

118TH CONGRESS
1ST SESSION

S. 1722

To expand access to breastfeeding accommodations in the workplace for certain employees of air carrier employers.

IN THE SENATE OF THE UNITED STATES

MAY 18, 2023

Mr. MERKLEY (for himself, Mrs. MURRAY, Mr. FETTERMAN, Mr. BOOKER, Mr. BLUMENTHAL, and Mrs. GILLIBRAND) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To expand access to breastfeeding accommodations in the workplace for certain employees of air carrier employers.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “AIR PUMP Act”.

5 **SEC. 2. DEFINITIONS.**

6 For purposes of this Act:

7 (1) AIR CARRIER.—The term “air carrier” has
8 the meaning given such term in section 40102 of
9 title 49, United States Code.

1 (2) AIR CARRIER EMPLOYER.—The term “air
2 carrier employer” means an air carrier that is an
3 employer.

4 (3) CREWMEMBER.—The term “crewmember”
5 has the meaning given such term in section 1.1 of
6 title 14, Code of Federal Regulations (or successor
7 regulations).

8 (4) CRITICAL PHASES OF FLIGHT.—The term
9 “critical phases of flight” has the meaning given
10 such term in 121.542 of title 14, Code of Federal
11 Regulations (or successor regulations).

12 (5) EMPLOYEE; EMPLOYER.—The terms “em-
13 ployee” and “employer” have the meanings given
14 such terms in section 3 of the Fair Labor Standards
15 Act of 1938 (29 U.S.C. 203).

16 **SEC. 3. BREASTFEEDING ACCOMMODATIONS IN THE WORK-**
17 **PLACE FOR CERTAIN EMPLOYEES OF AIR**
18 **CARRIER EMPLOYERS.**

19 (a) IN GENERAL.—An air carrier employer that, as
20 described in subsection (b), is subject to the requirements
21 of this section with respect to an employee who is a crew-
22 member shall provide—

23 (1) a reasonable break time for such an em-
24 ployee to express breast milk for such employee’s
25 nursing child for 1 year after the child’s birth each

1 time such employee has need to express the milk;
2 and

3 (2) a place, other than a bathroom, that is
4 shielded from view and free from intrusion from co-
5 workers and the public, which may be used by such
6 an employee to express breast milk.

7 (b) APPLICABILITY.—An air carrier employer shall be
8 subject to the requirements of this section with respect
9 to an employee who is a crewmember provided that (as
10 defined and delimited by the Administrator of the Federal
11 Aviation Administration through regulations issued under
12 section 5)—

13 (1) in providing a break described in subsection
14 (a)(1) to such an employee, an air carrier employer
15 shall not be required to provide such break during
16 critical phases of flight; and

17 (2) compliance with the requirements of this
18 section does not—

19 (A) impact the safety or security of flight
20 or the operation of an aircraft in flight or on
21 the ground; or

22 (B) require the air carrier employer to
23 incur significant expense, such as through the
24 addition of a crewmember in response to pro-
25 viding a break described in subsection (a)(1) to

1 another crewmember, removal or retrofitting of
2 seats, or the modification or retrofitting of an
3 aircraft.

4 (c) SIGNIFICANT EXPENSE.—For purposes of sub-
5 section (b)(2)(B), modifying or retrofitting an aircraft by
6 installing a curtain or other screening protection shall not
7 be considered a significant expense.

8 **SEC. 4. ANTI-RETALIATION.**

9 It shall be unlawful for any person to discharge or
10 in any other manner discriminate against any employee
11 who is a crewmember because such employee has—

12 (1) filed any complaint or instituted or caused
13 to be instituted any proceeding under or related to
14 this Act or, as described in subsections (a) and (b)
15 of section 6, the Fair Labor Standards Act of 1938
16 (29 U.S.C. 201 et seq.); or

17 (2) testified or is about to testify in any such
18 proceeding.

19 **SEC. 5. RULEMAKING.**

20 Not later than 3 years after the date of enactment
21 of this section, the Administrator of the Federal Aviation
22 Administration, in consultation with the Secretary of
23 Labor, shall issue regulations, as appropriate, to define
24 and delimit the terms and conditions under section 3 for
25 all crewmember time onboard an aircraft.

1 **SEC. 6. REMEDIES.**

2 (a) ENFORCEMENT BY THE SECRETARY.—

3 (1) IN GENERAL.—The Secretary of Labor shall
4 receive, investigate, and attempt to resolve com-
5 plaints of violations of sections 3 and 4 in the same
6 manner that the Secretary of Labor receives, inves-
7 tigate, and attempts to resolve complaints of viola-
8 tions of sections 18D and 15(a)(3) of the Fair
9 Labor Standards Act of 1938 (29 U.S.C. 218d;
10 215(a)(3)), respectively.

11 (2) VIOLATIONS.—

12 (A) SECTION 3.—An air carrier employer
13 that violates section 3 shall—

14 (i) be considered to be in violation of
15 section 18D of the Fair Labor Standards
16 Act of 1938 (29 U.S.C. 218d); and

17 (ii) be subject to the penalties de-
18 scribed in sections 16 and 17 of such Act
19 (29 U.S.C. 216; 217) with respect to such
20 violation.

21 (B) SECTION 4.—An air carrier employer
22 that violates section 4 shall—

23 (i) be considered to be in violation of
24 section 15(a)(3) of the Fair Labor Stand-
25 ards Act of 1938 (29 U.S.C. 215(a)(3));
26 and

1 (ii) be subject to the penalties de-
2 scribed in sections 16 and 17 of such Act
3 (29 U.S.C. 216; 217) with respect to such
4 violation.

5 (b) PRIVATE RIGHT OF ACTION.—An action alleging
6 a violation of section 3 or 4 may be maintained against
7 an air carrier employer in any Federal or State court of
8 competent jurisdiction by an employee who is a crew-
9 member or a representative of such employee for and on
10 behalf of the employee, or the employee and others simi-
11 larly situated, in the same manner, and subject to the
12 same remedies (including attorney’s fees and costs of the
13 action), as an action brought under section 16 of the Fair
14 Labor Standards Act of 1938 (29 U.S.C. 216) by an em-
15 ployee alleging a violation of section 18D or 15(a)(3) of
16 such Act (29 U.S.C. 218d; 215(a)(3)), respectively.

17 **SEC. 7. EFFECTIVE DATE.**

18 This Act shall take effect on the date that is 180 days
19 after the date of enactment of this Act.

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