

November 17, 2015

By U.S. Mail

Northwest Airlines, Inc.
Plan Sponsor for the Northwest Airlines Pension Plan for Contract Employees
c/o Joanne Smith, Executive Vice President and Chief Human Resources Officer
Delta Air Lines, Inc.
P.O. Box 20706
Atlanta, GA 30320-6001

RE: Northwest Airlines Pension Plan for Contract Employees
Daniel B. Walter, surviving spouse of Herbert J. Beadle, III (Employee
#049763700)

Dear Ms. Smith:

We write on behalf of Daniel B. Walter, whose claim for spousal survivor benefits under the Northwest Airlines Pension Plan for Contract Employees (“the Plan”) and appeal were denied in 2014 after the death his husband and partner of more than 21 years, Herbert J. Beadle, III (“Jay”). Dan, along with his attorneys at Civil Rights Education and Enforcement Center (CREEC), a nonprofit civil rights organization, and Lambda Legal, a nationwide public interest law firm committed to achieving full civil rights for LGBT people, respectfully request that Northwest Airlines, Inc./Delta Air Lines, Inc., as the Plan Sponsor, amend the terms of the Plan to allow surviving spouses like Dan who were married to long-term Delta employees to receive survivor benefits. We hope that Delta will demonstrate its continuing leadership in the supporting the LGBT community by granting spousal survivor benefits to spouses of long-term employees whose relationships are long, but whose marriages have been short due to discriminatory marriage exclusions across the country that the Supreme Court struck down on June 26, 2015 in *Obergefell v. Hodges*, 135 S. Ct. 2071 (2015).

Dan and Jay are one such couple. When Jay passed away from head and neck cancer in 2014, the couple had been together for more than 21 years. They functioned as a committed, interdependent, married couple throughout their relationship, but did not get married for many years because they were prohibited by unconstitutional laws from doing so. Despite the legal barriers to marriage, to establish their commitment as a couple, they became “Registered Domestic Partners” with Northwest Airlines as soon as the company made this status available in the late 1990s. Dan and Jay pursued every option to formalize their relationship and commitment to each other. They established joint finances, joint home ownership, and joint powers of attorney and wills. For many years before they

married, Dan and Jay cared for and provided for each other, shared a home together, and supported each other through challenging times.

Jay was diagnosed with cancer, non-Hodgkin's Lymphoma, in 1999. Two months after the initial chemotherapy and radiation treatments, the cancer relapsed, and Jay required a bone marrow transplant. Although Jay was a Northwest Flight Attendant at the time, he was transitioned to a Special Assignment Flight Attendant position during his treatment and recovery so he could continue to work. Jay required subsequent treatments and hospitalizations in the years that followed, though he continued to work throughout this period as a Special Assignment Flight Attendant. He gave Northwest/Delta his all, and received numerous awards for his service.

In October 2010, Jay was diagnosed with head and neck cancer. Despite this new diagnosis, Jay continued to work as a dedicated employee of Northwest/Delta, and in 2011 he was selected as a Chairman's Club Nominee, a distinction of which he was extremely proud. The cancer progressed aggressively, however, and Jay went out on disability in December of 2012.

In July 2013, Jay had surgery at the Sloan Kettering Cancer Center, where the surgical team removed all of Jay's lower left jaw and the tissue in his neck below. On November 15, 2013, the couple learned that the cancer had returned again, that there were no treatment options left, and that Jay likely had three to five months to live.

Dan and Jay lived in Georgia, which, throughout the couple's relationship, did not allow same-sex couples to marry or recognize same-sex marriages from out of state. While Section 3 of the so-called Defense of Marriage Act (DOMA) was in effect, it was not realistic for the couple to travel out of state to be married, because there would have been no recognition of the marriage at either the state or federal level.

Following the Supreme Court's decision in *United States v. Windsor*, 570 U.S. 12 (2013), which resulted in federal recognition of same-sex marriages, Dan and Jay wanted to get married as soon as they could, even though they were legally barred from doing so in Georgia. The *Windsor* decision was issued on June 26, 2013, however, which coincided with Jay's last surgery at Sloan Kettering in early July 2013. Jay was in the hospital for from July 8, 2013 to August 2, 2013, and then home recovering for the next few months and unable to travel.

When the couple learned in November 2013 that there were no more treatment options for Jay and that Jay had only a few months to live, they were determined to get married before Jay passed away. Jay went into a hospice program on November 27, 2013. On November 29, 2013, the couple traveled to Minneapolis, Minnesota to get married on their 21st anniversary as a couple. While it was a bittersweet moment for Jay and Dan, knowing that their time together was limited, it was nonetheless tremendously important to both of them.

Jay passed away on January 21, 2014, after serving Northwest/Delta for 36 years. He was so dedicated to his job that he requested that his obituary express his fondness for his job and the company. Jay's former Vice President at Northwest, Lloyd Warren, delivered the eulogy at his funeral and spoke movingly of Jay's love for his work, and how he was a role model for his coworkers with his attitude and dedication.

After Jay died, Dan applied for spousal survivor benefits under the Plan. His request was denied in March 2014, not because of any refusal to recognize the marriage, but because he and Jay were "married for less than one year on the date of Mr. Beadle's death," so he was "not eligible to receive a pre-retirement survivor benefit based on the Contract Pension Plan provisions." Dan appealed, requesting that the Plan waive the one-year marriage duration requirement. The Committee denied his appeal on September 24, 2014.¹

We strongly urge you, as the Plan Sponsor, to amend the Plan retroactively to modify the one-year marriage duration requirement, which is not mandated by ERISA or the Internal Revenue Code. Strictly enforcing a marriage duration requirement imposes significant hardship for surviving spouses like Dan, who until very recently had no way to secure their committed relationship by marrying. Although the Supreme Court recently overturned state bans on marriage for same-sex couples in the *Obergefell* decision this past June, same-sex couples across the country have encountered many years of discrimination and barriers. In fact, Dan and Jay were *never* permitted throughout their 21-year relationship to marry in the state where they lived, and the state of Georgia did not recognize their marriage until more than a year after Jay passed away. It took the *Obergefell* decision to get Georgia even to issue an amended death certificate for Jay listing his status as "married" and identifying Dan as Jay's "spouse."

We look to Delta to be the leader we know your company to be. We have seen firsthand Delta's demonstrated track record of support for the LGBT community, including the domestic partner benefits that Jay and Dan relied on for nearly twenty years – benefits for which Delta assumed the costs of the unequal tax burden experienced by same-sex couples whose relationships were denied legal recognition.² Delta has sponsored LGBT Pride events across the country,³ has been at the forefront of fighting against laws

¹ This wholesale denial is particularly stark given the couple's efforts to ensure that Dan would be receiving at least some sort of benefit after Jay's death. Starting on December 18, 2013, the couple made a series of calls to Delta's Employee Services Center to try to transition Jay to retirement before he passed away, which would have resulted in Jay being able to elect a 100% Survivor Benefit option payable to Jay before his death and then to Dan after Jay passed away. As set forth in Dan's claim file, the couple received misinformation and encountered a significant delay on Delta's part such that Jay ultimately passed away before his retirement could be effectuated. Had Delta appropriately responded to Jay and Dan's efforts, Dan would be receiving some benefits now, although at a dramatically lower level than the pre-retirement survivor benefit for which he should be deemed eligible.

² <http://news.delta.com/tax-burden-employees-same-sex-relationships-assumed>.

³ <http://insidetrade.co/delta-air-lines-to-celebrate-pride-month-in-june/>.

permitting religiously motivated discrimination against LGBT people,⁴ and has provided a strong voice in amplifying the harms of marriage bans for the business community.⁵ Delta celebrated the Supreme Court ruling in June, noting that as a result of “the court’s decision to fully legalize same-sex marriage in all states and jurisdictions..., Delta will be able to provide an equitable benefits package to all Delta people.”⁶

Surviving spouses like Dan need your company’s leadership and support as well. We call on you to amend the terms of the Plan to provide exactly that kind of equitable benefits package to a surviving spouse like Dan – whose committed relationship clearly met the durational requirement though his marriage did not – by allowing him to receive survivor benefits. Such an amendment would allow surviving spouses whose marriages were shorter than one year to demonstrate that the short duration of the marriage was due to discriminatory laws and that, in fact, their committed relationships exceeded one year. It would provide critical protection for your employees across the country as they continue to confront the fallout of an inconsistent legal landscape for same-sex couples. Now that barriers to marriage have been removed for same-sex couples, the number of Plan participants needing to avail themselves of such a safeguard would likely be very small, but it is of vital importance to those who do.

An amendment like this is consistent with ERISA and was precisely the type of amendment anticipated by the federal agencies governing retirement plans in the aftermath of the *Windsor* decision. Although ERISA allows retirement plans to impose a one-year marriage duration requirement for survivor benefits, it does not require it.⁷ Northwest/Delta could remove that requirement entirely without running afoul of ERISA or the Internal Revenue Code. The only relevant requirement for a qualified pre-retirement survivor benefit (or a qualified joint and survivor benefit) is that the couple was married.⁸

Furthermore, the IRS has issued explicit guidance for plan sponsors that recognizes the potential need for changes to retirement plans better to include same-sex spouses within their protections.⁹ For example, the IRS’s guidance plainly states that plans may be amended to provide new protections to participants:

FAQ-4. May a qualified plan be amended in light of the *Windsor* decision to provide new rights or benefits with respect to participants with same-sex spouses?

⁴ <http://news.delta.com/delta-issues-statement-proposed-legislation>.

⁵ See, e.g., Brief of 379 Employers et al., *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015); Brief of 37 Employers as Amici Curiae, *Brenner v. Armstrong*, Nos. 14-14061-AA & 14-14066-AA, (11th Cir., filed Dec. 23, 2014).

⁶ <http://news.delta.com/delta-celebrates-marriage-equality>.

⁷ See 29 U.S.C. 1055(f) (plan “may” limit survivor annuities to those married one year).

⁸ See 26 U.S.C. 401(a)(11).

⁹ See Rev. Rul. 2013-17; IRS Notice 2014-19.

Yes. In light of the *Windsor* decision, a plan sponsor may wish to amend a plan to provide new rights or benefits with respect to participants with same-sex spouses – such as an amendment that provides those participants with a new opportunity to elect a qualified joint and survivor annuity (QJSA) – to make up for benefits that were not previously available to those participants. Such an amendment must comply with the applicable qualification requirements (such as section 401(a)(4)).¹⁰

The amendment requested here fits squarely within that description. Northwest/Delta, as the Plan Sponsor, has the authority to provide these benefits and should do so.

Other major companies have already taken this step, retroactively amending their plans to allow surviving same-sex spouses to be deemed eligible for benefits. For example, in 2014, CNA Financial Corporation amended its plan to allow a plan participant and his or her same-sex spouse married for less than a year to be considered as married for a full year if, at the date of death, they (i) lived in a state that either did not recognize their marriage or recognized their marriage for less than a year, and (ii) they can prove that they were in a committed relationship for at least twelve months.¹¹ Northwest/Delta should follow suit.

As court after court struck down discriminatory exclusions of same-sex couples from marriage, culminating in the Supreme Court's decision in *Obergefell v. Hodges*, these exclusions are now a thing of the past. But the surviving same-sex spouses of your employees who until very recently were excluded from marriage need protection for their relationships, which you have the power to provide. In June, Delta's CEO, Richard Anderson, said, "The law should be that we're equal regardless of who we love in this life. ... That shouldn't be a question – that should be a fundamental right. At Delta, we always try to be a leader and are very clear about our support."¹² We urge Delta to demonstrate that support and amend the Plan to provide a means for Dan – and other deserving spouses like him – to be eligible for spousal survivor benefits under the Plan. Protecting the families of devoted and beloved employees like Jay would further Delta's core values of diversity and inclusion, showcasing Delta's role as a leader once again.

¹⁰ IRS, Application of the Windsor Decision and Post-Windsor Published Guidance to Qualified Plans FAQs, at FAQ-4, available at <http://www.irs.gov/Retirement-Plans/Application-of-the-Windsor-Decision-and-Post-Windsor-Published-Guidance-to-Qualified-Retirement-Plans-FAQs>.

¹¹ See, e.g., *CNA Begins Policy Supporting Employees' Surviving Same-Sex Spouses*, Windy City Times, (Jan. 9, 2015), at <http://www.windycitymediagroup.com/lgbt/CNA-begins-policy-supporting-employees-surviving-same-sex-spouses/50182.html>.

¹² <http://news.delta.com/delta-celebrates-marriage-equality>.

Thank you for your consideration.

Sincerely,

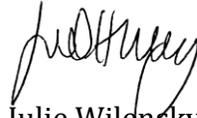
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