

## **Air Travel with a Disability**

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Speaking from personal experience, one of the most difficult situations I regularly encounter, as both an attorney and an individual with a disability, is air travel. Unbeknownst to most, air travel is one of the least accessible day-to-day accommodations encountered by individuals with disabilities. As such, one of the most common questions I get asked in my practice is: Why does it seem like airlines are so far behind other public accommodations in terms of accessibility? This article hopes to briefly address that question while also giving disabled air travelers some critical tips for reducing the inconvenience of flying as much as possible.

There are several reasons that, in terms of accessibility, air travel is not on par with other modes of transportation. One, airplanes are in no way designed for, or accessible to, air travelers with disabilities. Prior to boarding a plane, an individual with a disability must leave their chair for an “aisle chair” (an ineffective assistive mobility device for most disabilities) or be assisted by untrained airline personnel onto the plane. Further, the chair (or power chair) is then taken by baggage handlers who, more often than not, damage the chair during loading and unloading in the cargo hold of the plane. This is especially problematic if the chair is a custom, power wheelchair, as service and repairs are especially expensive. Additionally, if a service or support animal is involved, an additional layer of obstacles must be overcome to ensure that an individual can make the trip with their assistance animal.<sup>1</sup>

All of these reasons, however, stem from the fact that domestic air carriers are largely exempt from the enforcement provisions of federal civil rights laws, including, importantly, the Americans with Disabilities Act (“ADA”). The Air Carrier Access Act, 49 U.S.C. § 41705 (“ACAA”),<sup>2</sup> is the primary law setting forth the obligations of air carriers as it relates to disabled travelers. The ACAA was passed in 1986 and is enforced by the United States Department of Transportation. The DOT issues implementing regulations from time to time, and those regulations provide the meat on the bones of the ACAA.

At first glance, many aspects of the ACAA appear to be taken directly from the ADA. For example, issues like the definition of “disability” are identical to the ADA. The main difference between the ACAA and ADA, however, is that under the ACAA, disabled travelers do not have a private right of action against an air carrier that discriminates against the customer.<sup>3</sup> Unfortunately, the most effective means for effectuating change when dealing with large venues or companies is the legal

process. However, if an individual is discriminated against while on an airplane, there is no recourse through the courts for the most part. Any complaints or allegations of discrimination are handled in concert between the customer, the airline's customer service, and the DOT. Aside from potential reimbursement of repair costs or fines levied by the government against the airline, there is no real incentive preventing air carriers from repeating bad conduct. At the end of the day, the degree of effort required to remedy, and the consequences for, misconduct is more trouble than it is worth for the average disabled air traveler to pursue.

With all of that in mind, here are some important tips for individuals with disabilities to follow prior to their next flight:

- A. *Know your rights.* The sad reality is that most airline employees are poorly trained when it comes to providing services to disabled air travelers. I can't stress enough how important it is to carry a copy of the DOT's rules as it relates to air travel for persons with disabilities. Entitled "Nondiscrimination on the Basis of Disability in Air Travel", these rules address 95% of the questions that might arise while traveling by air.<sup>4</sup>
- B. *Don't take the first no for an answer.* In the event questions or issues arise, always ask to speak to the airline's complaints resolution official ("CRO"). Each airline is required to designate and make available to customers a CRO, 24 hours a day, 7 days a week. Generally, CROs are the airline employees with the most knowledge concerning disabled air travelers and associated accommodations. Additionally, the DOT maintains a customer assistance line for these types of issues.<sup>5</sup> If the CRO is not being as helpful as they should, contacting the DOT may assist in expediting the process.
- C. *Contact the airline prior to your date of travel.* A lot of the issues commonly encountered by disabled air travelers can be resolved ahead of time through the carrier's reservation and/or customer service departments. At a minimum, contact your airline 48 hours prior to your departure to inform them of the specifics related to your disability and accompanying needs. This includes advising them of what type of assistive device you'll be traveling with (i.e. chair, power, type of battery, etc.), whether or not you need assistance enplaning or deplaning, or seat assignment (i.e. the need to be reassigned to seating near the bulkhead of the plane to reduce the amount of distance you'll need to traverse from the door of the plane to your seat, etc.).<sup>6</sup>
- D. *Become very familiar with the complaint resolution process.* As mentioned previously, in the event you believe an airline has discriminated against you

on the basis of disability, the designated means for recourse is a complaint filed with the DOT. The DOT's air consumer department provides a bevy of information on both the rules airlines are required to follow, and the forms and steps necessary to pursue a remedy through the DOT's administrative process. Having an understanding of these rules prior to traveling will assist a disabled traveler in making sure that the full scope of remedies available through the DOT's grievance process are in play in the unfortunate event that further steps are necessary.

In summary, traveling with a disability already presents certain obstacles and concerns that are just inherent to being disabled. However, the very limited range of available options to a disabled passenger that is discriminated against makes it very important that such travelers are well-versed in their rights and their legal options.

#### References:

1. Additional guidance on traveling with an assistance animal can be found here: <http://airconsumer.ost.dot.gov/rules/20030509.pdf>
2. *See also* Title 14 CFR Part 382; 70 FR 41482; <http://airconsumer.ost.dot.gov/ACAAcomplaint.htm>
3. In other words, generally, a disabled air traveler does not have the right to file a lawsuit for discrimination against an air carrier. This rule is not set in stone or uniform. While most circuits have found that a private right of action by an aggrieved, disabled traveler does not exist – *see, e.g., Love v. Delta Air Lines*, 310 F.3d 1347 (11th Cir. 2002) – circuits, such as the 9<sup>th</sup>, do recognize such a right under the ACAA. *See Newman v. Am. Airlines, Inc.*, 176 F.3d 1128 (9th Cir. 1999).
4. The most recent version can be found here: <http://airconsumer.ost.dot.gov/rules/382short.pdf>.
5. The DOT Aviation Consumer Protection Division: 800.778.4838 (voice) or 800.455.9880 (TTY), hours of operation: 9 AM to 5 PM EST, Monday through Friday.
6. Up until the day of departure, airlines block out certain bulkhead seating (i.e. close to the door) to accommodate the travel schedules of employees, travelers with disabilities, or any other passenger with special needs.