

## Charge of Discrimination

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### PERSONS INVOLVED

Erin Zielinski, First Officer at Frontier Airlines, on behalf of herself and others similarly situated

Frontier Airlines

### DATE OF INCIDENT

November 19, 2014 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 take an unpaid leave during the last eight 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 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”). Moreover, Frontier senior management viewed my requests for accommodation as “baiting” and “games,” further evidencing a disregard for the medical needs of its breastfeeding employees and their rights under federal and state law.

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, including mastitis and premature termination of breastfeeding, 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 2013. I became pregnant in 2013. Pursuant to Frontier’s policies, a female pilot in my position was required to go out on leave without pay 2.5 months prior to her due date, even though she may have been prepared to continue working in a reassigned capacity if it had been made available. My son was born in July 2014, and I returned to work in November 2014 when he was four months old. My maternity leave for this four month period was unpaid. I would have taken longer maternity

leave (even unpaid) if it had been available. When I returned to work in November 2014, I had been exclusively breastfeeding and required a workplace accommodation to pump breast milk. Frontier has no express or written policy on accommodations to pump breast milk. I approached Frontier to seek accommodation related to my physiological need to express breast milk, as permitted by state and federal law. Despite my requests, Frontier has failed to provide acceptable accommodation 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 2013. I have been employed by Frontier as a First Officer for over two years.
2. Prior to working at Frontier I was a pilot for Express Jet for six months. Prior to my tenure at Express Jet I was a pilot for Great Lakes Airlines where I worked for five years.
3. My first job upon graduating college in 2003 was as a flight attendant for Frontier. I held that position from 2004 to 2008, at which point I decided to pursue flight school and become a pilot. After two years of training, I eventually qualified as a commercial airline pilot and began flying with Great Lakes.

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 desire 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 child be fed exclusively breast milk, and not formula, during the first six months of his life, and that he be breastfed for at least a full year after birth even after he starts 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 would experience these complications.

*Relevant Personal Background and Frontier’s Discriminatory Conduct*

18. I became pregnant in October 2013. Because of my pregnancy-related complications, I went on leave during the 30th week of my 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.
20. I gave birth in July 2014 and remained on unpaid maternity leave until November 2014.

21. As Frontier failed to offer either paid maternity leave or job reassignment for pregnant pilots, and I had been required to take unpaid leave following my 30th week of pregnancy, I suffered financial harm from my resulting loss of income.
22. Because I anticipated the pressure that my regular schedule would place on my ability to pump, I would have preferred to take more than the maximum of 120 days of unpaid maternity leave so that I could continue breastfeeding, but I was not permitted to do so under Frontier's policies. Frontier's policies also prevented me from seeking unpaid medical leave for a longer period by demonstrating medical necessity as a result of lactation.
23. I therefore sought an accommodation in order to enable me to return to work. In anticipation of my return date, I emailed Frontier's Senior Employee Relations Manager, Chris Benedict, on November 4, 2014 regarding my need to pump breast milk.
24. On November 6, 2014, Mr. Benedict responded that there is a lactation room at DIA, Frontier's home hub. Mr. Benedict also stated that "it might be easiest to speak directly just prior to [my] return so that we [could] coordinate access to the room."
25. I knew I might not have enough time to get to the lactation room and back to the plane in time for my scheduled flight times, especially if I was flying into or out of a gate located far from the lactation room. This facility would of course not be available to me when I was at outstations.
26. On November 11, 2014, I responded to Mr. Benedict via email inquiring as to where I could pump in airports other than DIA. It is my understanding that every airport is already required by law to have a room available for its own hourly employees who need to pump breast milk.
27. Mr. Benedict did not respond to my email. On November 13, 2014, I wrote to him again, this time to inquire about another potential accommodation: whether I could reduce my schedule to 50 flight hours per month from the normal 70. I used my personal Hotmail email account for this correspondence.
28. Mr. Benedict agreed in writing to a reduced flight schedule.
29. On November 19, 2014, I received an email at my Hotmail address from Michelle Zeier, Senior Manager, Labor Relations. The email was sent to Mr. Benedict and, almost certainly inadvertently, to me. Other recipients included Joseph P. ("J.P.") Thibodeau, Chief Pilot, and Jacalyn Peter, who is part of the Human Resources Department. Ms. Zeier's email appeared to be in response to my November 11, 2014 email query to Mr. Benedict. In her November 19, 2014 reply, Ms. Zeier

wrote that: “She’s still baiting us. No reply. She needs to come in for a meeting. No recordings/no games. Let’s chat tomorrow about it.”

30. I was distressed by Ms. Zeier’s email, especially by the clear implication that my inquiry about the location of lactation rooms was viewed by a Frontier Senior Manager as “baiting” and “games.” In light of Ms. Zeier’s email I felt intimidated and was afraid of attending an in-person meeting with a person I knew to be hostile to my request for adequate workplace nursing accommodations.
31. My apprehension was well founded because soon after receiving Ms. Zeier’s email, access to my Frontier email account as well as access to Comply 365 were suspended. An IT representative told me that it had been ordered to be deactivated by Ms. Zeier.
32. I was extremely concerned about having my Frontier email and Comply 365 account suspended. Comply 365 is an application Frontier uses on company required iPads to access all of our company manuals and other necessary information pertinent to my job. I was in the midst of studying for recertification exams that were required for my return to work, and I could not access various manuals essential for preparing for recertification. If I were to fail this recertification my job would be in jeopardy.
33. Because of Ms. Zeier’s email and being subsequently locked out of my Frontier email account, I was too intimidated to ask any more questions about workplace nursing accommodation. The loss of email access, and the impact that had on my ability to study for recertification, made me believe that asking about workplace nursing accommodation would negatively affect my employment.
34. Instead of making another workplace nursing accommodation request, which I believed would not be favorably received by Frontier, I decided to drop the matter of workplace nursing accommodation, accepted the offer of a reduced flight schedule of 50 hours each month, and resolved to attempt to schedule my pumping sessions around my flight schedule.
35. In an attempt to maintain my supply of breast milk, I resorted to pumping in the aircraft lavatory before and after each flight whenever possible.
36. 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.
37. Each time I pumped on the aircraft I became anxious and concerned that I would be reported to Frontier management and would be disciplined or suffer other

consequences, including losing my job. I was also worried that I would not finish my duties in a timely manner, possibly causing delays.

38. 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 due to engorgement, and I suffered a steep decline in milk supply.
39. As a result of the decline in my milk supply, I had to supplement my son's diet with formula starting when he was six months old. I had to stop breastfeeding entirely when he was nine months old, despite my desire to continue for a longer period.
40. I know, from the email I received, that Frontier viewed my inquiries about nursing accommodations as nothing more than an attempt to "bait[]" them and did not appreciate that I was, in fact, trying to ensure that I would be able to pump adequate breast milk to feed my son and avoid serious medical complications for my own health.
41. I believe that Frontier has provided workplace accommodations to other pilots for reasons unrelated to pregnancy and breastfeeding.
42. I believe that other pilots have had the opportunity to seek medical leave upon a showing of medical necessity. However, aside from the reduced flight schedule that I was able to negotiate, I have not been provided any accommodations for reasons related to pregnancy or breastfeeding.

*Frontier's Policies and Practices are Discriminatory*

43. 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).
44. 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.
45. 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.

46. 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.
47. 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 (mastitis), premature termination of breastfeeding, and financial harm.
48. 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.
49. 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*

50. 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 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: \_\_\_\_\_

Erin Zielinski, Charging Party