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2021 Aviation Roundtable OSHA and the Aviation Industry

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OSHA and the Aviation Industry

- FAA exclusively governs aviation safety under 49 U.S.C. § 44701 *et seq.*
- OSHA governs employee occupational safety and health under 29 U.S.C. § 651 *et seq.*
- Intersection of OSHA with aviation: The “working conditions” context
- “Working conditions” is central inquiry, even if procedures, prescribed conditions, or lack of warnings resulting in incident are FAA governed
- FAA exclusivity over working conditions only applies to employees on aircraft in operation – flight deck, and almost everything for cabin crew
- OSHA therefore intersects with aviation safety differently for airlines, product manufacturers, maintainers, airports, etc.



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OSHA and the Aviation Industry

- 2014 memorandum of understanding regarding OSHA limited application to aircraft in operation
- Joint FAA-OSHA policy consideration: OSHA can apply limited standards to cabin crew members while onboard aircraft in operation (except flight deck crew). May expand.
 - 29 CFR 1910.1200 hazard communications
 - 29 CFR 1910.1030 bloodborne pathogen exposure
 - 29 CFR 1910.95 occupational noise exposure
- Existing OSHA authority within broader aviation context:
 - 29 CFR Part 1904 recordkeeping
 - 29 CFR 1910.1020 access to employee exposure and medical records
 - Investigation of employee discrimination for health/safety related protected activity in workplace
 - Other workplace safety that does not involve an aircraft in operation



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CLE Code #1

- Aircraft



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Investigations – Interplay Between OSHA, FAA, and NTSB

- NTSB has authority to investigate all aviation accidents. 49 U.S.C. § 1131
 - Party participant system limits access, involvement, and information flow
- OSHA has authority to investigate upon receiving a report of certain types of incidents. 28 C.F.R. § 1960.29
 - OSHA guidance says to **report** all incidents involving injury or near misses
 - OSHA investigation will occur in event of death or injury of 3 or more employees
- FAA also has authority to investigate aviation safety issues. 49 U.S.C. § 40113



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Investigations – Interplay Between OSHA, FAA, and NTSB

- OSHA will investigate complaints without aircraft being in operation; if required to be in operation, FAA and OSHA will coordinate. MOU at III(A).
- FAA and OSHA will refer FOIA requests to each other when implicated: MOU at IV.
- Parallel investigations often present competing and conflicting requirements
 - NTSB FIU bridge collapse: NTSB revoked OSHA's party participant status for publishing information under OSHA process
- Use investigation best practices and apply consistently to parallel investigations



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Scenario 1 – Part 145 Repair Station

- Part 145 repair station conducting paint removal on aircraft with chemical agents
- Repeated chemical exposure of employees without PPE and ventilation
- Chemical spill comes into contact with employees
- Company was conducting ongoing safety studies regarding different types of industry-standard chemicals and new PPE
- Union raises OSHA complaint/notification



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CLE Code #2

- PPE



Scenario 2 – Airline Crewmember

- Airline pulls into airport gate as directed by airport operations company
- Ground handling company brings boarding stairs to aircraft
- Airline cabin crewmember steps toward boarding stairs, slips and falls over inadequate protective railing, dies as a result



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Thank You

If you have any questions, please contact us:

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