

FAA Lets OSHA Standards Board the Plane

August 28, 2013

Last week, the Federal Aviation Administration (FAA) issued a final policy allowing the U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) to enforce certain of its safety standards for aircraft cabin crewmembers during aircraft operation. The policy ends the FAA's nearly 40-year assertion of sole jurisdiction over in-flight.....

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In 1975, the FAA first claimed exclusive responsibility for all aspects of the aircraft work environment, but 25 years later, in 2000, the FAA and OSHA [began the process](#) of determining whether OSHA should have a role in regulating the aircraft work environment. The agencies never took any formal action on the subject, and eventually Congress intervened by passing the FAA Modernization and Reform Act of 2012, which, among other things, instructed the FAA to develop an official policy about OSHA's involvement in the aircraft cabin.

In its [new policy](#), the FAA continues to assert its authority over working conditions on aircraft in operation generally, but allows OSHA to enforce certain standards where working conditions have not been addressed by FAA regulations. As an initial application of its policy, the FAA identifies three specific standards that OSHA can enforce in the aircraft cabin: **hazard communication, bloodborne pathogens, and hearing conservation**. The FAA also made clear that OSHA regulations regarding recordkeeping and access to employee medical and exposure records have always applied to flight attendants.

For now, OSHA's enforcement reach into cabin working conditions is limited to the three specific standards identified above, although the policy states that the two agencies will establish procedures to identify any additional working conditions that should be addressed in the future.

OSHA's new authority does not apply to flight deck crewmembers (pilots) and only applies to aircraft "in operation" (defined as from the time the first crewmember boards the aircraft until the time the last crew

member deplanes). Additionally, the FAA policy makes clear that OSHA will not be able to apply any requirements that could negatively impact aviation safety, and that the FAA may preempt OSHA's authority on a standard previously approved if the FAA later determines that the standard could interfere with safety.

The policy will take effect on September 23, 2013, but OSHA will not begin its enforcement until six months later, so that it can engage in outreach and compliance-assistance activities. Once enforcement begins, OSHA does not anticipate needing to inspect aircraft while in operation to carry out its duties. In fact, all three standards identified require employers to develop and implement their own programs, and the FAA stated in its Federal Register notice that OSHA can examine the programs and verify compliance without being onboard aircraft at all.

In our experience, airlines are no strangers to OSHA enforcement. Over the years, OSHA has conducted inspections and issued citations to airlines with respect to ground support operations, including baggage handling, the operation of tugs, and conditions in buildings. But with OSHA entering a new sphere of airline operations, it will pay dividends for airlines to be proactive in ensuring compliance with the three identified OSHA standards with respect to their flight attendants *before* the effective date of OSHA's expanded enforcement role. Airlines will also want to keep their ears to the ground for hints of whether the FAA might grant OSHA the authority to enforce additional standards in the future.

Hopefully, the airline industry will have opportunities flying forward to help shape OSHA's enforcement policies, as the horizon for OSHA's entry into the world of aircraft cabin working conditions comes into view.

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