No. 18-579

In the Supreme Court of the United States

ALASKA AIRLINES, INC.,

PETITIONER,

v.

JUDY SCHURKE, in her official capacity as Director of the State of Washington Department of Labor and Industries; ELIZABETH SMITH, in her official capacity as Employment Standards Program Manager of the State of Washington Department of Labor and Industries,

RESPONDENTS.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF IN OPPOSITION

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QUESTION PRESENTED

When a state agency enforces state law in an administrative proceeding, and the action does not turn in any way on the interpretation or enforcement of a collective bargaining agreement, does the Railway Labor Act divest the agency of jurisdiction to interpret state law?

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INTRODUCTION

In an effort to manufacture conflict where none exists, Petitioner Alaska Airlines inaccurately describes the opinion below and its consequences. Read accurately, that opinion creates no conflict with decisions of this Court or any other. And the consequences the Airline complains of have nothing to do with the opinion below. Certiorari is unwarranted.

Washington law guarantees all workers the right to use paid leave they have earned to care for a sick relative. This law applies to workers whether they are covered by a collective bargaining agreement or not.

Alaska Airlines refused to allow one of its workers to use vacation leave to care for her sick child. When Washington's Department of Labor and Industries fined the Airline for violating Washington law, the company sued, claiming that the Railway Labor Act (RLA) preempted the Department's claim.

The Ninth Circuit carefully applied this Court's precedent and rejected Alaska Airlines' argument. The Airline asserts that the Ninth Circuit flouted decisions of this Court and other circuits by holding that federal courts "lack the authority to consider the nature" of a state-law claim when deciding whether the claim is preempted under the RLA. Pet. 2. But the Ninth Circuit said no such thing. Instead, the Ninth Circuit found no preemption because the court concluded that regardless of the meaning of Washington law, the Department's claim could be resolved without interpreting the Airline's collective bargaining agreement (CBA) with its employees. Pet. App. 30a-31a. If the Department's reading of

Washington law is correct, then the Airline violated state law regardless of the CBA's meaning. *Id.* at 31a. If the Airline's reading of state law is correct, then Alaska Airlines complied with state law because the Airline's interpretation of the CBA is not disputed. *Id.* Either way, no interpretation of the CBA is necessary.

The decision below is thus entirely consistent with decisions of this Court and other circuits. Those decisions have found RLA preemption only where a claim seeks to enforce a CBA or requires interpretation of a CBA. Neither is the case here.

The decision below also will not lead to the parade of horribles Alaska Airlines describes. The Airline laments the difficulty of complying with different leave requirements and other labor protections in different states. Pet. 27-28. But that is a criticism of federal law, not the Ninth Circuit's opinion, because this Court has repeatedly held that the RLA does not preempt states from imposing different minimum labor standards. The Airline also claims that the decision will lead to inconsistent interpretations of CBAs in different states, Pet. 26-27, but that critique makes no sense when the key point of the decision below is that no interpretation of the CBA is required.

In short, the decision below is consistent with precedent and will have none of the consequences Alaska Airlines claims. The Court should deny certiorari.

STATEMENT OF THE CASE

A. The Washington Family Care Act Sets Minimum Labor Standards

In 1988, the Washington Legislature enacted the Washington Family Care Act, granting Washington workers the right to use accrued sick leave to care for a sick child. 1988 Wash. Sess. Laws 1094-96 (ch. 236, §§ 1-12), BIO App. 6a-10a. This labor requirement was explicitly termed a "minimum standard." *Id.* at § 1. The right was granted equally to workers earning sick leave pursuant to a collective bargaining agreement or an employer policy. *Id*. For leave other than sick leave, use of leave to care for a sick child remained controlled by the terms of a CBA or employer policy. *Id.* at § 3. In enacting the law, the Legislature recognized the difficulties faced by parents, especially working parents and single parents, when their children are sick. The Act balanced the needs of Washington families against the demands of the workplace, to "promote family stability and economic security." *Id.* at § 1.

In 2002, the Legislature strengthened this minimum labor standard. 2002 Wash. Sess. Laws 1160-61 (ch. 243, §§ 1-4), BIO App. 11a-13a, codified at Wash. Rev. Code § 49.12.270 (Pet. App. 140a). The Legislature expanded the type of leave that an employer must allow an employee to use to care for a sick child. *Id.* at § 1. While the 1988 law applied only to accrued sick leave, the 2002 amendments applied to other paid time off (including vacation days) the employee was "entitled to" under the terms of a CBA or employer policy. *Id.* Again, the law applied equally to workers whether subject to a CBA or not. *Id.*

(applying law to leave an employee is entitled to under a CBA or employer policy). The Department of Labor and Industries interprets the statutory term "entitled to" to include leave that has been earned and is reflected in an employee's earned leave bank. Pet. App. 5a.

To allow employees flexibility in using leave to care for a sick child, the Act creates a nonnegotiable standard that employees need not follow any terms in a CBA or employer policy "relating to choice of leave." *Id.* at § 1. The Department interprets the statutory phrase "terms relating to choice of leave" to include advance scheduling requirements for vacation leave. Pet. App. 5a.

B. Alaska Airlines Denied a Washington Mother the Right to Use Her Accrued Leave to Care for Her Sick Child

Laura Masserant is a Washington resident who has worked for Alaska Airlines as a flight attendant since 1991. In May 2011, Ms. Masserant's child developed bronchitis, and she asked for time off to care for him. Because she did not have sufficient sick leave available, she asked to use two of her seven remaining days of accrued vacation leave. Pet. App. 3a. In her request, Ms. Masserant specifically referred to Washington's Family Care Act.

Alaska Airlines denied the request, citing the CBA between the Airline and flight attendants. The CBA required vacation leave to be scheduled in advance, and Ms. Masserant's accrued vacation leave was scheduled to be used in December. Ms. Masserant took unscheduled leave to care for her child, and was assessed disciplinary points. *Id.* at 3a-4a.

Under the undisputed terms of the CBA, on December 31 of each year, flight attendants become entitled to their entire allotment of leave for the following year. All leave is placed in a "leave bank," which is then depleted as flight attendants use their vacation days. Leave in a leave bank may be immediately cashed out, with the scheduled leave remaining on the calendar but converted to unpaid time off. *Id*. Flight attendants are required to schedule their vacations in advance, and to request their specific vacation dates by the preceding October. Once leave is placed in a flight attendant's leave bank, the CBA generally requires the employee to use the leave on the previously scheduled dates. There are, however, numerous exceptions that allow flight attendants to use leave at unscheduled times: the leave may be exchanged with other flight attendants, used for extended medical leaves of absence, used for maternity-related leaves of absence, and used to extend bereavement leave. *Id.* But the CBA does not allow flight attendants to use their vacation leave for sick leave, or to care for a child, unless the illness happens to fall on the date of the previously scheduled vacation leave.

C. The Department Issued a Notice of Infraction to Alaska Airlines

After Alaska Airlines denied her use of vacation leave to care for her sick child, Ms. Masserant filed a complaint with the Department. *Id*. at 4a. The Department investigates complaints under the Washington Family Care Act and may issue infractions if it reasonably believes the employer has failed to comply with the Act. Wash. Rev. Code § 49.12.280, .285. The Department investigated the

complaint and determined that state law required Alaska Airlines to allow Ms. Masserant to use the vacation leave in her leave bank to care for her sick child. *See* BIO App. 1a-2a (Notice of Infraction, May 31, 2012). The Department determined that Ms. Masserant was entitled to seven days of vacation leave, "which Alaska Airlines, Inc. did not refute." BIO App. 2a. The Department also found that Ms. Masserant asked to use her vacation leave to care for a sick child, and was denied. The Department thus issued a Notice of Infraction that Alaska Airlines had violated Wash. Rev. Code § 49.12.270, and imposed a fine of $200.

Pursuant to Washington's Administrative Procedures Act, Alaska Airlines filed an administrative appeal with the Department and requested a hearing. Alaska Airlines and the Department later stipulated to a dismissal without prejudice of the administrative appeal because of the federal lawsuit that is the subject of the petition for certiorari. Alaska Airlines had amended an existing lawsuit to include Ms. Masserant's complaint after the Department had begun its investigation but before the issuance of the Notice of Infraction and subsequent administrative appeal. The stipulation included that either party could renew their request for an administrative hearing.

D. Alaska Airlines Sought an Injunction Preventing Enforcement of Washington's Family Care Act

In its federal lawsuit, the Airline sought to enjoin the Department from investigating complaints filed by flight attendants, and specifically to enjoin

enforcement of the Act with respect to Ms. Masserant's claim. Pet. App. 113a-14a. Alaska Airlines also sought a declaratory judgment that the Washington Family Care Act, as applied to Alaska Airlines, is preempted in its entirety by the Railway Labor Act (RLA), 45 U.S.C. § 151a. *Id.* The Airline did not argue that the Department had misinterpreted a term in the CBA but instead took issue with whether Ms. Masserant had "earned" vacation leave and whether she was "entitled" to use the leave, as those terms are used in the Washington Family Care Act. Pet. App. 31a. The district court subsequently allowed intervention by the Association of Flight Attendants-Communication Workers of America, AFL-CIO.

On cross motions for summary judgment, the district court granted summary judgment for the Department and the Union. Pet. App. 114a-15a. The court concluded that the state-law claims at issue were independent of the CBA and thus were not preempted under the RLA. *Id.* at 115a.

E. After a Divided Ninth Circuit Panel Initially Reversed, an En Banc Panel of the Ninth Circuit Affirmed the Trial Court

Alaska Airlines appealed to the Ninth Circuit. In a divided opinion, a panel of the Ninth Circuit reversed the district court. The Ninth Circuit then granted en banc review.

In the en banc decision, the Ninth Circuit affirmed the district court. Pet. App. 1a-38a. Noting that the RLA contains no express preemption provision, the majority opinion first established the history and purpose of the RLA's preemption doctrine. The RLA creates a "comprehensive framework for

resolving labor disputes." Pet. App. 8a (quoting *Hawaiian Airlines, Inc. v. Norris*, 512 U.S. 246, 252, (1994)). Disputes growing out of grievances or the interpretation or application of a CBA are known as "minor disputes" for RLA purposes. Minor disputes must be addressed through CBA mechanisms—first through grievance and then arbitration before a system board of adjustment. Pet. App. 10a, n.6.

Echoing this Court's precedent, the majority recognized that the purpose of the RLA related to fostering industrial self-governance and ensuring uniformity in resolving CBA disputes. Pet. App. 10a-13a. The RLA was never intended to override state minimum labor standards. Pet. App. 14a. Nor was it intended to create uniformity with respect to the various minimum labor standards to which an airline or railway might be subject. Instead, it was intended to create uniformity only with respect to CBA interpretation. Pet. App. 15a.

Consistent with the focus on CBA disputes, the majority concluded that "RLA preemption does not apply where the state law claim can be resolved independently of any CBA dispute." Pet. App. 5a-6a (citing *Norris*, 512 U.S. at 256-58; *Lingle v. Norge Div. of Magic Chef, Inc.*, 486 U.S. 399, 407 (1988)). The court also emphasized that the RLA did not preempt substantive law but rather addressed only the forum that must decide the dispute. Pet. App. 23a.

Applying these settled principles, the majority determined that the RLA did not preempt the Department's enforcement of a minimum labor standard in this case. Examining the legal character of the claim, as this Court has instructed, the majority

found that the claim was based on a statutory right independent of the CBA, and that resolution of the claim did not require interpretation of the CBA. Although it acknowledged that Alaska Airlines disputed the Department's interpretation of state law, it identified that dispute as one over the meaning of state law, not the meaning of the CBA. The court also noted that whether or not the Department is ultimately vindicated on its view of state law, the claim would be resolved solely on those state-law grounds and would not involve interpretation of a CBA term. Pet. App. 30a.

Finding that the case could be resolved entirely on state-law grounds without any risk of interpreting the CBA, the court found no need to go further: "Under both the RLA and LMRA § 301, federal preemption extends no further than necessary to preserve the role of grievance and arbitration, and the application of federal labor law, in resolving *CBA disputes*." Pet. App. 8a.

By contrast, the dissenting judges would have decided the merits of the state-law dispute, even though the claim brought by the Department indisputably did not involve interpretation of any CBA term. The dissent took this approach because Alaska Airlines asserted that under its interpretation of the statute, resort to the CBA would be necessary. The dissent understood preemption analysis to require a resolution of any state-law disputes in order to determine if rejection of the state-law claim might then lead to reliance on a CBA. In a case such as this one, where the CBA terms were not disputed and the case rises and falls solely on which interpretation of state law should be applied, the dissent would

essentially decide the case in order to determine which forum should decide the case. *See* Pet. App. 33a.

REASONS FOR DENYING THE PETITION

A. The Decision Below Is in Lockstep with this Court's Decisions

The en banc decision is firmly grounded in two bedrock principles announced by this Court that govern RLA preemption. First, the RLA requires arbitration only when state-law claims require the interpretation of CBA terms or seek to enforce those terms, neither of which is the case here. *Norris*, 512 U.S. at 256. Second, the RLA does not preempt state law claims to enforce rights independent of a CBA, such as minimum labor standards like those at issue here. *Id*. As the en banc court recognized, this case involves application of a minimum labor standard and requires no interpretation of CBA terms. The decision below is thus entirely consistent with this Court's jurisprudence.

1. This Court has consistently held that the RLA does not preempt state labor standards, it simply requires arbitration of disputes that require enforcement or interpretation of the CBA

This Court has long held that the RLA does not preempt state labor standards, but rather merely demands arbitration of certain disputes to ensure consistent interpretation of collective bargaining agreements. *E.g.*, *Norris*, 512 U.S. at 252, 255-56. The Court has repeatedly held the same as to § 301 of the

Labor Management Relations Act (LMRA).[1] *Livadas v. Bradshaw*, 512 U.S. 107, 122-23 (1994); *Allis-Chambers Corp. v. Lueck*, 471 U.S. 202, 212 (1985). Accordingly, the Court applies RLA preemption only when a state-law claim is "inextricably intertwined" with the terms of a CBA or where a CBA must be interpreted to resolve the claim. *E.g., Lueck*, 471 U.S. at 213; *Lingle*, 486 U.S. at 409. Disputes requiring arbitration are those involving "the interpretation or application of existing labor agreements." *Norris*, 512 U.S. at 256. The Court looks to the "legal character of a claim" to determine if it is independent of a right under a CBA. *Livadas*, 512 U.S. at 123.

The Court has developed several rules to ensure that RLA preemption extends only far enough to protect the role of arbitration in CBA enforcement and interpretation. For example, "the bare fact that a collective-bargaining agreement will be consulted in the course of state-law litigation plainly does not require the claim to be extinguished." *Livadas*, 512 U.S. at 124 (citing *Lingle*, 486 U.S. at 413 n.12). Similarly, state minimum labor standards remain "independent" of a CBA right—and are not preempted—even if they relate to a benefit set forth in the CBA. *Id.*

In *Livadas*, for example, the question was whether RLA preemption applied to a state law requiring payment of wages immediately upon discharge, where the amount of wages at issue was defined in the CBA and therefore the CBA would need

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[1] In *Norris*, this Court held that the analysis for preemption under LMRA § 301 applied to RLA preemption. 512 U.S. at 263.

to be referenced to calculate damages. *Id.* at 123-24. The Court noted that the amount of wages due under the CBA was not in dispute, and the only question was whether the employer had complied with the state law requiring payment of wages immediately upon discharge. *Id.* at 124-25. Under those circumstances, the Court held there was not "even a colorable argument" that the claim was preempted. *Id*. at 124.

Here, the opinion closely followed this Court's precedent in concluding that the state-law claim was not preempted. Contrary to Alaska Airlines' claim, the en banc court carefully examined the nature and scope of the state-law claim to determine if it required interpretation of the CBA. Pet. App. 29a-30a. In doing so, the court did not simply accept an assertion in a pleading that no interpretation of the CBA was involved. Instead, the court looked at "the legal character of a *claim*," as this Court has instructed. *See Livadas*, 512 U.S. at 123 (emphasis added); Pet. App. 29a-30a. The claim in this case is that the Washington Family Care Act provides an independent state right for Ms. Masserant to use her banked vacation days to care for her sick child. As noted by the majority, this claim invokes a state-law right applicable to all workers, and does not rely on interpretation of a CBA. Pet. App. 29a. The fact that Alaska Airlines disputes the interpretation of state law in the claim does not raise any issue under the RLA. Instead, the claim "gives rise to a state law dispute, not a dispute concerning the meaning of the CBA." Pet. App. 29a.

The Ninth Circuit also relied on its conclusion that regardless of whether a state court ultimately agrees with the Department's interpretation of Washington law, no interpretation of the CBA was

required. *Id.* at 30a-31a. The Washington Family Care Act requires an employer to allow an employee to use leave to care for a sick child "if, under the terms of a collective bargaining agreement or employer policy applicable to an employee, the employee is entitled to sick leave or other paid time off." Wash. Rev. Code § 49.12.270(1). The Department interprets the statutory term "entitled to" to include vacation leave that has been earned and placed in an employee's leave bank, regardless of whether the vacation leave has been scheduled for a certain date. Pet. App. 5a. On the other hand, Alaska Airlines interprets the statutory term "entitled to" to mean that the employee must be entitled, under the terms of the CBA or employer policy, to use the vacation leave on the particular day that their child is sick. Pet. 9.

In its petition, Alaska Airlines does not dispute that under the Department's interpretation, there would be no need to interpret the CBA. Pet. 10, 15. But even under Alaska Airlines' interpretation of the statute, there would be no need to interpret the CBA. That is because the Department does not dispute that the CBA does not allow flight attendants to re-schedule their vacation leave to care for a sick child. Pet. App. 5a, 30a. Thus, if a state court agreed with the Airline's statutory interpretation, the Notice of Infraction would simply be dismissed, without any need to interpret the CBA.

Alaska Airlines and the dissenting opinion below attempt to create a dispute over CBA terms where none exists. *E.g.*, Pet. 8-9; Pet. App. 56a-57a. The Department does not assert and has never asserted that Alaska Airlines violated state law

because the CBA allowed Ms. Masserant to use her banked vacation leave at a non-scheduled time to care for her sick child. Instead, the Department asserts that state law requires that Ms. Masserant be allowed to use her banked vacation leave to care for her sick child, even if the CBA says otherwise.

Because the only dispute in the case involves whether undisputed facts establish a violation of state law, there is no need for CBA interpretation to resolve the claim and therefore no RLA preemption. *See Norris*, 512 U.S. at 262-63 (reviewing precedent describing preemption of claims that depend on the interpretation of a CBA); *Lingle*, 486 U.S. at 407 (stating that state-law claim was independent for LMRA preemption purposes because resolution of the state-law claim did not require construing the CBA).

The Ninth Circuit's opinion is also firmly rooted in this Court's recognition that preemption of employment standards within the traditional police power of the State "should not be lightly inferred." *Norris*, 512 U.S. at 252. In light of RLA preemption's limited focus on protecting the role of arbitration in interpreting a CBA, this Court has repeatedly made clear that claims based on nonnegotiable state rights are not preempted unless they require interpretation of CBA terms. *See, e.g.*, *Norris*, 512 U.S. at 252, 256; *Livadas*, 512 U.S. at 123; *Lueck*, 471 U.S. at 213; *Lingle*, 486 U.S. at 411-12. For example, the Court held that the LMRA did not preempt a claim alleging wrongful discharge in retaliation for filing a workers compensation claim, even though the CBA also prohibited firing without just cause. *Lingle*, 486 U.S. at 401. Although the state-law claim and a grievance under the CBA might involve similar facts, the Court

concluded, "the state-law remedy in this case is 'independent' of the collective-bargaining agreement in the sense of 'independent' that matters for § 301 pre-emption purposes: resolution of the state-law claim does not require construing the collective-bargaining agreement." *Id.* at 407.

Similarly, the Court held that the RLA did not preempt a claim of wrongful discharge in retaliation for reporting safety violations, even though the CBA offered an alternative avenue for relief. *Norris*, 512 U.S. at 258. The Court reasoned that the CBA was not the only source of the claimed prohibition against wrongful discharge. "Wholly apart from any provision of the CBA, petitioners had a state-law obligation not to fire respondent in violation of public policy or in retaliation for whistle-blowing." *Id.*

As in *Norris*, the Washington Family Care Act creates a nonnegotiable, minimum labor standard. It establishes rights independent of any labor agreement and extends equally to workers covered by a CBA and workers not covered by a CBA. Pet. App. 29a; Wash. Rev. Code § 49.12.270(1). As a result, the Department's claim—that Ms. Masserant was entitled to use her banked vacation leave to care for a sick child notwithstanding contrary provisions in the CBA—relies solely on application of the state law and does not require construction of the CBA. The independence of the state law claim is further illustrated by Alaska Airlines' defense, which disputes the State's reading of the Act, but not the meaning of any provision of the CBA.

In holding that the state-law right is "independent" of the CBA because it does not involve

interpretation of the CBA, the Ninth Circuit faithfully applied this Court's precedent.

2. There is no conflict with decisions of this Court

Contrary to Alaska Airlines' claim, the opinion is also fully consistent with *Lueck*, 471 U.S. 202, and *United Steelworkers of America, AFL-CIO-CLC v. Rawson*, 495 U.S. 362 (1990). Pet. 22-25.

Alaska Airlines claims that *Lueck* is an example of this Court resolving a dispute about the meaning of state law in the course of assessing LMRA preemption. Pet. 25-26. But the opinion refutes that contention.

In *Lueck*, the plaintiff claimed that an insurer acted in bad faith in processing an insurance claim under an insurance policy created pursuant to a CBA. The Wisconsin Supreme Court held that this claim was not preempted by the LMRA. This Court reversed, but it emphasized that it was *not* questioning the Wisconsin court's interpretation of state law. The Court explained that "the nature of the state tort is a matter of state law," *Lueck*, 471 U.S. at 213-14, and a state court's interpretation of state law is "unassailable," *id.* at 214. Rather, the relevant question for the federal court to decide was "whether the Wisconsin tort is sufficiently independent of federal contract interpretation to avoid pre-emption." *Id.* at 214. That was the question the Court proceeded to consider, and it found that the Wisconsin Supreme Court had erred not because it got state law wrong, but because its conclusions depended not solely on state law, but "on assumptions about the scope of the contract provision which it had no authority to make

under state law." *Id.* Put another way, *Lueck* "held that resolution of a state-law tort claim must be treated as a claim arising under federal labor law when it is substantially dependent on construction of the terms of a collective-bargaining agreement." *Rawson*, 495 U.S. at 366.

Lueck is thus entirely consistent with the opinion below. The Ninth Circuit carefully considered the appropriate federal question: whether the Department's claim that Alaska Airlines violated the Washington Family Care Act was "sufficiently independent of federal contract interpretation to avoid pre-emption." *Lueck*, 471 U.S. at 214. That is what the bulk of the opinion addresses. Pet App. 8a-32a. And the Ninth Circuit properly concluded that the Department's Washington Family Care Act claim was not "substantially dependent on construction of the terms of a collective-bargaining agreement." *Rawson*, 495 U.S. at 366; Pet. App. 30a.

Rawson likewise creates no conflict with the opinion below. *Rawson* had a complicated procedural history that informed the outcome of the case. The plaintiffs' complaint and discovery responses made crystal clear that their legal theory relied on an alleged violation of the CBA. 495 U.S. at 370 ("The only possible interpretation of these pleadings . . . is that the duty on which respondents relied as the basis of their tort suit was one allegedly assumed by the Union in the collective-bargaining agreement."). And in initially allowing the lawsuit to go forward, that is how the Idaho Supreme Court understood the claim. *Id.* But after this Court granted, vacated, and remanded that opinion in light of its decision in *International Brotherhood of Electrical Workers, AFL-*

CIO v. Hechler, 481 U.S. 851 (1987),[2] the Idaho Supreme Court significantly changed its description of plaintiffs' claim. *Rawson*, 495 U.S. at 370. Confusingly, while the Idaho Supreme Court purported to adhere to its prior opinion as written, it also this time described plaintiffs' claim as being entirely independent of the CBA. *Id*. This Court reversed.

The Court did not reject the Idaho court's interpretation of Idaho law; under well-settled principles, it could not have done so. *E.g.*, *Riley v. Kennedy*, 553 U.S. 406, 425 (2008). Rather, this Court addressed the same federal question it addressed in *Lueck*: whether the plaintiffs' state-law claims were sufficiently "independent of the collective-bargaining agreement" to avoid preemption. *Rawson*, 495 U.S. at 371; *cf. Lueck*, 471 U.S. at 214 (asking whether state law claims were "sufficiently independent of federal contract interpretation to avoid pre-emption"). It was in making that federal assessment that this Court disagreed with the Idaho Supreme Court.

Alaska Airlines asserts the Ninth Circuit would have come to a different result than in *Rawson*, stating that the plaintiffs there "pleaded a *theory* of state law that would have permitted recovery without reference to the CBA." Pet. 25. But *Rawson* rejected exactly that argument, holding that "the duty on which respondents relied as the basis of their tort suit was one allegedly assumed by the Union in the collective-bargaining agreement." *Rawson*, 495 U.S. at 370. Far from conflicting with the opinion below,

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[2] *See United Steelworkers of Am., AFL-CIO-CLC v. Rawson*, 482 U.S. 901 (1987).

Rawson thus does not even address the question Alaska Airlines presents.

B. The Opinion Below Creates No Conflict Among the Circuits

The court of appeals decision does not conflict with any decision of any other court of appeals. There is no need for this Court's review.

1. Alaska Airlines inaccurately characterizes the opinion below in claiming a conflict

In asserting a conflict with decisions of other circuits, Alaska Airlines contends that the opinion below announces a "new rule" that preemption must be denied "whenever a plaintiff pleads any *theory* of state law" that does not require CBA interpretation. Pet. 15. But the Ninth Circuit announced no such across-the-board rule. Rather, it concluded that no interpretation of a CBA would be required in this case regardless of which party was right about the meaning of Washington law. Pet. App. 30a-31a. Alaska had conceded this point earlier in the case, acknowledging that there was no dispute about the meaning of the CBA, but rather solely about the meaning of state law. Pet. App. 7a. As a result, this case will end with a ruling on the meaning of the state statute alone, with no need to interpret the CBA. The Ninth Circuit simply recognized that when there is no need for interpretation of the CBA regardless of the meaning of state law, the RLA does not preempt the state-law claim.

In arguing that the opinion below announces a broad new rule, Alaska repeatedly asserts that the

court held that it lacked "jurisdiction" or "authority" to examine state law in its preemption analysis. Pet. 12 (citing Pet. App. 22a, 32a-33a), 21, 24, 26. Not so. The jurisdiction the majority opinion occasionally refers to, *see, e.g.*, Pet. App. 23a, 33a, is the jurisdiction to adjudicate the underlying claim, not the decision on whether the claim is preempted. *See* Pet. App. 33a. And the lack of jurisdiction to adjudicate the underlying claim in a case involving RLA preemption is unquestionably correct. Either the state-law claim is not preempted and remains in state court, or the claim is preempted and is decided by the RLA arbitral mechanism. *E.g.*, *Norris*, 512 U.S. at 248; *cf. United Steelworkers of Am. v. Am. Mfg. Co.*, 363 U.S. 564, 569 (1960) (stating that court improperly usurps function of arbitration where it "undertakes to determine the merits of a grievance under the guises of interpreting the grievance procedure of collective bargaining agreements").

Importantly, this jurisdictional point is one area of difference between RLA preemption and LMRA preemption, a difference that the Airline ignores. While preemption analysis under the two statutes is generally the same, *see Norris*, 512 U.S. at 263, one crucial difference is that this Court has held that the LMRA creates "complete preemption" of state law claims that fall under the LMRA's purview. Conversely, this Court has never held that the RLA creates complete preemption and most of the circuits that have examined this issue have held that it does not.[3] Thus, where a state-law claim is preempted by

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[3] *See, e.g.*, *Sullivan v. Am. Airlines, Inc.*, 424 F.3d 267, 277 (2d Cir. 2005) (finding no complete preemption under the RLA); *Ry. Labor Execs. Ass'n v. Pittsburgh & Lake Erie R.R. Co.*,

the LMRA, it is essentially converted to a federal-law claim, and federal courts have jurisdiction to decide it. *See, e.g.*, *Franchise Tax Bd. v. Constr. Laborers Vacation Trust*, 463 U.S. 1, 23 (1983) ("[T]he preemptive force of [LMRA] § 301 is so powerful as to displace entirely any state cause of action for violation of contracts between an employer and a labor organization. Any such suit is purely a creature of federal law." (Internal quotation marks omitted)); Pet. App. 21a-22a n.15 (explaining this distinction). By contrast, a finding of RLA preemption does not mean that a federal court can then decide the underlying merits of the claim; rather, it simply means that the claim must be decided in arbitration. *Norris*, 512 U.S. at 253. This difference in the impact of a finding of preemption becomes important in understanding some of the cases that the Airline claims conflict with the opinion below.

2. The courts of appeals have found RLA preemption only when interpretation of a CBA is required

There is no support in any circuit for the Airline's contention that state claims should be preempted when the sole issue is interpretation of state law. In each case cited by Alaska Airlines, the state-law claim was preempted because resolution of the dispute required CBA interpretation, which is not the case here.

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858 F.2d 936, 942-43 (3d Cir. 1988) (same); *Roddy v. Grand Trunk W. R. Inc.*, 395 F.3d 318, 326 (6th Cir. 2005) (same); *Moore-Thomas v. Alaska Airlines, Inc.*, 553 F.3d 1241, 1245 (9th Cir. 2009) (same); *Geddes v. Am. Airlines, Inc.*, 321 F.3d 1349, 1357 (11th Cir. 2003) (same).

For example, in *Tifft v. Commonwealth Edison Co.*, 366 F.3d 513 (7th Cir. 2004), the question was whether LMRA § 301 completely preempted the plaintiffs' wrongful termination claim, such that the claim was really a claim under federal law and could be removed to federal court. After examining Illinois law, the Seventh Circuit concluded that the only way to determine whether state law had been violated would be by interpreting provisions of a CBA between the plaintiffs and the defendant. *Id.* at 519 ("[T]he state-law cause of action is meaningless without reference to the agreements which articulate the Defendants' obligations toward these Plaintiffs."). The court's holding rested on its determination that the analysis required "more than mere reference to the collectively bargained agreements." *Id.* at 520. The court explained that if the Illinois statute had established an independent statutory right, there would have been "no need to interpret the CBA or any other agreements, [the] state law claim would be independent of the CBA, and [the] claims would not have been preempted." *Id.* at 519; *see also Baker v. Kingsley*, 387 F.3d 649, 657 (7th Cir. 2004) (holding that "[i]f a state-law claim requires reference to, but not interpretation of, a collective bargaining agreement, the claim is not preempted.") (citing *In re Bentz Metal Prods. Co., Inc.*, 253 F.3d 283, 285 (7th Cir. 2001)).

Contrary to the Airline's contention, nothing in *Tifft* conflicts with the opinion below. Alaska Airlines claims that under the Ninth Circuit's rule, *Tifft* would have come out differently because the plaintiffs alleged that the defendant's conduct violated state law without reference to any CBA. Pet. 16. But in this

case, the Ninth Circuit relied not simply on the Department's allegations, but on its own assessment that no interpretation of the CBA would be necessary regardless of the meaning of state law. Pet. App. 30a-31a. Moreover, *Tifft* involved LMRA preemption, so the court had to determine the rights granted by state law to understand whether they were completely preempted by federal law and thus whether federal jurisdiction existed. *Tifft*, 366 F.3d at 516. Here, by contrast, once the court concluded that no CBA interpretation would be required regardless of the meaning of state law, there was no need for the court to go further in deciding the proper interpretation of Washington law.

The decision below is also consistent with the Fourth Circuit's decision in *Barton v. House of Raeford Farms, Inc.*, 745 F.3d 95 (4th Cir. 2014). Like *Tifft*, *Barton* involved a defendant's claim that LMRA § 301 completely preempted the plaintiffs' claims. The plaintiffs in *Barton* were employees of a chicken processor who alleged that their work hours should have been measured by the time they were "on the clock," not their time on the production line. *Barton*, 745 F.3d at 99, 101. The Fourth Circuit concluded that this dispute could not be resolved without interpreting the parties' collective bargaining agreement, so the plaintiffs' claim was completely preempted. *Id.* at 106-07. The court explained that if the meaning of the CBA were not in dispute, there would have been no cause for preemption. *Id.* at 107 (citing *Livadas*, 512 U.S. at 123).

Here again, nothing in *Barton* conflicts with the decision below. The Ninth Circuit properly concluded that no interpretation of the CBA would be necessary

regardless of the meaning of state law. Pet. App. 30a-31a. And unlike *Barton*, this case involved RLA preemption, so the court did not need to interpret state law to decide whether complete preemption applied and converted the claim into one under federal law.

The Airline's reliance on *Rueli v. Baystate Health, Inc.*, 835 F.3d 53 (1st Cir. 2016), is similarly misplaced. *Rueli* was another case involving LMRA § 301, this time involving a claim brought by a class of nurses seeking payment of wages and overtime. The First Circuit's analysis focused on "whether there is a plausible argument, as defendants contend, that adjudicating plaintiffs' claims will require the resolution of a genuine interpretive dispute about one or more provisions of the CBA." *Id.* at 55. The state law at issue required payment of wages for hours the employer "suffers or permits" to be done. *Id.* at 62. The court held that if the plaintiffs were able to prove that the employer knew about unpaid hours they were working, they could establish that the employer suffered or permitted them to work the hours without needing to interpret the CBA, and the claim would not be preempted. *Id.* But the plaintiffs' proof was incomplete, and they were forced to rely on interpretation of multiple intersecting provisions of the CBA to show that the employer had constructive knowledge of the hours worked. *Id.* Because the claim could not be resolved without interpretation of disputed provisions in the CBA, the court concluded that preemption was required. *Id.* at 63-64.

Alaska claims that the decision below conflicts with *Rueli* because the First Circuit has adopted a rule that claims are preempted if resolution of the

claim "arguably hinges upon an interpretation of the collective bargaining agreement." Pet. 18 (quoting *Rueli*, 835 F.3d at 58). But applying that test here, the result would be exactly the same. The Ninth Circuit concluded that no interpretation of the CBA would even arguably be necessary here because there was no relevant dispute about the CBA's meaning and interpretation of the CBA would be unnecessary regardless of the meaning of state law. Pet. App. 30a-31a. Regardless of whether a court ultimately agrees with the State's or the Airline's reading of the Washington Family Care Act, the case will end with the ruling on the meaning of state law. There is simply no contractual dispute at issue, under any reading of state law.

All of the other cases cited by the Airline also follow the well-settled rule established by this Court and applied by the Ninth Circuit: preemption is appropriate only if resolution of the dispute requires interpretation of a CBA. *See Gore v. Trans World Airlines*, 210 F.3d 944, 952 (8th Cir. 2000) (applying preemption where the alleged duty and wrongful action "cannot" be established without "interpretation of the relevant rights and duties bargained for in the [CBA]"); *DeCoe v. Gen. Motors Corp.*, 32 F.3d 212, 216 (6th Cir. 1994) (recognizing that if a right is "borne of state law and does not invoke contract interpretation, then there is no preemption"); *Vera v. Saks & Co.*, 335 F.3d 109, 115-16 (2d Cir. 2003) (finding preemption is appropriate where "plaintiff's challenge to the lawfulness of a term of the CBA" and challenge to a common law rule the parties had "agreed to alter" requires "substantial interpretation of the CBA"); *Penn. Fed'n of the Bhd. of Maint. of Way Emps. v. Nat'l*

R.R. Passenger Corp., 989 F.2d 112 (3d Cir. 1993) (cautioning that the RLA is not intended to preempt state police power to enforce labor laws and requiring preemption only after finding it impossible to resolve dispute without CBA interpretation); *Kollar v. United Transp. Union*, 83 F.3d 124, 126 (5th Cir. 1996) (citing *Melanson v. United Airlines, Inc.*, 931 F.2d 558, 562-63 (9th Cir. 1991)) (concluding that common-law fraud claim was preempted because the seniority dispute was "controlled by the CBA and modifying agreements" and "clearly require[d] . . . interpretation of the CBA"); *Ertle v. Cont'l Airlines, Inc.*, 136 F.3d 690, 694 (10th Cir. 1998) (holding contract claim was preempted because it was "inextricably intertwined" with CBA and court could not see how claims could be resolved "without interpreting and applying the CBA").

Alaska Airlines argues that the Ninth Circuit recently departed from this well-settled case law in *McCray v. Marriott Hotel Servs., Inc.*, 902 F.3d 1005 (9th Cir. 2018). Pet. 29-30. It did not. McCray contended that his employer violated a city ordinance's minimum wage requirement. The ordinance allowed a CBA to waive the minimum wage "to the extent required by federal law." *McCray*, 902 F.3d at 1012. As in the present case, there was no dispute about the meaning of the CBA. *Id.* at 1013. The court held that the case was not preempted because it only required the court to answer a question of statutory interpretation: whether the ordinance was waivable. *Id.* at 1012. The court explained that if it determined that "[the ordinance] can't be waived, then it's irrelevant whether the CBA contains a waiver." *Id.* at 1013. On the other hand, if

the court determined that the ordinance allowed a waiver, the court would need to do no more than refer to the CBA to see whether it waived the minimum wage. *Id.* Checking to see whether the waiver was contained in the CBA would require no more analysis of the CBA than this Court engaged in when it checked the agreement discussed in *Livadas* to determine the employee's pay rate. *Id.* at 1013 (citing *Livadas*, 512 U.S. at 124-25). In short, *McCray* simply applied the well-settled rule that preemption is appropriate only when CBA interpretation is required.

Alaska Airlines' contention that a state-law claim may be preempted when there is no need to interpret a CBA finds no support in any court.

3. No circuit has preempted a state-law claim based on minimum state labor standards that did not require interpretation of a disputed CBA provision

Like this Court, the courts of appeals have uniformly declined to find state-law claims preempted when they could be resolved solely by interpretation of state law, without analysis of a CBA. The courts of appeals have applied this principle, just as the Ninth Circuit did here, for very good reasons.

For one thing, as the Sixth Circuit has recognized, the purpose of RLA preemption is to avoid inconsistent interpretations of a CBA by the states. *Paul v. Kaiser Found. Health Plan of Ohio*, 701 F.3d 514, 521-22 (6th Cir. 2012) (citing *Lingle*, 486 U.S. at 404). This risk is present only if the state-law claim cannot be resolved without interpreting a disputed

CBA provision. An employer's assertion that claims are "tangentially related" to a CBA is not sufficient to justify preemption of a state-law claim. Rather, the essence of the claim must be "inextricably intertwined" with CBA interpretation. *Id.* at 521-24; *see also Bogan v. Gen. Motors Corp.*, 500 F.3d 828, 833 (8th Cir. 2007) (citing *Meyer v. Schnucks Mkts., Inc.*, 163 F.3d 1048, 1051 (8th Cir. 1998)).

The *Paul* case illustrates this principle. There, an employee brought a state-law claim alleging disability discrimination. The defendant employer contended that the state-disability claim and request for accommodation would implicate "scheduling changes, changes that would implicate other employees' schedules and seniority rights under the CBA." *Paul*, 701 F.3d at 522. But the CBA provisions were not in dispute: the employee did not contest the employer's reading of the contract. *Id*. at 523. Because resolution of the state-law dispute was not inextricably entwined with interpretation of the contract terms, the claim was not preempted. *Id*.

The Ninth Circuit opinion here is closely analogous. While there are CBA provisions addressing leave, the undisputed terms have no impact on resolution of the state-law dispute. As a result, there was no basis for finding preemption.

Another crucial point recognized by the circuits, which follows from this Court's opinions, is that it would be inconsistent with congressional intent to preempt state-law claims that are independent of contractual rights. *McKnight v. Dresser, Inc.*, 676 F.3d 426, 430-31 (5th Cir. 2012) (quoting *Lueck*, 471 U.S. at 212-13). In *McKnight*, a group of employees filed

suit alleging that their employer's failure to mitigate employee exposure to loud noise in a Louisiana industrial facility caused the employees to suffer hearing loss. *Id.* at 428. The court found that the workplace safety claims were "based on precisely the type of independent, non-negotiable state law rights and obligations which the Supreme Court excepted from § 301 preemption." *Id.* at 432. The court noted that if a claim could be preempted when interpretation of the CBA is not required, employers would be allowed "to remove all state workplace safety claims to federal court as long as the governing CBA made reference with some specificity to workplace safety." *Id.* at 434. The relief sought by Alaska Airlines would have precisely that effect. It would enable employers to negate the State's ability to enforce independent wage and safety requirements by including mention of such topics in collective bargaining agreements, even if resolution of the state-law claim does not require interpretation of contested CBA provisions. Such a broad-scale deprivation of state police power would grossly exceed congressional intent.

In sum, like the Ninth Circuit, the courts of appeals have consistently followed this Court's decisions and declined to find preemption unless the state-law dispute requires interpretation of a CBA. Alaska shows no conflict between the decision below and any circuit.

C. The Ninth Circuit Opinion Creates No Risk of Circumvention or Inconsistent Interpretation of CBAs

Alaska Airlines and its amici claim that a variety of troubling consequences will follow from the Ninth Circuit's opinion. Their concerns are unfounded.

First, Alaska Airlines and amici contend that the "*possibility* of inconsistent application" of a CBA presents a concern for labor relations. Pet. 27; *see also* Br. of Airlines for Am. 13-19; Br. of Ass'n of Am. R.R.s and Chamber of Commerce 6. But the opinion below creates no such possibility. Regardless of whether the case is brought in state or federal court, once the court determines that resolution of the dispute requires interpretation of a CBA, the court must dismiss the claim as preempted by the RLA. *See Norris*, 512 U.S. 246. The Ninth Circuit opinion cannot reasonably be read to hold otherwise. See Pet. App. 28-29a. When, as here, the only dispute before the court is how to interpret state law—and no party raises a claim or defense requiring CBA interpretation—there is no risk of contract interpretation. As a result, there is no possibility of inconsistent application of a CBA by the courts.

In arguing that the decision below "fundamentally undercuts the value of a nationwide CBA," Alaska Airlines confuses uniformity in CBA interpretation—which is in no danger under the Ninth Circuit's analysis—with abiding by different states' independent labor standards, which the Airline already must do. In essence, the Airline is railing against the inconvenience and expense of

being subject to different labor laws in each state. Pet. 27. But this Court has repeatedly rejected the notion that allowing the states to enact substantive labor standards undercuts collective bargaining. *Fort Hallifax Packing v. Coyne*, 482 U.S. 1, 20 (1987); *Metro. Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 748 (1985).

Alaska Airlines' and amici's desire for national uniformity would require overturning nearly a century of case law holding that the RLA does not preempt state enactment or enforcement of state labor laws that do not depend on interpretation of a CBA. For nearly 80 years, this Court has recognized the states' authority to impose minimum labor standards on national corporations, despite any inconvenience to employers:

> "State laws have long regulated a great variety of conditions in transportation and industry, such as sanitary facilities and conditions, safety devices and protection, purity of water supply, fire protection, and innumerable others. Any of these matters might, we suppose, be the subject of a demand by work[ers] for better protection and upon refusal might be the subject of a labor dispute which would have such effect on interstate commerce that federal agencies might be invoked to deal with some phase of it. . . . But it cannot be said that the minimum requirements laid down by state authority are all set aside. We hold that the enactment by Congress of the [RLA] was not a preemption of the

> field of regulating working conditions themselves . . . ."

Norris, 512 U.S. at 256-57 (quoting *Terminal R.R. Ass'n of St. Louis v. Trainmen*, 318 U.S. 1, 6-7 (1943)); *see also Missouri Pac. R.R. Co. v. Norwood*, 283 U.S. 249, 258 (1931) (rejecting the railroad's argument that the RLA preempted an Arkansas statute regulating the number of workers required to operate freight equipment). Alaska Airlines' petition asserts no basis for overturning this Court's longstanding recognition of the states' police power.

Finally, contrary to Alaska Airlines' assertions, the Ninth Circuit opinion will not allow Plaintiff to avoid mandatory arbitration by raising a "tenuous" threshold question of state law. Pet. 26. The Ninth Circuit properly barred the door on artful pleadings by holding that when a state law claim "is, in effect, a CBA dispute in state law garb, [it] is preempted." Pet. App. 17a (citing *Livadas*, 512 U.S. at 122-23); *see, e.g.*, *Melanson v. United Airlines*, 931 F.2d 558, 561 n.1 (9th Cir. 1991) (recognizing that "[t]he RLA's grievance procedure would become obsolete if it could be circumscribed by artful pleading"). As a result, the decision provides no support to litigants seeking to avoid arbitration of what are really CBA claims. If there is a dispute regarding a CBA term, the decision below recognizes that the dispute must be sent to arbitration. Pet. App. 10a. The Ninth Circuit simply held the non-controversial view that "[t]o the extent a plaintiff's state law claim can be resolved without infringing on the role of grievance and arbitration, there is no 'conflict' to speak of, and the preemption analysis ends." Pet. App. 29a.

D. The Rare Circumstances of this Case Make It a Bad Vehicle for Addressing RLA Preemption

This case arises in an unusual context that makes it a poor vehicle for addressing RLA preemption issues. Ordinarily, RLA and LMRA preemption claims arise via an employer's defensive use of preemption, where an employer seeks to dismiss or remove to federal court a claim allegedly preempted. Pet. App. 23a-24a n.17; *see, e.g.*, *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987). Here, however, Alaska Airlines seeks to use RLA preemption offensively to secure an injunction against enforcement of a state statute in an ongoing state labor law enforcement proceeding and to prevent similar future application of the state police power. Pet. App. 113-14a. *Id*. Alaska Airlines cites no opinions addressing similar circumstances.

There are two reasons why the rare circumstances of this case make it a poor vehicle for addressing RLA preemption analysis.

First, many of the concerns animating this Court's discussion of RLA preemption are not presented here. "Congress' purpose in passing the RLA was to promote stability in labor-management relations . . . ." *Norris*, 512 U.S. at 252. In light of this purpose, the Court has rejected so called "artful pleading" efforts by employees "to renege on their arbitration promises by 'relabeling' as tort suits actions simply alleging breaches of duties assumed in collective-bargaining agreements." *Livadas*, 512 U.S. at 123 (quoting *Lueck*, 471 U.S. at 219).

Here, the risk of employee incentive to evade contractual obligations by engaging in "artful pleading" is absent. Unlike *Lueck* and *Rawson*, this case does not involve employees suing their union or employer based on duties arising under a CBA. Instead, this case involves an employer seeking to enjoin state authority to enforce minimum labor standards. In fact, there is no pleading here at all—the only administrative action to date is that the Department issued an infraction. As a result, a decision in this case would be unhelpful in the vast majority of cases involving RLA preemption analysis.

Second, there are significant problems with the scope of the remedy sought by Alaska Airlines. The Airline seeks an injunction preventing the State from pursuing its current state administrative enforcement action and preventing the State from any future enforcement of Washington's Family Care Act against Alaska Airlines. Due to comity concerns, this Court and Congress have been reluctant to interfere with such proceedings even on a case-by-case basis, much less in the across-the-board manner Alaska seeks here. *See Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 77 (2013) (explaining circumstances in which a federal court should decline to enjoin an ongoing state proceeding); 28 U.S.C. § 2283 (federal court may not enjoin proceedings in a state court except under limited circumstances). Such an injunction would make particularly little sense here, because, as the Ninth Circuit recognized, the RLA only preempts claims to the extent necessary to ensure CBA construction by grievance and arbitration. Pet. App. 35a-36a, n.27 (citing *Lingle*, 486 U.S. at 413 n.12). Thus, at most a trial court should enjoin a state court

or administrative agency from construing terms in a CBA. Pet. App. 35a-36a n.27. In this case, where no terms in the CBA are disputed, such an injunction would be meaningless.

In short, even if the decision below conflicted with decisions of other courts, and even if the question presented otherwise merited this Court's consideration, the Court would be better served addressing it in a case more representative of disputes between employers and employees under the RLA.

CONCLUSION

The petition for a writ of certiorari should be denied.

RESPECTFULLY SUBMITTED.

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February 25, 2019

APPENDIX

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[SER 205]

State of Washington
DEPARTMENT OF LABOR AND INDUSTRIES

EMPLOYMENT STANDARDS PROGRAM – (360) 902-5316
P.O. BOX 44510, OLYMPIA, WASHINGTON 98504-4510

NOTICE OF INFRACTION

THIS DECISION IS APPEALABLE UNDER RCW 34.05 AND RCW 49.42.285

FAILURE TO APPEAL WITHIN 20 DAYS OF THE DATE OF THIS NOTICE OF INFRACTION WILL WAIVE APPEAL RIGHTS.

CERTIFIED MAIL

May 31, 2012

Lawton Humphrey Davis Wright Tremaine LLP 1201 3rd Ave, Suite 2200 Seattle, WA 98101-3045 Representing: Alaska Airlines, Inc. – A Corporation	Laura Masserant 23796 Brixton Place Poulsbo, WA 98370

Subject: Notice of Infraction No: PL-13-12
Cast No: 74164
Employer: Alaska Airlines, Inc.
Complaint filed by Employee:
Laura Masserant

The Department of Labor and Industries (L&I) received a complaint on June 21, 2011 filed by Laura Masserant against her employer, Alaska Airlines, Inc. Ms. Masserant alleged the following:

1. Her employer incorrectly calculated her available amount of family sick leave on or about May 20, 2011.

2. Her employer denied her the choice to use her available family sick leave to cover her absence from May 21-22, 2011 to care for a minor child with a health condition that required treatment or supervision.

3. Her employer denied her the choice to use her vacation to cover her absence from May 21-22, 2011 to care for a minor child with a health condition that required treatment or supervision.

[SER 206]

Following an investigation, the Department determined that Ms. Masserant was entitled to seven (7) days of vacation, which Alaska Airlines, Inc. did not refute. On May 20-21, 2011, she asked her employer to use her choice of vacation leave to care for a minor child with a health condition that required treatment or supervision. Alaska Airlines, Inc. disallowed the use of vacation to cover her absence. L&I has determined that Alaska Airlines, Inc. violated RCW 49.12.270 by denying Ms. Masserant the use of any and all of her sick leave or other paid time off to care for her minor child. The department hereby issues this Notice of Infraction.

ORDER TO PAY PENALTY

RCW 49.76.080 authorizes the director to impose a fine of up to two hundred dollars ($200.00) for the first infraction and up to one thousand dollars ($1,000.00) for repeat infractions of the Family Care Act. Having determined that the Alaska Airlines, Inc. has no previous infractions of the Family Care Act, the

department orders Alaska Airlines, Inc. to pay the following penalty.

Infraction Number	Issue	Penalty Assessed
PL-13-12	Violation of RCW 49.12.270	$200.00
Total Penalty Assessment		$200.00

PAYMENT

Send a check or money order made payable to the Department of Labor and Industries including a reference to Infraction number PL-13-12 no later than June 20, 2012, mail the check or money order to:

Department of Labor & Industries
Employment Standards Division
P.O. Box 44510
Olympia, WA 98504-4510

Or, if sending a response that requires delivery to L&I's physical location, send to:

Department of Labor & Industries
Employment Standards Division
7273 Linderson Blvd
Olympia, WA 98504-4510

- Include note with Infraction # PL-13-12 on remittance

[SER 207]

APPEAL RIGHTS

Under the Administrative Procedures Act, RCW 34.05 and RCW 49.12.285, an employer, an employee, or any person aggrieved a Notice of Infraction may appeal within 20 days of issuance.

How to appeal: To appeal, a written notice of appeal must be filed with L&I within 20 days of the date of issuance of the Notice of Infraction. To file the written notice of appeal, mail or deliver the original and 2 copies of the notice of appeal to:

Elizabeth Smith, Program Manager
Department of Labor & Industries
Employment Standards Program
P.O. Box 44510
Olympia, WA 98504-4510

Content of appeal: The notice of appeal must: (A) Specify the name, address, and telephone number of the appealing party, (B) Specify the Notice of Infraction appealed, (C) Specify which findings and conclusions are erroneous; (D) Have written arguments supporting the appeal attached; and (E) Be served upon all other parties or their representatives at the time the notice of appeal is filed.

Effect of failure to appeal: If L&I does not receive a notice of appeal within 20 days of date of issuance of the Notice of Infraction, the Notice of Infraction shall become FINAL AND BINDING, and not subject to further appeal.

If you have questions about the Notice of Infraction, please contact David Johnson, Industrial Relations Specialist at (360) 902-4930 or by letter to the address above.

Issued by:

s/ Elizabeth Smith — *5/31/2012*
Elizabeth Smith — Issuance date
Employment Standards Program Manager
Department of Labor and Industries

cc: David Johnson, Industrial Relations Specialist

Attached: Family Care Act (RCW 49.76)
Family Care WAC 296-130

[SER 208]

CERTIFICATE OF MAILING

I certify that on this day I caused to be mailed by delivering this Notice of Infraction issued on this date to Consolidated Mail Services for placement in the United States Postal Service, certified mail, and first class mail postage prepaid, to the parties listed below.

Lawton Humphrey Davis Wright Tremaine LLP 1201 3rd Ave, Suite 2200 Seattle, WA 98101-3045	ARTICLE NUMBER 91 7199 9991 7030 1082 1954
Representing: Alaska Airlines, Inc.	
Laura Masserant 23796 Brixton Place Poulsbo, WA 98370	ARTICLE NUMBER 91 7199 9991 7030 1082 1961

Dated at Tumwater, Washington on this 31st day of May, 2012.

DEPARTMENT OF LABOR AND INDUSTRIES

By: *s/ David L. Johnson*
David L. Johnson

[SER 209]

* * * * *

CHAPTER 236

[Substitute House Bill No. 1319]

FAMILY LEAVE

AN ACT Relating to notice to employees of employer leave policies, use of employer-granted leave to care for minor children with health conditions, and leave from employment for maternity disability; amending RCW 49.12.005; adding new sections to chapter 49.12 RCW; creating a new section; prescribing penalties; and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature recognizes the changing nature of the work force brought about by increasing numbers of working mothers, single parent households, and dual career families. The legislature finds that the needs of families must be balanced with the demands of the workplace to promote family stability and economic security. The legislature further finds that it is in the public interest for employers to accommodate employees by providing reasonable leaves from work for family reasons. In order to promote family stability, economic security, and the public interest, the legislature hereby establishes a minimum standard for family care. Nothing contained in this act shall prohibit any employer from establishing family care standards more generous than the minimum standards set forth in this act.

NEW SECTION. Sec. 2. The department shall develop and furnish to each employer a poster which describes an employer's obligations and an employee's

rights under this 1988 act. The poster must include notice about any state law, rule, or regulation governing maternity disability leave and indicate that federal or local ordinances, laws, rules, or regulations may also apply. The poster must also include a telephone number and an address of the department to enable employees to obtain more information regarding this 1988 act. Each employer must display this poster in a conspicuous place. Every employer shall also post its leave policies, if any, in a conspicuous place. Nothing in this section shall be construed to create a right to continued employment.

NEW SECTION. Sec. 3. An employer shall allow an employee to use the employee's accrued sick leave to care for a child of the employee under the age of eighteen with a health condition that requires treatment or supervision. Use of leave other than accrued sick leave to care for a child under the circumstances described in this section shall be governed by the terms of the appropriate collective bargaining agreement or employer policy, as applicable.

NEW SECTION. Sec. 4. The department shall administer and investigate violations of sections 2 and 3 of this act.

NEW SECTION. Sec. 5. The department may issue a notice of infraction if the department reasonably believes that an employer has failed to comply with section 2 or 3 of this act. The form of the notice of infraction shall be adopted by rule pursuant to chapter 34.04 RCW. An employer who is found to have committed an infraction under section 2 or 3 of this act may be assessed a monetary penalty not to

exceed two hundred dollars for each violation. An employer who repeatedly violates section 2 or 3 of this act may be assessed a monetary penalty not to exceed one thousand dollars for each violation. For purposes of this section, the failure to comply with section 2 of this act as to an employee or the failure to comply with section 3 of this act as to a period of leave sought by an employee shall each constitute separate violations. An employer has twenty days to appeal the notice of infraction. Any appeal of a violation determined to be an infraction shall be heard and determined by an administrative law judge. Monetary penalties collected under this section shall be deposited into the general fund.

NEW SECTION. Sec. 6. Nothing in this act shall be construed to reduce any provision in a collective bargaining agreement.

NEW SECTION. Sec. 7. The department shall notify all employers of the provisions of sections 1 through 6 of this act.

Sec. 8. Section 1, chapter 16, Laws of 1973 2nd ex. sess. and RCW 49.12.005 are each amended to read as follows:

For the purposes of this chapter:

(1) The term "department" means the department of labor and industries.

(2) The term "director" means the director of the department of labor and industries, or his designated representative.

(3) The term "employer" means any person, firm, corporation, partnership, business trust, legal representative, or other business entity which

engages in any business, industry, profession, or activity in this state and employs one or more employees and for the purposes of sections 1 through 7 of this 1988 act also includes the state, any state institution, any state agency, political subdivisions of the state, and any municipal corporation or quasi-municipal corporation.

(4) The term "employee" means an employee who is employed in the business of his employer whether by way of manual labor or otherwise.

(5) The term "conditions of labor" shall mean and include the conditions of rest and meal periods for employees including provisions for personal privacy, practices, methods and means by or through which labor or services are performed by employees and includes bona fide physical qualifications in employment, but shall not include conditions of labor otherwise governed by statutes and rules and regulations relating to industrial safety and health administered by the department.

(6) For the purpose of this 1973 amendatory act a minor is defined to be a person of either sex under the age of eighteen years.

(7) The term "committee" shall mean the industrial welfare committee.

NEW SECTION. Sec. 9. Sections 1 through 7 of this act are each added to chapter 49.12 RCW.

NEW SECTION. Sec. 10. Prior to the effective date of this act, the department of labor and industries may take such steps as are necessary to ensure that sections 1 through 8 of this act are implemented on their effective date.

NEW SECTION. Sec. 11. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 12. This act shall take effect on September 1, 1988.

Passed the House March 9, 1988.

Passed the Senate March 6, 1988.

Approved by the Governor March 24, 1988.

Filed in Office of Secretary of State March 24, 1988.

CHAPTER 243

[Substitute Senate Bill 6426]

EMPLOYER-GRANTED LEAVE—CARE FOR FAMILY MEMBERS

AN ACT Relating to use of employer-granted leave to care for family members with serious medical conditions; amending RCW 49.12.270; adding new sections to chapter 49.12 RCW; and providing an effective date.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 49.12.270 and 1988 c 236 s 3 are each amended to read as follows:

(1) If, under the terms of a collective bargaining agreement or employer policy applicable to an employee, the employee is entitled to sick leave or other paid time off, then an employer shall allow an employee to use any or all of the employee's ((~~accrued~~)) choice of sick leave or other paid time off to care for: (a) A child of the employee ((~~under the age of eighteen~~)) with a health condition that requires treatment or supervision; or (b) a spouse, parent, parent-in-law, or grandparent of the employee who has a serious health condition or an emergency condition. An employee may not take advance leave until it has been earned. The employee taking leave under the circumstances described in this section must comply with the terms of the collective bargaining agreement or employer policy applicable to the leave, except for any terms relating to the choice of leave.

(2) Use of leave other than ((~~accrued~~)) sick leave or other paid time off to care for a child, spouse, parent, parent-in-law, or grandparent under the circumstances described in this section shall be governed by the terms of the appropriate collective bargaining agreement or employer policy, as applicable.

NEW SECTION. Sec. 2. A new section is added to chapter 49.12 RCW to read as follows:

The definitions in this section apply throughout RCW 49.12.270 through 49.12.295 unless the context clearly requires otherwise.

(1) "Child" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis who is: (a) Under eighteen years of age; or (b) eighteen years of age or older and incapable of self-care because of a mental or physical disability.

(2) "Grandparent" means a parent of a parent of an employee.

(3) "Parent" means a biological parent of an employee or an individual who stood in loco parentis to an employee when the employee was a child.

(4) "Parent-in-law" means a parent of the spouse of an employee.

(5) "Sick leave or other paid time off" means time allowed under the terms of an appropriate collective bargaining agreement or employer policy, as applicable, to an employee for illness, vacation, and personal holiday.

(6) "Spouse" means a husband or wife, as the case may be.

NEW SECTION. Sec. 3. A new section is added to chapter 49.12 RCW to read as follows:

An employer shall not discharge, threaten to discharge, demote, suspend, discipline, or otherwise discriminate against an employee because the employee: (1) Has exercised, or attempted to exercise, any right provided under RCW 49.12.270 through 49.12.295; or (2) has filed a complaint, testified, or assisted in any proceeding under RCW 49.12.270 through 49.12.295.

NEW SECTION. Sec. 4. This act takes effect January 1, 2003.

Passed the Senate March 12, 2002.

Passed the House March 8, 2002.

Approved by the Governor March 29, 2002.

Filed in Office of Secretary of State March 29, 2002.