

ATPDR: LIMITED EXEMPTIONS FOR FOREIGN AIR CARRIERS

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On June 25, 2019, the Canadian Transportation Agency (the “**CTA**”) enacted the *Accessible Transportation for Persons with Disabilities Regulations* (SOR/2019-244) (the “**ATPDR**”) in order to establish a single and comprehensive set of mandatory rules aimed at making travel more accessible and consistent for persons with disabilities. The majority of the provisions of the ATPDR are scheduled to come into force on June 25, 2020.

However, due to the severe financial and operational challenges arising from the COVID-19 pandemic for carriers and terminal operators, the CTA issued the *Accessible Transportation for Persons with Disabilities Regulations Application Exemption Order* (SOR/2020-125) (the “**Exemption Order**”) on June 1, 2020, which provides some temporary exemptions from certain specific requirements of the ATPDR until December 31, 2020.

What’s new with the ATPDR?

Currently, in order to protect the rights of persons with disabilities to an accessible transportation network, the CTA can rely on two regulations, six voluntary codes of practice and the adjudication orders that it may issue.

The regulations in question (Part VII of the *Air Transportation Regulations* (SOR/88-58) (the “**ATR**”) and the *Personnel Training for the Assistance of Persons with Disabilities Regulations* (SOR/94-42) (the “**PTAPDR**”)) are only applicable to domestic air transport (in the case of the ATR) and to certain Canadian carriers and terminal operators (in the case of the PTAPDR).

The six codes of practice are outdated and their application is entirely voluntary.

Finally, the CTA issues adjudication orders only in response to specific complaints. Therefore, only the carrier(s) involved in such complaints are required to remove undue obstacles to the transportation of persons with disabilities, while their competitors might not be subject to the same obligations.

Consequently, the rules are disparate, unequal, outdated and there are currently no mandatory provisions applicable to foreign carriers.

The ATPDR is generally based on the existing regulations and codes of practice but the requirements have been updated. Moreover, it will impose binding obligations on most carriers (including foreign air carriers),

terminal operators, the Canadian Air Transport Security Authority and the Canadian Border Services Agency. Also, the non-compliance to the ATPDR can result in administrative monetary penalties.

The obligations under the ATPDR can be summarized in four categories:

- requirements regarding communication;
- requirements for personnel training;
- requirements regarding services to be provided to persons with disabilities; and
- technical requirements related to certain equipment that should be available to ensure that the means of transport and terminals are accessible to persons with disabilities.

These obligations are applicable to all transportation service providers, with some specific differences depending on the mode of transportation.

With regards to foreign air carriers, however, with the exception of the requirement to publish a notice on their website listing the applicable obligations pursuant to the ATPDR (which is applicable to all transportation service providers), foreign air carriers are only subject to the requirements regarding services to be provided to persons with disabilities.

The Exemption Order

Firstly, pursuant to the Exemption Order, air terminal operators, Canadian air carriers and domestic bus and marine carriers are exempted from certain of the ATPDR requirements related to communication, personnel training and technical requirements.

More specifically, until December 31, 2020, these transportation service providers will be exempt from the requirement to make their websites accessible by meeting the requirements for a Level AA conformance that are set out in the Web Content Accessibility Guidelines. They will also be exempt from the requirement to develop new training programs.

Moreover:

- air terminal operators will be exempt from the requirement to create relief areas for service dogs and the requirement to assist persons with disabilities between the curbside zone and the check-in for arriving passengers and between the general public area and curbside zone for departing passengers;
- air terminal operators and Canadian air carriers will be exempted from their obligation to provide information in alternative formats; and
- both Canadian air carriers and domestic bus carriers will be exempted from the requirement to make available personal electronic devices with accessible content if they have onboard entertainment

systems that are not accessible.

Secondly, all air carriers subject to the ATPDR (which includes both large Canadian and foreign air carriers) are exempted from two service requirements imposed by the ATPDR:

- the obligation to provide a written confirmation of the requested services; and
- the obligation to offer to retain passengers' confidential health information for future travels.

The Exemption Order was issued by the CTA after it conducted a consultation with the Accessibility Advisory Committee (which is comprised of representatives from the community of persons with disabilities, transportation service providers and other interested parties). The above mentioned exemptions were granted in consideration of the operational and financial difficulties created by the COVID-19 pandemic.

For example, the COVID-19 social distancing requirements are creating challenges with respect to the consultations to be conducted regarding the personnel training programs and the effective training of the transportation service providers' personnel. Other obligations, such as those related to website accessibility, would generate important IT expenses for the transportation service providers at a time when they are already facing substantial financial difficulties.

While helpful, the Exemption Order provides temporary relief only in relation to a small number of the provisions of the ATPDR, which includes over 200 sections.

Limited impact for foreign air carriers

The only exemptions applicable to foreign air carriers are the ones related to:

- the obligation to provide a written confirmation of the requested services; and
- the obligation to offer to retain passengers' confidential health information for future travels.

Therefore, until December 31, 2020:

- air carriers will not be required to (i) indicate in the record of the person's travel reservation the service that the carrier will provide and (ii) include a written confirmation of the service in the itinerary that is issued to the person or, if a service is confirmed only after the itinerary is issued, to provide a written confirmation of the service); and
- where a person with a disability provides supporting information and documentation in relation to a request for service, including health information, the carrier will not be required to offer to retain an electronic copy of the information for at least three years in order to use it if the person makes another request for service.

However, as of June 25, 2020, they will be required to comply with all the other service requirements of the ATPDR, which includes, without limitation, the following:

- assistance during the check-in, boarding and disembarking operations;
- assistance during flight, for example with regards to the service of meals and to transfer from a seat to an onboard wheelchair and vice-versa;
- the carriage of mobility aids (including the obligation to inform the person of the option to make a special declaration of interest under article 22(2) of the *Montreal Convention and/or the Warsaw Convention* as applicable)
- the carriage of service dogs;
- the creation of allergy buffer zones;
- the procurement of additional adjacent seating for support persons, service dogs or the person depending on her disability.

Moreover, in cases where a mobility aid is damaged, destroyed, lost or delayed during its transport, the obligations related to the provision of a temporary mobility aid, the repair, replacement or reimbursement of the mobility aid and the reimbursement of all expenses caused by the damage, destruction, loss or delay of the mobility aid also come into force on June 25, 2020 as scheduled.

As of June 25, 2020, foreign air carriers are also required to publish the following information on their website:

- A notice listing the obligations that are applicable to the carrier pursuant to the ATPDR;
- Information about the maximum weight and dimensions of mobility aids that each make and model of the carrier's aircrafts is capable of transporting;
- A notice that informs persons with disabilities who use mobility aids of the option to make a special declaration of interest under Article 22(2) of the *Montreal Convention* or under Article 22(2) of the *Warsaw Convention*.

Finally, yet importantly, while foreign air carriers were already required to include the conditions of transportation of persons with disabilities in their tariffs, they will be required to include their obligations under the ATPDR in their tariffs.

Consequently, while the two exemptions mentioned above will certainly provide some relief with regards to the financial impacts of the coming into force of the ATPDR, the scope of the exemptions granted under the Exemption Order is very limited for foreign air carriers.

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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