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December 20, 2016

*Via Electronic Mail and U.S. Mail*

Chris Maberry  
Southwest Airlines  
2702 Love Field Drive, HDQ-4GC  
Dallas, TX 75235  
Chris.Maberry@wnco.com

Re: Changes to the Protected Sick Leave Policy

Dear Mr. Maberry:

I write on behalf of Transportation Workers Union Local 555 and Local 556 (“the Unions”) regarding Southwest’s recent announcement of changes to its protected sick leave policy for the 2017 calendar year. The Unions have serious concerns with the new, unilaterally implemented policy. Southwest’s policy violates California-based employees’ rights under California Labor Code sections 233 and 234. Southwest’s decision to revise its policy for 2017 does not appear to have been made in response to any changes in the law, and the changes do not resolve the problems previously identified by the Unions. Instead, the changes to the policy violate California Labor Code section 233 in additional ways. The Unions were provided little to no opportunity to provide input regarding the policy changes prior to the policy being broadly distributed to the members. The Unions ask that the policy be revised immediately to address the legal defects identified below, and to allow the parties to discuss any future changes to the policy. We hope that the parties are able to resolve these issues informally and without the need for litigation.

1. The policy distributed to the Unions’ members continues to violate Labor Code section 233 by automatically “burning” employees’ protected leave without their consent. Section 233 requires Southwest to “permit an employee to use” half of her expected annual paid sick leave for certain specified purposes, Lab. Code § 233; but the law does not allow an employer to *require* employees to use such leave. As we have discussed, requiring employees to “burn” their section 233 leave could have the adverse effect of leaving employees without *any*

portion of their accrued, paid sick leave to care for family members. For example, if an employee is herself sick in the first half of the year, and is forced to take leave pursuant to section 233 to attend to her personal illness, she may have no section 233 leave remaining later in the year in the event a family member is ill. In effect, Southwest's policy reads the right to use accrued leave to care for family members out of the statute, and replaces it only with a right to use the first half of a year's sick leave entitlement for section 233 purposes. This was clearly not the intent of the Legislature in broadening the protections of section 233 in the January 1, 2016 amendments to section 233, which prompted Southwest to issue its 2016 policy and set off our first round of discussions on this matter.

Southwest's proposed 2017 policy does not solve the problem the Unions identified with the 2016 policy. It appears that Southwest intends to continue "burning" employees' protected leave without their consent. The policy changes may slow the rate at which employees burn this protected leave, but only because it illegally limits employees to using a portion of the protected leave to which they are entitled, as explained below.

2. The 2017 policy that Southwest distributed to the Unions' members creates a new, significant legal violation by establishing what Southwest terms an "allotment method" that is clearly contrary to the Labor Code. Section 233 requires that Southwest permit an employee to use "the employee's accrued and available sick leave entitlement, *in an amount not less than the sick leave that would be accrued during six months at the employee's then current rate of entitlement*" to care for kin, among other purposes. Lab. Code § 233 (emphasis added). Protected leave itself does not have to be accrued or allotted; section 233 entitles employees to use paid sick leave for certain purposes as it accrues under Southwest's existing paid sick leave policy (here, the Unions' respective collective bargaining agreements). As long as an employee has sufficient accrued paid sick leave, he or she should be able to use an amount of that leave that is equal to what the employee would normally accrue in a six-month period for the purposes specified in section 233. But under Southwest's new policy, an employee will be limited to using the number of paid protected sick days Southwest has arbitrarily "allotted."

For example, Employee Smith expects to accrue 12 days of paid sick leave in 2017, giving him 6 days that he is entitled to use for section 233 purposes during the year. He has 7 days of paid sick leave accrued and available. On January 1, 2017, he is absent for 4 days. He should be able to have all 4 days covered by section 233. Under Southwest's new policy, he would be limited to 3 days of protected leave in January, because Southwest has chosen to "allot" only 3 "protected" paid sick leave days in January. By creating a monthly "allotment" system — which applies only to the use of protected sick leave, and not to other uses of paid sick leave — Southwest's new policy denies employees the right to use their accrued paid sick leave for all the purposes specified in section 233, in violation of that section and section 234.

Southwest has provided no explanation for its decision to create an "allotment" system that applies to the use of section 233 leave only. Section 233 does not permit Southwest to create an allocation system for section 233-covered leave that treats leave taken for purposes covered by section 233 differently from other paid sick leave provided by the Company.

3. The policy document sent to TWU Local 555 with regard to California-based employees outside of Oakland presents an additional concern. Under Southwest's new "allotment" system for protected sick leave, employees are allotted 24 hours of protected leave in January, and 4 hours per month thereafter until the full amount of protected leave has been "allotted." Given Southwest's practice of "burning" protected leave without employees' consent, TWU Local 555 requests clarification regarding how Southwest intends to treat leave taken when an employee has only 4 hours of protected leave that have been allotted (or 12 hours for a two-day absence, etc.). Will Southwest "burn" the "allotted" 4 hours of protected leave to cover an 8 hour absence? If so, will the employee also accrue points under the Company's absence control policy?

We would like to resolve this matter quickly. Please advise us within three business days whether Southwest is available to discuss changes to the protected sick leave policy. Although the Unions have continued concerns with Southwest's 2016 policy, we ask that you delay implementation of the 2017 policy until we have had a chance to meet.

Sincerely,

A handwritten signature in blue ink, appearing to read 'B. J. Chisholm', with a long horizontal flourish extending to the right.

Barbara J. Chisholm

Cc: Greg Puriski, Audrey Stone, Ed Cloutman (via electronic mail)