

No. 19-35937

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

AIR TRANSPORT ASSOCIATION OF AMERICA, INC.,
dba Airlines for America,
Plaintiff-Appellant,

v.

WASHINGTON STATE DEPARTMENT OF LABOR AND INDUSTRIES
and JOEL SACKS, in his official capacity as Director of the Department of Labor
and Industries,
Defendants-Appellees,

ASSOCIATION OF FLIGHT ATTENDANTS – COMMUNICATION WORKERS
OF AMERICA, AFL-CIO,
Intervenor-Appellee.

On Appeal from a Judgment of the United States District Court
for the Western District of Washington
No. 3:18-cv-05092-RBL
Hon. Ronald B. Leighton

**BRIEF OF AMICI CURIAE MASSACHUSETTS, CALIFORNIA,
CONNECTICUT, DELAWARE, THE DISTRICT OF COLUMBIA,
ILLINOIS, MAINE, MARYLAND, MICHIGAN, MINNESOTA, NEVADA,
NEW JERSEY, NEW MEXICO, NEW YORK, NORTH CAROLINA,
OREGON, PENNSYLVANIA, VERMONT, AND VIRGINIA
IN SUPPORT OF APPELLEES AND AFFIRMANCE**

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
INTERESTS OF AMICI.....	1
ARGUMENT	3
I. Paid Sick Leave Laws Advance Essential Public Health Objectives and Provide Significant Benefits to Workers, Employers, and the Public at Large.	3
II. Commercial Air Travel Amplifies the Rapid Dissemination of Infectious Disease.....	17
III. Paid Sick Leave Laws Ensure That Flight Crew Do Not Feel Compelled to Work While Sick and Thereby Potentially Infect Co-Workers and the Traveling Public.....	20
CONCLUSION.....	24
CERTIFICATES OF COMPLIANCE AND SERVICE	27

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INTERESTS OF AMICI

Amid a global pandemic that has infected millions of people, overwhelmed public health systems, and killed tens of thousands of people in the United States, the Air Transport Association asserts that States do not have a “legitimate interest” in stopping the spread of infectious disease on airplanes. Opening Br. 3. This is plainly wrong. States have a compelling interest in protecting the health and welfare of their workers and their residents, and PSL laws confer extensive “local benefits” to jurisdictions across the country. *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970). The *Amici* States—Massachusetts, California, Connecticut, Delaware, the District of Columbia, Illinois, Maine, Maryland, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Vermont, and Virginia—therefore file this brief in support of Washington State’s paid sick leave law pursuant to Fed. R. App. P. 29(a)(2) to underscore the substantial benefits that such laws provide, including as applied to the airline flight crew who crisscross the country daily in serving our residents.

Over the last several years, more than a dozen states—including *amici* California, Connecticut, the District of Columbia, Maine, Maryland,

Massachusetts, Michigan, Nevada, New Jersey, New York, Oregon, and Vermont, as well as Arizona and Rhode Island—and two dozen municipalities in states including *amici* Illinois, Minnesota, New Mexico, and Pennsylvania have enacted paid sick leave (“PSL”) laws like Washington’s.¹ These laws are critically important to promoting both workplace health and safety and the health of the public at large: protecting workers at their jobs, containing the spread of contagious disease, and advancing other essential public health objectives, all as part of the States’ broad authority to regulate our workers’ conditions of employment. Through our collective experience, we know that paid sick leave is always important, and that it has never been more important than right now.

The importance of PSL laws stems from the fundamental protection they provide: ensuring that workers can take time off when they or a family member is sick without fear of retribution by their employer. By contrast, as discussed further below, workers without such protection are more likely to delay or forgo seeking medical care for themselves and their families, and more likely to work while sick.

¹ See Family Values @ Work, *Timelines of Wins: Paid Sick Days & Paid Family Leave*, <http://familyvaluesatwork.org/states> (collecting laws) (last visited May 14, 2020).

The obvious public interest in avoiding workers feeling compelled to work while sick or to send a sick child to school is all the more self-evident now, as our States work to overcome the greatest international public health crisis in generations. Moreover, this public interest is especially acute as applied to frontline workers like flight crew, whose work takes them across state boundaries and brings them into daily contact with residents of all our States.

The *Amici* States therefore join Washington and the Association of Flight Attendants in asking this Court to affirm the decision below.

ARGUMENT

I. Paid Sick Leave Laws Advance Essential Public Health Objectives and Provide Significant Benefits to Workers, Employers, and the Public at Large.

Workers who anticipate lost wages, reprisals, or job loss due to absences are more likely to go to work sick, to send sick children to school, and to delay preventive and other timely medical care.² PSL laws seek to address these public

² Elise Gould & Jessica Schieder, Economic Policy Institute, *Work Sick or Lose Pay?: The High Cost of Being Sick When You Don't Get Paid Sick Days* (2017), <https://www.epi.org/files/pdf/130245.pdf>; Philip Susser & Nicolas R. Ziebarth, *Profiling the U.S. Sick Leave Landscape: Presenteeism Among Females*,

health problems by providing access to paid leave that employees can use to care for themselves and their families due to illness, injury, or routine medical care. These laws couple the promise of paid leave with protections from penalty for using that leave and from employer policies attaching onerous conditions to use of sick leave.³ Together, these provisions give employees the ability to obtain medical care or to self-isolate as needed, benefiting employees and the broader public.⁴ These manifest benefits of PSL laws, demonstrated by Washington and the Association of Flight Attendants, *see* Wash. Br. 8-13; Assoc. Br. 9-10, have also

Health Servs. Res., Dec. 2016, at 2305, <https://tinyurl.com/y7l6gx86> (finding that income loss and fear of losing a job are among the most significant single factors in employees' decision to work sick).

³ For example, PSL laws generally limit the amount of notice that employers can require for unanticipated absences and the circumstances under which employers can require doctors' notes. These requirements, whether to substantiate the illness or the recovery, have been associated with higher frequency of working while sick. Steven Sumner et al., *Factors Associated with Food Workers Working While Experiencing Vomiting or Diarrhea*, J. Food Protection, Feb. 2011, at 215, 217, <https://tinyurl.com/ycq6lgwf>. Similarly, PSL laws generally prohibit so-called "progressive discipline" systems—which punish unexcused absences (or in some cases, *all* absences) with warnings and ultimately termination—as these systems are specifically structured to discourage workers from using PSL.

⁴ Gould & Schieder, *supra* note 2.

been extensively recognized and documented by the federal government, *see* Department of Labor, *Establishing Paid Sick Leave for Federal Contractors*, 81 Fed. Reg. 67,598, 67,694-99 (Sept. 30, 2016). They include at least the following seven facets.

First, PSL laws increase the likelihood that employees will not work while sick,⁵ and employees who stay out of work when sick enjoy better health outcomes.⁶ Employees with access to sick leave under PSL mandates use more

⁵ LeaAnne DeRigne et al., *Workers Without Paid Sick Leave Less Likely to Take Time Off for Illness or Injury Compared to Those with Paid Sick Leave*, Health Aff., Mar. 2016, at 520, <https://www.healthaffairs.org/doi/pdf/10.1377/hlthaff.2015.0965>; Gould & Schieder, *supra* note 2; Tom W. Smith & Jibum Kim, National Opinion Research Center, *Paid Sick Days: Attitudes and Experiences* 6 (2010), <https://www.nationalpartnership.org/our-work/resources/economic-justice/paid-sick-days/paid-sick-days-attitudes-and-experiences.pdf> (finding that “37% of those with paid sick days have gone to work with a contagious illness like the flu compared to 55% of those without paid sick days.”); Sumner, *supra* note 3; Susser & Ziebarth, *supra* note 2.

⁶ Kevin Miller et al., Institute for Women’s Policy Research, *Paid Sick Days and Health: Cost Savings From Reduced Emergency Department Visits* 7 (2011), <https://tinyurl.com/yajco8up> (workers’ ability to seek timely treatment for illness through paid sick leave leads to better health outcomes).

time off than they did before enactment of the laws.⁷ Relatedly, employees with access to PSL are more likely to seek timely treatment for illnesses, thus avoiding more serious or prolonged illness.⁸ By encouraging employees to respond to their health needs in a timely manner, PSL laws enable quicker recoveries and fewer complications from acute illnesses.⁹

Second, PSL laws give workers the opportunity to take protected, paid leave from work to care for a sick family member. As with the provisions of PSL that enable employees to seek timely treatment for their own illnesses, PSL laws similarly result in employees responding to their children's and family members'

⁷ Eileen Appelbaum et al., Center for Economic and Policy Research, *Good for Business?: Connecticut's Paid Sick Leave Law* (2013), <https://cepr.net/documents/good-for-buisness-2014-02-21.pdf> (survey of Connecticut businesses after the State's PSL law went into effect showed an increase in workers' use of paid sick days, although workers did not draw down all PSL available); Susser & Ziebarth, *supra* note 2.

⁸ DeRigne et al., *supra* note 5, at 521.

⁹ Jody Heymann et al., Center for Economic and Policy Research, *Contagion Nation: A Comparison of Paid Sick Days Policies in 22 Countries 2* (2009), <https://tinyurl.com/yckdop7r> ("Research has shown that taking adequate time to rest and recuperate when sick encourages a faster recovery and helps prevent minor health conditions from progressing into more serious illnesses." (citation omitted)).

health needs promptly, improving family health overall.¹⁰ PSL laws also make it less likely that a parent will send a sick child to school or child care.¹¹ Sick children whose parents take leave from work and keep them home from school recover more quickly, suffer fewer complications from acute illnesses, and have better vital signs.¹² Additionally, PSL laws that enable parents to stay home with ill

¹⁰ Jessica Milli et al., Institute for Women's Policy Research, *Paid Sick Days Benefit Employers, Workers, and the Economy* 2-3 (2016), <https://iwpr.org/wp-content/uploads/wpallimport/files/iwpr-export/publications/B361.pdf> (paid sick days result in more timely treatment for illnesses and improved family health).

¹¹ Smith & Kim, *supra* note 5, at 6 (study showed that 24% of workers without paid sick days sent a sick a child to school, compare with 14% of workers with paid sick days).

¹² Darlena Cunha, *Kids Come to School Sick Because We Can't Stay Home from Work*, Wash. Post (Oct. 14, 2014), <https://tinyurl.com/yao7z7eg>; DeRigne et al., *supra* note 5 (finding that employees with paid sick leave used more leave, and employees without access to paid sick leave were three times more likely to delay needed medical care for themselves or a family member); Anne Grinyer & Vicky Singleton, *Sickness Absence as Risk-Taking Behavior: A Study of Organisational and Cultural Factors in the Public Sector*, Health Risk & Society, Mar. 2000, at 7, <https://doi.org/10.1080/136985700111413>; Mika Kivimäki et al., *Working While Ill as a Risk Factor for Serious Coronary Events: The Whitehall II Study*, Am. J. Pub. Health, Jan. 2005, at 98, <https://tinyurl.com/yc5zffeh>.

children limit the spread of infectious diseases at schools and child care programs, reducing the rates of illness for other children.¹³

Third, PSL laws increase the use of preventative care services, as access to paid sick days allows workers to take time off to attend routine medical appointments for themselves or a family member.¹⁴ Where PSL is not available, family members are more likely to delay this necessary medical care¹⁵ and forgo preventative services shown to improve health outcomes, like cancer and blood

¹³ S. Jody Heymann et al., *Child Care Providers' Experiences Caring for Sick Children: Implications for Public Policy*, 172 *Early Child Dev. & Care*, no. 1, 2002, at 1, <https://tinyurl.com/y9uww2h6> (when parents can share in the care of sick children, the children recover more quickly and are less likely to spread illness to other children).

¹⁴ Bart Hammig & Brooke Bouza, *Paid Sick Leave Benefits and Adherence to Recommended Screening Tests Among Male Labor Workers in the United States*, *J. Occupational & Env'tl. Med.*, Feb. 2019, at 102, 105, <https://tinyurl.com/y75sy9qk> (finding that “paid sick leave was significantly associated with adoption of health screening behaviors and health care utilization” in male workers); Lucy A. Peipins et al., *The Lack of Paid Sick Leave as a Barrier to Cancer Screening and Medical Care-Seeking: Results from the National Health Interview Survey*, 12 *BMC Pub. Health*, no. 520, 2012, at 1, 8, <https://tinyurl.com/yb5gr6al> (workers with access to paid sick days are more likely to have mammograms, pap tests, and endoscopies).

¹⁵ DeRigne et al., *supra* note 5, at 520, 524 (without PSL, “needed care is three times more likely to be delayed or put off entirely because of cost for the adult worker without paid sick leave.”).

pressure screenings, well-child visits, dental care, and influenza vaccines.¹⁶ This remains true even when those services are provided at no direct cost to the worker.¹⁷ In contrast, employees with access to PSL are also more likely to be vaccinated for influenza than employees without access to PSL.¹⁸ And an

¹⁶ LeaAnne DeRigne et al., *Paid Sick Leave and Preventive Health Care Service Use Among U.S. Working Adults*, *Preventive Med.*, June 2017, at 58, <https://doi.org/10.1016/j.ypmed.2017.01.020>; Peipins, *supra* note 14; Megan Shepherd-Banigan et al., *Mothers' Employment Attributes and Use of Preventive Child-Health Services*, *Med. Care Res. & Rev.*, Apr. 2017, at 208, 221, <https://journals.sagepub.com/doi/abs/10.1177/1077558716634555> (“[P]aid sick leave was related to an increased probability of receiving recommended outpatient preventive services . . .”).

¹⁷ DeRigne et al., *supra* note 16.

¹⁸ Fernando A. Wilson et al., *Universal Paid Leave Increases Influenza Vaccinations Among Employees in the U.S.*, *Vaccine*, May 2014, at 2441, 2443, <https://tinyurl.com/y8waxczg> (34% of workers with PSL get influenza vaccination, as compared to 21% of those without paid leave); Yusheng Zhai et al., *Paid Sick Leave Benefits, Influenza Vaccination, and Taking Sick Days Due to Influenza-Like Illness Among U.S. Workers*, *Vaccine*, Nov. 2018, at 7316, 7318, <https://tinyurl.com/yao4wyru> (finding that “workers with PSL were greater than 30% more likely to be vaccinated against influenza” than those without paid sick leave and also more likely to seek treatment for their illnesses).

employee's ability to obtain preventative care results in reduced health care expenditures due to reduced hospitalizations and better chronic disease care.¹⁹

Fourth, access to paid sick leave is also associated with a reduction in the spread of infectious diseases in the workplace.²⁰ PSL mandates allow workers to stay home from work while they are contagious, thereby reducing the likelihood that they infect co-workers.²¹ For example, public health experts estimate that of the millions of workers infected with influenza-like illnesses during the 2009 H1N1 pandemic, 5 to 7 million instances were attributable to lack of PSL.²² They

¹⁹ Human Impact Partners & San Francisco Department of Public Health, *A Health Impact Assessment of the Healthy Families Act of 2009* 27 (2009), <https://tinyurl.com/ybbpq878> (“[T]imely receipt of primary care may not only ensure better quality of life . . . but may also lower health care costs . . .”).

²⁰ William K. Bleser et al., *Child Influenza Vaccination and Adult Work Loss: Reduced Sick Leave Use Only in Adults with Paid Sick Leave*, *Am. J. Preventive Med.*, Feb. 2019, at 251, 253, 259-60 [https://www.ajpmonline.org/article/S0749-3797\(18\)32281-5/pdf](https://www.ajpmonline.org/article/S0749-3797(18)32281-5/pdf) (“[T]he failure of US policy to ensure paid sick leave may thus contribute to spreading influenza in the household, workplace, and broader community.”).

²¹ *See, e.g.*, Jody Heymann et al., *supra* note 9, at 2 (“If working adults are able to stay home when they are sick, they are less likely to spread infectious diseases to adults they work with.” (citations omitted)).

²² Wash. Br. 10 (citing ER 869); Robert Drago & Kevin Miller, Institute for Women's Policy Research, *Sick at Work: Infected Employees in the Workplace*

further determined that others in an influenza-infected worker's home were more likely to contract the illness if the worker's employer did not provide some form of PSL, that workers who did not stay home during that outbreak infected an additional seven million people, and that a lack of PSL resulted in approximately 1,500 additional deaths.²³ In another study, researchers found a 6% to 7%

During the H1N1 Pandemic 1, 7 (2010), <https://tinyurl.com/raz2jlt> (“[E]mployees who attended work while infected with H1N1 are estimated to have caused the infection of as many as 7 million co-workers.”); Supriya Kumar et al., *The Impact of Workplace Policies and Other Social Factors on Self-Reported Influenza-Like Illness Incidence During the 2009 H1N1 Pandemic*, *Am. J. Pub. Health*, Jan. 2012, at 134, 139, <https://tinyurl.com/yb2wp8qo> (“[A] calculation of the population-attributable risk suggests . . . 5.0 million cases of [influenza-like illness] because of lack of sick leave”).

²³ DeRigne et al., *supra* note 5, at 525 (many workers were unable to stay home despite recommendations from the Centers for Disease Control and Prevention that workers stay home if sick, leading to increased infections and deaths, and “[l]ack of paid sick leave is estimated to have resulted in 1,500 additional deaths during this outbreak.” (citation omitted)); Drago & Miller, *supra* note 22, at 7 (“[E]mployees who attended work while infected with H1N1 are estimated to have caused the infection of as many as 7 million co-workers.”); Kumar et al., *supra* note 22, at 137 (“Those who reported that they would not get paid if they stayed home from work were more likely to report [influenza-like illness] in their household . . .”).

reduction in influenza-like illnesses after cities implemented PSL mandates.²⁴ And PSL laws play an essential role in containing outbreaks of food-borne illnesses from norovirus, many of which are attributable to infection from food service workers who all-too-often lack access to PSL and report working while sick for reasons including loss of pay or fears of retaliation.²⁵

Fifth, access to PSL improves workplace safety. Without access to PSL, employees may feel more pressure to work while sick, which means that employees may be operating at a reduced functional capacity with an increased risk of unsafe operations and increased workplace injuries.²⁶ Workers without access to PSL have a 28% higher risk of nonfatal occupational injury, regardless of

²⁴ Stefan Pichler & Nicolas R. Ziebarth, *The Pros and Cons of Sick Pay Schemes: Testing for Contagious Presenteeism and Noncontagious Absenteeism Behavior*, 156 J. Pub. Econ., no. C, 2017, at 20, <https://tinyurl.com/y8ap7x86>; see also Drago & Miller, *supra* note 22.

²⁵ Aron J. Hall et al., *Foodborne Norovirus Outbreaks - United States, 2009-2012*, Morbidity & Mortality Weekly Rpt. (June 6, 2014), <https://tinyurl.com/y8z4djr7>; Lynne Shallcross, *Half of Food Workers Go to Work Sick Because They Have To*, National Public Radio (Oct. 19, 2015), <https://tinyurl.com/y8knvbu5>.

²⁶ Abay Asfaw et al., *Paid Sick Leave and Nonfatal Occupational Injuries*, Am. J. Pub. Health, Sept. 2012, at 59, 63, <https://tinyurl.com/y776axw2>.

industry or occupation.²⁷ Fatigue—like illness—also results in decreased functional capacity for workers and increased workplace injuries,²⁸ in some instances with effects analogous to the effects of alcohol consumption.²⁹ And medical conditions themselves can result in poor sleep.³⁰ Access to PSL allows employees to take time off when they are operating at a reduced functional

²⁷ *Id.* at 59, 62.

²⁸ Aerospace Medical Education Division, Federal Aviation Administration, *Fatigue in Aviation* (2020), https://www.faa.gov/pilots/safety/pilotsafetybrochures/media/fatigue_aviation.pdf (identifying direct ties between worker fatigue and aviation accidents); *see also* National Transportation Safety Board, *NTSB 2019-2020 Most Wanted List of Transportation Safety Improvements: Reduce Fatigue-Related Accidents 1* (2020), <https://tinyurl.com/y9bsrdpf> (noting that more than 300 U.S. aviation accidents have been associated with fatigue since 1982).

²⁹ A. M. Williamson & Anne-Marie Feyer, *Moderate Sleep Deprivation Produces Impairments in Cognitive and Motor Performance Equivalent to Legally Prescribed Levels of Alcohol Intoxication*, *Occupational Env'tl. Med.*, Oct. 2000, at 649, 651-654, <https://tinyurl.com/ya3splho> (after almost 20 hours without sleep, subjects' performance on some tests were equivalent to or worse than performance at a blood alcohol content of 0.05%).

³⁰ *See, e.g.*, Aerospace Medical Education Division, *supra* note 28, at 2 (recognizing that “[a] variety of medical conditions can influence the quality and duration of sleep[,]” including “sleep apnea, restless leg syndrome, certain medications, depression, stress, insomnia, and chronic pain.”).

capacity (either because they are sick or have been caring for a family member who is sick), reducing the rate and severity of workplace injuries.³¹

Sixth, PSL laws, by altering workers' willingness to seek preventative care and stay home when they or a close relative is sick, benefit states themselves by slowing the spread of disease, improving public health, and reducing health care costs. For example, employees who can schedule appointments during work hours and seek medical care promptly are less likely to use emergency services, lessening the strain on health services and reducing health care costs—a result that would represent potential for savings of \$1 billion a year if PSL laws were implemented throughout the nation.³² These cost savings are shared by hospitals, private insurance, and public insurance programs (like Medicaid).³³ For example, nearly

³¹ Abay G. Asfaw et al., *Relationship of Work Injury Severity to Family Member Hospitalization*, *Am. J. Indus. Med.*, May 2010, at 506, <https://doi.org/10.1002/ajim.20804> (working while under stress due to a family medical issue may result in more severe workplace injuries).

³² Miller et al., *supra* note 6, at iv (“It is estimated that \$1 billion in health care expenses could have been avoided in 2010 in the United States if access to paid sick days had been universal.”).

³³ *Id.*

five years after implementation of its paid sick leave law, Massachusetts is saving an estimated \$37.4 million annually on healthcare expenses due to the reduction of rates of flu, emergency department visits, norovirus in nursing homes, and other sources of healthcare expenses.³⁴

Finally, job-protected access to paid sick leave promotes employment stability and economic security.³⁵ While many workers report job loss or punishment for missing work to tend to their or a family member's illness,³⁶ paid sick leave has been found to significantly decrease the likelihood of job separation.³⁷ Without PSL, employees who serve as caregivers may reduce their work schedules if their work is incompatible with the demands of caring for the

³⁴ Kimberly McKee & Jessica Milli, Institute for Women's Policy Research, *Valuing Good Health in Massachusetts: The Costs and Benefits of Earned Sick Days* 3 (2019), https://iwpr.org/wp-content/uploads/2019/09/B382_Valuing-Good-Health-in-MA.pdf.

³⁵ Heather D. Hill, *Paid Sick Leave and Job Stability*, Work & Occupations, May 2013, at 143, 12, <https://tinyurl.com/y9wcma65> (pincite consistent with page numbering in author manuscript, accessible via the URL).

³⁶ Smith & Kim, *supra* note 5, at 5-6, 37.

³⁷ Hill, *supra* note 35, at 12 (PSL decreases likelihood of job separation by 25%).

needs of their family.³⁸ PSL laws allow workers flexibility to address the health needs of their family without having to reduce their work hours or leave the labor market completely.³⁹

In sum, PSL laws benefit not only the workers who gain access to these rights, but also their families and employers, the economy, and public health systems. PSL laws allow employees to address their own health needs and the health needs of their family members before situations worsen, reducing the need for emergency or critical care down the line. If fewer workers go to work sick (and by extension fewer children go to school and care programs sick), the spread of infection diseases decreases. By staying home when sick, workers quicken recovery periods, are more productive at work, are less likely to be injured on the job, and are more likely to stay in the workforce. And when workers are able to obtain preventative care and seek timely treatment for illness, they are less

³⁸ Milli et al., *supra* note 10, at 3 (“Informal caregivers whose work schedules are incompatible with the care needs of their family members may decrease their work hours or even leave the labor force completely.” (citation omitted)).

³⁹ *Id.* (PSL allows employees to “maintain their desired level of employment while continuing to perform their caregiving work.”).

dependent on emergency care, resulting in cost savings for public and private insurers, hospitals and doctors, and taxpayers.

II. Commercial Air Travel Amplifies the Rapid Dissemination of Infectious Disease.

The benefits of PSL laws are all the more urgently needed in the context of air travel, which accelerates the rapid spread of infectious diseases.

Examples of this phenomenon are unfortunately legion. Air travel caused the spread of severe acute respiratory syndrome (“SARS”) in 2003, as well as H1N1 in 2009. Wash. Br. 10 (citing ER 870-71).⁴⁰ Other reported outbreaks of serious airborne diseases aboard commercial flights include outbreaks of tuberculosis, influenza, smallpox, and measles.⁴¹ And air travel has undoubtedly accelerated the

⁴⁰ See also, e.g., Sonja J. Olsen et al., *Transmission of the Severe Acute Respiratory Syndrome on Aircraft*, 349 *New Eng. J. Med.* 2416 (2003), <https://www.nejm.org/doi/full/10.1056/nejmoa031349>.

⁴¹ See Alexandra Mangili et al., *Infectious Risks of Air Travel*, 3 *Microbiology Spectrum*, Oct. 2015, at 1, <https://tinyurl.com/y9tfgydd> (“Air transportation is a major vehicle for the rapid spread and dissemination of communicable diseases, and there have been a number of reported outbreaks of serious airborne diseases aboard commercial flights including tuberculosis, severe acute respiratory syndrome, influenza, smallpox, and measles, to name a few.”).

global spread of COVID-19, a public health crisis that the *Amici* States are each currently battling.

Airline employees have been, and remain, on the front lines of this ongoing public health crisis. Already at an elevated risk of exposure to infectious-disease-carrying passengers because of their irregular work schedules, inconsistent sleep schedules, and essential duties like moving throughout the aircraft, interacting with passengers on the flight, and handling their belongings, *see* Wash. Br. 11 (citing ER 864, 868, 871), airline flight crew members are routinely being described in news reports as being exposed to passengers who were symptomatic and, in many cases, testing positive for COVID-19.⁴² Tragically, some crew members have died

⁴² See, e.g., Lori Aratani, *As Covid-19 Cases Mount, Flight Attendants Grow Increasingly Fearful of Flying*, Wash. Post (Apr. 8, 2020), <https://tinyurl.com/yad32dpu> (reporting that, as of early April, “the Association of Flight Attendants-CWA, which represents flight attendants for United, Alaska, Spirit and other airlines, said more than 150 members have reported testing positive for covid-19 and an estimated 300 suspect they have contracted the virus. Separately, the Association of Professional Flight Attendants, which represents those who fly for American Airlines, said at least 100 flight attendants have tested positive.”); Leyland Cecco, “*We’re a Part of the Spread*”: *Flight Attendant’s Guilt over Covid-19*, The Guardian (Apr. 2, 2020), <https://tinyurl.com/y82fynrk> (reporting two dead-heading pilots and six flight attendants testing positive for COVID-19 following one international flight); Elizabeth Wiley et al., *Hundreds of*

as a result of their illnesses.⁴³

To be clear, flight crew are far from the only airline-industry workers facing occupational exposure to COVID-19. Pilots, mechanics, ground crew, ticketing agents, and baggage handlers are among the employees of Air Transport Association's member airlines also suffering from COVID-19.⁴⁴ So too are the economically-at-risk employees of companies that the member airlines subcontract with for in-flight meals and other services.⁴⁵

American, Southwest Airlines Employees Test Positive for COVID-19, WFAA (Apr. 7, 2020), <https://tinyurl.com/ya7zyhtml> (reporting TWU Local 556, the union for Southwest Airlines flight attendants, confirmed that 600 employees had tested positive).

⁴³ See, e.g., Aratani, *supra* note 42 (deaths among Philadelphia- and New York City-based flight crews).

⁴⁴ Kiera Feldman, *15 Deaths in the Airline Industry in 9 Days Linked to Coronavirus. Why Are Planes Still Flying?*, L.A. Times (Apr. 20, 2020), <https://tinyurl.com/yd6l8nnv>; Brandon Quester & Jude Joffe-Block, *COVID-19 Cases Surge Among American Airlines Ramp Employees*, Daily Independent (Apr. 27, 2020), <https://tinyurl.com/ycwqb8w7> (reporting 70 American Airlines ground crew workers in Phoenix tested positive for COVID-19 as of April 27, 2020).

⁴⁵ See Katie Johnston, *Airline Catering Workers Getting Infected, Hospitalized at High Rate, Union Says: Historic Lack of Health Insurance and Expense of Employer Plans Puts Workers Providing Food and Drink to Passengers at Greater Risk*, Boston Globe (Apr. 28, 2020), <https://tinyurl.com/ydcjdokr> (reporting 74 positive tests and nine deaths among workers for the two largest airline catering

III. Paid Sick Leave Laws Ensure That Flight Crew Do Not Feel Compelled to Work While Sick and Thereby Potentially Infect Co-Workers and the Traveling Public.

The *Amici* States have substantial and well-established interests in regulating employment conditions and protecting workers in their individual states, *see DeCanas v. Bica*, 424 U.S. 351, 356 (1976)—interests that are only heightened due to the COVID-19 global pandemic. In response to the pandemic, the *Amici* States have issued a multitude of emergency orders and guidance to protect the public health⁴⁶—all in the public interest of slowing the spread of this highly contagious infectious disease. Application of PSL laws, too, is crucial to this effort, especially

companies, LSG Sky Chefs and Gate Gourmet); *see also* Alan Levin, *U.S. Airport Screeners Now Must Wear Masks, Public May Be Next*, Bloomberg (May 7, 2020), <https://tinyurl.com/ycc7ettp> (reporting more than 500 positive tests and six deaths among Transportation Security Agency employees).

⁴⁶ In Massachusetts, for example, the Governor ordered all non-essential businesses closed and banned all gatherings of more than ten people, and Commonwealth agencies have issued guidance on a host of other measures. Governor Charles D. Baker, *Order Assuring Continued Operation of Essential Services in the Commonwealth, Closing Certain Workplaces, and Prohibiting Gatherings of More Than 10 People: COVID-19 Order No. 13* (Mar. 23, 2020), <https://tinyurl.com/rog8pj7>; *see also* Office of Governor Charlie Baker and Lt. Governor Karyn Polito, *COVID-19 State of Emergency*, <https://www.mass.gov/info-details/covid-19-state-of-emergency> (last updated May 12, 2020) (collecting emergency orders and guidance).

with respect to front-line workers like flight crew, who travel extensively across the country in serving our residents, and yet face airline attendance policies that penalize use of sick time and thereby encourage them to work while sick, send sick children to school, and delay preventive and other timely medical care for themselves and their families.

Recognizing the impact of COVID-19 on air travel, the Federal Aviation Administration (“FAA”) recently issued occupational safety and health guidance for airlines and their workers that advises air carriers to follow the Centers for Disease Control and Prevention’s (“CDC”) COVID-19 guidance.⁴⁷ This guidance recommends, among other practices, that “crewmembers with known exposure to COVID-19 . . . not work until 14 days after the last potential exposure.”⁴⁸ These exposed crew members are advised against working, even if asymptomatic, because of their inability “to remove themselves from the workplace if they

⁴⁷ See FAA, *FAA Safety Alert for Operators No. 20009: COVID-19: Updated Interim Occupational Health and Safety Guidance for Air Carriers and Crews 1* (May 11, 2020), <https://tinyurl.com/ya9mn4k8>.

⁴⁸ *Id.* at 2.

develop symptoms during a flight and the challenges involved in effectively isolating a symptomatic person on board an aircraft.”⁴⁹ And the CDC guidance cited by the FAA advises people experiencing COVID-19 symptoms like cough or fever to stay home.⁵⁰

Yet these public-health focused recommendations are in tension with the Air Transport Association’s member airlines’ own attendance policies. These policies, discussed in detail in Washington’s and the Association of Flight Attendants’ briefs, are designed to discourage flight attendants from using sick leave by imposing graduated discipline as the employee’s absences increase. *See* Wash Br. 6-8; Assoc. Br. 4-5. Because these policies penalize a worker for an absence from a scheduled flight, flight attendants unsurprisingly report feeling pressured to work while sick. *See* Wash. Br. 7-8. These reports, which are consistent with the broader consensus among researchers examining the benefits of paid sick leave,⁵¹ suggest a

⁴⁹ *Id.*

⁵⁰ Centers for Disease Control and Prevention, *What to Do If You Are Sick*, <https://tinyurl.com/vgx83aq> (last updated May 8, 2020).

⁵¹ *See* Wash. Br. 7 (citing ER 854, 867); Smith & Kim, *supra* note 5, at 5-6.

real risk of sick flight attendants (or other airline employees) feeling pressured to work, with the inevitable result of spreading a potentially lethal illness to co-workers and the traveling public.⁵² The public statements by some of the Air Transport Association's member airlines about probable future staffing reductions in response to the COVID-19 pandemic only exacerbate the economic pressure that individual employees feel to not miss a flight.⁵³

Accordingly, especially at this time, airline employees, who are among the public-facing workers on the front lines of this pandemic, need paid sick leave laws like Washington's to ensure that they can take time off without job-related consequences. And, for all the reasons described above, Part I, *supra*, by protecting these employees' ability to take paid sick leave without putting their jobs at risk, PSL laws also promote personal, familial, and public health: giving them the time they need to stay home and recover when they are sick; permitting them to take

⁵² See, e.g., Aratani, *supra* note 42 (Oakland-based flight attendant continuing to work despite the risks because of financial pressures).

⁵³ See, e.g., Chris Isidore, *United Says Demand for Travel Is "Essentially Zero" and Signals Layoffs*, CNN (Apr. 16, 2020), <https://tinyurl.com/y9n6pq9r> (United Airlines anticipating layoffs beginning in October 2020—the earliest it can begin cutting staff after accepting federal payroll assistance).

care of a sick child or vulnerable family member; and avoiding forcing them to balance their individual financial interests and job security against the health and welfare of their families, their co-workers, and the traveling public. PSL laws have thus never been more important to the public health and safety of our Nation.

CONCLUSION

For the foregoing reasons, this Court should affirm the judgment below.

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CERTIFICATES OF COMPLIANCE AND SERVICE

CERTIFICATE OF COMPLIANCE

1. Pursuant to Ninth Circuit Rule 32.1, I certify that this brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) and 32(a)(7)(B), because it contains 5,198 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

2. I certify that this brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6), because it has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman style, 14-point font.

/s/ Elizabeth N. Dewar

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CERTIFICATE OF SERVICE

I hereby certify that on May 18, 2020, I electronically filed the foregoing document with the United States Court of Appeals for the Ninth Circuit by using the CM/ECF system. All counsel of record are registered as ECF Filers and will be served by the CM/ECF system.

/s/ Elizabeth N. Dewar

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