

AVIATION REGULATORY UPDATE

PRESIDENT TRUMP SIGNS LEGISLATION ENDING SHUTDOWN AND REOPENING GOVERNMENT THROUGH FEBRUARY 15

On January 25, 2019, President Trump signed a continuing resolution passed by Congress which reopened the U.S. government and provided funding through February 15, 2019. The legislation also established a bipartisan, bicameral committee tasked with negotiating an agreement on border security as part of a new spending bill for the U.S. Department of Homeland Security. Negotiations over President Trump's prior request for \$5.7 billion in funding for a southern border wall remain ongoing, with no clear resolution at this time.

With funding set to expire on February 15, 2019 and the possibility of another government shutdown after that date, if you require any short-term action by the Department of Transportation, Federal Aviation Administration, Customs and Border Protection, Transportation Security Administration, or any other relevant government agency, we recommend you contact us for assistance as soon as possible.

DRAFT CONSUMER PROTECTION REGULATIONS PUBLISHED FOR COMMENT BY CANADIAN TRANSPORT AUTHORITY

Pursuant to a May 2018 instruction from the Canadian Parliament to develop a standardized set of passenger protection regulations for air travelers, intended to be at least as robust as similar measures in the U.S. and E.U., the Canadian Transport Authority (CTA) has published a draft set of "Air Passenger Protection Regulations" and is seeking input from industry stakeholders. **The deadline to comment is February 20, 2019**, and the rules are expected to go into effect this summer after revisions are finalized. When passed, air carriers will have new responsibilities to communicate with passengers and to provide set levels of compensation for key events such as delayed or cancelled flights, denied boarding, tarmac delays, and damaged or lost baggage. Certain communications will also be required to be included as part of itinerary documents and on digital sales platforms.

All flights to, from, and within Canada (including connecting flights) will be covered by the new rules. For example, a flight from Shanghai to New York via Toronto would be covered. Carriers will need to provide specific disclosures when a key event occurs, and will be required to take remedial steps depending on the situation and the amount of control the carrier exercises over the source of the problem. For example, passengers generally must be allowed to disembark after tarmac delays exceeding three hours. Regarding compensation, the rules fix amounts due for delays (e.g. C\$400 for 3-6 hours) and denied boarding (e.g. C\$900 for less than 6 hours) – with escalating amounts the longer delays persist – and will impose requirements in some situations to provide food, communications, rebooking on other carriers, or overnight accommodations. Regarding children, the rules will require carriers to seat children under the age of 14 with their parents at no additional cost and will incorporate ICAO standards on unaccompanied minors. Depending on the provision or regulation violated, carriers can be fined up to **C\$25,000** for any violation(s).

Please contact us if you would like assistance with comment submission.

AVIATION REGULATORY UPDATE

CALIFORNIA ATTORNEY GENERAL SEEKS PUBLIC COMMENT ON THE STATE'S CONSUMER PRIVACY ACT OF 2018

Signed on June 28, 2018, the California Consumer Privacy Act of 2018 (CCPA) is a comprehensive consumer data privacy act that grants California consumers broad rights and protections over personal data collected by businesses. Upon request from a consumer, businesses are required to: disclose the categories and specific items of personal data collected, including sources and business purposes; disclose what data is shared with third-parties, and who those parties are; allow consumers to opt-out of third-party data sharing; and to delete a consumer's data permanently. The law may be enforced by the California Attorney General starting on July 1, 2020 or six months after the California Attorney General adopts regulations implementing the law, whichever is sooner. Citizens also have a private right of action to sue under the CCPA, beginning on the effective date of the legislation, January 1, 2020. However, private suits may only pertain to a data breach and may not be brought for a failure to give certain notices or disclosures.

Businesses have an opportunity to engage in the CCPA rulemaking process as active participants. Interested persons may submit comments via e-mail to privacyregulations@doj.ca.gov with the subject line "Comments on CCPA" or by mail to the California Department of Justice, ATTN: Privacy Regulations Coordinator, 300 S. Spring St., Los Angeles, CA 90013. The Department is also holding public hearings on the Act, the schedule for which is available at oag.ca.gov/privacy/ccpa.

Please contact us if you would like assistance with comment submission.

NORWEGIAN PLANE STUCK IN IRAN AIRPORT DUE TO U.S. SANCTIONS

On December 14, 2018, a Norwegian Air Shuttle ASA (Norwegian) B-737 MAX had an emergency landing due to a technical error in one of the engines. All 186 passengers and six crew members spent the night in Iran and flew to Oslo the next day. The aircraft, however, remains grounded in Iran due to U.S. sanctions against Iran prohibiting civilian aircraft sales, including services and parts.

Current U.S. sanctions under the Trump Administration ban "the exportation, reexportation, sale or supply, directly or indirectly, from the United States or by a US person, wherever located, of any goods, technology or services to Iran." The export restrictions under the U.S. sanctions also apply to any company that seeks to sell or resell goods to Iran that contain more than 10 percent parts or technology from the United States. Therefore, if Norwegian sought to obtain a spare part and that spare part contains more than 10 percent U.S.-origin goods or technology, such a transaction would require a U.S. license.

As of January 31, 2019, the Norwegian Air jet is still stuck in Iran's Shiraz Airport.

UNITED TIGHTENS LIMITATIONS ON SERVICE ANIMALS

United Airlines (United) has joined Delta Air Lines (Delta) in tightening its limitations on passengers travelling with service and emotional support animals (ESAs). Since January 7, 2019, United passengers cannot travel with ESAs or trained service animals under the age of four months. Similar to the arguments made by Delta, United asserts that animals under the age of four months have not typically received the

AVIATION REGULATORY UPDATE

necessary vaccinations. Requiring proof of vaccinations is a newly permissible limitation established in the DOT's Interim Statement of Enforcement Priorities Regarding Service Animals.

Under United's new policy, if a passenger is traveling with a trained service animal, the animal may be a dog, cat, or miniature horse. However, emotional support animals may only be dogs or cats. Moreover, United has completely banned emotional support animals on flights that are eight hours or longer, as the airline has reported an increase in incidents on longer flights: "We have seen increases in on-board incidents on longer flights involving these animals, many of which are unaccustomed to spending an extended amount of time in the cabin of an aircraft," United reported in a statement issued on the new policy.

As the larger U.S. carriers continue to tighten service animal and ESA policies, additional airlines are likely to follow suit.

INCREASE IN FORM I-9 (EMPLOYMENT AUTHORIZATION) AUDITS PROGRAM

Over the past year, the U.S. Citizenship and Immigration's (ICE) Homeland Security Investigations (HSI) division has worked to expand its Form I-9 audits program. As this initiative is continuing, we wish to remind our clients of the importance of Form I-9 compliance.

Businesses are responsible for filling out a Form I-9 and collecting supporting documents for each individual they hire to prove all such employees are legally authorized to work in the U.S. Employers must be careful to accept the proper documents, as listed on the last page of the Form I-9, depending on the status of each individual, and documents must not be expired. For example, an alien with work authorization might provide as proof of status a foreign passport along with a separate Employment Authorization Document containing a photograph (I-766), or a foreign passport with an I-551 stamp or I-551 notation on a machine-readable immigrant visa, or a foreign passport along with a complete and endorsed Form I-94. Completed I-9 Forms are not filed with the government, but must be retained for a specified period in case of an audit. This is just one of several technical requirements imposed by the law.

An audit entails on-site inspection of records by ICE/HSI agents to ensure proper recordkeeping and to verify that a business is employing only legal workers. Upon discovery of improper completion, processing or even retention of I-9 Forms, ICE/HSI may impose civil penalties for minor technical errors discovered in an employer's records (\$220 to \$2,200 per violation), but may seek criminal charges (and significantly higher financial penalties) for employers who substantively fail to maintain proper documentation. The trend of audits is only expected to grow because ICE/HSI views them as a tool to dis-incentivize illegal hiring and build a culture of labor law compliance. In fiscal year 2017 alone, American businesses were levied \$97.6 million in forfeitures, fines, and restitution, and another \$7.8 million in civil fines.

The seriousness of the government's push for more audits was illustrated this past summer when the U.S. Department of Justice filed suit against California to enjoin legislation that effectively sought to interfere with ICE employer audits. As enhanced scrutiny continues, employers should be prepared for audits, and be vigilant to avoid common pitfalls in Form I-9 preparation such as leaving certain fields of the form blank,

AVIATION REGULATORY UPDATE

not providing a hire date, not filling out forms promptly upon hiring an employee, or accepting documentation that is not valid.

If you are concerned about your current method and manner of handling I-9 Forms, Eckert Seamans can assist, and if you are contacted by ICE/HSI, you should contact us immediately.

CALIFORNIA LABOR LAW REMINDER - MEAL AND REST BREAKS

Pursuant to the California Labor Code, employers in California must ensure proper documentation of the hours for which employees must be paid. If employees are working at unscheduled times, for example, even short periods of extra time generally must be recorded and the employee must be compensated.

Non-exempt employees must also receive regular meal and rest breaks. An employer must provide an unpaid, off-duty meal period of at least 30 minutes no later than the fifth hour of an employee's shift. "Off-duty" means that an employee is free from work obligations and cannot be encouraged to skip the break. An employer must provide a second unpaid meal break if an employee works more than 10 hours. Additionally, employers must provide at least 10-minute uninterrupted rest breaks for all nonexempt employees whose total daily work time is at least 3.5 hours. These often, though not always, fall mid-shift between meal breaks.

Employers in California should be aware of these requirements and ensure that scheduling of employees' work hours is compliant, as employees may bring claims under the California Labor Code for lost wages as compensation.

FAA ISSUES CAUTIONARY NOTAM FOR PAKISTANI AIRSPACE

At the end of December 2018, the FAA issued a Notice to All Airmen (NOTAM) advising U.S. air carriers and commercial operators to exercise caution when flying into, out of, or over Pakistan due to continuing militant/extremist activity. According to the notice, risks include attacks against airports and aircraft, particularly for aircraft on the ground and aircraft operating at low altitudes, including during the arrival and departure phases of flight. While there have been no recent reports of man-portable air defense systems (MANPADS) being used against civil aviation, these weapons may be present in the area and pose some risk. Air carriers are encouraged to stay vigilant for any further FAA alerts and to report any security incidents.

This Aviation Regulatory Update is intended to keep readers current on matters affecting the industry, and is not intended to be legal advice. If you have any questions, please contact Evelyn Sahr at esahr@eckertseamans.com or 202-659-6622; Drew Derco at dderco@eckertseamans.com or 202-659-6665; Alexander Matthews at amatthews@eckertseamans.com or 202.659.6633.