



Flight Attendants and Customer Service Agents: Risks and Liabilities

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Fox
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Risks to Flight Attendants and Customer Service Agents

- Being assaulted or injured
- Getting sued (both individually and the airline)
- Having a passenger potentially report *you* to law enforcement
- Being accused of over-reacting or unnecessarily affecting the customers' experience and the airline's brand
- Taking action that will result in complications for the employee (post-event interviews with supervisors and law enforcement, potential depositions, etc.)
- Being accused of failing to prevent risks to aviation safety or failing to follow company policy

Flight Attendants and Customer Service Agents Face Difficult Choices

- High-profile roles as face of the passengers' experience
- Difficult balance of protecting themselves, protecting others (and aviation safety generally), complying with company policies/training and maintaining customer service (e.g., whether to limit service)
- Failure to report (to airport police, gate staff, supervisors, crewmembers, etc.) versus over-reporting
- When/how to deny boarding, deplane passengers, restrain passengers or enlist other passengers as allies

Unruly and Disruptive Passengers

- Down since Covid but here to stay as a threat to aviation safety
- Prevent flight attendants (and customer service agents) from safely and efficiently accomplishing their duties
- Instigators are also potential claimants
- Bystanders are now reporters (mobile phone videos/social media)

Causes of Disruptive Passengers

- Alcohol/intoxication
- Drug use (prescription and otherwise)
- Mental health
- Fear of flying (anxiety)
- Fatigue
- Travel (and life) frustrations

Civil Penalties — Domestic Flights

- 14 CFR § 91.11 — no person may assault, threaten, intimidate, or interfere with a crewmember in the performance of the crewmember's duties aboard an aircraft being operated
- The same language appears in 14 CFR § 121.580, 14 CFR § 125.328 and 14 CFR § 135.120.
- Violations of the above regulations are subject to FAA fines up to \$16,630
- 49 USC § 46318 (FAA Reauthorization Act of 2018) — anyone committing physical or sexual threats or assaults against anyone on a civil aircraft or taking any action posing an imminent threat to the safety of the aircraft or others on the aircraft, are subject to civil penalties of \$43,658 or less
- If there is a criminal conviction, the FAA can consider the resulting criminal penalties as a mitigating factor under FAA Order 2150.3C

FAA Enforcement

- FAA can propose up to \$37,000 per violation
- Disruptive passengers can be removed from the TSA precheck program
- FAA can refer cases to the FBI
- Airlines can also place disruptive passengers on internal no-fly lists (based on violations of contracts of carriage)
- In 2021, the FAA instituted a Special Emphasis Enforcement Program (SEEP) of “zero tolerance” for unruly and disruptive passengers

Trends

- In 2021, the FAA investigated 1,112 instances of unruly conduct, resulting in 344 enforcement actions and civil penalties totaling \$5,320,450
- In 2021, the average penalty was \$15,466
- In 2023, airlines reported 2,075 instances of unruly passengers and the FAA investigated 512 cases, resulting in 402 enforcement actions, and \$7.5 million in fines
- In 2023, the average penalty was \$19,000
- In 2024, airlines reported 2,102 instances of unruly passengers, up from 2,075 in 2023
- Unruly passenger cases are down more than 80% since their peak during the Covid era
- Actual instances of unruly and disruptive conduct are higher than the reported numbers indicate because reporting is at the discretion of the crew member

Criminal Law — FAA/FBI Partnership

- August 21, 2024, FAA reported that it has referred 310 unruly passenger cases to the FBI for potential felony conviction since the FAA/FBI enforcement partnership was created in late 2021
- Individuals engaged in criminal behavior on aircraft may be subject to arrest and prosecution by state or local law enforcement

Criminal Penalties — Domestic Flights

- Under 49 USC § 46504, instances of:
 - assault or intimidation;
 - while in flight (*i.e.* anytime doors are closed);
 - of a crew member or flight attendant;
 - that interferes with the performance of their duties;
 - or any attempts or acts of conspiracy to do so;
 - shall be fined, imprisoned for not more than 20 years, or both, except that use of a dangerous weapon to assault or intimidate the crew member or flight attendant can result in life imprisonment

Criminal Prosecutions — International Flights

- Tokyo Convention (1963) (aka Convention on Offences and Certain Other Acts Committed on Board Aircraft)
- Unlawful to commit “Acts which, whether or not they are offences [against the penal law of a member State] may or do jeopardize the safety of the aircraft or of persons or property therein or which jeopardize good order and discipline on board”
- For the unruly passenger to face prosecution, the aircraft must land in a State that is a party to the Tokyo Convention and the passenger must be delivered to the local law authorities, based on “reasonable grounds [of belief]” that the passenger committed a “serious offence” under the laws of the State of registration of the aircraft
- The fact the State of aircraft registration has jurisdiction over onboard offenses means that unruly passengers are often not prosecuted
- IATA states that 60% of unruly passenger cases are not prosecuted

Disruptive Passengers – Airline Training Requirements

- Flight Attendant Training — Air Carriers 49 USC § 44734
 - Alcohol service
 - Recognizing intoxicated passengers
 - Dealing with disruptive passengers
 - Situational training for dealing with intoxicated, belligerent passengers

Potential Civil Liability

- Negligent or intentional infliction of emotional distress
- False imprisonment
- Personal injury/negligence
- Assault
- Discrimination
- Failure to adequately train
- Negligent hiring/retention

Thank You

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