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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

AIR TRANSPORT ASSOCIATION OF
AMERICA, d/b/a AIRLINES FOR AMERICA,

Plaintiff,

v.

THE WASHINGTON DEPARTMENT OF
LABOR & INDUSTRIES and JOEL SACKS, in
his official capacity as Director of the
Department of Labor & Industries,

Defendants.

No. _____

COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF

I. INTRODUCTION

1. The Washington Paid Sick Leave Act, passed by Initiative 1433, and its implementing regulations (collectively referred to herein as the “Paid Sick Leave Act” or “Act”), as applied to pilots and flight attendants (“flight crew”), violate the United States Constitution.

2. The United States Constitution’s Dormant Commerce Clause limits the power of states to enact legislation that affects interstate commerce when a national uniform economic policy is required. Uniformity in regulation of air carriers from one end of a route to another is a national necessity, and only regulation by a single regulatory authority can ensure efficient air carrier operations. Accordingly, Congress regulates nearly every facet of the air transportation industry, and this federal regulation is “intensive and exclusive.” *Northwest Airlines v.*

1 *Minnesota*, 322 U.S. 292, 303 (1944) (Jackson, J., concurring); *see also* 49 U.S.C. §
2 40103(a)(1) (stating that the federal government has exclusive sovereignty of the airspace of
3 the United States). For example, the Airline Deregulation Act (“ADA”), 45 U.S.C. § 41713(b)
4 preempts state or local laws that relate to the prices, routes, and services of air carriers.

5 3. Allowing Washington to require and regulate the provision and use of paid sick
6 leave for flight crew thwarts this uniform system of federal regulation. If Washington can
7 regulate flight crew leave, other states and municipalities can too. Indeed, at least 36 state and
8 local jurisdictions currently require and regulate paid sick leave. These various regimes impose
9 different (and inconsistent) obligations on air carriers. For example, a flight crew departing
10 from SeaTac International Airport, landing in Portland International Airport, and continuing to
11 San Diego International Airport is subject to three different paid sick leave laws in a single duty
12 period, each with its own accrual, compensation, reporting, and leave requirements.¹

13 Additionally, if states were permitted to enforce disparate laws against air carriers, flight crew
14 who worked the entire trip (Seattle to San Diego) would receive paid leave benefits different
15 from those received by flight crew who flew the second leg (Portland to San Diego) but not the
16 first (Seattle to Portland), even though the two flight crews worked on the same plane. Not
17 only does this cause mass confusion among flight crews, the task of untangling the snarl of
18 conflicting paid sick leave rules imposes a substantial and unconstitutional burden on air
19 carriers in violation of the Dormant Commerce Clause.

20 4. Member airlines in Plaintiff Air Transport Association of America, d/b/a
21 Airlines for America (“A4A”), already provide paid sick leave benefits to pilots and flight
22 attendants, and they have for years. Airlines extensively negotiate these benefits in nationwide
23 collective bargaining agreements (“CBAs”), and these comprehensive bargained-for benefits
24 allow flight crew to take paid time away from work to care for themselves and family
25

26 ¹ Washington’s Department of Labor & Industries (L&I) takes the position that the Paid Sick Leave Act applies
27 extraterritorially to Washington domiciled employees, regardless of whether that work occurs in Washington or in
some other jurisdiction, regardless of whether the other jurisdiction has its own paid sick leave law, and regardless
of how much time the employee actually spends working in Washington.

1 members. In exchange, airlines preserve the right to monitor attendance and reliability to
2 ensure compliance with federal regulations governing duty period limitations, flight crew
3 family medical leave, rest requirements, and aviation safety. The Paid Sick Leave Act conflicts
4 with these carefully negotiated provisions. Because the burdens on air carriers and interstate
5 commerce imposed by the Paid Sick Leave Act substantially outweigh the putative state
6 interest in regulating paid sick leave for flight crew at the state level, the Act is unconstitutional
7 as applied to flight crew.

8 5. In addition, the Airline Deregulation Act preempts the Paid Sick Leave Act
9 because the Act relates to and adversely affects air carrier prices, routes, and services. Among
10 other effects, paid sick leave laws, like Washington's, severely constrain an airline's ability to
11 monitor and prevent abuse of sick leave and result in significant spikes in flight crew absences,
12 which leads to an increase in delayed and cancelled flights. In at least one location with a
13 similar local paid sick leave law, the effects were so onerous they led a member airline to close
14 a base of operations for flight attendants. Forcing airlines to comply with the Paid Sick Leave
15 Act for flight crew will cause additional operational disruptions, including cascading delays
16 and cancellations across entire fleets.

17 6. The Act also violates the Due Process Clause of the Fourteenth Amendment to
18 the U.S. Constitution because it purports to apply extraterritorially, that is, to work performed
19 outside the state of Washington.

20 7. As detailed below, Airlines for America, on behalf of its member airlines, seeks
21 declaratory and injunctive relief to invalidate Washington's new Paid Sick Leave Act and to
22 prohibit its enforcement with respect to airlines' employment of flight crew, such as pilots and
23 flight attendants.

24 II. NATURE OF ACTION

25 8. Plaintiff A4A seeks a declaration, pursuant to 42 U.S.C § 1983 and 28 U.S.C. §§
26 2201 and 2202, that the Paid Sick Leave Act violates the Commerce Clause of the United
27

1 States Constitution because it substantially impairs interstate commerce when a national,
2 uniform system of regulation is required.

3 9. A4A seeks a declaration, pursuant to 42 U.S.C § 1983 and 28 U.S.C. §§ 2201
4 and 2202, that the ADA preempts the Paid Sick Leave Act.

5 10. A4A seeks a declaration, pursuant to 42 U.S.C § 1983 and 28 U.S.C. §§ 2201
6 and 2202, that the Paid Sick Leave Act violates the Fourteenth Amendment to the U.S.
7 Constitution because it purports to apply state law extraterritorially.

8 11. A4A also seeks a preliminary injunction prohibiting enforcement of the Paid
9 Sick Leave Act against airlines with respect to their employment of flight crew, pending final
10 resolution of this challenge, and a permanent injunction prohibiting such enforcement of the
11 Paid Sick Leave Act.

12 III. PARTIES

13 12. A4A is a nonprofit corporation organized under the laws of the District of
14 Columbia, with its principal place of business in Washington, D.C. A4A advocates for its
15 member air carriers on issues of safety, security, customer service, environment, energy, taxes,
16 economic growth, and other policies and measures relevant to the airline industry. A4A also
17 works with its members in legal, political, and regulatory arenas to foster a business and
18 regulatory environment that promotes a safe, secure, and financially stable airline industry in
19 the United States.

20 13. A4A is the principal trade association representing scheduled airlines, including
21 American Airlines, Inc.; Alaska Airlines, Inc.; Atlas Air, Inc.; Federal Express Corp.; Hawaiian
22 Airlines; JetBlue Airways Corp.; Southwest Airlines Co.; United Airlines, Inc.; and United
23 Parcel Service Co. A4A's members and affiliated airlines account for more than 70% of the
24 annual passenger and air cargo traffic on U.S. airlines and provide more than 450,000 full-time
25 equivalent airline-industry jobs.

26 14. A4A members operate at Washington's airports and absent relief from this court
27 will be subjected to the Paid Sick Leave Act and its implementing regulations.

1 15. Defendant Department of Labor & Industries (“Department” or “L&I”) is a
2 Washington State agency charged with creating rules and regulations implementing the
3 provisions of the Paid Sick Leave Act and with enforcing the Act.

4 16. Defendant Joel Sacks is the current Director of the Department of Labor &
5 Industries. As Director he is charged with creating rules and regulations implementing the
6 provisions of the Paid Sick Leave Act and with enforcing the Act.

7 **IV. JURISDICTION AND VENUE**

8 17. This Court has jurisdiction over the subject matter of this suit pursuant to 28
9 U.S.C. §§ 1331 and 1337 because Plaintiff’s claims arise under the United States
10 Constitution—specifically Art. I, Sec. 8, Cl. 3 (the “Commerce Clause”); Art. VI, Cl. 2 (the
11 “Supremacy Clause”), and Amend. XIV, Sec. 1 (the “Fourteenth Amendment”)—and because
12 it arises under the ADA, an Act of Congress regulating air commerce.

13 18. The Federal Declaratory Judgment Act, as amended, 28 U.S.C. §§ 2201 and
14 2202, authorizes the declaratory and other relief sought herein.

15 19. Plaintiff A4A has standing as an organization to bring claims for declaratory and
16 injunctive relief. “[A]n association has standing to sue in their own right when: (a) its members
17 would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are
18 germane to the organization’s purpose; and (c) neither the claim asserted nor the relief
19 requested requires the participation of individual members in the lawsuit.” *Hunt v. Wash. State.*
20 *Apple Advert Comm’n*, 432 U.S. 333, 343 (1977); *see also United Food & Commercial*
21 *Workers Union Local 751 v. Brown Grp., Inc.*, 517 U.S. 544, 552-53 (1996). A4A’s members
22 subject to the Paid Sick Leave Act are substantially and adversely affected by it. These
23 members would have standing in their own right to challenge the Act and its implementing
24 regulations. Plaintiff is an organization that exists to promote its members’ business and
25 commercial interests, which are subject to immediate and ongoing harm caused by the Act and
26 its implementing regulations. The relief A4A seeks—a judgment declaring the Act
27 unconstitutional as applied to the flight crew of its member carriers and an injunction—does

1 not require an individualized determination necessitating the participation of the members in
2 this lawsuit. *See Associated Gen. Contractors of America v. Metro. Water Dist. of Southern*
3 *Calif.*, 159 F.3d 1178, 1181 (9th Cir. 1998) (associational standing appropriate because
4 “declaratory and injunctive relief is sought rather than monetary damages”); *Schweiker v. Gray*
5 *Panthers*, 453 U.S. 34, 40 n.8 (1981) (“The District Court correctly found that respondent had
6 standing to sue because respondent alleged and proved that some of its members are persons
7 adversely affected by the Secretary’s regulations,” which the suit sought to enjoin).

8 20. Venue is proper in this Court under 28 U.S.C. § 1391(b) as this Court is located
9 in the judicial district where a substantial part of the events or omissions giving rise to A4A’s
10 claims have occurred, are now occurring, and will occur in the future, and because Defendants
11 reside or are found in this judicial district.

12 V. THE AIRLINE INDUSTRY

13 21. All of A4A’s members are federally regulated air carriers that operate domestic
14 and international flights daily out of SeaTac International Airport (“SeaTac”), among other
15 airports in Washington, and up and down the east coast, west coast, throughout the United
16 States, and internationally.

17 22. Pilots and flight attendants are highly mobile workers who do not work regularly
18 scheduled shifts. Schedules vary widely and are determined by bidding processes that take into
19 account crew member preferences and seniority, FAA mandated flight duty limitations,
20 collective bargaining agreement limitations, and crew member “domiciles” or “base” airports.
21 (Typically, flight crew bid for available flight segments that begin and end at their domicile
22 airports.) Alaska Airlines, Inc., domiciles pilots and flight attendants at SeaTac International
23 Airport. A4A’s remaining members operate several flights into and out of Washington airports
24 on a regular, even daily, basis.

25 23. A4A’s members do not require pilots to reside in the same city or state as the
26 domicile airport. Many pilots reside in cities and states geographically distant from their
27 domicile airport and commute to and from work by air travel.

1 24. Because A4A’s members have few flights that both begin and end in
2 Washington, pilots domiciled in Washington begin or end flights in Washington but spend
3 minimal time actually working in Washington.

4 25. As with pilots, A4A’s members do not require flight attendants to reside in the
5 same city or state as their domicile airport. And because flight attendants can trade, add, and
6 drop flights (without employer control or even advance notice), they do not work a regularly
7 scheduled shift flying between the same airports or with standard start and end times for their
8 shifts. Instead, they work fluctuating schedules that depend on seniority, bidding preferences
9 and choices, regulatory requirements, collective bargaining limitations, and base assignments.

10 26. As with pilots, flight attendants, even those who start or end a flight in
11 Washington, spend the bulk of their work time in flight, working in federally regulated
12 airspace. Flight attendants also pass through airports in multiple cities in the course of a single
13 day, spending just enough time on the ground in each airport to prepare for the next flight.

14 27. A4A’s members calculate flight crew pay according to several different
15 methods, many of which are not based on hours worked.

16 28. For example, United Airlines pays pilots according to a complex formula that
17 includes flight advances (which reflects the pilot’s anticipated compensation at the end of the
18 bid period), a Minimum Pay Guarantee (a minimum amount of pay for each day the pilot is
19 scheduled to work), and, for lineholder pilots, a Protected Time Credit (which protects a pilot’s
20 compensation expectation when a schedule change adversely affects pay). None of these
21 factors are based on—nor do they correspond to—the number of hours a pilot actually works.

22 29. Likewise, Alaska compensates flight attendants based on “trips for pay” or
23 “TFP.” TFP is based on the distance of a flight, not on days or hours worked. Flight attendant
24 pay also fluctuates monthly according to several variables, including the number of duty
25 periods in a sequence in a bid month, whether a flight attendant voluntarily swaps trips, the
26 position in the aircraft the flight attendant works (which can change from flight to flight, at the
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1 flight attendant's control), whether the flight attendant is deadheading,² whether flights are
2 flown internationally, whether flights are delayed or cancelled, whether the flight attendant
3 duty day exceeds a specified period of time, and whether the flight attendant has worked flight
4 segments in addition to the bid schedule.

5 30. Other A4A members likewise have complex pay schemes for pilots and flight
6 attendants that are not based on hours worked. For example, the unit of compensation for
7 Southwest flight attendants is also TFP, which per the operative CBA is "based on point-to-
8 point mileage," not on hours. Flights with nonstop mileage of two-hundred forty-three (243)
9 miles or less are considered "standard" TFPs, and flights with nonstop mileage of more than
10 two-hundred forty-three (243) miles are considered "non-standard" TFPs paid at a higher rate.
11 Southwest flight attendants are also entitled to additional pay due to a delay—such as if a flight
12 is grounded and does not take off on time or if a flight operates in excess of the scheduled
13 block time—in such cases, they are paid a fraction of a TFP, not a particular rate per length of
14 delay.

15 31. A4A members allow flight crew to accrue generous paid sick leave benefits.
16 For instance, Alaska pilots accrue five and one-half hours of sick leave credit for each month
17 the pilot performs six or more hours of work and can accrue up to 1000 hours in their sick leave
18 banks. Pilots are also entitled to rapid re-accrual (11 hours per month) in cases of long-term
19 absences of 60 days or more. Paid sick leave can be used for a pilot's own illness or for an
20 eligible family member's illness. Alaska can require proof of sickness, at its expense, without
21 regard to the number of days the pilot is sick or absent from work. Pilots who call out sick
22 before reporting for duty can call in well and rejoin the original pairing, but only if the trip
23 returns to the pilot's domicile before completion of all scheduled flight segments and a reserve
24 pilot is not reassigned prior to departure. Pilots can also make up lost sick leave by opting to
25 fly additional flights in the bid period.

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² Deadheading is company-required travel to put a crewmember in a different location.

1 32. Many A4A members have memorialized methods for calculating pay and
2 accrued sick leave or other paid time off in collective bargaining agreements (CBA)
3 extensively negotiated with pilot and flight attendant unions. Some A4A members have had
4 CBAs in place with pilot and flight attendant unions for decades.

5 33. A4A members also maintain attendance and reliability policies for flight crew,
6 many of which are also incorporated into CBAs. The purpose of these policies is to allow
7 airlines to monitor whether a crew member works when scheduled, to ensure on-time
8 operations, and to make sure A4A members are able to staff their flights properly. These
9 policies consider the airline's need to comply with comprehensive federal safety laws and
10 regulations on work hours and staffing, including those related to duty period limitations, flight
11 crew family medical leave, rest requirements, and aviation safety. They also take into account
12 the airline's need to provide consistent, on-time service to its customers and to treat a highly
13 mobile work force fairly and consistently throughout its entire operation, regardless of which
14 airports any given flight crew flies into and out of on any given day.

15 34. Because absences cause significant operational disruptions, A4A members often
16 assess points for crew member absences and impose discipline when a crew member accrues
17 too many points under the relevant attendance and reliability policy. Potential discipline ranges
18 from coaching to a written warning to possible termination.

19 VI. THE WASHINGTON PAID SICK LEAVE ACT

20 35. Washington voters adopted Initiative 1433 – the Paid Sick Leave Act – in
21 November 2016. In addition to establishing a statewide minimum wage, it requires every
22 employer to provide dedicated paid sick leave to every employee. The paid sick leave
23 provisions went into effect January 1, 2018.

24 36. The Act defines “employee” broadly as “any individual employed by an
25 employer.” RCW 49.46.010(3)(g). And “employer” under the Act is “any individual,
26 partnership, association, corporation, business trust, or any person or group of persons acting
27 directly or indirectly in the interest of an employer in relation to an employee.” RCW

1 49.46.010(4). Thus, airlines and flight crew would be covered by the Act, if the Act is not
2 enjoined.

3 37. The Act requires employers to provide employees one hour of dedicated paid
4 sick leave for every 40 hours worked. RCW 49.46.210(1)(a). Employees must be allowed to
5 begin using paid sick leave 90 days after their employment commences. WAC 296-120-
6 630(2)-(3).

7 38. Covered employees are entitled to carry over 40 hours of unused paid sick leave
8 every year, with no limit on how many days of accrued paid leave can be used in a single year.
9 RCW 49.46.210(1)(j).

10 39. Under implementing regulations, employers may not require employees to take
11 leave in increments exceeding one hour unless the employer applies for and receives a waiver
12 from this increment limitation. WAC 296-128-630(4).

13 40. The Act requires that for each hour of paid sick leave used the employee be paid
14 the greater of the state minimum hourly wage rate or the employee's "normal hourly
15 compensation." RCW 49.46.210(1)(i). "An employer must calculate an employee's normal
16 hourly compensation using a reasonable calculation based on the hourly rate that an employee
17 would have earned for the time during which the employee used paid sick leave." WAC 296-
18 128-670(2). The implementing regulations provide "[e]xamples" of what constitutes a
19 "reasonable" formula. For instance:

20 (c) For a nonexempt employee paid a salary, dividing the annual salary by fifty-
21 two to determine the weekly salary, and then dividing the weekly salary by the
22 employee's normal scheduled hours of work;

(d) For employees whose hourly rate of pay fluctuates:

23 (i) Where the employer can identify the hourly rates of pay for which the
24 employee was scheduled to work, a calculation equal to the scheduled hourly
25 rates of pay the employee would have earned during the period in which paid
26 sick leave is used;

27 (ii) Where the employer cannot identify the hourly rates of pay for which
the employee would have earned if the employee worked, a calculation based on

1 the employee's average hourly rate of pay in the current or preceding thirty
2 days, whichever yields the higher hourly rate.

3 WAC 296-128-670(2).

4 41. Under the Act, employees are entitled to receive sick pay no later than the
5 payday for the pay period in which the paid sick leave was used by the employee unless
6 verification of absences exceeding three days is required. WAC 296-128-680. The Act
7 prohibits employers from requesting physician verification, unless the employee misses more
8 than three consecutive work days. WAC 296-128-660.

9 42. The Act prohibits employers from counting sick-leave-related absences towards
10 discipline. RCW 49.46.210 (2)(4); WAC 296-128-770.

11 43. The Act requires employers to provide regular notifications to employees about
12 the amount of paid leave available to the employee. RCW 49.46.210(1)(i). Implementing
13 regulations clarify that "regular notification" means an (1) accounting of paid sick leave
14 accruals each month, along with any unused paid leave available for use by an employee;
15 (2) paid sick leave reductions each month, including paid sick leave used by an employee and
16 accrued paid sick leave not carried over to the following year. WAC 296-128-760.

17 44. The Act contains no exemption for flight crew or for workers covered by CBAs.
18 WAC 296-128-700.

19 45. In addition to agency enforcement proceedings, *see* WAC 296-128-780 to 810,
20 the Act also creates a private right of action for both failure to provide the mandated benefits
21 and for retaliation. RCW 49.46.800; WAC 296-128-780(10). One national union representing
22 many A4A members' flight attendants has already insisted that an A4A member air carrier
23 comply with the Act.

24 **VII. ADMINISTRATIVE RULEMAKING**

25 46. The Department of Labor and Industries, responsible for adopting and
26 implementing rules to carry out and enforce the Act, commenced administrative rulemaking in
27 January 2017.

1 47. Public comments submitted to the Department identified several problems with
2 the statute. Key among them was the difficulty in applying the Act to employees, like flight
3 crew, who spend only a small percentage of their workday within Washington’s jurisdiction.
4 Other comments identified additional difficulties in applying the Act to employees covered by
5 negotiated paid time off provisions that allow for the use of sick days.

6 48. To resolve these issues, comments recommended that employees of an RLA-
7 covered air carrier be exempted from the Act’s definition of “employee” in the same way that
8 the Act already excludes railroad employees. *See* RCW 49.46.010(3)(g). Comments also
9 recommended exemptions for individuals covered by a CBA that provides for paid sick leave
10 or a paid time off policy that permits the use of sick days. Comments noted that several state
11 and federal laws currently exempt employees of RLA-covered air carriers and, alternatively,
12 employees covered by valid CBAs from other leave laws and urged the Department to look to
13 these regimes for guidance.

14 49. The Department rejected each of these recommendations and promulgated final
15 rules with no exemptions for flight crew, employees of RLA-covered air carriers, or employees
16 covered by valid CBAs with pre-existing paid sick leave or paid time off policies that allow for
17 the use of sick days.

18 50. The Department has subsequently informed one of A4A’s members that:

- 19 a. The Act applies at least to all flight crew domiciled in Washington,
20 including when those employees are working outside the state.
- 21 b. L&I will consider all hours on duty without regard to the airlines’ method of
22 calculating time worked towards statutory accrual, usage, and other
23 requirements under the Act, even if the employee was working outside
24 Washington and in a jurisdiction that purports to apply its own paid sick
25 leave law with different rights and obligations to the same employee.
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- 1 c. The Act's protections apply, and would prohibit any disciplinary action for
2 use of sick leave, even if the flight crew uses paid sick leave in a location
3 other than Washington.
- 4 d. Absent an employee waiver or variation approved by L&I, L&I will require
5 air carriers to allow flight crew to use sick leave in increments of one duty
6 hour or less, even though airlines cannot guarantee that a crew member who
7 calls out for only a short time before calling in well again will be able to pick
8 up another flight.
- 9 e. Air carriers are prohibited by the Act from requesting medical verification of
10 the need for sick leave unless the individual calls out sick on more than three
11 consecutive work days. Under the state's interpretation, an individual
12 scheduled to fly a pairing on Friday, Saturday, and Sunday and another
13 pairing on Monday and Tuesday can call out sick on Friday and, as a
14 consequence of how flight crew are scheduled, miss work on Saturday and
15 Sunday and call out sick again on Monday, without triggering an employer's
16 right to request medical verification.

17 **VIII. THE ACT WILL CAUSE IMMEDIATE AND SUBSTANTIAL HARM**

18 51. The Paid Sick Leave Act and its implementing regulations immediately and
19 substantially harm A4A's member airlines. By way of example and without limitation:

20 52. The Act imposes an hourly sick leave accrual rate whereas A4A member flight
21 crew accrue leave according to terms that are not readily converted to hours worked as
22 specified in employer policies and CBAs. The Act also imposes compensation formulas based
23 on hourly rates of pay when flight crew are not paid according to hours worked, and the pay a
24 crew member receives can fluctuate significantly month to month.

25 53. The Act interferes with an airline's enforcement of nationwide attendance and
26 reliability policies, which were designed to comply with comprehensive federal laws and
27 regulations related to duty period limitations, flight crew family medical leave, rest

1 requirements, and aviation safety. For instance, the Act's three-day minimum absence
2 requirement impairs airlines from requesting medical verification. Because of the way flight
3 crew schedules are built, flight crew will rarely (if ever) trigger the requirement for a call out
4 on more than three back-to-back work days.

5 54. In addition to significantly impairing the airline's ability to investigate fraud and
6 abuse of sick leave protections, compliance with the Act will also lead to more absences, which
7 will lead to more delays and flight cancellations, interfering with interstate travel, adversely
8 affecting customer experience, and doing lasting damage to air carriers' brands and otherwise
9 burdening interstate commerce. Regular and predictable employee attendance is vital to
10 ensuring passenger safety, FAA compliance, and timely flight departures. FAA regulations set
11 the minimum staffing levels for every commercial flight. Without the requisite number of crew
12 members on board, a plane cannot take off. If a scheduled crew member unexpectedly calls out
13 sick, a replacement crew member must be found through a process that often causes a delay in
14 the flight's departure. If a replacement crew member cannot be found either because of
15 scheduling or because no reserve crew members are at the necessary location, the flight may be
16 cancelled in its entirety. And because flight crew schedules are built with a complex array of
17 connections and transfers, a delayed departure due to an unexpected absence in one location
18 can ripple across the system, leading to additional delays and possibly cancellations at other
19 airports across the country. Indeed, one A4A member airline recently closed a flight attendant
20 base because compliance with that local jurisdiction's paid sick leave law led to a rapid
21 increase in the number of sick calls, which caused disruptions to the operation.

22 55. A4A members will also be required to increase the reserve pool headcount for
23 flight crew to ensure operational continuity. Hiring more flight crew will increase the costs of
24 operation without resolving the core problem of having to comply with disparate regimes.

25 56. The Act will further expose A4A member airlines to a patchwork of inconsistent
26 state and municipal regulatory regimes, adversely affecting efficient, on-time air transportation.
27 Several of the airports to which A4A members fly are in jurisdictions with their own paid sick

1 leave regimes. At least six other states have mandatory paid sick leave laws – Arizona,
2 California, Connecticut, Massachusetts, Oregon, and Vermont – and there are more than 30
3 sick leave regimes at the municipal level.

4 57. These sick leave regimes impose different (and inconsistent) obligations on
5 employers and grant employees different rights with respect to paid leave. For example, these
6 regimes authorize different uses for sick leave, different accrual and annual carryover limits,
7 different compensation rate formulas, different employee notification requirements, and
8 different restrictions on when employers can request medical verification of an illness.
9 Complying with the laws of each state or municipality in which a carrier operates (and over
10 which it flies) means tracking each crew member’s hours worked and the locations in which
11 they worked and then calculating different accrued sick leave benefits to each employee. Often
12 times this tracking is different from how duty time is tracked for pay purposes, meaning a
13 carrier would have to have multiple systems for tracking separate administrative requirements.
14 Not only are the administrative costs of complying onerous and unreasonable, but attempts to
15 comply with these different regimes simultaneously will cause mass confusion and expose A4A
16 member airlines to a flood of new lawsuits and enforcement proceedings.

17 **IX. CLAIMS**

18 **COUNT I:**

19 **THE PAID SICK LEAVE ACT VIOLATES THE COMMERCE CLAUSE OF THE U.S.**
20 **CONSTITUTION**

21 58. Plaintiff realleges and incorporates herein each of the preceding allegations.

22 59. Art.1, Sec. 8, Cl. 3 of the United States Constitution empowers Congress—and
23 not states or municipalities—to “regulate Commerce with foreign Nations, and among the
24 several States.” Accordingly, this clause limits the powers of state and local governments to
25 enact laws affecting foreign and interstate commerce when a national, uniform economic policy
26 is required.
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1 60. The United States Government has exclusive sovereignty of the airspace of the
2 United States. Federal control of air travel is intensive and exclusive. Uniformity in regulation
3 of air transportation is a national necessity to ensure efficient air carrier operations.

4 61. A4A member airlines engage in interstate commerce as a federally regulated air
5 carrier.

6 62. The Paid Sick Leave Act and similar laws enacted in other states and
7 municipalities in which A4A member airlines operate impose impermissible burdens on air
8 transportation and interstate commerce.

9 63. The evolving patchwork of new state regulation of sick leave exposes A4A
10 member airlines to inconsistent and potentially conflicting state and local regulation.
11 Compliance with every state or local paid sick leave law imposed by jurisdictions in which
12 A4A member airlines operate is nearly impossible, and even if it were possible, it would be
13 extremely burdensome.

14 64. The burdens imposed by the Paid Sick Leave Act are also excessive in relation
15 to its putative local benefits, particularly given A4A's member airlines already provide paid
16 sick leave (including in collective bargaining agreements) to their flight crew.

17 65. Because the Act impermissibly burdens interstate commerce, the Paid Sick
18 Leave Act violates the Commerce Clause of the United States Constitution.

19 **COUNT II:**

20 **THE AIRLINE DEREGULATION ACT PREEMPTS THE PAID SICK LEAVE ACT**

21 66. Plaintiff realleges and incorporates herein each of the preceding allegations.

22 67. The Supremacy Clause, Article VI, clause 2 of the United States Constitution
23 states, "This Constitution, and the Laws of the United States which shall be made in Pursuance
24 thereof . . . shall be the Supreme Law of the land."

25 68. Under the Supremacy Clause, federal law preempts any state or local regulation
26 in an area in which Congress has expressly or impliedly exercised exclusive authority.
27

1 DATED this 6th day of February, 2018.

2 Attorneys for Airlines for America

3
4 By /s/ John Hodges-Howell

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