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DOT's Disability Regulations: Traps for the Unwary Air Carrier (Feb. 2011)

Since 1986, the Air Carrier Access Act, (49 U.S.C. § 41705) ("ACAA") has prohibited air carriers from discriminating against individuals with physical or mental impairments. The U.S. Department of Transportation ("DOT") has adopted regulations (14 C.F.R. Part 382) which implement the ACAA. Effective in 2009, the regulations were substantially revised, both to expand their scope (e.g., to broaden applicability to foreign air carriers) and to add new requirements (e.g., rules regarding the use of medical oxygen in-flight).

By now, the key requirements of Part 382 should be well-known to air carriers. In 2010, DOT sanctioned seven carriers for violations of these rules – in particular, for failing to provide adequate assistance to passengers with disabilities in the enplaning and deplaning process, and for failing to adequately maintain records of and to adequately respond to disability-related complaints. Because these issues have proven to be of particular concern to DOT, carriers should ensure that they are in compliance with the applicable rules.¹

However, Part 382 includes eleven subparts and numerous specific requirements, not all of which are well-known. Although a carrier's front-line employees may have the best intentions, the carrier nevertheless may be found in breach of DOT requirements (and subject to a fine of up to \$27,500 per violation, per day) if such employees fail to comply with the specific standards set forth in Part 382.

This advisory provides a list of ten potential "traps for the unwary air carrier." The list does not cover all of the rules with which carriers must comply under DOT's disability regulations, but it does emphasize the breadth and depth of Part 382 as well as the importance of ensuring that a carrier has a comprehensive compliance program for the proper and legal treatment of passengers with disabilities.



The firm's practice encompasses virtually every aspect of aviation law, including advising domestic and foreign airlines on compliance with the DOT's regulations on nondiscrimination on the basis of disability in air travel.

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¹ See, e.g., 14 C.F.R. § 382.95 ("What are carriers' general obligations with respect to boarding and deplaning assistance?"), 14 C.F.R. § 382.155 ("How must carriers respond to written complaints?") and 14 C.F.R. § 382.157 ("What are carriers' obligations for recordkeeping and reporting on disability-related complaints?").

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(1) For foreign carriers, Part 382 applies to single-flight number services operated beyond foreign points.

In 2009, DOT extended most of Part 382's requirements to foreign carriers. For foreign carriers, the rules apply to "a continuous journey in the same aircraft *or with one flight number* that begins or ends at a U.S. airport" (emphasis added). For example, if a passenger books a journey on a foreign carrier from New York to Prague and changes aircraft in Frankfurt, but the flight number remains the same, the requirements of Part 382 apply to the Frankfurt-Prague leg of the passenger's travel.

(2) Part 382 applies to most charter flights, as well as to most services offered by indirect air carriers.

Part 382 applies not just to scheduled flights but also to most charter flights. However, there is an exception for charter flights that (i) are operated by foreign carriers, (ii) originate from and return to a foreign airport, and (iii) do not pick up any passengers in the U.S. Additionally, Part 382's general prohibition on discrimination against passengers with disabilities applies to indirect air carriers to the extent they provide facilities or services to passengers that otherwise would have been provided by a direct carrier.

(3) Written passenger complaints are not the only matters requiring a written carrier response.

The general rule is that a carrier has 30 days to respond in writing to a disability-related complaint submitted by a passenger or other user of its services (as discussed further below). But in certain other cases a carrier must provide a written explanation within 10 days, including cases where a passenger has been denied boarding on the basis of his/her disability. There are only very limited circumstances under Part 382 when a carrier may deny boarding based on a disability and if a carrier does so it must provide the passenger with a written statement of its specific reasons in 10 days – even if the passenger has not specifically requested such a statement.

(4) Carriers must provide TTY and other calling information on their websites and in other advertising.

Carriers that provide reservation and information services by telephone must also ensure the same services are provided to individuals with hearing impairments (e.g., via text telephone (TTY), voice relay, or other technology). These services must be available during the same hours as regular telephone services and response times must be substantially equivalent. Any advertisement (regardless of medium) which includes a phone number must include a TTY number, or, if no TTY number is available, information as to how TTY users can contact the carrier.

(5) Carriers must keep a copy of Part 382 available at airports, and provide it to passengers upon request.

DOT requires carriers to keep a copy of Part 382 at each airport they serve (in the case of U.S. carriers) or at each airport served by a flight to or from the U.S. (in the case of foreign carriers). This copy must be provided for the review of any passenger who requests it. Carriers are not, however, required to give away copies of Part 382. Carriers should ensure that they have the most recent copy of Part 382, which includes amendments made in 2009 and 2010, at covered airports.

(6) New audio-visual displays in carrier-controlled airport facilities must have high-contrast captioning.

Captioning must be enabled on television and other audio-visual displays capable of displaying captions in terminal facilities a carrier owns, leases, or controls at a U.S. airport. Captioning on existing equipment must be high-contrast if the equipment can display it. Additionally, as equipment that provides passengers with safety

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briefings, information, or entertainment is replaced or updated, the replacement equipment must have the ability to display high-contrast captioning.

(7) If airports kiosks are not accessible, carriers must provide equivalent services to passengers with disabilities.

If a carrier's airport kiosks are not accessible to passengers with disabilities, the carrier must provide equivalent service to such passengers (e.g., by having carrier personnel assist at the kiosk or alternatively allowing the passenger to come to the front of the line at the check-in counter).

(8) If a carrier determines that an individual with a disability must travel with a safety assistant as a condition of being provided air transportation, the carrier must not charge for the transportation of the safety assistant.

In cases where a passenger with a disability voluntarily chooses to travel with a personal care attendant or safety assistant, the carrier may charge for the transportation of that person. If a passenger with a disability wants to travel alone but the carrier determines, contrary to the self-assessment of that passenger, that a safety assistant is essential for safety, the carrier must not charge for the transportation of the safety assistant. Carriers are not required to find or provide a safety assistant, although they may offer to do so as a customer service matter.

(9) A carrier must make a CRO available, even if a passenger has not specifically asked for one.

Complaint Resolution Officials (CROs) must be available (in person or by telephone) at each airport served by a U.S. carrier or, in the case of a foreign air carrier, at each airport served by a flight to or from the U.S. Carrier personnel must inform a passenger of his or her right to speak with a CRO any time a passenger makes a complaint or raises a concern with respect to discrimination, accommodations, or services for passengers with disabilities that is not immediately resolved. This information, and assistance in contacting the CRO, must be provided even if the passenger does not specifically request a "CRO" or "Complaint Resolution Official."

(10) Carriers must not only respond to disability complaints, but include specific information.

DOT requires that carriers submit dispositive responses to any written complaint (e.g., letters, emails, faxes) within 30 days of its receipt. Carriers must ensure that their responses to such complaints: (1) are timely; (2) are complete (e.g., admit or deny a violation occurred); (3) include the facts and the steps taken (if any) in cases where a violation is admitted or include the facts and reasons why the carrier believes no violation occurred; and (4) inform the individual of his or her right to pursue enforcement action from DOT.

Carriers are advised to consult with counsel for more information about Part 382's complex requirements.

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