

23 February 2021

Chair Karin Power  
House Judiciary Subcommittee on Civil Law  
900 Court Street NE  
Salem, OR 97301

**Subject:** Alaska Airlines and Horizon Air Comments Opposing HB2205

Dear Chair Power and members of the committee,

Thank you for the opportunity to submit comments on behalf of Alaska Airlines and Horizon Air expressing our opposition to House Bill 2205, legislation which would authorize private individuals or representative organizations to bring public enforcement actions, also known as qui tam actions, against employers for alleged violations of state statutes.

Alaska Airlines and Horizon Air Industries (“Alaska” and “Horizon” or “the companies”) employ more than 2,000 people in Oregon. These are good jobs with excellent pay and benefits. Both companies have highly unionized workforces, and Alaska and Horizon respect the bargaining process as well as the right of employees to bring lawsuits to enforce their rights. The companies see a distinction between enforcing rights and making an employee whole versus the excessive penalties for technical violations provided for under HB2205.

Alaska and Horizon have significant concerns about this proposed legislation based on Alaska’s experience with a similar law in the state of California, the Private Attorneys General Act (PAGA), which has resulted in multi-million-dollar lawsuits against Alaska for purely technical violations of state employment laws where no actual harm was alleged. Alaska and Horizon appreciate the opportunity to provide the following details regarding the harmful nature of these types of lawsuits – particularly when applied to airlines with unique pay, scheduling and leave practices that do not fit neatly into the requirements of individual state employment laws, but are necessary to support our complex, interstate operations.

**Alaska’s Experience with California Private Attorneys General Act:**

Alaska has been subject to onerous lawsuits in California under PAGA, resulting in substantial judgments totaling nearly \$100 million. These judgments are currently on appeal. One of the lawsuits involved allegations that the formatting of flight attendant pay statements did not meet the very technical requirements of California’s wage statement law, even though those rules do not translate to the way Alaska’s flight attendants are paid under their collective bargaining agreement. In this case, the employee was paid correctly and there were no allegations that any of Alaska’s employees had been harmed because of the pay statement looking different from the technical requirements of California law. Despite this, under a strict liability approach, the judge ordered Alaska to pay a \$25 million judgment based on approximately one year of technical violations. Of that \$25 million, only \$6.2 million would go to our employees. The companies remain at risk for similar lawsuits and judgments each year in California.

**Alaska and Horizon Pay Structure for Flight Crew:**

Each company pays its flight attendants and pilots (“flight crew”) through different sets of unique and complicated pay rules that have been bargained for in their collective bargaining agreements. This is similar to the way airlines throughout the country compensate flight crew. Pilots and flight attendants are not paid like typical hourly or salaried workers for several reasons. First, they are subject to pervasive federal regulations, which strictly limit the time they can work in a day/month/year, along with strict rules over rest periods between periods of work. This, layered on top of a complicated air transportation network with significant risk of irregular operations caused by weather, mechanical irregularities, Air Traffic Control, and other delays, requires complicated scheduling and pay structures that our unions sought in bargaining.

To meet these requirements, flight crew are paid through a credit-based pay system that includes additional pay activities, minimum pay guarantees, and formulas layered on top of credits. For example, a flight attendant may have a trip that is worth a certain number of credits, but those credits may be increased or changed if the trip he/she is working meets certain rules. Instances of flight delays, cancellations, or extended sit times for aircraft and crew – all very real and regular occurrences in our industry - play into this complex pay structure to ensure our employees are appropriately compensated. Airlines and their unions have accounted for these complications by bargaining extensive and unique pay and scheduling rules that allow crew to work in the best and most efficient ways that they prefer and that support airlines' complex operations.

**Pay Structure Incompatibility with California Law:**

Like many states, including Oregon, California law mandates employers include certain items and adhere to specific format requirements on wage statements provided to employees. As you might expect, these laws are drafted with the typical hourly or salaried worker in mind. They do not account for workgroups like flight attendants and pilots who have unique and complicated pay and scheduling rules that do not fit neatly into the framework of state wage statement laws.

The most problematic part of the California wage statement law for airlines is its requirement that employers itemize all applicable hourly rates or piece rates and the corresponding number of hours worked or units earned. This is a simple matter for employees working a standard 40 hours per week and receiving one or few hourly rates. This is a very complex matter for airlines because we do not pay flight crew an hourly rate or a straight piece rate. Airlines also do not track the time worked at each pay rate or credit type, instead tracking things like FAA-required duty time.

Under PAGA, damages or injuries to a plaintiff are not required, opening the door to frivolous and damaging lawsuits that result in multi-million-dollar judgments like the one outlined above. As long as airlines continue to pay and schedule flight crew the way airlines and their unions have bargained, we will continue to be at risk for more wage statement lawsuits in California. The only workable way to avoid the risk is to pay crew like traditional hourly workers, which is simply infeasible in a complicated working and operating environment like ours.

**Impact of Oregon's House Bill 2205 on Alaska and Horizon:**

Oregon's proposed HB2205 would authorize individuals to bring lawsuits against Alaska and Horizon for similar technical violations to those Alaska has experienced in California. Given the size of our workforces in Oregon, the companies' exposure to qui tam lawsuits would be severe, leaving Alaska and Horizon vulnerable to multi-million-dollar penalties for technical violations on an annual basis. Furthermore, lawsuits of this magnitude will directly harm Alaska's and Horizon's ability to recover from the current crisis – one in which the companies have continued to provide crucial airline service to airports throughout Oregon while keeping our people and passengers safe and avoiding largescale furloughs of employees. Judgments of this scale are simply not sustainable and impede Alaska and Horizon's ability to grow and invest in our businesses, add good jobs, and compete with much larger airlines who are not headquartered in the Pacific Northwest.

For these reasons, Alaska Airlines and Horizon Air oppose HB2205 and any effort to authorize qui tam lawsuits in Oregon.

Sincerely,



**Scott Kennedy**  
State and Local Government Affairs Manager