

Background

1. Bobbie Roth is a mother of two young children and resides in New York State.
2. Ms. Roth has been employed by National Railroad Passenger Corporation d/b/a Amtrak (“Amtrak”) since December 16, 2011. For the last nine years she has worked for Amtrak as a Locomotive Engineer. Until recently, she was the only female Locomotive Engineer operating out of her home station in [REDACTED].
3. Ms. Roth takes great pride in her job, and in being one of the few women in a male-dominated profession. She trained for two years to become an engineer.
4. As a Locomotive Engineer, Ms. Roth is usually solely responsible for the operation of the train. While the events described below took place, for three days a week, Ms. Roth had a set schedule of routes. She also spent three days of every week on-call. While on-call, she was expected to be available to pick up additional routes as needed. As long as she agreed to take the routes offered while on-call, she was guaranteed to be paid for a minimum of 40 hours a week, even if her actual hours worked were less. However, if she was unable to take a route while on-call, this “broke” her guaranteed hours, and she was only paid for her hours actually worked. As of the time this charge was filed, Ms. Roth’s schedule has been altered so she only has a predetermined schedule two days a week, and is on-call for four days a week.
5. Ms. Roth gave birth to her son on [REDACTED], 2019. After her maternity leave, she sought accommodations from Amtrak to allow her to express milk during her shifts. In lieu of accommodating her, Amtrak asked Ms. Roth how much money she wanted in exchange for ending her employment. She refused this offer, and Amtrak subsequently denied her accommodations to pump at work. As a result, she stopped breastfeeding her son when he was six months old, six months sooner than she had planned.
6. In early 2023, Ms. Roth learned she was pregnant and publicly announced her pregnancy in April of 2023. On the advice of her doctor, she began her maternity leave on July 21, 2023.

Discriminatory and Retaliatory Absence Policy

7. On July 28, 2023, Ms. Roth received a disciplinary notice (Exhibit A) stating that she was in violation of Amtrak’s attendance policy. Amtrak’s attendance policy (Exhibit B) gives employees “occurrences” for unauthorized absences, even those that the employee notifies their employer about in advance. Missing any work or being unable to take a route while on-call is considered an “occurrence.” Although Amtrak’s policy excludes absences approved under the Americans with Disabilities Act (ADA) and the Family and Medical Leave Act (FMLA), the policy does not mention the Pregnant Workers Fairness Act (PWFA) or provide

any information about how to get excused absences to receive prenatal care or due to pregnancy-related illness.

8. The disciplinary notice that Ms. Roth received stated that she had violated the policy by incurring three “occurrences” within 30 days. Specifically, the disciplinary notice said that she had been given occurrences for three absences on July 3, 2023; July 10, 2023; and July 17, 2023. All of these absences were to allow Ms. Roth to attend prenatal appointments. She provided her employer with doctor’s notes immediately after each appointment, confirming that her absence was to attend pregnancy-related medical appointments. Nevertheless, these absences were included in the disciplinary notice.
9. Ms. Roth gave birth to her daughter on [REDACTED], 2023, and took less than 3 months of leave. She returned to work in early November.
10. On February 15, 2024, Ms. Roth received another disciplinary notice (Exhibit C) stating that not only were her absences for known prenatal care still being used as a basis for discipline, the first five days of her maternity leave from July 21, 2023 to July 25, 2023 had been counted as unexcused absences, resulting in 5 additional occurrences.
11. The February 15th disciplinary notice stated that, as a result of Ms. Roth’s unexcused absences, Amtrak considered her to be in violation of Amtrak’s absence policy, as she had more than 11 occurrences in a 12-month period. The disciplinary notice also notified Ms. Roth that further absences could result in disciplinary actions up to and including termination. As a result of the disciplinary notice, Ms. Roth was prevented from taking time off work again until July 2024, even for illnesses or to attend medical appointments, as any additional absence would put her in further violation of Amtrak’s absence control policy. This negatively impacted her ability to care for herself and her family when ill, and to obtain necessary postpartum care.
12. Upon information and belief, it would not have imposed an undue hardship on Amtrak to not discipline Ms. Roth for her pregnancy-related absences in July of 2023.
13. By disciplining Ms. Roth for absences due to known pregnancy-related needs, Amtrak denied Ms. Roth an accommodation in violation of the PWFA and New York State Human Rights Law (NYSHRL) and retaliated against her for requesting and using reasonable accommodations in violation of the PWFA and NYSHRL.
14. By maintaining an absence policy that purports to discipline employees for pregnancy-related absences, and by actually disciplining employees for pregnancy-related absences, Amtrak has interfered with Ms. Roth’s exercise of rights in violation of the PWFA.

15. Moreover, by maintaining such a policy, Amtrak is engaging in a systemic pattern or practice of denying employees accommodations they are entitled to under the PWFA and NYSHRL, retaliating against employees for requesting and using accommodations under the PWFA and NYSHRL, and interfering with employees' exercise and enjoyment of their right to accommodations pursuant to the PWFA.

Failure to Accommodate Lactation Needs

16. Amtrak's written policy regarding lactation (Exhibit D) stands in flagrant violation of its obligations under the PWFA and NYSHRL. As an initial matter, it limits lactation-related accommodations to a fixed period of one year following the birth of a child, irrespective of the employee's individual needs. Second, the policy states that Amtrak will make designated lactation spaces available only "[i]n certain locations," and otherwise will make only "reasonable efforts" to "locate" lactation spaces for employees. Both the PWFA and the NYSHRL require far more than this, stating that employers *must* accommodate employees' lactation-related needs absent *undue hardship* – an affirmative defense that would require Amtrak to establish significant difficulty or expense to excuse its failure to accommodate.
17. On October 12, 2023, Ms. Roth sent Amtrak a "Nursing Mothers Plan" (Exhibit E), informing her employer of her intent to express milk at work once she returned from maternity leave. She requested assistance finding a private space to pump milk. She also communicated that she would need pumping breaks 15 to 30 minutes long, two to three times per day.
18. On October 26, 2023, Ms. Roth received a response from [REDACTED], a Senior Compliance Specialist with Amtrak's HR Compliance department. In an email exchange (Exhibit F, page 7), Ms. [REDACTED] asked Ms. Roth "how [she] anticipate[d] this request being accommodated[?]" as there is typically only one Locomotive Engineer on a train, and Locomotive Engineers are not provided breaks while they are operating the train alone. As Ms. Roth's employer, it is Amtrak's responsibility to identify available reasonable accommodations. Instead, Amtrak improperly put the burden on Ms. Roth to suggest accommodations due to its own failure to create a protocol to accommodate Engineers who need lactation breaks.
19. Even though it was not her responsibility to do so, Ms. Roth provided numerous suggestions for how Amtrak could accommodate her. Ms. Roth pointed out that the difficulty with giving her breaks while she was operating the train would only be an issue during routes where her travel time exceeded three hours, as there is a layover break at the end of each route that gives her sufficient time to pump. She suggested that she could work in a territory that would limit her to these shorter routes. She requested assistance identifying private lactation spaces at the terminals where she would be taking her layover breaks. She also requested permission to turn down on-call routes that would exceed the time she can wait

between pumping breaks, without facing the usual penalty for refusing a route while on-call. As an alternative, Ms. Roth raised the option of temporary transfer to another position while she is lactating, expressing an interest in any current vacancy.

20. In spite of Ms. Roth's active participation in the interactive process and proactive suggestions, Amtrak failed to meaningfully engage in the interactive process with Ms. Roth to discuss her suggestions. Instead, on November 6, 2023, Ms. Roth received a determination letter dated November 3, 2023 (Exhibit G) stating that Amtrak would not provide her with accommodations to allow her to take pumping breaks. Amtrak denied these accommodations, in part, on the basis that they could not provide her a "limited schedule" and that taking on-call trips was an essential function of her job (Exhibit F, page 1). Amtrak made this statement even though the PWFA requires them to temporarily suspend essential functions, absent undue hardship. Amtrak's response also made no mention of her request for temporary transfer.
21. Upon information and belief, Amtrak has given accommodations similar to those that Ms. Roth requested to Locomotive Engineers and other personnel involved in the operation of trains at Ms. Roth's home station for reasons other than pregnancy or childbirth. One Engineer* experienced a mental health crisis, and Ms. Roth's employer created a temporary yard job in order to keep him at his home station under closer supervision. Another Engineer* was given a modified schedule after he got a legal citation for driving while intoxicated that made him ineligible for certain routes. A former Engineer* was transferred to a managerial position in order to be closer to his child with a serious health condition. A former Conductor* was transferred after he failed a colorblindness test that is a requirement for the conductor position.
22. As a result of Amtrak's refusal to accommodate Ms. Roth, Ms. Roth had to return to work without any guarantee that she would be able to get lactation breaks. While her predetermined schedule of routes did not require her to go more than three hours between pumping breaks and she typically had sufficient time during layovers to pump, during the three days a week that she was on-call, she was expected to be willing to take any route offered to her. When offered routes more than three hours long, Ms. Roth was forced to turn down these routes and face the wage penalty.
23. Amtrak also did not take affirmative steps to identify private spaces at stations or other locations along Ms. Roth's routes for her to take lactation breaks. Instead, Ms. Roth had to inquire about such spaces herself, relying on guidance from coworkers or station personnel.
24. Ms. Roth was also denied access to suitable pumping spaces on trains even when she was not solely responsible for operating them. Recently, on a trip she took

* Names available upon request to counsel.

with another Engineer, Amtrak refused Ms. Roth's request to use one of the unoccupied private roomettes on this train as a pumping space. Upon information and belief, providing Ms. Roth with a private roomette would not have imposed an undue hardship on Amtrak, as there were unsold roomettes available on the train.

25. As a result of Amtrak's refusal to provide Ms. Roth with accommodations to give her regular pumping breaks and a private space to pump, Ms. Roth has suffered personal, professional, and financial consequences.
26. Because Amtrak failed to find suitable accommodations to allow her to take trips longer than 3 hours, Ms. Roth has had to refuse longer routes offered to her while on-call, breaking her 40-hour guarantee and resulting in significant financial loss.
27. Amtrak's failure to find suitable accommodations has also resulted in Ms. Roth losing her qualifications to run longer, more lucrative routes. Once an Engineer becomes qualified to run a route, they must run that route at least once a year to maintain their qualification. These refamiliarization trips are always done alongside another Engineer. Even though Ms. Roth could take pumping breaks during refamiliarization trips due to the presence of a second Engineer, Amtrak's failure to provide her with a private space to pump on board has meant that she is unable to take refamiliarization trips longer than three hours. As a result, she has already lost her qualification to do one route, and may lose other qualifications as well. Because of her lost qualification, Ms. Roth is unable to run this high-paying route, and will have to become re-qualified. The re-qualification process includes not only a test, but taking six unpaid trips along the route. Losing this qualification also jeopardizes Ms. Roth's employment long-term, as missing qualifications can be the basis for taking away her on-call shifts altogether.
28. By failing to provide Ms. Roth for a reasonable accommodation for her lactation-related needs, Amtrak has violated Ms. Roth's right to a reasonable accommodation for her pregnancy-related condition in violation of the PWFA and NYSHRL.
29. By denying Ms. Roth the same accommodations that were given to other similarly-situated Locomotive Engineers who had limitations unrelated to pregnancy or childbirth, Amtrak has discriminated against Ms. Roth on the basis of a pregnancy- or childbirth-related medical condition in violation of the Pregnancy Discrimination Act.
30. By maintaining a lactation policy that: (1) purports to limit employees' right to lactation-related accommodations to a maximum of one year following the birth of their child (in violation of the PWFA which has no age limit) and (2) misstates the burden on Amtrak to provide lactation-related accommodations pursuant to the PWFA, Amtrak is engaging in a systemic pattern or practice of denying employees accommodations they are entitled to under the PWFA and NYSHRL,

and interfering with employees' exercise and enjoyment of their right to reasonable accommodations pursuant to the PWFA.

Discriminatory and Retaliatory Hostile Work Environment

31. After she announced her pregnancy, Ms. Roth began to experience differential treatment at work that only worsened when she returned from maternity leave and asserted her right to take lactation breaks. Before announcing her pregnancy, Ms. Roth's relationship with her supervisor, [REDACTED], was friendly and collegial. After announcing her pregnancy, their working relationship chilled considerably. Mr. [REDACTED] became distant and unresponsive. He delayed performing tasks that Ms. Roth depended on him to do or outright ignored Ms. Roth's requests for assistance, culminating in Mr. [REDACTED] mischaracterizing her maternity leave as an unexcused absence. This unprofessional and frigid treatment has only continued since Ms. Roth returned from maternity leave. For example, Mr. [REDACTED] has stopped answering Ms. Roth's emails, and has not responded to requests from Ms. Roth to correct the record on her unexcused absences. As a result, Ms. Roth has been unable to enjoy equal privileges and benefits of employment.
32. This hostile treatment is not isolated to Mr. [REDACTED]. Prior to her maternity leave, Ms. Roth requested to be qualified to run lucrative routes to Burlington and Montreal. Both before and since her maternity leave, Ms. Roth has witnessed other engineers, many of whom were junior to her, get selected by managers to be qualified to run these routes. However, in spite of her expressed interest in receiving the same qualification, Ms. Roth has been routinely passed over for these routes by multiple managers. Denied lactation accommodations by Amtrak and singled out by her supervisors, Ms. Roth has missed out on the opportunities to earn income that her peers are given as a matter of course.
33. Additionally, during a recent shift, Ms. Roth was informed that she would not be getting her usual layover between two shorter trips. Ms. Roth reminded Mr. [REDACTED] that she relies on that layover to pump, and he said he would find a solution. However, she then learned from her coworker* that Mr. [REDACTED] and four other supervisory staff members were having a discussion about Ms. Roth's pumping breaks within earshot of other employees, calling her request "ridiculous." Ms. Roth approached the group and heard that they were still speaking about her, although they stopped speaking when they noticed her. The group told Ms. Roth that she would only have a 15-minute layover. When she pointed out that this was barely enough time to complete the paperwork she is required to fill out at the end of the trip, let alone get to/from a lactation space and pump, they told her to "make it work." Ms. Roth arrived at her destination, and the foreman at this station told her that she should take her pumping break. However, when she called her home station to inform them, manager [REDACTED] berated her for taking her break, raised his voice, then hung up on her.

* Name available upon request to counsel.

34. By creating a hostile work environment for Ms. Roth because of her pregnancy-related condition (lactation), Amtrak has discriminated against her in violation of the Pregnancy Discrimination Act and NYSHRL.
35. By creating a hostile work environment for Ms. Roth because of her requests for and use of reasonable accommodations for her pregnancy-related needs, Amtrak has retaliated against Ms. Roth in violation of the PWFA and NYSHRL.
36. As a result of Amtrak's unlawful actions, Ms. Roth has experienced significant emotional distress and loss of vital income, among other damages.
37. In addition to any and all monetary, declaratory, and injunctive relief Ms. Roth is entitled to under applicable law, Ms. Roth demands that Amtrak (1) adopt an attendance policy that complies with both federal and state law, and specifically informs employees of their right to exceptions under the PWFA and NYSHRL, and (2) adopt a lactation policy that complies with the PWFA and NYSHRL.