

# The Rules Are Changing

## *How New OSHA Protections Will Affect You*

On August 22, 2013, the Association of Flight Attendants-CWA (AFA) hailed the announcement that some Occupational Safety and Health protections will apply to Flight Attendants working on commercial aircraft. Following AFA's tireless advocacy to improve safety and health standards for Flight Attendants in the workplace, the Federal Aviation Administration (FAA) and the Occupational Safety and Health Administration (OSHA) finalized a policy statement that corrects a nearly four-decade-old exclusion of OSHA in the passenger cabin.

In 1975, the FAA claimed exclusive jurisdiction over workplace safety and health for all crewmembers, preventing OSHA from protecting Flight Attendants while working on board commercial flights. Since then, AFA has pursued multiple legal and regulatory solutions. The final policy statement resulted from years of aggressive AFA advocacy, a memorandum of understanding between the FAA and OSHA signed during the Clinton Administration, follow-through by the Obama Administration, and a thorough FAA and OSHA review of comments submitted by AFA, individual AFA members, and others.

In the months ahead, AFA will work to ensure implementation of the six standards identified in the new policy, as well as full compliance with the relevant training requirements. The new policy includes three standards that affect your rights and that have always been in place:

**Recordkeeping; Access to Employee Exposure and Medical Records;** and the **Anti-Discrimination** (i.e., Whistleblower) provision of the 1970 Occupational Safety and Health Act. The new policy also includes three workplace safety and health standards that did not previously apply to Flight Attendants working in the airplane cabin: **Noise; Bloodborne Pathogens;** and **Hazard Communication** (related to **Toxic Chemicals**). Other existing and proposed OSHA standards could be evaluated and considered for future application. The two agencies are drafting a Memorandum of Understanding to support discussions of how any additional standards could apply in the cabin; AFA is closely monitoring this process.

As OSHA protections enter the airplane cabin, AFA members are asking about the new requirements and how they affect our workplaces. This booklet answers some of these questions, and summarizes key aspects of the six OSHA standards that protect Flight Attendants in the cabin.

<b>Subject</b> .....	<b>Page</b>
1. OSHA in the Cabin – Finally! .....	<u>2</u>
2. Summaries of Six OSHA Standards .....	<u>5</u>

# 1. OSHA in the Cabin – Finally!

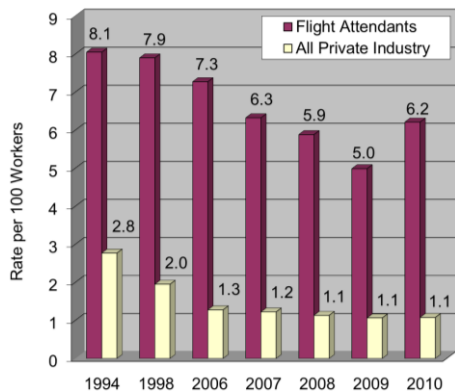
## *Why are OSHA protections entering the airplane cabin?*

In 1975, the Federal Aviation Administration (FAA) published a notice in the Federal Register to claim *exclusive* jurisdiction over workplace safety and health for all aircraft crewmembers. Unfortunately, this decision prevented the Occupational Safety and Health Administration (OSHA), which regulates the safety and health of most U.S. workers, from protecting crewmembers working on aircraft in operation.

In 1990, AFA filed a petition for rulemaking that asked the FAA to adopt selected OSHA safety regulations and apply them to crewmembers, addressing such areas as the recording and reporting of injuries; access to employee exposure and medical records; right to inspections; safety definitions; the handling of hazardous materials; personal protective equipment; medical and first aid; fire protection, and toxic and hazardous substances. In submitting this petition, AFA sought to fill the void created when the FAA asserted jurisdiction over crewmember health and safety, without actually exercising that authority. About seven years after AFA petitioned for rulemaking, the FAA finally responded in June 1997, with a one-page rejection letter.

This rejection led to extensive pressure exerted by Flight Attendants and AFA; finally, a Memorandum of Understanding (MOU) was signed on August 7, 2000 by the then-FAA Administrator and OSHA Assistant Secretary. The MOU directed FAA and OSHA to “establish a procedure for coordinating and supporting enforcement ... with respect to the working conditions of employees on aircraft in operation ... and for resolving jurisdictional questions.” Unfortunately, the January 2001 change of administration in Washington slowed the process and led to a watered-down voluntary program that failed to attract participants.

For decades, Flight Attendants have suffered from the lack of occupational safety and health regulatory protections. Federal government statistics for workplace injuries and illnesses have consistently shown (see the chart to the right) that aircraft cabins are dangerous workplaces, with Flight Attendant rates consistently many times higher than those experienced by employees in private industry as a whole.



*Rates of nonfatal injuries/illnesses involving days away from work for Flight Attendants vs. workers in other industries, based on government data.*

On February 14, 2012, Public Law 112-95—*FAA Modernization and Reform Act of 2012*—was signed into law, following years of congressional inability to pass a comprehensive bill to fund the FAA. This bill includes an important statute—*Sec. 829, Clarification of memorandum of understanding with OSHA*—that was intended to finally bring meaningful safety and health protections to Flight Attendants working in the cabin. Sec. 829 required the FAA to report to Congress within six months of bill passage (by August 14, 2012) on milestones for completion of work begun under the August 2000 MOU and to “initiate development of a policy statement to set forth the circumstances in which requirements of the Occupational Safety and Health Administration may be applied to crewmembers while working in an aircraft.” During this six-month period, AFA worked hard to hold both agencies and the industry accountable for ensuring that Flight Attendants working on aircraft in operation are covered by comprehensive, *regulatory* safety and health protections.

On December 7, 2012, the FAA published its proposal for a new policy to address Flight Attendant workplace safety. The FAA requested comments, and many AFA members and the AFA Air Safety, Health and Security department responded with statements that can be found by searching on “FAA–2012–0953” at [www.regulations.gov](http://www.regulations.gov).

On August 22, 2013, AFA’s long-term work with the FAA and OSHA finally led to the [FAA policy statement](#) that freed OSHA to begin regulating the safety and health of crewmembers working on aircraft in operation. In coordination with its local safety committees, AFA will now collaborate with the FAA, OSHA and the airlines to ensure that Flight Attendants are provided sufficient information to understand their rights to safe, healthy cabin workplaces, and that all airlines that employ AFA members comply with all relevant aspects of the applicable OSHA standards, including Flight Attendant training requirements. AFA will support the FAA and OSHA in holding the industry accountable for documenting their programs, training workers, mitigating hazards, and generally making the cabin a safer, healthier workplace.

### ***Which OSHA standards apply to the cabin workplace?***

Three OSHA regulations that address specific workplace hazards will be enforced in the airplane cabin: Bloodborne Pathogens; Occupational Noise Exposure; and Hazard Communication. The policy statement also references three other OSHA requirements that, because they do not address working conditions, have always applied to Flight Attendants: Recordkeeping; Access to Employee Exposure and Medical Records; and the Anti-Discrimination (i.e., Whistleblower) provision of the 1970 Occupational Safety and Health Act.

## ***When will the new OSHA regulations take effect?***

The new FAA policy became effective on September 26, 2013 and required that OSHA conduct no enforcement activities related to the three workplace hazard regulations within the first six months after it became effective. Thus, initial OSHA enforcement begins March 26, 2014, but many employers developed written plans and modified training materials well before then.

## ***What other issues are raised by OSHA jurisdiction?***

The application of OSHA standards raises several potential issues that were resolved through interagency collaboration. These include:

- **Possible Adverse Effects on Aviation Safety:** In the unlikely event that application of an OSHA standard could adversely affect aviation safety, both agencies agreed that FAA regulations and enforcement will take precedence.
- **Worksite Inspections:** It is not expected that onboard inspections will be needed to ensure compliance, at least for the three OSHA standards discussed above, which require employers to develop and implement their own programs. For these, compliance can be verified outside the aircraft. However, in response to a stakeholder question regarding inspections, the [FAA noted that the two agencies will](#) “explore the feasibility of developing interagency procedures to address and coordinate workplace inspections if and when they may be required.”
- **State Jurisdiction:** Twenty-two U.S. states have separate, unique “State Plan” programs to provide regulatory occupational safety and health protections to employees working for private sector employers. In states that do not have State Plan programs, workers are protected by Federal OSHA. Since airplanes are mobile workplaces, this system of shared jurisdiction would create confusion. To avoid this problem, OSHA consulted with the State Plan programs, and it was agreed that Federal OSHA will cover all airplane cabin working conditions, including in any state that has its own State Plan for private sector employers.
- **International Jurisdiction:** By law, OSHA jurisdiction is limited to the boundaries of the U.S. and its territories and possessions. As a result, the OSHA standards do not apply on operations outside the U.S. However, OSHA requirements for training and access to information, and any cabin safety mitigations, will benefit all U.S. Flight Attendants, including those who fly internationally.

## 2. Summaries of Six OSHA Standards

The following tables summarize key aspects of the six OSHA standards that will apply to Flight Attendants working in the cabins of commercial transport airplanes. Each table includes the name and number (in the Code of Federal Regulations, or CFR) of the standard. Brief descriptions of the scope of each standard are also provided, as well as potential effects on crew training programs, compliance issues, and onboard equipment requirements. Further detailed information and resources are available at the OSHA website locations provided in the footnotes, from your safety committee members, or by contacting the AFA-CWA International Air Safety, Health and Security Department.

Standard/Scope	Training and Education	Compliance Issues	Equipment
<p><b>Bloodborne Pathogens</b></p> <p><a href="#">29 CFR 1910.1030</a></p> <p>Pathogens that are present in human blood and can cause disease in humans.</p> <p><i>Exposure Incident ... a specific eye, mouth, other mucous membrane, non-intact skin, or parenteral contact with blood or other potentially infectious materials that results from the performance of an employee's duties.</i></p> <p>Each employer having an employee(s) with reasonable anticipation of an occupational exposure ... shall establish a written Exposure Control Plan ... to eliminate or minimize ... exposure.</p>	<p>Communication of Hazards to Employees</p> <p><i>Labels and Signs</i></p> <p><i>Information and Training</i></p> <p>OSHA Resources</p> <p><a href="#">OSHA's Bloodborne Pathogens Standard</a></p> <p><a href="#">Bloodborne Pathogen Exposure Incidents</a></p> <p><a href="#">Hepatitis B Vaccination Protection</a></p> <p><a href="#">Holding the Line on Contamination</a></p> <p><a href="#">Personal Protective Equipment (PPE) Reduces Exposure to Bloodborne Pathogens</a></p>	<p>Methods of Compliance</p> <p><i>Universal precautions</i></p> <p><i>Engineering and Work Practice Controls</i></p> <p><i>Personal Protective Equipment</i></p> <p><i>Housekeeping</i></p> <p>Hepatitis B Vaccination and Post-exposure Evaluation and Follow-up</p> <p>Recordkeeping</p> <p><i>Medical Records</i></p> <p><i>Training Records</i></p> <p><i>Sharps injury log</i></p>	<p><i>Handwashing Facilities ... a facility providing an adequate supply of running potable water, soap, and single-use towels or air-drying machines.</i></p> <p><i>Personal Protective Equipment</i> is specialized clothing, gloves, or equipment worn by an employee for protection against a hazard. General work clothes (e.g., uniforms, pants, shirts or blouses) not intended to function as protection against a hazard are not considered to be personal protective equipment.</p>

Standard/Scope	Training and Education	Compliance Issues	Equipment
<p><b>Occupational Noise Exposure</b></p> <p><u><a href="#">29 CFR 1910.95</a></u></p> <p>Protection against the effects of noise exposure shall be provided when the sound levels equal or exceed an 8-hour time weighted average of 85 decibels.</p>	<p>The employer shall train each employee who is exposed to noise at or above an 8-hour time weighted average of 85 decibels regarding noise effects, protective devices, and audiometry. The employer shall institute a training program and ensure employee participation in the program.</p> <p>The employer shall make available to affected employees or their representatives copies of the OSHA noise standard and shall also post a copy in the workplace.</p> <p>OSHA Resource:</p> <p><u><a href="#">Hearing Conservation</a></u></p>	<p>Hearing conservation program</p> <p>Employee notification</p> <p>The employer shall establish and maintain an audiometric testing program to all employees whose exposures equal or exceed an 8-hour time-weighted average of 85 decibels.</p> <p>The program shall be provided at no cost to employees.</p> <p>Within 6 months of an employee's first exposure at or above the action level, the employer shall establish a valid baseline audiogram against which subsequent audiograms can be compared.</p>	<p>Employers shall make hearing protectors available to all employees exposed to an 8-hour time-weighted average of 85 decibels or greater at no cost to the employees. Hearing protectors shall be replaced as necessary.</p>

Standard/Scope	Training and Education	Compliance Issues	Equipment
<p><b>Hazard Communication</b>  <u>29 CFR 1910.1200</u></p> <p>The Hazard Communication Standard requires employers to inform employees of the hazards and the identities of workplace chemicals to which they are exposed.</p> <p>The requirements of this section are intended to be consistent with the provisions of the United Nations Globally Harmonized System of Classification and Labelling of Chemicals (GHS), Revision 3. The transmittal of information is to be accomplished by means of comprehensive hazard communication programs, which are to include container labeling and other forms of warning, safety data sheets (SDS) and employee training.</p>	<p>The employee training plan must include at least:</p> <ul style="list-style-type: none"> <li>▪ How the hazard communication program is implemented in that workplace, how to read and interpret information on labels and the SDS, and how employees can obtain and use the available hazard information.</li> <li>▪ The hazards of the chemicals in the work area. (The hazards may be discussed by individual chemical or by hazard categories such as flammability.)</li> <li>▪ Measures employees can take to protect themselves from the hazards.</li> <li>▪ Specific procedures put into effect by the employer to provide protection such as engineering controls, work practices, and the use of personal protective equipment (PPE).</li> <li>▪ Methods and observations -- such as visual appearance or smell -- workers can use to detect the presence of a hazardous chemical to which they may be exposed.</li> </ul>	<p>Employers shall:</p> <ul style="list-style-type: none"> <li>▪ Identify and list hazardous chemicals in their workplaces.</li> <li>▪ Obtain SDSs and labels for each hazardous chemical, if not provided by the manufacturer, importer, or distributor.</li> <li>▪ Develop and implement a written hazard communication program that includes labels, SDSs, and employee training on the list of chemicals, SDSs, and label information.</li> <li>▪ Communicate hazard information to their employees through labels, SDSs, and formal training programs.</li> </ul>	<p><i>Labels and other forms of warning</i></p> <p><i>Safety data sheets</i></p>

Standard/Scope	Training and Education	Compliance Issues	Equipment
<p><b>Access to Employee Exposure and Medical Records</b></p> <p><a href="#">29 CFR 1910.1020</a></p> <p>The purpose of this section is to provide employees and their designated representatives a right of access to relevant exposure and medical records ... in order to fulfill responsibilities under the Occupational Safety and Health Act. Access by employees, their representatives, and the Assistant Secretary is necessary to yield both direct and indirect improvements in the detection, treatment, and prevention of occupational disease.</p>	<p>Upon an employee's first entering into employment, and at least annually thereafter, each employer shall inform current employees covered by this section of the following:</p> <ul style="list-style-type: none"> <li>▪ The existence, location, and availability of any records covered by this section;</li> <li>▪ The person responsible for maintaining and providing access to records; and</li> <li>▪ Each employee's rights of access to these records.</li> </ul> <p>OSHA Resource:</p> <p><a href="#">Medical Records: Access to Medical and Exposure Records</a></p>	<p>Employee exposure record</p> <p>Health Professional means a physician, occupational health nurse, industrial hygienist, toxicologist, or epidemiologist, providing medical or other occupational health services to exposed employees.</p> <p>Preservation of records</p> <p>Whenever an employee or designated representative requests access to a record, the employer shall assure that access is provided in a reasonable time, place, and manner.</p>	<p>Not applicable</p>



Standard/Scope	Training and Education	Compliance Issues	Equipment
<p><b>Recordkeeping</b> <u>29 CFR 1904</u></p> <p>The purpose of this rule ... is to require employers to record and report work-related fatalities, injuries and illnesses.</p> <p>This information is important for employers, workers and OSHA in evaluating the safety of a workplace, understanding industry hazards, and implementing worker protections to reduce and eliminate hazards</p> <p>Note: Recording or reporting a work-related injury, illness, or fatality does not mean that the employer or employee was at fault, that an OSHA rule has been violated, or that the employee is eligible for workers' compensation or other benefits.</p>	<p>Employer must inform each employee of how he or she is to report an injury or illness</p> <p>Recordable work-related events:</p> <ul style="list-style-type: none"> <li>▪ Fatalities</li> <li>▪ Injuries / illnesses that result in days away from work, restricted work or transfer to another job, loss of consciousness or medical treatment beyond first aid</li> <li>▪ Any significant injuries / illnesses diagnosed by a physician or other licensed HCP</li> </ul> <p>OSHA Resources:</p> <p><a href="#">Highlights of OSHA's Recordkeeping Rule Fact Sheet</a></p> <p><a href="#">OSHA 300, 300A, and 301 Forms, 2004 and beyond Forms</a></p> <p><a href="#">Brief Tutorial on Completing the Recordkeeping Forms</a></p> <p><a href="#">Memo: Employer Safety Incentive and Disincentive Policies and Practices</a></p>	<p>Employer must provide limited access to ... injury and illness records for ... employees and their representatives.</p> <p>Employers ... must orally report to OSHA the death of any employee from a work-related incident or the in-patient hospitalization of three or more employees as a result of a work-related incident within eight (8) hours</p> <p>Employers ... must post Form 300A, the Summary of Work-Related Injuries and Illnesses, in a workplace every year from February 1 to April 30</p> <p>Per Fairfax Memo (footnote 14): "Section 11(c) of the OSH Act prohibits an employer from discriminating against an employee because the employee reports an injury or illness."</p>	<p>The AFA Air Safety, Health and Security Department can provide model template letters for local/national councils to request OSHA injury/illness data from their employers.</p> <ul style="list-style-type: none"> <li>▪ When an ... authorized employee representative asks for copies of ... OSHA 300 Log(s) ... the [employer] must give the requester a copy ... by the end of the next business day.</li> <li>▪ When an authorized employee representative asks for copies of the OSHA 301 Incident Reports [the employer] must give [redacted] copies ... within 7 calendar days.</li> </ul>

Standard/Scope	Training and Education	Compliance Issues	Equipment
<p><b>Anti-Discrimination</b></p> <p><a href="#">OSHA Act of 1970, Sec. 11, Judicial Review</a></p> <p>(c) (1) No person shall ... discriminate against any employee [who] has filed any complaint ... related to this Act or ... because of the exercise by such employee on behalf of himself or others of any right afforded by this Act.</p> <p>Note: This is in addition to the AIR21 law, which “Protects employees of air carriers and contractors and subcontractors of air carriers who, among other things, report violations of laws related to aviation safety.”</p>	<p>Protection from discrimination means that an employer cannot retaliate by taking "adverse action" against workers, such as:</p> <ul style="list-style-type: none"> <li>▪ Firing or laying off</li> <li>▪ Blacklisting</li> <li>▪ Demoting</li> <li>▪ Denying overtime or promotion</li> <li>▪ Disciplining</li> <li>▪ Denial of benefits</li> <li>▪ Failure to hire or rehire</li> <li>▪ Intimidation</li> <li>▪ Making threats</li> <li>▪ Reassignment affecting prospects for promotion</li> <li>▪ Reducing pay or hours</li> </ul>	<p>Sec. 11. Judicial Review</p> <p>(c) (2) Any employee who believes that he has been discharged or otherwise discriminated against by any person in violation of this subsection may, within thirty days after such violation occurs, file a complaint with the Secretary alleging such discrimination ... [T]he United States district courts shall have jurisdiction ... [to] order all appropriate relief including rehiring or reinstatement of the employee to his former position with back pay.</p>	<p>Not applicable</p>