

Welcome and thank you for joining us for today's Aviation Webinar Series. Our topic is **“The 2022 Aviation Roundtable”** We have just a few announcements before we get started.

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2022 Aviation Private Roundtable

FAA and OSHA Preemption or Overlap?

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The Relationship Between FAA and OSHA

- FAA has authority over the safe and efficient use of the navigable airspace of the United States
- Courts have held that this mandate carries with it broad preemption of safety issues and the use of the National Airspace
- OSHA has broad authority over workplace safety affecting private employers in the United States
- On July 10, 1975, the FAA published a notice in the Federal Register stating that the Federal Aviation Regulations completely occupy the area of workplace safety for flight crews while the aircraft is in operation. See 40 FR 29114.
- On August 27, 2013, FAA published a notice stating that it has not exercised statutory authority to cover all working conditions affecting aircraft cabin crewmembers, and that OSHA regulations can apply even when the aircraft is not in operations, with the exception of the flight deck. 78 FR 52848.
- The FAA and OSHA have subsequently entered into three Memorandums of Understanding (MOU)

The Relationship Between FAA and OSHA

- August 9, 2000 MOU
 - Recognized the need to coordinate so that the agencies do not “unnecessarily” block the application of the other agency's regulations
 - Clarify that the 1975 notice “affected only the application of OSHA requirements to the working conditions of employees on aircraft in operation.”
 - An aircraft is “‘in operation’ from the time the aircraft is first boarded by a crew member, preparatory to a flight, to the time the last crewmember leaves the aircraft after the completion of that flight, including stops on the ground during which at least one crewmember remains on the aircraft, even if the engines are shut down.”
 - For maintenance and ground support personnel, OSHA has been enforcing, and will continue to enforce, OSHA requirements to the extent allowed under Section 4(b)(1) of the OSHA Act
 - FAA and OSHA reiterated that FAA's comprehensive regulation of the working conditions in the cockpit is complete and exclusively encompass the safety and health aspects of the work environment of the flight deck crew so in order to fully occupy and exhaust the field of flight deck crew occupational safety and health

The Relationship Between FAA and OSHA

- December 1, 2015
 - FAA and OSHA both have jurisdiction over claims for retaliation against airline workers/contractors for reporting or testifying about safety violations
 - FAA and OSHA recognize each has an independent statutory obligation and agree to cooperate and engage in the timely exchange of information
 - Formal procedures established for liaison officers, mutual notifications and coordination process
 - The MOU does not create binding, enforceable obligations against either agency
 - The MOU does not alter, amend, or affect in any way the statutory or regulatory authority of the FAA or OSHA

The Relationship Between FAA and OSHA

- August 26, 2014
 - FAA and OSHA agree that OSHA standards can apply to:
 - Hazard communication, 29 CFR § 1910.1200
 - Bloodborne pathogens exposure, 29 CFR § 1910.1030
 - Occupational noise exposure, 29 CFR § 1910.95
 - The working conditions addressed by these three standards are the only working conditions subject to OSHA enforcement
 - FAA states it will “continue to exercise its statutory authority over all other working conditions of aircraft cabin crewmembers while they are on aircraft in operation, and to fully occupy and exhaust the field of flight deck crew occupational safety and health while they are on aircraft in operation.”
 - FAA pledges to cooperate in resolving complaints in these three areas

How Far Does FAA Preemption Extend

- FAA reiterates its full field preemption regarding working conditions on the aircraft when in operation
- FAA has recognized joint authority to aviation workplace safety, with OSHA generally being the lead agency
- Conflict Preemption Resolved on a case-by-case basis
 - Is there an FAA standard?
 - Is there an OSHA standard
 - Is compliance with the FAA standard mandatory?
 - Can both standards be complied with?
 - Is the FAA requirement related to safety of aviation generally, or individual worker safety?

How Far Does FAA Preemption Extend

- Approved vs. Accepted Manuals
- “Accepted” is used to describe a document, manual, or checklist that does not have, or is not required to have, FAA approval
 - Only a portion of an operator’s manuals are required to have FAA approval.
 - The remaining portions are “accepted” by the FAA. Operators are required to submit the entire general manual to the FAA for review
 - If the FAA concludes that an accepted section of the general manual is not in compliance, the FAA must formally notify the operator of the deficiency. Upon notification, the operator must take action to resolve the deficiency
- When “approved” is used to describe a document, manual, or checklist, it means that a regulation requires FAA approval, and that the FAA has evaluated and specifically approved the document, manual, or checklist
 - Approval process can include on-site validation, testing, inspection, and evaluation of realistic, real-time scenarios

Dual OSHA/FAA Enforcement

- Even if OSHA can enforce a workplace safety issue, FAA can still take its own enforcement action under certain circumstances, e.g., joint authority over some HAZMAT issues
- A failure to follow an FAA approved or accepted manual or checklist, such as a General Operations Manual, can result in an employee or contractor injury
- FAA can assess civil penalties under its general authority as set forth in 49 U.S.C. § 46301
- The FAA generally imposes sanctions for punitive and deterrent purposes and sanctions for remedial purposes
- FAA enforcement policy is to not use civil penalties as a first resort
- The Compliance Program “intends to foster an open and transparent exchange of comprehensive safety data between the FAA and aerospace communities, as well as to promote the identification of safety hazards and management of risk.”
- Deviations that are repeated, intentional or reckless are likely to result in civil penalties

Thank You

If you have any questions, please contact:



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