

Charge of Discrimination

PERSONS INVOLVED

Shannon Kiedrowski, First Officer at Frontier Airlines, on behalf of herself and others similarly situated
Frontier Airlines

DATE OF INCIDENT

August 6, 2013 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”).

As a result of Frontier’s policies and practices, I suffered from stress and anxiety, fear that I would lose my job, 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 March 4, 2002. I became pregnant with my second child in 2012, and worked until the 30th week of my pregnancy, when I was required to go out on leave without pay 2.5 months prior to my due date even though I would have been prepared to continue working in a reassigned capacity. My son was born in March 2013 and I returned to work in July 2013, 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 July 2013, I had been exclusively breastfeeding and required a workplace accommodation in order to pump breast milk. After returning to work, I requested 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

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 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 March 2002. I have been employed by Frontier as a pilot continuously since this time.
2. Prior to working at Frontier, I was a pilot for Continental Express, where I worked for approximately two years.
3. I graduated college in 1997 with a degree in aviation. I trained to be a pilot at Centennial Airport in Denver. After this training, I qualified as a commercial airline pilot and began flying with Continental Express.
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 the Denver metro area 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 currently has a designated room at DIA for use by employees who are pumping. However, if it did exist in 2010 or 2013 during the time period when I was pumping breast milk for either of my children, I was not aware of it. Moreover, Frontier was unable to inform me about it when I specifically inquired about its existence in 2013. At its present location, it is in most cases far from the 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 would experience these complications.

Relevant Personal Background and Frontier’s Discriminatory Conduct

18. I became pregnant with my first child in March 2010 and worked until the 32nd 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 to my first child in December 2010. I went back to work in March 2011.

21. During the time I was breastfeeding my first child in 2011, I used a breast pump to express milk on the aircraft. I was unaware of any Frontier policy that forbade me from doing so, and I was never told that this behavior was not permitted.
22. I became pregnant with my second child in June 2012 and worked until my 30th week of pregnancy, when I went on leave. Aside from some period that may have been covered by accrued paid sick or vacation leave, this leave was unpaid.
23. I gave birth to my second child in March 2013. I remained on unpaid maternity leave until July 2013.
24. As Frontier failed to offer either paid maternity leave or job reassignment for pregnant pilots, and I had been required to take unpaid leave at the end of both of my pregnancies, I suffered financial harm from my resulting loss of income.
25. 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 following both of my pregnancies 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.
26. When I came back to work in July 2013 after giving birth to my second child, I spoke with another female pilot who asked whether I was planning to again use a breast pump to express milk on the aircraft. I confirmed that I did plan to do so.
27. I subsequently learned that this conversation was overheard by a male pilot named Ron Stock, who was scheduled to fly with me beginning the following month. I understand that he thereafter reported me to the Chief Pilot's Office for using a breast pump on the aircraft. Notably, Mr. Stock had observed me utilizing a breast pump to express milk in the aircraft after I returned to work after my first child and had never to my knowledge objected to my doing so.
28. A few days after my conversation with the female pilot about pumping breast milk, I arrived at the airport before a scheduled flight. At that time, I received a phone call from Michelle Zeier, Senior Manager of Labor Relations at Frontier. Ms. Zeier explained that she wanted to schedule a meeting with myself and Joseph P. ("J.P.") Thibideau, Chief Pilot at Frontier, and informed me that because I was returning after maternity leave, I needed to discuss plans for returning to work. I asked whether I was in trouble, to which Ms. Zeier responded no, and I therefore hoped that this was to be a productive discussion about my transition back to work.
29. I then flew my scheduled flight to Fairbanks, Alaska and back to Denver. During both flights, I used a breast pump to express milk as I had done previously after giving birth to my first child.

30. Four days after receiving the phone call from Ms. Zeier, I had my scheduled meeting with Ms. Zeier and Mr. Thibideau. They said that they knew I had been using a breast pump in the aircraft. They questioned me as to why I was breastfeeding, why I was not choosing to feed my child formula, why I thought it was acceptable to use a breast pump in the aircraft, and how long I planned to do so. Their questions were asked in accusatory manner and made me feel anxious and ashamed.
31. I brought a copy of Colorado's WANMA with me to this meeting and told them that I knew I had certain rights. Their response was that they were aware of the law and they would get back to me as to how to proceed.
32. In light of this meeting, I reached out to an attorney who I understood to be working for my union, Marc Anderson, and told him what had taken place.
33. A few days later, I received a call from Mr. Thibideau. He told me that I would not be permitted to use a breast pump at work. I explained that I was supposed to fly out for the following three days (Saturday-Monday), and that I would experience major health risks if I simply stopped expressing milk. Therefore, he removed me from my scheduled flights for these three days while Frontier contemplated how to proceed, and he said they would set up a meeting for that Monday.
34. Nothing happened on that Monday, but I received a call on Tuesday to set up a meeting. This meeting took place on August 6, 2013 at which I, Mr. Anderson, Dan Silbaugh, Mr. Thibideau, and Ms. Zeier were present. At this time, they handed me a letter, attached hereto as Exhibit A. The letter stated that effectively immediately, I would "no longer be allowed to pump breast milk while [I] was performing [my] duties as a First Officer." It further stated that removing myself from the flight deck to pump breast milk "compromise[d] safety" but that pumping breast milk in the flight deck was also not an acceptable alternative because of the "serious issue of flight safety."
35. At this meeting, Mr. Thibideau and Ms. Zeier stated that they were not going to continue to pay me a salary if I was unable to fly. I subsequently explained to Human Resources that I wanted to work but that I needed the ability to pump while I was on duty, whether in the airport lavatory or elsewhere.
36. In order to both pump and fulfill my job requirements, I initially modified my schedule to fly shorter trips or trips with more ground time. As I had relatively high seniority (number 10 of over 300 first officers), I had the ability to bid for short flights. However, other Frontier pilots in the same position would not have had the same opportunities.
37. I also informed Mr. Thibideau that I was going to pump as soon as I finished my duties on the flight, but that I would do so in the aircraft lavatory. He told me this

would be fine as long as there were no flights departing late, but he said he would be watching over me carefully and monitoring my flights. I suffered from anxiety and fear about the additional scrutiny that I faced.

38. Ultimately, a meeting was held in early September 2013 at which I, Mr. Anderson, Mr. Silbaugh, and Jim Colburn, Director of Operations, were present, to discuss my need for accommodations. I urged Frontier to adopt a policy that would support nursing mothers like myself who were returning to work. Mr. Colburn responded that they did not need to create a policy because my situation was an anomaly. They informed me that they would handle issues like mine on a case-by-case basis.
39. As to my own need for accommodations, they seemed to recognize that I would need to pump while I was working, and they said they would look for a room in DIA for me to pump. However, they never notified me whether any such a location had been identified. They also offered to let me pump in the Chief Pilot's office, but I declined this option because I knew that this would not address my need for accommodations outside of Denver, and in any event, I would feel uncomfortable doing so. Finally, they offered to let me apply for unpaid personal leave on a month-to-month basis, but they stated that because it was the holiday season, they could not guarantee it would be granted. For personal and financial reasons, I did not take them up on this offer.
40. After this point, it became even more difficult to express breast milk while I was at work. The only options I had were to leave home having just nursed or pumped, to get to the airport early and pump in the public bathroom, or to pump in the aircraft lavatory, in the restrooms at outstations, or at my hotel on overnight trips. I tried to pump before and between flights, but when it became necessary due to pain and discomfort, I sometimes had to take "physiological needs breaks" in the aircraft lavatory during flights.
41. 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.
42. 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.
43. 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.
44. I am aware of Frontier providing workplace accommodations, including working in the Chief Pilot's office, to other pilots for reasons unrelated to pregnancy and

breastfeeding. I am aware that pilots have been provided ground positions when they suffer from medical conditions such as vertigo and seizures. However, I was not provided accommodations for reasons related to pregnancy or breastfeeding.

45. I was ineligible to seek unpaid medical leave for reasons related to breastfeeding, and indeed Frontier did not even provide me with an opportunity to make a showing of medical necessity.

Frontier's Policies and Practices are Discriminatory

46. 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).
47. 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.
48. 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.
49. 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.
50. As a result of Frontier's conduct, I suffered from stress and anxiety, emotional distress, fear that I would lose my job, physical harm (discomfort, engorgement, leakage) and financial harm.
51. 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.
52. 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

53. 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: _____

Shannon Kiedrowski, Charging Party