

Charge of Discrimination

PERSONS INVOLVED

Brandy Beck, First Officer at Frontier Airlines, on behalf of herself and others similarly situated
Frontier Airlines

DATE OF INCIDENT

July 2015 and ongoing

SUMMARY OF DISCRIMINATORY CONDUCT

I am a First Officer pilot employed by Frontier Airlines (“Frontier”). I bring this charge on behalf of myself and others who are similarly situated because Frontier is failing to accommodate the needs of its pregnant or breastfeeding pilots and to respect their dignity as equal and deserving members of its workforce. Frontier subjects its pilots to policies and practices that discriminate against women. As a result of Frontier’s policies, I was forced to go on leave during the last twelve weeks of my pregnancy, even though I would have been prepared to continue working in a reassigned capacity. Frontier also failed to provide me with an adequate maternity leave or an appropriate workplace accommodation to express breast milk when I returned to work, in violation of the laws of the United States and the State of Colorado, including Title VII of the Civil Rights Act of 1964, the Colorado Fair Employment Practices Act, and Colorado’s Workplace Accommodation for Nursing Mothers Act (“WANMA”).

As a result of Frontier’s policies and practices, I suffered from stress and anxiety, fear that I would lose my job, reduced breast milk production, physical harm, and financial harm. Because Frontier’s policies and practices remain in place, I continue to be subject to them and am affected by them on an ongoing basis. I am filing this charge in order to force Frontier to change its policies and practices to better accommodate the needs of pilots who are pregnant and breastfeeding.

PARTICULARS

Personal Harm

I have been a First Officer at Frontier since November 17, 2003. Ten years later, I became pregnant with my second child in 2013. I worked until I was twenty-eight weeks pregnant, when I went out on leave, even though I would have been prepared to continue working in a reassigned capacity. My son was born in June 2014 and I returned to work in May 2015, when my son was eleven months old. I would have taken longer maternity leave (even unpaid) if it had been available. When I returned to work in May 2015, I had been exclusively breastfeeding my child and required a workplace accommodation in order to pump breast milk. I approached Frontier to seek accommodations related to my physiological need to express breast milk, as permitted by state and federal law. Despite my requests, Frontier failed to provide

acceptable accommodations for me. As a result of Frontier's actions, I have suffered emotional, physical, and financial harm.

Discrimination Statement

Frontier has discriminated against me because I am a woman and due to my pregnancy and a condition related to my pregnancy and childbirth—specifically, lactation. This discrimination violates the laws of the United States and the State of Colorado, including Title VII of the Civil Rights Act of 1964 and the Colorado Fair Employment Practices Act, which prohibit discrimination on the basis of sex, as well as Colorado's WANMA. The term "sex" includes, but is not limited to, pregnancy, childbirth, and related medical conditions. Lactation is a medical condition related to pregnancy and childbirth. Frontier's policies and practices of forcing pregnant pilots onto unpaid maternity leave at the end of their pregnancies, to return to work within 120 days of unpaid maternity leave, and failing to provide an appropriate accommodation for pilots who need to pump breast milk in the workplace constitute disparate treatment on the basis of sex, and have a disparate impact on female pilots.

In addition, WANMA requires employers to (i) provide break time to allow employees to express breast milk for their nursing child for up to two years after the child's birth; and (ii) provide private space, other than a toilet, in close proximity to the "work area," where the employee can express breast milk in privacy. Frontier has failed to provide sufficient break time or a private space other than a toilet in close proximity to my work area where I can express breast milk in privacy as required by law.

Professional Background

1. I have at all relevant times been employed as a commercial airline pilot by Frontier. I began working as a First Officer at Frontier in November 2003. I have been employed by Frontier as a First Officer for over 12 years.
2. Prior to working at Frontier, I was a pilot for Great Lakes Airlines from 1999 to 2002 and Air Wisconsin from 2002 to 2003.
3. I graduated from the University of North Dakota in 1997 with a degree in aviation. I became a captain at Great Lakes Airlines in 2001.
4. My qualifications as a First Officer are current and I am a member of the Frontier Airline Pilots Association ("FAPA"), the union that represents Frontier pilots.
5. Frontier is a commercial airline and maintains a hub at Denver International Airport ("DIA"). I live in Denver and am based out of DIA.

Frontier's Policies and Practices

6. Frontier requires pregnant pilots to go on maternity leave following the 32nd week of pregnancy, or after they are no longer medically authorized to fly, whichever is sooner. Frontier's policy permits pilots on maternity leave to use any accrued sick or vacation leave during this time. After any such leave is exhausted, all remaining leave is unpaid.
7. Under Frontier's policies, pregnant pilots do not have any option to seek a temporary alternative assignment that would permit them to remain on the job and continue earning a salary during their pregnancy. In contrast, Frontier permits other employees to seek temporary alternative assignments if they can demonstrate medical necessity or disability.
8. Frontier permits women to take up to 120 days of maternity leave following birth. That period is unpaid, except to the extent the employee uses any accrued sick and vacation time. After 120 days, employees are required to return to work as soon as they are deemed medically fit for duty, regardless of their specific needs or desires to extend the period of unpaid leave. Although there is a provision in the collective bargaining agreement that permits this period to be extended "for extraordinary circumstances," maternity leave is not usually extended for any reason other than a medical complication following birth, which usually results in the pilot taking a medical leave of absence.
9. Frontier's policies permit pilots to take unpaid medical leave as a result of medical conditions upon a demonstration of medical necessity. However, Frontier does not consider breastfeeding pilots eligible to seek medical leave under this policy even though breastfeeding is a physiological condition that may require special accommodation that would be incompatible with working a regular flight schedule.
10. It is my understanding that (other than the lactation room at DIA) Frontier has no formal policy on providing accommodations for pilots who are breastfeeding.
11. Frontier does not make temporary alternative job assignments available to pilots who are breastfeeding.
12. Pilots at Frontier can work more than 12 hours a day, with flight times ranging from one hour to five hours. Frequently, pilots take overnight trips of two to five days in length spanning multiple cities. Although pilots have breaks of about 45 minutes between flights, their pre- and post-flight duties leave only about 15 minutes of time to attend to personal needs, such as eating meals or using the restroom. Additionally, these breaks are sometimes compressed due to flight delays. As a general matter, these breaks are insufficient in length to permit pilots who are breastfeeding to pump milk.

13. Frontier has a designated room at DIA for use by employees who are pumping. However, it is in most cases far from departure/arrival gates where the airplanes on which I work are located, and there is no similar facility available to Frontier pilots at outstations (airports other than DIA). It is therefore not located in close proximity to my “work area.”
14. Moreover, Frontier does not provide additional break time for the purpose of allowing employees to express breast milk for their nursing child for up to two years after the child’s birth.

My Need for Accommodations Related to Breastfeeding

15. It is important to me that my children be fed exclusively breast milk, and not formula, during the first six months of their lives, and that they be breastfed for at least a full year after birth even after they start eating solid food. This is not only because of the known health benefits of breast milk, but also because of the important bonding and emotional connection that breastfeeding allows between mother and child.
16. Women who cannot be with their babies at all times need to express breast milk, usually by using a breast pump, in order to ensure that there is a supply of milk on hand for the baby when they are not present to breastfeed, and to maintain the supply and production of breast milk. If a woman does not breastfeed or express breast milk at frequent intervals, her breast milk supply will decrease and she may stop producing milk altogether. She will also experience pain and discomfort, and could develop blocked ducts or mastitis, which is an infection of the breast tissue.
17. I knew that without the ability to pump breast milk at work, I would be unable to maintain a sufficient milk supply and will experience these complications. I had suffered from both blocked ducts and mastitis, twice, prior to my return to work.

Relevant Personal Background and Frontier’s Discriminatory Conduct

18. I became pregnant with my first child in 2010. Because of pregnancy-related complications, I went on leave during my 29th week of pregnancy. Aside from some period that may have been covered by accrued paid sick or vacation leave, this leave was unpaid.
19. Under Frontier’s policies, I did not have the option to seek a temporary job reassignment during the remainder of my pregnancy, although I would have been able to work had I had the option of being temporarily reassigned to a ground position.
20. I gave birth to my first child in December 2010. Because of severe childbirth-related complications, I was on medical leave from September 2010 until November

2013. I received no paid parental leave, although I collected benefits under the Company's long-term disability insurance plan for two of the three years.
21. When I returned to work in November 2013, I was no longer breastfeeding, and I was already pregnant with my second child.
 22. I gave birth to my second child on June 13, 2014. Due to childbirth-related complications, I was on medical leave until May 2015. I received no paid parental leave, although I collected benefits under the Company's long-term disability insurance plan.
 23. As Frontier failed to offer either paid maternity leave or job reassignment for pregnant pilots, and I had been required to take unpaid leave after the 28th week of pregnancy, I suffered financial harm from my resulting loss of income.
 24. In or around March 2014, when I had been back at work for some four months, I was contacted by Michelle Zeier in Frontier's Human Resources ("HR") department who made discriminatory comments based on sex, specifically related to my pregnancies. In response to learning that I was pregnant again, Ms. Zeier asked me, "Why did you even come back to work?" and stated, "We spent so much money to train you."
 25. I was distressed by these interactions and dismayed by the suggestion that I should not have returned to work after more than three years of not flying and more than a year of receiving no salary.
 26. As part of my return to work in the spring of 2015, I provided a "fit for duty" letter from my doctor that states that I have a medical need to express breast milk every three hours. I was still breastfeeding frequently, and my baby had been having issues gaining weight and was not taking much solid food.
 27. By email dated July 29, 2015, I brought my need to express breast milk to the attention of Frontier's Supervisor of Disability Program Management, Shelly Leyner. I sought permission to use the aircraft lavatory as a space for expressing breast milk and asked whether there were any lactation rooms in the airports to which Frontier flies.
 28. It was not until more than three weeks later, on August 18, 2015, that I received a response. Ms. Leyner wrote me an email stating that the lavatory is not a designated room for pumping and that Frontier was working to determine lactation rooms. However, she never got back to me with this information.
 29. It was difficult to express breast milk after I returned to work. I tried to express breast milk approximately every three hours, either between flights in the restrooms at outstations, at my hotel on overnight trips, or, when it became necessary due to

pain and discomfort, through taking “physiological needs breaks” during flight in the aircraft lavatory.

30. Pumping breast milk in the aircraft’s lavatory is unsanitary, hot, and cramped. It is also my understanding that this is inadequate under WANMA, which requires that employers provide space, other than a toilet, in close proximity to the work area where the employee can express breast milk in private.
31. Each time I pumped on the aircraft I was anxious and concerned that I would be reported to Frontier management and would be disciplined or suffer other consequences, including losing my job.
32. Due to inadequate accommodations for pumping, there was rarely sufficient time to pump. I frequently had to delay pumping due to my flight schedule or flight delays, causing pain and discomfort, and I suffered a decline in milk supply. On at least three occasions, someone entered the space where I was pumping.

Frontier’s Policies and Practices are Discriminatory

33. Frontier’s policies and practices related to pregnancy and breastfeeding constitute discrimination against me based on my sex and because of a condition related to my pregnancy (lactation).
34. Frontier’s failure to provide employees who are pregnant or breastfeeding with access to workplace accommodations such as temporary job reassignment, medically necessary breaks and sanitary facilities to pump breast milk, or medical leave constitute disparate treatment on the basis of sex in violation of the Colorado Antidiscrimination Act and Title VII.
35. Frontier’s policies and practices related to pregnancy and breastfeeding—specifically, the policy of forcing pilots to take mandatory unpaid leave during pregnancy, the limitation to 120 days of unpaid maternity leave, the lack of any paid leave, the ineligibility of breastfeeding pilots for medical leave, the lack of sanitary facilities or adequate break time for pumping breast milk, and the failure to make alternative job assignments available to pregnant and breastfeeding pilots, have a disparate impact on female pilots.
36. Frontier’s failure to provide a workplace accommodation for me to express breast milk in a private area close to my work area violates WANMA.
37. As a result of Frontier’s conduct, I suffered from stress and anxiety, emotional distress, fear that I would lose my job, reduced breast milk production, physical harm, and financial harm.
38. I continue to be subject to Frontier’s policies and practices on an ongoing basis. These policies and practices remain in place, and have impacted and continue to impact my plans with respect to my family and my personal reproductive decisions.

39. I understand that on March 9, 2016, the ACLU and the law firm Holwell Shuster & Goldberg LLP wrote a letter to Howard Diamond, Senior Vice President, Secretary, and General Counsel of Frontier, to inform them of my and other pilots' experiences of being subject to discriminatory policies and practices at Frontier related to pregnancy, parental leave, and breastfeeding, and to demand that Frontier immediately revise those policies and practices. I understand that the letter requested a response by March 25, 2016 and that Frontier failed to respond.

Remedies Requested

40. Accordingly, I am seeking the following relief:
- a. A finding that Frontier's policies and practices violate Title VII, the Colorado Antidiscrimination Act, and WANMA;
 - b. A policy permitting pilots to seek a temporary modified duty assignment to a ground position during the period when they are ineligible to fly due to pregnancy and during the period when the need to express breast milk precludes them from working for continuous periods without regular breaks;
 - c. A policy ensuring sufficient breaks and a private location other than a lavatory for pumping, including but not limited to while on duty, during training and simulation exercises, and during turns at outstations;
 - d. Designation of adequate facilities (consisting of a convenient, private location other than a lavatory or restroom) for pumping, including on aircraft, during training and simulation exercises, and at outstations;
 - e. Publication of a list of breastfeeding and pumping resources, including a list of adequate facilities (a convenient, private location other than a lavatory or restroom) at each outstation where breastfeeding employees may pump breast milk (every airport is already required by law to have facilities available for its own hourly employees who need to pump breast milk);
 - f. A policy permitting a temporary delegation of pre- and post- flight duties to the other pilot when a pilot is breastfeeding and needs additional break time to pump breast milk;
 - g. A policy permitting (but not requiring) pumping in the lavatory on the aircraft on an as-needed basis for the minimum amount of time medically necessary, as permitted by safety and operational needs;
 - h. A policy extending the existing unpaid parental leave (currently called "maternity" leave) to both male and female pilots; and

- i. A policy extending eligibility for unpaid medical leave to employees whose need to express breast milk precludes them from working for continuous periods without regular breaks, notwithstanding the accommodations provided for in (b)-(g) above.

Signature: _____

Date: _____

Brandy Beck, Charging Party