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Reference  
Chapters  
6, 13

# Session 10: Operating a Passenger Terminal: Labor, Gender Discrimination, Concessions, and Other Emerging Issues

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# Life Out There On The Airport Is Complicated

- Myriad Of Issues Facing Sponsors That Are Outside Of The Traditional Confines of “Airport Law”
- Awareness & Sensitivity Is More Than ½ The Battle
- Hitting Hot Spots Today



# Title VI Antidiscrimination & The Sponsor - Statutory Authority

- Civil Rights Act of 1964
- Prohibits federal funding recipients from discriminating based on race, color, or national origin (42 U.S.C. 2000d)
- Discrimination based on sex or creed (49 U.S.C. 47123) and age (42 U.S.C. 6101) also prohibited
- Grantees must take affirmative steps to ensure non-discrimination

# Title VI - Regulations & Guidance

- DOT Regulations at 49 C.F.R. Part 21.7
- FAA Advisory Circular 150/5100-15A
- Other FAA Guidance - Title VI Tool Kit



# Title VI – Airport Tenants

- Airports must require all tenants and sub-tenants to agree to non-discrimination terms in their agreements
- Initial agreement issues
- On-going relationship monitoring



# Title VI - Complaints and Compliance

- Airports must report any complaint regarding discrimination to FAA within 15 days
- Airports must also inform complainants that they may inform FAA directly
- Airports must post public notice on premises indicating that complaints may be directed to FAA
- FAA may also conduct random compliance checks
- Does your airport have a Title VI coordinator?



# LEP - Statutory Authority

- Limited English Proficiency (“LEP”) authority:
  - Title VI
  - Executive Order 13166 - Requires improved access to federally assisted programs and activities for people with limited English proficiency (“LEP”)
  - DOT issued LEP guidance (70 Fed. Reg. 74087)



# LEP - Determining Need

- Four-Factor Analysis for determining LEP obligation:
  - Number/proportion of LEP persons in an airport sponsor's area
  - Frequency of contact between LEP persons and airport sponsor's services
  - Importance of the service provided by airport sponsor
  - Resources available to airport sponsor and cost



# LEP - Language Assistance Plan

- Based on results of Four-Factor analysis, airports may need to develop a Language Assistance Plan
  - Not required unless Four-Factor analysis indicates
  - No required format (but guidance from FAA regarding minimum elements)



# LEP - Strategies/Measures

- Strategies for providing language assistance
  - Identifying LEP populations - community outreach; translation “I Speak” cards; information desk and tenant surveys
  - Providing notice to LEP populations - Postings, advertising, marketing, websites
  - Interpretation/translation - bilingual staff/volunteers; telephonic interpretation services; universal symbols; translated documents
  - Training and monitoring - may include tenant training

# Title VI and LEP Coverage

- Title VI and LEP protections apply to:
  - the flying public
  - airport employees
  - tenants and their employees
  - concessions customers and potential customers
  - other users of the airport

# Non-Discrimination Contractual Requirements

- Non-discrimination requirements (Title VI, LEP, etc.) are included in AIP Grant Assurances (GA 30)
- GA 30 requires all airport (sub)tenants, (sub)concessionaires, and (sub)lessees to agree to Title VI non-discrimination requirements

# Non-Discrimination Contractual Requirements (con't)

- Grant Assurance 30 Requirements
  - Contract clauses prohibiting discrimination on the basis of race, color, national origin, creed, sex, age, or handicap
  - Clauses requiring compliance with federal law, and include regulations by reference in all covered contracts
  - Notice on all solicitations, including for airport concessions, of potential parties' Title VI obligations

# FAA Compliance Audits, Affirmative Action Plans and Recordkeeping

- FAA Compliance Reviews
- Information Commonly Requested By Agency
- Contractual Provisions & Sponsor Responsibility To Monitor Compliance

# Real World Application of Non-Discrimination Provisions

- Including “Required Provisions” In Airport Contracts
- LEP: Terminal Access
- Contractor Affirmative Action Plans & EEO-1 Filings
- LEP & Environmental Justice
- Sponsor on-going outreach
  - Tenants
  - Contractors

# The Airport Sponsor & Locally-Derived Legislative Initiatives

- Federally-derived initiatives are not the only area of concern
- Locally-derived initiatives are increasingly becoming a significant source of additional responsibility for the sponsor
- Variety of drivers in play

# Sponsor-Local Government Interplay: Competing or Complementary Interests?

- The San Francisco Airport Commission is an enterprise department of the City and County of San Francisco.
- The Airport has a \$1B operating budget and financially self-sufficient operation.
- It is also a government entity which implements the public policy goals and initiatives of the City.

# Concession Enterprise

- In FY 2015-16, the Airport held a total of 56 food and beverage leases and 39 retail leases.
- Revenue from food and beverage leases exceeded \$21 million.
- Revenue from retail leases exceeded \$29 million.

# Public Policy Initiatives – Adding to the Sponsor Responsibilities

- Wages
- Health Care
- Lactation Rooms
- All Gender Restrooms

# Public Policy Initiatives – Wages

- Concession leases incorporate the provisions of the City's Minimum Compensation Ordinance (San Francisco Administrative Code Chapter 12P, section 12P.4).
- Concession tenants are required to pay employees the current MCO rate (\$13.34/hour).
- MCO may be waived through collective bargaining, but such waiver must be explicit (section 12P.10).

# Public Policy Initiatives – Health Care Benefits

- Concession leases incorporate the provisions of the City's Health Care Accountability Ordinance (San Francisco Administrative Code Chapter 12Q, section 12Q.2.14).
- Concession tenants are required to either (a) provide a health care benefit or (b) pay the City an hourly rate for each covered employee, to be used by the City's Department of Public Health for the care of the uninsured.
- HCAO may be waived through collective bargaining, but such waiver must be explicit (section 12Q.8).
- Any Airport food/beverage tenant employer providing a health benefit to its employees at a cost exceeding \$7.00/hour may apply a 2% surcharge on pre-tax food and beverage sales as a pass-through to its customers.

# Public Policy Initiatives – Lactation Rooms

- SFO currently has three nursing rooms located in the secure area. They are located in every domestic terminal and are planned for the International Terminal.
- Standard amenities include a chair, an outlet within reach of the chair, an infant changing table, and a sink.
- In 2014, the California Legislature adopted Government Code section 50479, which requires airports with one million annual enplanements to provide a lactation room with a minimum of a chair and an electrical outlet. New or renovated terminal lactation rooms must also include a sink. The room must be located beyond the security checkpoint and outside a public restroom.

# Public Policy Initiatives – All-Gender Restrooms

San Francisco Administrative Code section 4.1-3, which became effective in May 2016:

## SEC. 4.1-3. ALL-GENDER TOILET FACILITIES IN BUILDINGS ON CITY-OWNED OR LEASED LAND.

This Section 4.1-3 shall apply to all buildings on land owned by the City and County of San Francisco ("City") and all buildings that are leased to or by the City, whether such buildings are new or existing. For existing buildings, the City department or agency with jurisdiction over the building shall have six months from the effective date of this Section to comply with the requirements.

(a) **New Construction.** At least one all-gender toilet facility shall be provided on each floor in any new building constructed on City-owned land or that is constructed by or for the City where toilet facilities are required or provided. For purposes of this subsection (a) and subsection (b), below, "all-gender toilet facility" means a toilet facility that is not restricted to use by persons of a specific sex or gender identity by signage, design, or installation of fixtures.

(b) **Existing Buildings.** Unless not allowed by an existing lease, whenever extensive renovations are made on one or more floors in any building on land that the City owns or in a building that is leased to or by the City, at least one all-gender toilet facility shall be provided on each floor where the renovations take place and toilet facilities are required or provided. For purposes of this subsection (b), "extensive renovations" shall mean a renovation where the renovation construction costs exceed 50% of the costs of providing toilet facilities that comply with the requirements of this Section 4.1-3.

(c) If there are five or more toilet facilities in the building that are designed for use by multiple occupants, at least one such facility in the building shall be identified as all-gender by the recognized California geometric symbol for such facilities so long as the minimum number of separate male and female toilet facilities required by Title 24 of the California Code of Regulations is maintained. The City official with management authority over the building shall decide which toilet facilities shall be designated.

(d) Nothing in this Section 4.1-3 shall be construed as requiring or authorizing (1) a reduction in the number of toilet facilities that are required by Title 24 of the California Code of Regulations or (2) a reduction in the number of toilet facilities accessible to persons with disabilities that are otherwise required under either Title 24 of the California Code of Regulations or the Federal Americans with Disabilities Act.

# Animal Relief Areas

49 CFR 27.71(h) Airport Facilities Service Animal Relief Areas, requires airports (with 10,000 or more annual enplanements) to consult with at least one service animal training organization regarding the design, dimensions, materials, and maintenance of service animal relief areas and to establish animal relief areas which are:

- post-security (sterile area);
- wheelchair accessible ; and
- in each terminal; unless
- TSA directs or the service animal organization and airport agree that the relief areas will be located outside the sterile area.

# On-Airport Labor Relations Issues

- Concessions & Aircraft Service Personnel – Recent Trends & Issues
- On-Airport Labor Activity – Picketing, Leafletting & Union Organizing Activities

# ADA - General Requirements

- Americans with Disabilities Act (“ADA”) (42 U.S.C. 12101 et seq.) prohibits discrimination against persons with disabilities
- For airports, this includes ensuring that terminal facilities and services are readily accessible to and usable by persons with disabilities

# ADA - Coverage

- Airports may be subject to different types of ADA coverage:
  - employment requirements (Title I);
  - requirements for public entities (Title II);
  - requirements for private entities, including concessionaires, tenants, and lessees (Title III)

# ADA - Design Standards

- 2010 ADA Standards for Accessible Design govern new construction and alterations for public facilities, including airports, under Titles I and II of ADA
- Airport structures are subject to older 1991 Standards if constructed or altered before March 15, 2012

# ADA - Specific Requirements for Terminals

- Airports must ensure that there is an accessible path between the gate and the area from which aircraft are boarded
- Systems of inter-terminal transportation must comply with accessibility standards
- Service animals must be accommodated. Primary airports have an obligation to establish at least one relief area in each airport terminal

# ADA – Terminals

- Best Practices
- ADA Coordinator
- FAA Compliance Reviews



# ADA - Contracts with Carriers

- Contracts between carriers and airports concerning use of airport facilities must set forth the respective responsibilities of the parties for provision of accessible facilities and services

# Comments/Questions

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