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ATTORNEY GENERAL

September 4, 2026

***Via Federal eRulemaking Portal***

The Honorable Bryan Bedford  
Administrator  
Federal Aviation Administration  
1200 New Jersey Avenue S.E.  
Washington, DC 20590

RE: Docket No. FAA-2026-6739, Ensuring Passenger Safety by Preempting Duty and Rest Requirements, 91 Fed. Reg. 40,902 (July 6, 2026)

Dear Administrator Bedford:

The Attorneys General of California, Arizona, Colorado, Connecticut, the District of Columbia, Hawai'i, Illinois, Maine, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, Oregon, Virginia, and Washington respectfully submit the comment below in response to the Notice of Proposed Rulemaking (NPRM) promulgated by the Federal Aviation Administration (FAA) at Docket No. FAA-2026-6739, entitled Ensuring Passenger Safety by Preempting Duty and Rest Requirements. 91 Fed. Reg. 40,902 (July 6, 2026) (hereinafter, Preempting Duty and Rest Requirements).

Our states have enacted comprehensive worker protection laws and regulations that apply across a wide range of industries. In some states, these protections include a mid-shift meal break, typically 30 minutes, and some states also have short rest breaks before and after a midday break, typically 10 minutes for every 4 hours worked. The FAA's proposal seeks to nullify such state and local protections wherever they apply, even though the FAA's regulations do not require airlines to provide any mid-shift breaks for workers.

We hold three primary objections to the FAA's proposal. First, the proposed rule raises significant separation of powers concerns, as it infringes on the authority of Congress and seeks to improperly overrule judicial precedent. Second, the FAA's preemption analysis is in error. And third, state meal and rest break requirements would not present a burdensome patchwork of regulations for the airline industry. We explain each objection in more detail below.

**I. The FAA cannot unilaterally declare preemption of state and local meal and rest break laws to override unquestioned judicial precedent.**

The proposed rule improperly nullifies binding authority from the judicial branch. Proposed new section 121.468, paragraph (b) of Title 14 of the Code of Federal Regulations asserts that “Section 121.467 of this part preempts any State or local law, rule, regulation, order or standard, or enforcement thereof, covering the subject matter of flight attendant duty and rest periods, including meal and rest breaks.” Preempting Duty and Rest Requirements, 91 Fed. Reg. at 40,909. As the NPRM recognizes, the U.S. District Court, Northern District of California and the Ninth Circuit Court of Appeals have reached the opposite conclusion; these courts held that federal law does not preempt California’s meal and rest break laws in this context. *See Bernstein v. Virgin Am., Inc.*, 227 F. Supp. 3d 1049, 1070-73 (N.D. Cal. 2017); *Bernstein v. Virgin Am., Inc.*, 3 F.4th 1127, 1138-43 (9th Cir. 2021). The U.S. Supreme Court denied review of the Ninth Circuit’s decision in *Bernstein*, 142 S. Ct. 2903 (2022), and to our knowledge no court has questioned or disagreed with the appellate court’s decision.

The proposed preemption language also infringes on the role of the legislative branch. When agencies endeavor to preempt regulations in a field, courts ask “whether [the agency’s] action was within the scope of the agency’s delegated authority” from Congress. *Nat’l Fed’n of the Blind v. United Airlines, Inc.*, 813 F.3d 718, 733 (9th Cir. 2016). Here, the Ninth Circuit has already answered this question as to the FAA, and the answer is no. Especially considering how the Supreme Court has recently scaled back the deference given to agencies’ interpretation of statutes, *see Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412 (2024), the FAA has no basis or authority to overrule binding judicial precedent on its own in this instance. The *Bernstein* decision remains good law. In its wake, Congress may change the law but the FAA, acting alone and through diktat, cannot declare the law changed.

That the FAA’s preemption determination is *post hoc* reflects a deeper flaw. Without making any actual changes to the duty and rest period regulation in section 121.467, the proposed rule simply declares that this regulation now preempts the field. Preempting Duty and Rest Requirements, 91 Fed. Reg. at 40,909. The Supreme Court has counseled “that a court should decline to defer to a merely convenient litigating position or *post hoc* rationalization advanced to defend past agency action against attack.” *Kisor v. Wilkie*, 588 U.S. 558, 579 (2019) (cleaned up). The NPRM does not cite to—and we have not found—any instance where an agency has superseded binding judicial precedent by fiat. In this context, the FAA cannot simply stick a preemption label on a regulation where a court has already determined the exact regulation does not have preemptive effect.

In short, the proposed rule exceeds the agency’s authority and raises serious concerns under the U.S. Constitution’s separation of powers. While courts have recognized the authority of federal agencies to preempt state and local laws in certain circumstances, that authority does not extend to this instance, where federal courts have already determined that the relevant Congressional statute and agency regulation do not have preemptive effect.

## **II. State meal and rest break laws promote worker welfare without undermining aviation safety.**

We respectfully disagree with the FAA's conclusion that its duty period regulations preclude enforcement of state and local meal and rest break laws through field preemption, conflict preemption, and express preemption under the Airline Deregulation Act of 1978. The Agency's proposal is inconsistent with current preemption law.

To be sure, the Supremacy Clause in Article VI of the Constitution gives the federal government the power to preempt state and local law. Art. VI, cl. 2. But as a starting point in any Supremacy Clause analysis, courts should begin “with the assumption that the historic police powers of the States [are] not to be superseded by . . . Federal Act unless that [is] the clear and manifest purpose of Congress.” *Cipollone v. Liggett Grp., Inc.*, 505 U.S. 504, 516 (1992) (quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947)). The Supreme Court has repeatedly recognized that “[s]tates possess broad authority under their police powers to regulate the employment relationship to protect workers within the State.” *DeCanas v. Bica*, 424 U.S. 351, 356 (1976); *see also Chamber of Com. of U.S. v. Whiting*, 563 U.S. 582, 588 (2011) (quoting *DeCanas*); *Arizona v. United States*, 567 U.S. 387, 404 (2012) (quoting *DeCanas*); *Hawaiian Airlines, Inc. v. Norris*, 512 U.S. 246, 252 (1994) (“Pre-emption of employment standards within the traditional police power of the State should not be lightly inferred.” (cleaned up)).

Although courts have recognized that the Federal Aviation Act, 49 U.S.C. § 40103 *et seq.*, with its corresponding regulations “preempts the entire field of aviation safety through implied field preemption,” *see Montalvo v. Spirit Airlines*, 508 F.3d 464, 468 (9th Cir. 2007), the Ninth Circuit in *Bernstein* held that “California’s meal and rest break requirements have no *direct* bearing on the field of aviation safety.” 3 F.4th at 1139 (emphasis in original). Nor does section 121.467, according to the court, “resemble the type of comprehensive regulation or contain the pervasive language that we consider necessary to discern congressional intent to occupy the field.” *Id.* This section simply limits the “maximum hours” that a flight attendant can work in a duty period in response to the statutory directive to regulate the “maximum hours or periods of service” of airline employees. 14 C.F.R. § 121.467; 49 U.S.C. § 44701(a)(4). The FAA’s regulations do not prescribe in detail all of the diverse duties of flight attendants when in flight; they simply (and correctly) assume that they be available to ensure passenger safety. *See Preempting Duty and Rest Requirements*, 91 Fed. Reg. at 40,904. As the *Bernstein* court decided, “The regulation does not compel us to conclude that Congress left no room for states to prescribe meal periods and ten-minute rest breaks within the maximum total duty period allowed under federal law.” 3 F.4th at 1139.

Meal and rest breaks are regulations designed to promote worker welfare, not aviation safety. *See, e.g., Donohue v. AMN Servs., LLC*, 481 P.3d 661, 669 (Cal. 2021) (“Meal and rest periods have long been viewed as part of the remedial worker protection framework.”); *Am. Broad. Companies, Inc. v. Roberts*, 461 N.E.2d 856, 858 (N.Y. 1984) (“The Legislature has determined that persons who work the designated hours must, for their own health and welfare, be given adequate opportunity to eat and rest.”); *Lopez Demetrio v. Sakuma Bros. Farms*, 355

P.3d 258, 263 (Wash. 2015) (noting that the policy behind rest breaks was to ensure that “employees [are] afforded healthy working conditions and adequate wages”); Or. Rev. Stat. § 653.261(1)(a) (providing administrative authority to adopt meal periods and rest periods “as may be necessary for the preservation of the health of employees”). While the NPRM describes the purpose of the FAA’s duty and rest periods as “fatigue mitigation,” it implicitly acknowledges that mid-shift breaks serve different basic “physiological needs (*e.g.*, using the restroom and consuming food and drink).” Preempting Duty and Rest Requirements, 91 Fed. Reg. at 40,905-06.

Similarly, the FAA’s conflict preemption analysis in the NRPM falls short. The NPRM asserts, “To the extent that a State law purports to restrict the availability of a flightcrew member or a flight attendant to perform their safety-related duties during a duty period, such a law conflicts with the Federal regulatory framework and is preempted.” Preempting Duty and Rest Requirements, 91 Fed. Reg. at 40,904. The FAA ignores the conclusions of the *Bernstein* court, which found that airlines could comply with both state meal and rest break requirements and federal regulations and that state “break requirements do not stand as an obstacle to the accomplishment and execution of FAA safety regulations pertaining to flight attendants.” 3 F.4th at 1139-41.

Indeed, meal and rest break laws are not as rigid as the FAA purports them to be, and meal and rest break laws already coexist with wide-ranging industries where workers may need to respond to emergency safety issues. It is not reasonable to assume, as the FAA does, that flight attendants would not cut short a break to respond to an emergency or safety event like a violent passenger or smoke in the cabin. In California, for instance, the state supreme court has said that employers can simply pay a premium wage equal to one hour’s work in the rare cases where an emergency interrupts a rest period. *Augustus v. ABM Sec. Servs., Inc.*, 2 Cal. 5th 257, 272, *as modified on denial of reh’g* (Mar. 15, 2017). Furthermore, states both have the ability to and have actually implemented alternative pathways for compliance to accommodate the unique circumstances of certain industries. For example, California, and Oregon allow employers to apply for exemptions in cases of undue hardship. *See, e.g.*, Cal. Code Regs. tit. 8, § 11090(17); Or. Admin. R. 839–020–0050(3). Certain states have also chosen to exempt all employees covered under a collective bargaining agreement, or employees covered by the Federal Railway Labor Act, as flight attendants are. *See, e.g.*, Cal. Lab. Code § 512.2; Ky. Rev. Stat. Ann. § 337.355; Minn. Stat. § 177.254(3); Nev. Rev. Stat. § 608.019(3)(b); Or. Admin. R. 839-020-0050(7). Some state courts also allow collective bargaining provisions to substitute for statutory protections where “the exigencies of [an] industry are such that it was to the advantage of both [an employer] and its employees to negotiate an alternative arrangement better suited to their needs.” *See, e.g., Am. Broad. Companies, Inc.*, 461 N.E.2d at 859. And, contrary to the FAA’s assertion, the fact that flight attendants would not be free “to come and go” mid-flight would not necessarily violate any of the undersigned states’ meal and rest break rules. *See* Preempting Duty and Rest Requirements, 91 Fed. Reg. at 40,904.

Finally, the FAA’s finding of express preemption under the Airline Deregulation Act (ADA) codified at 49 U.S.C. § 41713 is likewise misguided. *See* Preempting Duty and Rest Requirements, 91 Fed. Reg. at 40,905. The ADA prohibits state and local laws and regulations

that are “related to a price, route, or service of an air carrier that may provide air transportation.” 49 U.S.C. § 41713(b)(1). As the NPRM notes, the Supreme Court has given this provision a broad scope. Preempting Duty and Rest Requirements, 91 Fed. Reg. at 40,905 (citing *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 383-84 (1992)). But the court in *Morales* was also clear that “[s]ome state actions may affect [airline fares] in too tenuous, remote, or peripheral a manner’ to have pre-emptive effect.” *Morales*, 504 U.S. at 390 (quoting *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 100 n.21 (1983)).

In any event, relevant case law forecloses the FAA’s conclusion. The *Bernstein* court explicitly held that the ADA did not preempt generally applicable meal and rest break requirements as applied to the airline industry. 3 F.4th at 1141. The *Bernstein* court relied on reasoning from the Federal Aviation Administration Authorization Act of 1994 (F4A)<sup>1</sup> case of *Dilts v. Penske Logistics, LLC*, 769 F.3d 637 (9th Cir. 2014), where the court held that

generally applicable background regulations that are several steps removed from prices, routes, or services, such as prevailing wage laws or safety regulations, are not preempted, even if employers must factor those provisions into their decisions about the prices that they set, the routes that they use, or the services that they provide. Such laws are not preempted even if they raise the overall cost of doing business . . . .

*Dilts*, 769 F.3d at 646.

In finding against ADA preemption, the *Bernstein* court joined the many courts across the country that have similarly held that the ADA or F4A do not preempt state-level worker protections. See *Abdu-Brisson v. Delta Airlines, Inc.*, 128 F.3d 77, 86 (2d Cir. 1997) (“[T]he New York state and local [anti-discrimination] laws do not directly affect prices, routes or services and although enforcement of the claims may have some effect on prices, routes or services nothing in the record suggests that this effect is the type of effect which Congress intended to prohibit under the ADA.”); *Lupian v. Joseph Cory Holdings LLC*, 905 F.3d 127, 135-36 (3d Cir. 2018) (state wage-deduction law not preempted by F4A); *Wellons v. Nw. Airlines, Inc.*, 165 F.3d 493, 495-96 (6th Cir. 1999) (state racial discrimination claims not preempted by ADA); *Aloha Islandair Inc. v. Tseu*, 128 F.3d 1301, 1303 (9th Cir. 1997) (state disability discrimination claims not preempted by ADA); *Air Transp. Ass’n of Am. v. City & Cnty. of San Francisco*, 266 F.3d 1064, 1074–75 (9th Cir. 2001) (local anti-discrimination law not preempted by ADA); *California Trucking Ass’n v. Bonta*, 996 F.3d 644, 649 (9th Cir. 2021) (state law that presumes workers are employees and not independent contractors not preempted

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<sup>1</sup> The NPRM improperly disregards as “an inapt parallel” the Ninth Circuit’s reliance on F4A case law, see Preempting Duty and Rest Requirements, 91 Fed. Reg. at 40,905, but this ignores the established practice of courts to look to identical language in other statutes to aid their interpretation. See *Rowe v. New Hampshire Motor Transp. Ass’n*, 552 U.S. 364, 370 (2008) (“And we follow *Morales* in interpreting similar language in the [F4A] before us here.”). In fact, the NPRM itself cites to *Rowe*, a F4A case. Preempting Duty and Rest Requirements, 91 Fed. Reg. at 40,905.

by F4A); *Air Transp. Ass'n of Am., Inc. v. Washington Dep't of Lab. & Indus.*, 859 F. App'x 181, 184 (9th Cir. 2021) (state paid sick leave law not preempted by ADA)<sup>2</sup>; *Ward v. United Airlines, Inc.*, 986 F.3d 1234, 1243 (9th Cir. 2021) (state law requiring accurate wage statements not preempted by ADA); *Parise v. Delta Airlines, Inc.*, 141 F.3d 1463, 1467-68 (11th Cir. 1998) (age discrimination claim not preempted by ADA); *Thompson v. U.S. Airways, Inc.*, 717 F. Supp. 2d 468, 479 (E.D. Pa. 2010) (state law minimum wage and overtime claims not preempted by ADA). The FAA's mere declaration cannot overturn these courts' conclusions.

In sum, Congress has expressed no intent to preempt general worker welfare laws as applied to workers in the airline industry. Indeed, the Railway Labor Act—the law that governs labor relations in the skies—“does *not* provide for, nor does it manifest any interest in, national or systemwide uniformity in substantive labor rights.” *Alaska Airlines Inc. v. Schurke*, 898 F.3d 904, 919 (9th Cir. 2018) (emphasis in original, footnote and citation omitted). As the cases above have found, neither does the ADA. We urge the FAA to reconsider its position.

### **III. Concerns about the difficulty of complying with a patchwork of state laws and regulations are overstated.**

We also write to express that allowing states and localities to enforce basic worker protections will not result in the “complex patchwork of regulatory requirements” that the FAA fears. *See* Preempting Duty and Rest Requirements, 91 Fed. Reg. at 40,903. The NPRM cites meal and rest break laws from 19 states. *Id.* at 40,904 n.6. In reviewing these laws, the required meal period applicable to airline employees is always 20 or 30 minutes. While the NPRM raises concerns about the timing requirements for this break, the laws with timing provisions all follow the same principle that the break should not be at the beginning or end of the shift, but rather somewhere in the middle. And where rest periods are mentioned in the cited laws, the states require 10 minutes for every 4 hours worked. *See* 7 Colo. Code Regs. § 1103–5.2; Nev. Rev. Stat. § 608.019(2); Or. Admin. R. 839–020–0050(6); Wash. Admin. Code § 296–126–092(4). In short, there is no significant variation in these laws.

Furthermore, the same worker is not subject to multiple states' wage and hour laws simply by crossing state lines. States only apply laws to workers with significant contacts with their state and the Due Process clause appropriately limits the extraterritorial application of state laws. *See Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 818 (1985) (for extraterritorial application, “[a] State must have a significant contact or significant aggregation of contacts, creating state interests, such that choice of its law is neither arbitrary nor fundamentally unfair.”). Airlines would therefore only have to determine which workers are connected to which primary state, a task they must already do for purposes like state tax withholding, minimum wage and

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<sup>2</sup> Notwithstanding the Ninth Circuit's conclusion in this cited case, we recognize that some district courts elsewhere have held that the ADA preempts local paid sick leave laws where they were applied to workers with “de minimis” connections to the locality, *Delta Air Lines, Inc. v. New York City Dep't of Consumer Affs.*, 564 F. Supp. 3d 109, 125 (E.D.N.Y. 2021), or where after trial the court found a “significant impact” to airlines' services, *Air Transp. Ass'n of Am., Inc. v. Campbell*, No. 18-CV-10651-ADB, 2023 WL 3773743, at \*12 (D. Mass. June 2, 2023).

overtime, or paid sick leave. *See, e.g., Air Transp. Ass’n of Am. v. Washington Dep’t of Lab. & Indus.*, 410 F. Supp. 3d 1162, 1173 (W.D. Wash. 2019) (noting how one airline applies paid sick leave laws based on the airport where flight attendants are domiciled).

We consider it particularly important to respond to this “patchwork” concern because, while the proposed rule only preempts laws “covering the subject matter of flight crew [or flight attendant] duty and rest periods, including meal and rest breaks,” the NPRM’s reasoning could be extended to eliminate other important worker protections. *See* Preempting Duty and Rest Requirements, 91 Fed. Reg. at 40,909. In its discussion of field preemption, the NPRM states that the “FAA has not only occupied the field of aviation safety generally, but has specifically occupied the field of flight attendant duty regulations . . . .” *Id.* at 40,904. This statement could be applied to preempt laws like mandatory paid sick leave provisions, protections for pregnant workers and other forms of family leave, other anti-discrimination protections, or laws that address distinctly state or regional concerns.<sup>3</sup> As expressed above, we do not believe that the FAA possesses the authority through this proposed rule to preempt state labor standards—especially where courts have already found such laws not to be preempted.

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<sup>3</sup> The FAA’s desired one-size-fits-all approach to worker safety would fail to account for significant differences across the country. For example, Sky Harbor Airport in Phoenix, Arizona often exceeds 110 degrees Fahrenheit during the summer, presenting grave safety risks. The proposed rule could prevent Arizona and others in similar circumstances from addressing the impact of high heat on workers. *Cf. Garcia v. San Antonio Metro. Transit Auth.*, 469 U.S. 528, 546 (1985) (“The essence of our federal system is that within the realm of authority left open to them under the Constitution, the States must be equally free to engage in any activity that their citizens choose for the common weal, no matter how unorthodox or unnecessary anyone else—including the judiciary—deems state involvement to be.”).

For the reasons stated above, we request that you do not proceed to finalize the proposed rule. We thank you for your consideration of our comments.

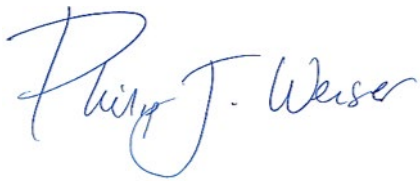
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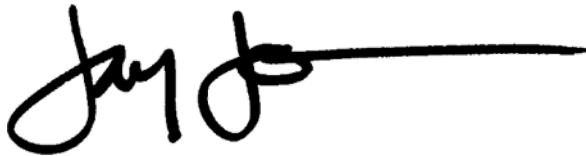
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