

Change all references of H33 to H 461

David Martin

Chair Clarkson, Vice Chair Brock and members of the committee, on behalf of the nearly 80,000 professional pilots of the Air Line Pilots Association (ALPA), we thank you for the opportunity to testify regarding H33. As the world's largest union representing commercial airline pilots, we thank you for expanding access to leave for workers.

ALPA thanks the committee for its interest in updating its paid leave programs with inclusive objectives, including the needs of Vermont workers. Pilots and flight attendants, like all types of workers, need leave to take care of a family member or attend a funeral. However, pilot and flight attendant schedules are quite complicated and require special consideration. Currently, H33 utilizes an hours accrual requirement that awards workers 1 hour of unpaid leave for every 30 hours worked. While we understand the need to include such a requirement, unfortunately for flight crew, it results in few if any hours available for pilots and flight attendants to utilize for permissible reasons under the program compared to other workers. Pilots' weekly hours are limited because our employers only count work hours as time in air, and federal fatigue and safety rules further limit how many hours a pilot can work in a given week or month. Notably, FAA regulations cap the number of hours a pilot can work at 1,000 per year; roughly half the number of hours a typical full-time worker works annually. As such, the unique circumstances of both the profession and law prevent pilots from working 30 hours a week.

Fortunately, there is precedent at the federal and state levels to accommodate the unique way flight crew hours are calculated. Pilot and flight attendant unions worked with Congress and the Department of Labor to adopt the Airline Flight Crew Technical Corrections Act to federal FMLA. Specifically, the revised FMLA calculates leave for pilots and flight attendants if they (1) worked 60 percent of their monthly guarantee; a guarantee is how pilot/flight attendants schedules are structured and (2) they worked or were paid 504 hours during the previous 12 months. Such individuals thus qualify federally for FMLA as full-time employees.

craft 29 CFR § 825.801- Special rules for airline flight crew employees, hours of service requirement. We have included the text of this fix, 29 CFR § 825.801, at the end of our written testimony.

Many states have used this federal accrual method to allow pilots and flight attendants to qualify for state sick and other leave benefits. A recent example: Michigan and Minnesota instituted paid leave programs which included a similar hours accrual formula(s) which initially did not account for the unique nature of how our hours are calculated and/or limited by federal regulation. We're happy to say that after working with Labor, pilots and flight attendants in both states can avail themselves of the same benefits as other workers using the same federal reference for accrual as we today propose before the State of Vermont. Specifically, we support the suggested language offered by the Vermont AFL-CIO which would amend H 33 in the following way:

~~(4) "Employer" means an individual, organization, or governmental body, partnership, association, corporation, legal representative, trustee, receiver, trustee in bankruptcy, and any common carrier by rail, motor, water, air, or express company doing business in or operating within this State that a person who for the purposes of parental leave, bereavement leave, safe leave, and leave for a qualifying exigency employs 10 or more individuals who are employed for an average of at least 30 hours per week during a year and for the purposes of family leave employs 15 or more individuals for an average of at least 30 hours per week during a year.~~

~~(2) (5) "Employee" means a person who, in consideration of direct or indirect gain or profit, has been continuously employed by the same employer for a period of one year for an average of at least 30 hours per week or is subject to 29 CFR 825. For purposes of safe leave only, "employee" means a person who in consideration of direct or indirect gain or profit has been continuously employed by the same employer for a period of six months for an average of at least 20 hours per week or is subject to Sec. 825.801 29 CFR 825.~~

It's also important to note that for attendants, most airlines utilize a points or demerit system which penalizes employees from taking time off even in cases when the employee has accrued the time off contractually. H 33 would help cabin crew take the time off we've earned without fear of retribution as is frequently the case without state protections. We appreciate this opportunity and your consideration of including the amended language highlighted in our testimony. Thank you.

(a) An airline flight crew employee's eligibility for FMLA leave is to be determined in accordance with [§ 825.110](#) except that whether an airline flight crew employee meets the hours of service requirement is to be determined as provided below.

(b) Except as provided in [paragraph \(c\)](#) of this section, whether an airline flight crew employee meets the hours of service requirement is determined by assessing the number of hours the employee has worked or been paid over the previous 12 months. An airline flight crew employee will meet the hours of service requirement during the previous 12-month period if he or she has worked or been paid for not less than 60 percent of the employee's applicable monthly guarantee and has worked or been paid for not less than 504 hours.

(1) The *applicable monthly guarantee* for an airline flight crew employee who is not on reserve status is the minimum number of hours for which an employer has agreed to schedule such employee for any given month. The *applicable monthly guarantee* for an airline flight crew employee who is on reserve status is the number of hours for which an employer has agreed to pay the employee for any given month.

(2) The hours an airline flight crew employee has worked for purposes of the hours of service requirement is the employee's duty hours during the previous 12-month period. The hours an airline flight crew employee has been paid is the number of hours for which an employee received wages during the previous 12-month period. The 504 hours do not include personal commute time or time spent on vacation, medical, or sick leave.

(c) An airline flight crew employee returning from USERRA-covered service shall be credited with the hours of service that would have been performed but for the period of absence from work due to or necessitated by USERRA-covered service in determining the employee's eligibility for FMLA-qualifying leave. Accordingly, an airline flight crew employee re-employed following USERRA-covered service has the hours that would have been worked for or paid by the employer added to any hours actually worked or paid during the previous 12-month period to meet the hours of service requirement. In order to determine the hours that would have been worked or paid during the period of absence from work due to or necessitated by USERRA-covered service, the employee's pre-service work schedule can generally be used for calculations.

(d) In the event an employer of airline flight crew employees does not maintain an accurate record of hours worked or hours paid, the employer has the burden of showing that the employee has not worked

or been paid for the requisite hours. Specifically, an employer must be able to clearly demonstrate that an airline flight crew employee has not worked or been paid for 60 percent of his or her applicable monthly guarantee or for 504 hours during the previous 12 months in order to claim that the airline flight crew employee is not eligible for FMLA leave.