

DOT Enforcement of Egregious Part 382 Violations (October 2022)

**David Endersbee and Barbara Marrin
KMA Zuckert LLC**

The U.S. Department of Transportation (“DOT”) has issued regulations, codified at 14 C.F.R. Part 382, implementing the Air Carrier Access Act (49 U.S.C. § 41705), and which prohibit discrimination on the basis of disability in air travel.¹ As a matter of policy, DOT has stated that violations of Part 382 constitute violations of carrier Customer Service Plans, violating 14 C.F.R. 259.5 and are, as such, unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712. Exercising its enforcement discretion, DOT has traditionally focused on situations in which a carrier has displayed a pattern or practice of noncompliance, rather than initiating “gotcha” enforcement over occasional oversights.²³

There is, however, a category of violations involving conduct so outrageous and/or injurious to a passenger that DOT will generally bring enforcement action even for a single incident. DOT refers to these as “egregious” violations.

Egregious Violations of Part 382

DOT has, helpfully, provided a broad definition of what it considers to constitute an egregious violation: “(1) the passenger was left unattended on an airplane for over 15 minutes after the other passengers deplaned; (2) a nonambulatory passenger was left unattended in a wheelchair for over 30 minutes in the terminal or on a jetway; (3) the carrier failed to provide requested wheelchair service or other



The firm’s practice encompasses virtually every aspect of aviation law, including advising domestic and foreign airlines on compliance with DOT’s regulations and policies concerning passengers with disabilities. For further information regarding the matters discussed in this article, please contact either of the following attorneys:

David M. Endersbee
(202) 973-7935
dendersbee@kmazuckert.com

Barbara M. Marrin
(202) 973-7961
bmarrin@kmazuckert.com

KMA Zuckert LLC
888 17th Street, NW, Suite 700
Washington, D.C. 20006
Telephone: (202) 298-8660
Fax: (202) 342-0683
www.kmazuckert.com

This document has been prepared by KMA Zuckert LLC to inform its clients and other parties of legal developments of interest. The views expressed herein do not constitute legal opinion or advice and should not be used as such.

© 2022 KMA Zuckert LLC

DOT Enforcement of Egregious Part 382 Violations

Page 2 of 4

assistance entirely, or a long time delay in providing wheelchair service or other assistance resulted in the passenger missing a flight; (4) the passenger was left at the wrong gate resulting in missing his or her flight; (5) the passenger had to wait an hour or more for a wheelchair in the terminal; and (6) other instances where passengers were subjected to significant delay, harm, or inconvenience because of inadequate assistance.”⁴⁵ In layman’s terms, if it’s really bad, it is probably egregious conduct.⁶

Specific Examples of Egregious Conduct

DOT’s consent orders generally provide an overview of the carrier’s violative conduct, sufficient to put the industry on notice regarding violations that DOT considers egregious enough to warrant severe enforcement. Some specific examples of conduct against individuals that DOT has found to be sufficient to justify enforcement action include:

- A carrier deplaned a passenger using a conveyor belt – described as an “egregious” violation;⁷
- A carrier improperly denied boarding on a return flight to a passenger with cerebral palsy who used a wheelchair on the grounds that she could not walk by herself, forcing her to rebook on another carrier - an “egregious” violation⁸
- A carrier removed a passenger from a flight in contravention of the carrier’s own policies because a flight attendant mistakenly believed the passenger required an attendant – described as an “egregious” violation;⁹
- A carrier improperly denied boarding to four passengers with mobility impairments on various improper bases, such as that a passenger was required to travel with an attendant or the carrier lacked staff to assist in transferring from an aisle chair to the seat (notwithstanding the passenger’s ability to do so unassisted);¹⁰ and,
- A carrier improperly denied boarding to four passengers with mobility impairments on various improper bases, such as that an amputee passenger using a wheelchair was told she would need an attendant because she could not walk to the bathroom or because a blind passenger would be required to travel with an attendant.¹¹

In addition, without invoking the term “egregious” DOT has penalized carriers for conduct involving serious passenger injury, such as when carrier personnel failed to correctly load a passenger’s electric wheelchair and the battery shifted, resulting in a sudden stop which threw the passenger out of the wheelchair and onto the sidewalk, resulting in injuries.¹²

Key Takeaways

DOT has not issued a consent order identifying “egregious” conduct in several years. This could be because, among other things, carriers and their personnel are better trained and now more aware of, and sensitive to, conduct that endangers or seriously insults the dignity of passengers with disabilities. Advocacy organizations would likely disagree with

DOT Enforcement of Egregious Part 382 Violations

Page 3 of 4

this assessment and have begun to push DOT for more public enforcement of Part 382 violations, including violations representing egregious conduct.¹³ Whatever the case, DOT clearly retains the authority and discretion to being enforcement in circumstances where a carrier's acts or omissions impact only one passenger but are serious in nature. Besides the accompanying reputational damage accompanying DOT's public consent orders, carriers face exposure to substantial civil penalties.

Carriers should ensure their employees and contractors receive appropriate and timely training, including hands-on training on the proper use of assistance equipment and assistance techniques, and that such training is well documented. Carriers are also well-advised to respond quickly to customer complaints, especially those involving "egregious"/serious matters such as denied boarding, injury, and serious damage to wheelchairs. Carriers should consult with counsel to ensure complete compliance with DOT's varied requirements.

¹ Generally speaking, Part 382 applies to U.S. and foreign air carriers. For U.S. air carriers, Part 382 applies to all flights and aircraft. For foreign air carriers, Part 382 specifically applies to flights that begin or end at a U.S. airport and to the aircraft used for these flights. 14 C.F.R § 382.7.

² See, e.g., Air Canada, Order 2016-8-29 (assessing a \$200,000 civil penalty for "regularly" failing to provide complaint responses to consumers and adopting and implementing policies inconsistent with DOT service animal regulations).

³ A succinct statement of DOT's enforcement perspective was stated in 1987: "The Enforcement Office's current priorities for prosecution of matters involving the types of violations covered by this order, except in egregious cases, are where there is a significant number of verifiable complaints, where there is a pattern of disregard of the various regulatory requirements, or where such verifiable complaints are not corrected quickly when carrier management becomes aware of them. This policy is especially important during the period a carrier . . . is conducting the hiring and additional training programs necessary to achieve long term compliance in response to enforcement action. This policy has been followed by the CAB and remains the policy of the Enforcement Office." Continental Airlines, Order 1987-6-29.

⁴ U.S. Airways, Inc., Order 2013-11-4, fn 2., page 2.

⁵ Even prior to amendments to the Air Carrier Access Act (which occurred in 2000) and the formal application of the disability regulations (Part 382 in 2008) to foreign carriers, DOT brought enforcement action against carriers for egregious conduct involving passengers with disabilities based on other authority. See, e.g., Alitalia, Order 98-12-19, in which DOT found that a carrier engaged in discriminatory conduct in violation of 49 U.S.C. § 41310 (providing that a foreign air carrier "may not subject a person, place, port, or type of traffic in foreign air transportation to unreasonable discrimination") for failing to provide a boarding wheelchair and then reassigning the passenger's seat without providing an alternative.

⁶ Quentin Tarantino, dir. Reservoir Dogs. 1992; Miramax Studios (Mr. Pink: "Is it bad?" Mr. White: "As opposed to good?").

⁷ Ryan International Airlines, Inc., Order 2003-9-4.

⁸ United Air Lines, Inc., Order 2005-10-22. It is important to emphasize that not being ambulatory is not the test as to whether a passenger must travel with a safety assistant; it is, rather, whether that person has a "mobility

DOT Enforcement of Egregious Part 382 Violations

Page 4 of 4

impairment so severe that the person is unable to assist in his or her own evacuation of the aircraft.” 14 C.F.R § 382.35(b)(3). In other words, a non-ambulatory person may still have the use of their arms and hands to assist in their own evacuation.

⁹ Air Canada, Order 2000-8-18.

¹⁰ British Airways, Plc, Order 2006-8-7.

¹¹ Compania Mexicana de Aviacion, S.A. de C.V., Order 2008-4-6.

¹² American Airlines, Order 2013-12-4.

¹³ See Third Party Complaint of Paralyzed Veterans of America v. American Airlines, DOT-OST-2022-0075) (filed July 6, 2022); see also Amanda Morris, *Embarrassing, Uncomfortable, and Risky: What Flying is Like for Passengers who Use Wheelchairs*, N.Y. Times (Aug. 8, 2022).