

# Client Bulletin

May 2009

## Increased Protections for Air Travelers with Disabilities

The Department of Transportation's ("DOT") final rule on "Nondiscrimination on the Basis of Disability in Air Travel", 14 CFR Part 382, went into effect on May 13, 2009. The new regulations expand protections to passengers with disabilities who travel on foreign air carriers. The regulations under the Air Carrier Access Act ("ACAA") have been applicable to domestic carriers since 1990. The new regulations, announced in the Federal Register a year ago, provide that foreign air carriers operating to and from the United States must provide services in a non-discriminatory manner to passengers with disabilities. While the exact definition of who is a person with a disability, be it mental or physical, is beyond the scope of this Client Bulletin, the ACAA's regulations provide that, to the maximum extent possible, persons with a disability must be treated in the same way as non-disabled passengers. A foreign air carrier, as a general matter, cannot refuse to transport a person with a disability unless that person provides a "direct threat" to the safe operation of the flight. Nor is there any permissible limitation on the number of disabled passengers who can be transported per flight, although when a group of ten or more disabled passengers are travelling, the group is required to give forty-eight hours advance notice to the carrier.

For passengers who have communicable diseases, a foreign air carrier may not refuse to transport them to or from the United States, or to require that they provide a medical certificate from their doctor, or impose any conditions or restrictions not imposed on other passengers, unless the person with a communicable disease poses a "direct threat" to the health or safety of others. Examples of persons who would not be direct threats would be passengers travelling with head colds, are HIV positive or have AIDS.

Carriers may require a medical certificate if a passenger with a disability is travelling on a stretcher or an incubator, needs medical oxygen during a flight, or has a medical condition that raises reasonable doubt that he or she can complete the flight safely.

If a passenger is travelling on a stretcher or in an incubator, the foreign air carrier may require the passenger to travel with a safety assistant at the expense of the travelling passenger. In addition to stretcher or incubator passengers, mentally unstable passengers or passengers who are blind, deaf and unable to respond to safety instructions may be required to bring a safety assistant on the aircraft with them, primarily for purposes of evacuating the passenger in an emergency situation or establishing communications for purposes of safety briefings.

The regulations also impose requirements on carriers that have new aircraft or have modified interiors of their current fleet which require that a percentage of aisle seats have movable armrests and that aircraft with more than one aisle have wheelchair accessible lavatories. Another significant change is that no air carriers, including foreign air carriers, are required to stow electric wheelchairs in the cabin.

To the extent that services provided to disabled passengers are provided by airport authorities in countries outside the United States, this does not excuse an air carrier from complying with the provisions of the ACAA. The carrier is required to "supplement" services provided at foreign airports to bring the carrier into compliance with the ACAA.

Most importantly, carriers need to appoint "Complaint Resolution Officials" to address disability-related problems. Complaint Resolution Officials must be on call, either by telephone or in person, at all times.

The application of the ACAA to foreign air carriers, while a long time coming, will have an

important effect on the operations of foreign air carriers in the United States.

If you desire more information concerning the particular provisions of the ACAA or wish to consider having your airline employees trained on the particular provisions of the ACAA, please feel free to contact:



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