#### **Charge of Discrimination**

#### PERSONS INVOLVED

Randi Freyer, First Officer at Frontier Airlines, on behalf of herself and others similarly situated Frontier Airlines

#### DATE OF INCIDENT

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 have suffered from stress and anxiety, fear that I would lose my job, reduced milk production, physical harm, including mastitis, 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 September 2013. I had my first child in April 2014 and returned to work in or around February 2015, when my daughter was approximately nine months old. I became pregnant with my second child in 2015, and worked until October 1, 2015, when I was required, pursuant to Frontier's policies, to go out on leave without pay until I gave birth, even though I would have been prepared to continue working in a reassigned capacity. Following my daughter's birth on December 5, 2015, I was only offered the option of a 120 day period of unpaid maternity leave by Frontier. This 120 day period expired on April 3, 2016, and I am currently preparing to return to work. When I do so, as I did in February 2015, I plan to be exclusively breastfeeding my child and will require a workplace accommodation to

pump breast milk. Indeed, I recently approached Frontier to seek accommodations related to my physiological need to express breast milk in order to breastfeed my child, 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 at Frontier in the Chief Pilot's office and the safety department, and I was hired as a pilot in September 2013.
- 2. Prior to working at Frontier, I was a pilot for Great Lakes Airlines from May 2008 until July 2012. Beginning in July 2012 I was employed as a pilot for XOJET, flying the Challenger 300 super-mid-size private jet.
- 3. 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.
- 4. Frontier is a commercial airline and maintains a hub at Denver International Airport ("DIA"). I live in Eagle, Colorado and am based out of DIA.

### Frontier's Policies and Practices

- 5. 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.
- 6. 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.
- 7. 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.
- 8. 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.
- 9. 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.
- 10. Frontier does not make temporary alternative job assignments available to pilots who are breastfeeding.
- 11. 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.

- 12. Frontier has a designated room at DIA for use by employees who are pumping. However, 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."
- 13. 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

- 14. 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.
- 15. 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.
- 16. I know that without the ability to pump breast milk at work, I will be unable to maintain a sufficient milk supply and will experience these complications.

# Relevant Personal Background and Frontier's Discriminatory Conduct

- 17. I became pregnant with my first child in 2013, and went on leave during 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.
- 18. Under Frontier's policies, I did not have the option to seek a temporary job reassignment or during the time I was required to take unpaid "maternity leave," although I would have been able to work had I had the option of being temporarily reassigned to a ground position.
- 19. When I was pregnant with my first child, I emailed several individuals at Frontier, including the Chief Pilot and the Director of Training, to offer to work in a ground position after my 32nd week of pregnancy. However, Frontier failed to respond to this email.

- I gave birth to my first child in April 2014. Because of childbirth-related complications, I was on medical leave from August 2014 until December 2014. I received disability insurance for that time period. I received no salary.
- 21. As Frontier fails to offer either paid maternity leave or job reassignment for pregnant pilots, and because I was required to take unpaid leave after the 32nd week of my pregnancy, I suffered financial harm from my resulting loss of income.
- 22. Because I anticipate the pressure that my regular schedule will place on my ability to pump, I would prefer to take more than the maximum of 120 days of unpaid maternity leave so that I can continue breastfeeding, but I am not permitted to do so under Frontier's policies. Frontier's policies also prevent me from seeking unpaid medical leave for a longer period by demonstrating medical necessity as a result of lactation.
- 23. I therefore have sought accommodations in order to enable me to return to work after the birth of each of my children.
- 24. I returned to work in January 2015. Because I was still breastfeeding at that time, in preparation for my return to work, I reached out to Frontier's Chief Pilot several times to inquire as to how Frontier would accommodate my need to pump breast milk once I returned to work. I never received a response to my numerous calls or emails.
- 25. In addition to contacting the Chief Pilot, I also reached out to Frontier's Human Resources ("HR") Department with approximately ten emails and a dozen phone calls to inquire about workplace nursing accommodations and a reduced schedule. No one responded to my inquiries.
- 26. Because neither the Chief Pilot nor Frontier's HR Department would return my emails or calls, I was never afforded an opportunity to formally request a workplace nursing accommodation in connection with my first child.
- 27. It was extremely 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.
- 28. 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.

- 29. 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.
- 30. I suffered from mastitis twice after I returned to work. The first instance of mastitis occurred in my first training session upon returning to work. It resulted in an extremely high fever and required taking antibiotics for ten days. The second instance of mastitis occurred on one of my first trips soon after my return to work and lasted approximately three days. Both instances of mastitis were extremely painful.
- 31. Both times, after suffering from mastitis, I experienced a reduction in my milk supply.
- 32. I became pregnant with my second child in early 2015 and remained at work until my 32nd week of pregnancy.
- 33. 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 until the end of my pregnancy had I had the option of being temporarily reassigned to a ground position.
- 34. I gave birth to my second child on December 5, 2015. I was on unpaid maternity leave for 120 days following the birth.
- 35. As Frontier fails to offer either paid maternity leave or job reassignment for pregnant pilots, and because I was required to take unpaid leave after the 32nd week of my pregnancy, I suffered financial harm from my resulting loss of income.
- 36. I was ordered to report ready to work as of April 3.
- 37. From my experience during my first pregnancy, I knew how difficult it would be to attempt to continue breastfeeding after returning to work. There are no facilities available to me for pumping on the aircraft or at outstations, other than a lavatory or restroom, and I knew that my schedule would make it difficult to take the necessary breaks. Although there is a lactation room at DIA, I knew that it would not be available to me during flights or when I was at outstations, and even when I was at DIA, I might not have sufficient time to make it to the lactation room and back during my "turn" time between flights in time to report for duty.
- 38. On March 31, 2016, in preparation for my return, I contacted the Chief Pilot, Joseph P. ("J.P.") Thibodeau, as well as the Leave of Absence ("LOA") department and various other Frontier officials, to advise them of my need to take regular breaks because I am breastfeeding, and ask what policies would be in place to assist me. Because of the lack of accommodations, I also asked whether I would be eligible to

seek a medical leave of absence until my daughter turned one, on December 5, 2016.

- 39. On April 18, Michelle Zeier in Frontier's HR department responded that I was free to apply for FMLA.
- 40. Thibodeau also responded on April 18: "[A] Medical Leave of Absence is available to '[a] Pilot who is unable to fly due to illness or injury and does not qualify for FMLA (or has exhausted FMLA).' Should that be the case, please contact LOA@flyfrontier.com. With regard to needed breaks, please contact Jerry Arellano for specifics on lactation room locations. He may be contacted through <u>Gerardo.Arellano@flyfrontier.com</u>."
- 41. I accordingly requested information on breaks for pumping in an email to Arellano sent on April 19. To date, he has not responded to my email.
- 42. I also responded to Thibodeau on April 20, asking for clarification as to whether I was eligible to seek a medical leave, and pointing out that I had already contacted LOA, which was copied on my original email.
- 43. I responded to Zeier on April 21, informing her that I'd already exhausted my FMLA, and requesting clarification as to whether or not I would be eligible to seek a medical leave of absence.
- 44. Neither Zeier nor Thibodeau has to date answered my question as to my eligibility for medical leave. However, on April 21, I received an email from LOA attaching forms for non-FMLA medical leave, including a form for my doctor to fill out and a form entitled "Notice to Employee Regarding Non-FMLA Medical Leave."
- 45. That form contained inapplicable provisions that related to FMLA leave. It also states: "Nursing Mothers: If you are an expecting mother applying for a leave of absence and have a need to express breast milk at work after returning please contact the leave department. We will work with you to make necessary arrangements."
- 46. I returned the signed form on April 25, but crossed out the provisions related to FMLA. I also said: "I am a nursing mother, and will need to express breast milk at work after returning. I copied the leave department in my previous email to JP. Your form says that the leave department 'will work with you to make necessary arrangements'—Can someone please tell me what types of arrangements would be possible?"
- 47. To date, no one has responded to my inquiry.
- 48. I fear that Frontier's ongoing failure to provide a workplace accommodation for me to express breast milk for my child means that I will once again have no choice but

to pump in the aircraft lavatory whenever my schedule does not permit me to pump in an airport bathroom or at my hotel.

49. I am aware of Frontier providing workplace accommodations, including offering alternative ground assignments, to other pilots for reasons unrelated to pregnancy and breastfeeding. For example, I am aware of one line pilot who was provided with a desk job position at headquarters when she was unable to fly because of certain medical reasons. However, I have not been provided any accommodations for reasons related to pregnancy or breastfeeding.

# Frontier's Policies and Practices are Discriminatory

- 50. 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).
- 51. Frontier's failure to provide employees who are pregnant or breastfeeding with access to workplace accommodations such as temporary job reassignment, medically necessary breaks, 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.
- 52. 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.
- 53. 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.
- 54. 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), and financial harm.
- 55. 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.
- 56. 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

- 57. 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: \_\_\_\_\_

Randi Freyer, Charging Party