Background

With states and municipalities passing laws granting paid leave, family leave, and related workplace benefits for workers, the airline industry has sought to exempt airline employees from the benefits of these laws. Under federal law states and municipalities have the clear legal authority to provide these rights to airline employees. Contrary to claims from the airline industry, the Airline Deregulation Act ("ADA"), the Railway Labor Act ("RLA"), and airline collective bargaining agreements *do not* impede such efforts, as clearly delineated in the relevant federal statutes and supported by relevant case law. As such, more than a dozen states have laws granting airline employees paid leave and related labor rights.

Airline Deregulation Act

Contrary to the airline industry's position, the Airline Deregulation Act of 1978, 49 U.S.C. § 41371, *et seq.*, does **not** preempt employment-related state or local legislation, including paid leave and family leave laws. The ADA's narrowly drawn preemption provision simply prohibits state and local jurisdictions from enacting or enforcing "a law, regulation, or other provision having the force and effect of law related to a price, route, or service of an air carrier[.]" Id. at § 41371(b)(1). ADA preemption is limited only to prevent states and localities from regulating customer-facing airline routes, fares, and services. Employment-related state and local legislation does not impact these issues and is not preempted. The establishment of labor standards "falls within the traditional police powers of the State" a settled principle that applies with equal force to the airlines. *Hawaiin Airlines Inc. V. Norris (1994).*

In fact, the Ninth Circuit Court of Appeals rejected a challenge brought by the industry's trade association – Air Transport Association ("A4A") – to Washington state's paid sick leave legislation, with the Supreme Court denying request for review, allowing the Ninth Circuit's decision to stand: *Air Transport Association of America, Inc. v. Washington Dept. of Labor and Industries,* 859 Fed.Appx. 181 (9th Cir. 2021), *cert. denied*, 142 S.Ct. 2903 (June 30, 2022) ("*A4A v. Wash. L&I*"). The Ninth Circuit noted that generally applicable labor regulations are too tenuously related to airlines' services to be preempted by the Act, and that because paid leave "does not regulate the airline-customer relationship or otherwise bind the airlines to a particular price, route or service, it is not preempted by the ADA." Id. Simply put, the Airline Deregulation Act is a narrowly tailored law that does not interfere with state and municipal authorities' right to grant airline employees paid leave and related labor protections.

Railway Labor Act

Paid leave and related state labor policy does not violate the Railway Labor Act. The Railway Labor Act, 45 U.S.C. §§ 151 *et seq.*, cannot be interpreted to preempt state and local leave laws, since paid leave and related state and local requirements are independent of the relevant collective bargaining agreements. States regulate all manner of employee and employment relationships, including matters as disparate as workers compensation and leave requirements, that exist independently of collective bargaining agreements. Further, in providing paid leave, states are by definition not enacting a conflicting collective bargaining statutory scheme covering airline and railroad workers and thus the RLA is moot.

Collective Bargaining Agreements

The airlines additionally argue that paid leave laws and ordinances, if applied to the airlines, would somehow interfere with or upend their collective bargaining agreements. Much like any unionized employer covered by a state or local leave ordinance, the air carriers' policies are legally separate from a collective bargaining agreement. Notably, the circumstances under which air carriers' employees can use such paid leave are frequently significantly narrower than provided by states and municipalities, and without the state and local protections, airline employees will continue to face adverse consequences for using paid sick and family leave. The individual and public health concerns driving paid leave policy apply with equal force to air carriers' employees and as the do for other employees, and it is imperative that air carriers' employees not be denied its protections. Frequently, airlines attendance policies assess points for taking sick leave, and such points factor into the airlines' progressive discipline policies for employees. To put it plainly, airline crew face punishment for using sick leave when they are sick. The air carriers' disciplinary policies effectively discourage their employees from using the sick leave benefits letter. This is counterproductive and presents genuine risks to the health of the sick crew members, their co-workers, and the public at large.

Conclusion

Multiple states have passed a series of paid sick leave, family leave, and other relevant labor laws covering airline employees, including pilots and flight attendants, in order to guarantee adequate health, safety, and labor protections. Federal law, including the Airline Deregulation Act and the Railway Labor Act do not interfere with the rights of state legislatures and city governments to enact these laws.