. Requiring benefits over and above those that A4A members and their unions negotiate disrupts the bargaining process and places a thumb on the scale in favor of certain levels of benefits instead of other terms and conditions of employment, such as wages or leaves. Such governmental interference with the bargaining process is not allowed under the RLA. *See, e.g., Machinists*, 427 U.S. at 147-48.

Based on media statements that have been made in the past few months about this proposed legislation, it appears that the purpose of this legislation is to influence collective bargaining that is currently occurring among some work groups at MSP. This is exactly what the RLA preempts. Indeed, as the United States District Court of the District of Minnesota has observed, a "state law which influences either the economic weapons available to the bargaining parties or the outcome of the negotiations is preempted." Thunderbird, 138 F.Supp.2d at 1197 (citing, among other cases, Employers Ass'n v. United Steelworkers, 32 F.3d 1297 (8th Cir. 1994) (preempting a state statute forbidding the hiring of striker replacement workers)).

Machinists preemption arguments are especially strong when these arguments are applied to industry- or site-specific laws like contained in HF 4818. Courts routinely find such laws preempted under federal labor law because they constitute an intrusion into collective bargaining in a particular industry. *See, e.g., 520 S. Michigan Ave. Assocs., Ltd. v. Shannon*, 549 F.3d 1119, 1124 (7th Cir. 2008) (state law requiring hotels to give certain workers specific breaks, rather than leave the issue to collective bargaining was preempted because it was not a minimum labor standard but a specific intrusion into collective bargaining in a particular industry).

2. *ERISA would preempt HF 4818 because the bill relates to ERISA-governed benefit plans.*

ERISA supersedes "any and all state laws insofar as they may now or hereafter relate to any benefit plan." 29 U.S.C. § 1144(a); *see also Pharm. Care Mgmt. Assoc. v. Gerhart*, 852 F.3d 722 (8th Cir. 2017). The proposed bill specifically dictates that, if employers are going to provide health insurance, then employers must provide a certain value of health insurance. This is a requirement that most certainly "relates to" the employer's benefit plan. ERISA will, therefore, preempt HF 4818.

More specifically, ERISA preempts any state or local law that dictates the value of benefits. *See, e.g., Local Union 598 v. J.A. Jones Const. Co.*, 846 F.2d 1213, 1219 (9th Cir. 1988) (a "statute which mandates employer contributions to benefit plans and which effectively dictates the level at which those required contributions must be made has a most direct connection with an employee benefit plan" and is "clearly preempted by ERISA"), *summarily aff'd*, 488 U.S. 881 (1988). The proposed bill dictates the acceptable value of benefits an employer offers in their health insurance plans.

An employer's ability to pay employees $4.98 per hour, rather than provide that value of health insurance benefits, does not save the proposed legislation from ERISA preemption. In *Retail Industry Leaders Ass'n v. Fielder*, 475 F.3d 180 (4th Cir. 2007), the United States Court of Appeals for the Fourth Circuit concluded that ERISA preempted a state law mandating employers to spend a certain level on healthcare and requiring an employer to pay separately into a state-run fund if the employer did not meet that level. The Fourth Circuit reasoned that allowing payment into a fund is really no option at all because it is highly unlikely that an employer would pay a government to run healthcare for some of its employees while having the option of covering them in a pre-existing ERISA plan. The same would be true here—it would be highly unlikely an employer would pay employees additional hourly wages while having the option of covering them in a pre-existing health insurance plan. State laws like proposed in HF 4818 indirectly but effectively force an employer to amend its existing ERISA plan(s) to comply with the state law. These laws are, therefore, preempted by ERISA.

3. The ADA would preempt the proposed legislation because HF 4818 would affect services and possibly prices and routes.

The ADA prohibits the enactment and enforcement of state laws "related to a price, route, or service of an air carrier." 49 U.S.C. § 41713(b)(1). Congress included this "broad" express preemption provision to promote efficiency and to avoid "regulatory patchwork[s]," *Rowe v. N.H. Motor Transp. Ass'n*, 552 U.S. 364, 373 (2008), and to prevent states from "undo[ing] federal deregulation with regulation of their own, *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 378, 383-84 (1992). The breadth of this provision is reflected in the ADA's "related to" language. It preempts any state law "having a connection" with air carrier "prices, routes, and services." *Rowe*, 552 U.S. at 370-71 (quotations omitted); *see also Ferrell v. Air EVAC EMS, Inc.*, 900 F.3d 602, 605 (8th Cir. 2018) (describing the ADA's preemptive force). That connection need not be direct, *id.*, and it is not necessary that the state law "actually prescribe[] rates, routes, or services," *Morales*, 504 U.S. at 385. Rather, the ADA preempts a state law if the claim "serves as a means to guide and police the practices of the airlines rather than simply giving effect to bargains offered by the airlines and accepted by airline customers." *LaBeau and Ma Florentina Busso LaBeau v. MN Airlines, LLC*, No. 18-cv-3216 (WMW) (LIB) (D.Minn. Jan. 14, 2020) (finding state law

negligence claim preempted by the ADA) (citing *Benedetto v. Delta Air Lines, Inc.*, 917 F.Supp.2d 976, 981-82 (D.S.D. 2013)).

The proposed legislation in HF 4818 would affect airline services in a manner prohibited by the ADA. By increasing the relative cost of employment, MSP employers will need to do more with less—meaning a headcount reduction is an almost certain outcome of cost increases due to the bill. Any headcount reduction will lead to longer lines and waiting times for passenger assistance, aircraft and ground service equipment maintenance, baggage loading and unloading, *etc.* The ADA preempts laws that lead to such reduced staffing because these laws affect airline services. *See, e.g., Brindle v. R.I. Dep't of Labor & Training*, 211 A.3d 930 (R.I. 2019) (overtime law that would cause air carriers to staff flights with fewer employees was preempted by the ADA because it affected services and service levels), *cert denied*, 140 S.Ct. 908 (2020).

A recent lawsuit brought by A4A against Massachusetts over its paid sick leave law further demonstrates the ADA's preemption of laws like that being proposed in HF 4818. In *Air Transp. Ass'n of Am., Inc. v. Campbell*, No. 18-cv-10651 (ADB), 2023 WL 3773743 (D.Mass. June 2, 2023), the United States District Court for the District of Massachusetts analyzed whether the ADA preempted the Massachusetts Earned Sick Time Law (MESTL). Like the legislation proposed in HF 4818, the MESTL purported to expand the reasons airline employees could take leave, prohibited airlines from assessing employee points for an absence, and limited when airlines could require their employees to provide a doctor's note when they call out sick. The district court credited data provided by the airlines confirming that when MESTL was available to airline employees, the sick rates were higher (sometimes almost double) than the system average, negatively impacting airline services due to reduced headcount on any given day. The district court concluded that as applied to the airlines' pilots, flight attendants, and ground-based employees, the ADA preempted the MESTL in its entirety. HF 4818 is likely to meet a similar fate because it will necessarily lead to reduced headcount and, therefore, reduced airline services.

It is too early for A4A to have effectively studied the cost implications of HF 4818 in any detail. It is likely, however, that the bill if passed will increase airline ticket prices and decrease routes at MSP. This is because the bill is potentially very expensive for employers, possibly requiring them to invest more than $10,000 per full-time employee at MSP ($4.98 multiplied by 40 hours per week multiplied by 52 weeks). Carriers may have no choice but to pass on these cost increases to consumers or to reduce flights into or out of MSP. The ADA preempts such laws. *See, e.g., Blackwell v. SkyWest Airlines, Inc.*, No. 06-cv-00307 (DMS) (AJB), 2008 WL 5103195, at *18 (S.D. Cal. Dec. 3, 2008).

In sum, it is apparent HF 4818 is seeking to regulate the aviation industry. It applies only at MSP. We raise this not to suggest that other Minnesota employers and their employees should be covered by the bill. Instead, we raise it to point out that the bill is clearly regulation directed at the aviation industry in violation of the ADA.

Conclusion

The proposed bill is unnecessary in light of the Affordable Care Act and A4A member employees' already generous health insurance benefits. Federal law would also preempt any version of the bill and therefore A4A is opposed to HF 4818.

Very Truly Yours,

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