



CUNNINGHAM SWAIM

The Air Carrier Access Act: A View From 30,000 ft.

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Flight Plan:

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What is the ACAA?

- The ACAA amended the Federal Aviation Act of 1958 to prohibit discrimination against handicapped individuals in the provision of air transportation.
- The ACAA further required the promulgation of regulations prohibiting such discrimination.

What is the ACAA?

49 USCA § 41705 - Discrimination Against Handicapped Individuals

(a) In general.--In providing air transportation, an air carrier, including (subject to section 40105(b)) any foreign air carrier, may not discriminate against an otherwise qualified individual on the following grounds:

- (1)** the individual has a physical or mental impairment that substantially limits one or more major life activities.
- (2)** the individual has a record of such an impairment.
- (3)** the individual is regarded as having such an impairment.

Origins of the ACAA

United States Dept. of Transportation, et al v. Paralyzed Veterans of America, et al, 477 U.S. 597 (1986).

- PVA challenged regulations of the Civil Aeronautics Board designed to implement the Rehabilitation Act of 1973 and to prevent discrimination against disabled persons in connection with air transportation.
- Section 504: “No otherwise qualified handicapped individual in the United States ... shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance....”
- The United States provides financial assistance to airport operators, and the Government operates a nationwide air traffic control system.

Origins of the ACAA

United States Dept. of Transportation, et al v. Paralyzed Veterans of America, et al, 477 U.S. 597 (1986).

- “This case presents the question whether, by virtue of such federal assistance, § 504 is applicable to commercial airlines.”
- The Court held that § 504 was not applicable to commercial airlines, rejecting the argument that federal funding to airports was the equivalent of federal funding to airlines and rejecting the argument that the air traffic control system constituted federal financial assistance to airlines.

Origins of the ACAA

United States Dept. of Transportation, et al v. Paralyzed Veterans of America, et al, 477 U.S. 597 (1986).

- A short time later, the ACAA was born -
 - “[T]he practical effect of *DOT v. PVA* is to leave handicapped air travelers subject to the possibility of discriminatory, inconsistent and unpredictable treatment on the part of air carriers.” S. Rep. 99-400 (1986).
 - “In recognition of the unique difficulties now faced by handicapped air travelers, S. 2703 would mitigate the effect of *DOT v. PVA* by amending section 404 of the Federal Aviation Act of 1958 to prohibit specifically discrimination against otherwise qualified handicapped individuals. The bill would give the Secretary 120 days after its date of enactment within which to promulgate regulations to prevent air carriers from discriminating, in the provision of air transportation, against handicapped individuals.” S. Rep. 99-400 (1986).

Key Regulations

14 CFR Part 382:

- Robust series of regulations dealing with everything from communicable diseases to the transportation of service animals, accessibility of airport kiosks, baggage liability limits, complaint resolution processes, the use of wheelchairs, handling of portable oxygen concentrators . . .the list goes on.

Key Regulations

- **14 CFR § 382.3 - What do the terms in this rule mean?**
 - “Individual with a disability”
 - “Physical or mental impairment”
 - “Major life activities”
 - “Has a record of such impairment”
 - “Regarded as having an impairment”
 - “Qualified individual with a Disability”

Key Regulations

14 CFR § 382.11 - What is the general nondiscrimination requirement of this part?

- As a carrier, you must not do any of the following things:
- discriminate against any qualified individual with a disability, by reason of such disability, in the provision of air transportation;
- require a person to accept special services that they do not request;
- exclude a person with a disability from or deny the person the benefit of any air transportation or related services that are available to other persons, . . . even if there are separate or different services available for persons with a disability;
- take any adverse action (e.g., refusing to provide transportation) because the person asserts, on his or her own behalf or through or on behalf of others, rights protected by ACAA.

Key Regulations

14 CFR § 382.19 - May carriers refuse to provide transportation on the basis of disability?

- Carrier must not refuse to provide transportation because the person's disability results in appearance or involuntary behavior that may offend, annoy, or inconvenience crewmembers or other passengers.
- Carrier may refuse to provide transportation to any passenger on the basis of safety, if the Carrier can demonstrate that the passenger poses a direct threat - defined in § 382.3
- “Direct threat”
- The Carrier must select the least restrictive response from the point of view of the passenger, consistent with protecting the health and safety of others.

Key Regulations

14 CFR § 382.21 - May carriers limit access to transportation on the basis that a passenger has a communicable disease or other medical condition?

- Must not refuse or delay transportation, impose any condition or restriction, or require a medical certificate unless passenger's condition poses a "direct threat."
- Carrier may rely on directives issued by public health authorities (e.g., the U.S. Centers for Disease Control or Public Health Service; comparable agencies in other countries; the World Health Organization).

Key Regulations

14 CFR § 382.21 - May carriers limit access to transportation on the basis that a passenger has a communicable disease or other medical condition?

- **Example 1:** The common cold is readily transmissible in an aircraft cabin environment but does not have severe health consequences. Someone with a cold would not pose a direct threat.
- **Example 2:** AIDS has very severe health consequences but is not readily transmissible in an aircraft cabin environment. Someone would not pose a direct threat because he or she is HIV-positive or has AIDS.
- **Example 3:** SARS may be readily transmissible in an aircraft cabin environment and has severe health consequences. Someone with SARS probably poses a direct threat.

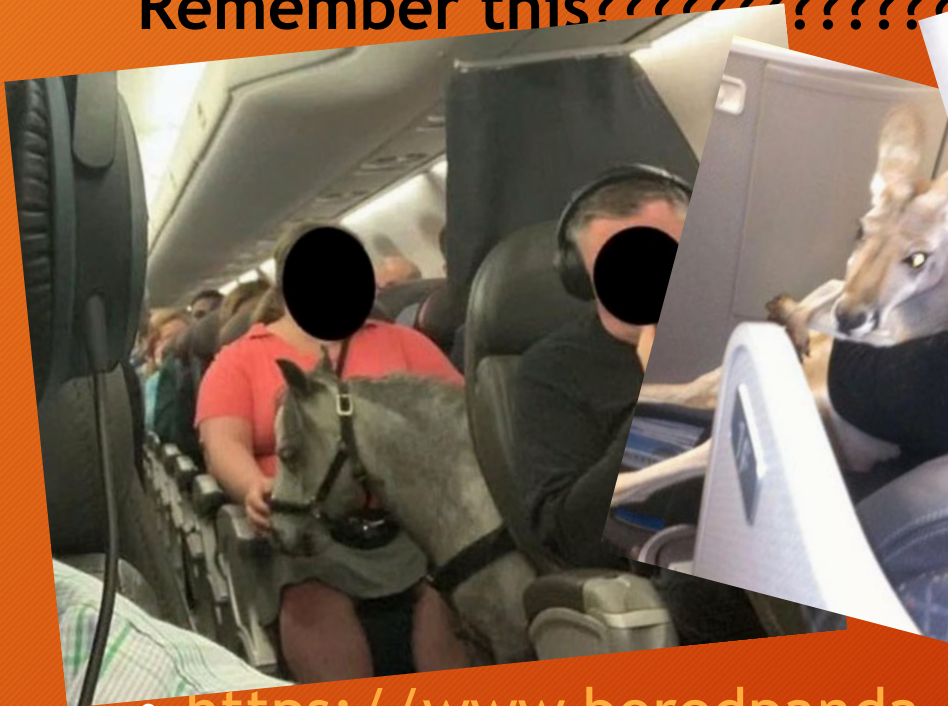
Key Regulations

14 CFR § 382.33 - May carriers impose other restrictions on passengers with a disability that they do not impose on other passengers?

- Carrier generally must not subject passengers with a disability to restrictions that do not apply to other passengers.
- Carrier must not:
 - Restrict passenger movement within the terminal;
 - Require passengers to remain in a holding area;
 - Make passengers sit on blankets on the aircraft;
 - Make passengers wear badges or other special identification (e.g., similar to badges worn by unaccompanied minors); or
 - Otherwise mandate separate treatment for passengers with a disability, unless permitted or required by this part or other applicable Federal requirements.

Key Regulations

Remember this??????????????



- <https://www.boredpanda.com/people-with-emotional-support-pets-went-too-far/>

Key Regulation

Effective January 11, 2018

- The rule changes were made to address the numerous complaints received by the Department and other Federal agencies of wildlife on-board aircraft, which caused disruptions caused by non-compliant animals; (4) the increased number of service animals on-board aircraft.

[\[Docket No. DOT-OST-2018-001\]](#)



on Service Animals

of compelling needs to the number of service animal passengers with disabilities; (2) the inconsistent definitions among agencies; (3) the lack of uniformity in the types of animals used in legitimate service; and (4) the increased number of travelers.”

Key Regulations

Effective January 11, 2021 - New Regulations on Service Animals

- New definition - “Service animal means a dog, regardless of breed or type, that is individually trained to do work or perform tasks for the benefit of a qualified individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Animal species other than dogs, emotional support animals, comfort animals, companionship animals, and service animals in training are not service animals for the purposes of this part.”
- Numerous other restrictions imposed - 14 CFR § § 382.72 - 382.80.

Key Regulations

14 CFR § 382.151 - What are the requirements for providing Complaints Resolution Officials?

- Carrier providing service using aircraft with 19 or more passenger seats, you must designate one or more CROs.
- “You must ensure that each of your CROs has the authority to make dispositive resolution of complaints on behalf of the carrier. This means that the CRO must have the power to overrule the decision of any other personnel, except that the CRO is not required to be given authority to countermand a decision of the pilot-in-command of an aircraft based on safety.”

Key Regulations

14 CFR § 382.151 - What are the requirements for providing Complaints Resolution Officials?

- Carrier must make a CRO available at each airport served.
- Must make passengers with a disability aware of the availability of a CRO and how to contact the CRO.

Key Regulations

14 CFR § 382.153 - What actions do CROs take on complaints?

- If complaint is made before violation of regulations, “the CRO must take, or direct other carrier personnel to take, whatever action is necessary to ensure compliance.”
- If alleged violation already occurred, and the CRO agrees, the CRO must provide complainant a written statement setting forth a summary of the facts and what steps, if any, the carrier proposes to take in response to the violation.
- If the CRO determines no violation occurred, “the CRO must provide to the complainant a written statement including a summary of the facts and the reasons, under this part, for the determination.”
- Must inform the complainant of right to pursue DOT enforcement action.

Key Regulations

14 CFR § 382.159 - How are complaints filed with DOT?

- Any person may seek assistance or file an informal complaint at the Department of Transportation no later than 6 months after the date of the incident by either:
 - Going to the web site of the Department's Aviation Consumer Protection Division at <http://airconsumer.ost.dot.gov> and selecting “Air Travel Problems and Complaints,” or
 - Writing to Department of Transportation, Aviation Consumer Protection Division (C-75), 1200 New Jersey Avenue, SE., Washington, DC 20590.
- May also file a formal complaint under the applicable procedures of 14 CFR part 302.

Enforcement Examples

- Scandinavian Airlines System - SAS violated Web site accessibility requirements by creating a separate Website for individuals with disabilities instead of ensuring that its primary Website met the Web Content Accessibility Guidelines, as required by 14 CFR 382.43(c) - \$200,000 compromise civil penalty.
- Allegiant Air, LLC - Allegiant failed to provide adequate assistance to passengers with disabilities moving within the terminal, failed to timely respond to complaints, and failed to make timely refunds - \$250,000 civil penalty.
- Hawaiian Airlines, Inc. - Hawaiian failed to properly categorize and report disability-related complaints, failed to provide timely dispositive responses regarding damage to assistive devices, and failed to comply with oversales regulations - \$125,000 compromise civil penalty.

ACAA as a Cause of Action - 5th Circuit

Shinault v. American Airlines, Inc., 936 F.2d 796 (5th Cir. 1991) -

- Passenger sued AA under the ACAA asserting that AA discriminated against him by refusing to let him board a flight because he was handicapped.
- Following the test in *Cort v. Ash*, 422 U.S. 66 (1975), the court found that a private right of action exists under the ACAA.
- “The ACAA does not provide for a private cause of action. We may imply private remedies, however, after considering the following four factors: (1) whether the plaintiff is one of the class of persons whom the statute was intended to benefit; (2) whether the legislature intended to create a private remedy; (3) whether a private remedy is consistent with the underlying statutory scheme; and (4) whether the contemplated remedy traditionally has been relegated to state law.”
- The court concluded “that the ACAA allows recovery of compensatory damages, including damages for emotional distress.”

ACAA as a Cause of Action - 5th Circuit

***Stokes v. Southwest Airlines*, 887 F.3d 199 (5th Cir. 2018) -**

- Mother of child with autism sued SWA for violation of the ACAA claiming that child was prevented from boarding aircraft due to allegedly disruptive behavior.
- Recognizing the rule announced in *Alexander v. Sandoval*, 532 U.S. 275 (2001), the court joined “every post-*Sandoval* federal court to consider the issue” and held that the ACAA confers no private right of action.

ACAA as a Cause of Action - 5th Circuit

***Stokes v. Southwest Airlines*, 887 F.3d 199 (5th Cir. 2018) -**

- “As other circuits have explained, although the ACAA prohibits airlines from discriminating on the basis of disability, it ‘does not expressly provide a right to sue the air carrier.’ . . . To the contrary, the ACAA combines with other federal aviation statutes to form a comprehensive *administrative* scheme ‘designed to vindicate fully the rights of disabled persons.’”
- Joining the Second, Tenth, and Eleventh Circuits, the court held that there was no private right of action under the ACAA and that *Shinault* is no longer the law.

Resources

There are numerous resources available .

- Electronic Code of Federal Regulations - 14 CFR Part 382:
<https://www.ecfr.gov/cgi-bin/text-idx?SID=ae47679a5dc0b0cdd685abc7e3437dbb&mc=true&node=pt14.4.382&rgn=div5>
- US Department of Transportation - ACAA Website:
<https://www.transportation.gov/airconsumer/disability>
- US Department of Transportation - Online Complaint Form:
<https://airconsumer.dot.gov/escomplaint/ConsumerForm.cfm>
- US Department of Transportation - ACAA Complaint Form (Paper):
<https://www.transportation.gov/sites/dot.gov/files/docs/382form.pdf>

Conclusion

If you have questions about this presentation, please e-mail me at:

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