



U.S. Department
of Transportation
**Federal Aviation
Administration**

Office of the Chief Counsel

800 Independence Ave., S.W.
Washington, D.C. 20591

JUL - 3 2018

John Q. de Lancie
[REDACTED]

Dear Mr. de Lancie:

Thank you for your March 22, 2018, request for a legal interpretation. You asked the FAA to clarify the 14 CFR part 117 definitions of “duty” and “flight duty period” (FDP) in the context of air carriers requiring employees to perform work activities in exchange for commuting benefits. You included a scenario in which a pilot performs cleaning duties on two flight segments while commuting¹ using company benefits. You asked whether the pilot’s FDP began during cleaning duties on the first leg, the second leg, or when the pilot reported for a flight assignment.

The FAA has clarified “duty” and “FDP” through several letters of interpretation. In *Laurenzano* (1992), the FAA stated that duty means all actual work for an air carrier, including preflight and post flight activities. In *Ewing* (2014), the FAA explained that the name the certificate holder gives to characterize work assigned to the flight crewmember is not determinative², and re-emphasized that duty is “actual work for a certificate holder[.]” In *Morris* (2005), the FAA indicated that when an air carrier assigns airport ground duties and flight assignments, airport ground duties are included in the duty period, because “we believe that such industry practices [] are activities that can lead to fatigue that could interfere with the [] ability to safely perform [] assignments.” The FAA went on to indicate that the time a flight crewmember reports for a flight assignment is not necessarily the time the duty period starts if prior to the report time the flight crewmember was engaged in airport ground duties. That period when the flightcrew member performs other activities for the air carrier must be included in the duty period, to mitigate any fatigue that might affect the flight assignment. Therefore, the pilot’s FDP must include any actual work assigned by the certificate holder.

¹ We note that when a pilot voluntarily commutes from his or her home to his or her place of work utilizing the certificate holder’s commercial air carriage, that is not typically considered deadhead transportation, and thus not part of the duty period.

² In this case, “commuting.”

Please find enclosed the letters of interpretation referenced in this response. If you have any additional questions regarding this matter, please contact your local Certificate Management Office or Flight Standards District Office.

Sincerely,

A handwritten signature in black ink, appearing to read "Lorelei D. Peter". The signature is fluid and cursive, with the first name being the most prominent.

Lorelei D. Peter
Assistant Chief Counsel for Regulations, AGC-200

Enclosures

Recipient Information

To: Office of the Chief Counsel
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Sender Information

From: John Q. de Lancie

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Sent on: Thursday, March 22 2018 at 2:36 PM EDT

Please respond with receipt of message and ruling to [REDACTED]

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2018.03.22

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8 To Whom It May Concern:

9 This inquiry is to further clarify the 14 CFR 117 definition of "duty" and
10 "flight duty period (FDP)".

11 **Background:** Some 14 CFR § 121 "low cost" air carriers are redefining the
12 traditional arrangements of **compensation** to employees in order to save on
13 employment costs, allowing the company to demonstrate a lower operating cost to
14 shareholders. These clever re-definitions may be circumventing the FAA's
15 definitions of "duty". One such practice involves using FAA certificated
16 employees (pilots) in non-traditional roles outside of their traditionally
17 understood duty footprint (flight duties). Traditional **compensation** involves the
18 employer defining a work to be performed and offering monetary compensation at
19 industry rates. **The low-cost carrier (the "Company") has reformed this**
20 **traditional arrangement by requiring the certificated employee to perform work**
21 **not for monetary compensation, but for the privilege of utilizing Company**
22 **aircraft for "non-revenue" transport from that employee's home to his domicile,**
23 **and vice-versa (commuting).** Specifically, the Company has required the
24 certificated employee to perform work which might include: **providing aircraft**
25 **janitorial services, cleaning aircraft toilets, assisting with cabin baggage**
26 **loading, or preparing the cabin for another flight.** At legacy carriers,
27 certificated employees are not used for these functions and the proper employees
28 are hired internally or contracted to perform the work.

29 The Company (certificate holder) is **requiring** (and **assigning**) the certificated
30 employee to perform work **on behalf of the certificate holder** in order to exercise
31 **non-revenue commuting "privileges"**. The certificate holder's policy provides no
32 opt-out provision and requires the certificated employee to perform the work, **or**
33 **else that employee's non-revenue privileges are revoked.** Effectively this is an
34 **instrument of coercion into involuntary work** since most airline pilots rely on
35 non-revenue privileges in order to report to their domicile for flight duty. Not
36 reporting for flight duty is grounds for termination. Therefore, the certificate
37 holder has used clever language in order to extract work by attaching it as a
38 requirement of exercising a **privilege**, yet not considering it "duty" for the
39 purposes of determining Flight Duty Periods.

40 **Specific Interrogatives:**

- 41 1. 14 CFR 117.3 provides for a definition of **duty** with some examples such as
42 **"administrative"** work but does not adequately provide examples of duty which
43 could be non-traditional such as a certificated employee performing
44 **janitorial services, assisting with baggage loading, assisting gate agents,**
45 **assisting flight attendants, etc.**
- 46 1.1. If a certified employee is producing work as directed by the
47 certificate holder, **for the benefit of the certificate holder**, is such work
48 considered "duty"?
- 49 1.2. If it is not considered "duty", then what is the litmus test for
50 determining whether an activity constitutes "duty"?

- 51 1.3. Is it necessary to provide monetary compensation in order for work to
52 be considered "duty"? For example, Flight Attendants are not paid until
53 the aircraft doors are closed.
- 54 2. If the pilot is performing extraneous work for the company, does the period
55 of that work constitute the beginning of a "duty period" as per 14 CFR
56 117.3?
- 57 3. If the FDP begins at the extraneous duty in question (well in advance of
58 actual pilot duties), is the Company miscalculating 14 CFR 117 maximum duty
59 period limitations as provided to pilots via ACARS prior to Blocking Out
60 (pushing from the gate)?
- 61 4. If the FDP begins at the duty in question (well in advance of actual pilot
62 duties), and the pilot accepts the Company's duty period limitation
63 calculations, is the certificated pilot potentially violating 14 CFR 117
64 regulations by accepting a flight assignment with a potentially
65 miscalculated FDP?

66 Example Scenario:

- 67 1. The pilot must commute from his home to his domicile by utilizing his
68 company's "non-revenue" benefits on Company aircraft. The pilot must use
69 2 non-revenue legs (KATL → KMCO → KJFK).
- 70 a. The first leg begins at 1000 Zulu originating at KATL and ends at 1120
71 Zulu at KMCO. The pilot is required to perform various "cleaning"
72 duties aboard the airplane prior to leaving the aircraft from 1120-
73 1135 Zulu.
- 74 b. The second leg begins at 1150 Zulu originating at KMCO and ending at
75 KJFK at 1430 Zulu. The pilot is required to perform various
76 "cleaning" duties aboard the airplane prior to leaving the aircraft
77 from 1430-1445 Zulu.
- 78 c. The pilot is scheduled to "report" for the beginning of his pairing at
79 KJFK at 1600 Zulu, at which point he is scheduled to perform two
80 flight legs, each lasting 3.5 hours (7 hrs total of flight time).
81 1600 Zulu is the traditionally understood beginning of the FDP.
- 82 2. Using this example, does the pilot's Flight Duty Period (FDP) begin at
83 1120 Zulu (the first leg "cleaning duty"), 1430 Zulu (the second leg
84 "cleaning duty") or at 1600 Zulu (the pilots scheduled "pairing")?

85 14 CFR § 117.3 Definitions.

- 86 • **Duty** means any task that a flightcrew member performs as required by the
87 certificate holder, including but not limited to flight duty period, flight
88 duty, pre- and post-flight duties, administrative work, training, deadhead
89 transportation, aircraft positioning on the ground, aircraft loading, and
90 aircraft servicing.
- 91 • **Flight duty period (FDP)** means a period that begins when a flightcrew member
92 is required to report for duty with the intention of conducting a flight, a
93 series of flights, or positioning or ferrying flights, and ends when the
94 aircraft is parked after the last flight and there is no intention for
95 further aircraft movement by the same flightcrew member. A flight duty
96 period includes the duties performed by the flightcrew member on behalf of
97 the certificate holder that occur before a flight segment or between flight
98 segments without a required intervening rest period. Examples of tasks that
99 are part of the flight duty period include deadhead transportation, training
100 conducted in an aircraft or flight simulator, and airport/standby reserve,
101 if the above tasks occur before a flight segment or between flight segments
102 without an intervening required rest period.

103

104 According to *Morris Legal Interpretation (2005)*, "We conclude that it is
105 reasonable to interpret the regulation to include airport ground duties in "duty
106 period" when a flight attendant is assigned a mix of airport ground duties, such
107 as office duty, station manager duty, gate duties (e.g., ticket collecting) along
108 with flight assignments, because we believe that such industry practices (i.e.,
109 mixing airport ground duties with flight assignments) are activities that can
110 lead to fatigue that could interfere with flight attendants' ability to safely
111 perform their cabin safety assignments."

112 Precedent appears to dictate that any duties, regardless of method of
113 compensation, can be considered "duty" when conducted for the benefit of the air
114 carrier. I am concerned that air carriers are infringing upon "duty" protections
115 by exploiting specific examples of what constitutes duty rather than the general
116 test of "for the benefit of the air carrier". **An air carrier setting this**
117 **precedent with minor work will inevitably exploit technicalities of the rule**
118 **making in the future.** For example, it is not inconceivable that an air carrier
119 requires pilots to assist in gate agent duties, baggage loading, or aircraft
120 cleaning as a stipulation of receiving the company sponsored "privilege" of
121 airport employee parking. Air carriers are exploiting duty (work) from
122 certificated employees by creating a "strings attached" clause to "privileges"
123 which are necessary for employment (e.g. pilots need to commute long distances to
124 their domiciles). Ultimately this creates a systemic safety situation where it
125 is impossible to gauge the true effects of work on duty periods. This could
126 invalidate the results of safety investigations which rely on consistently
127 applied definitions of duty in order to properly assess human performance.

128 I kindly request your legal interpretation in order to maintain the highest
129 standards safety and of fidelity to the 14 CFR series of regulations. I request
130 that you acknowledge receipt of this letter and to please forward your ultimate
131 replies electronically to [REDACTED].

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Regards,
John Q. de Lancie

[REDACTED]