

Minimizing Liability Risks with a Company Policy for Employee Use of Non-Company Aircraft on Company Business

Does your company have employees who have their own aircraft or a fractional interest? Do these employees utilize their aircraft on company business? Does the company reimburse the employees for their business travel in their own aircraft? If any of these apply, the company should be aware of several risk management issues and may want to adopt a company policy regarding business use of personal aircraft. Violation of the FAA reimbursement/consideration requirements can carry risk exposure for both the employee and the company, and few employers or employees are aware of these requirements.

Types of Operations

First, the company needs to confirm whether the flights are operated under the non-commercial operation regulations of Federal Aviation Regulation (“FAR”) Part 91, including the fractional operation regulations of FAR Part 91, Subpart K, or under the commercial operation regulations of FAR Part 135. Just as there are different federal regulations governing the different types of operations, there can be different risk issues to be addressed by the company.

For aircraft operations under FAR Part 91, generally no consideration or reimbursement is allowed. The FAA defines consideration in broad terms. It goes beyond monetary compensation and can include goodwill or simply the ability of an employee-pilot to accumulate flight hours (a benefit to many pilots) if the employee-pilot is not paying the operating costs of the aircraft.

Consideration/Reimbursement

14 C.F.R. § 61.113(b) allows reimbursement to an employee-pilot under limited circumstances and allows a pilot for compensation or hire to act as pilot in command of an aircraft in connection with any business or employment if the flight is only *incidental* to that business or employment and if the aircraft does *not carry passengers or property* for compensation or hire. If the company’s business is not related to air transportation, the employee-pilot may be reimbursed for costs when the employee-pilot’s travel is incidental to his/her employment and he/she does not carry any passengers or property. It is important that any reimbursement be paid to the employee-pilot directly, not to a management company or any other party, to help avoid the risk that the FAA or an insurance company may deem the flight to fall outside the regulatory requirements.

If the employee is not a pilot, but has his own aircraft or a fractional interest, the company needs to consider similar liability and risk issues. For a FAR Part 91, the non-pilot employee is generally considered to be in operational control of the aircraft even though he/she is not piloting the aircraft. The FARs would not prohibit this employee from submitting a reimbursement request to the company for the cost of his/her business travel, just as he/she would if the employee personally bought an airline ticket for a

business trip and submitted the charge for reimbursement pursuant to the company's travel reimbursement policy.

Depending on the type of aircraft and operation, there may also be options for the employee's aircraft to be leased to the company, chartered to the company or timeshared to the company.

Carriage of Other Company Personnel

Questions frequently arise regarding whether the employee-pilot or the employee with an aircraft or fractional interest is legally allowed to, or should carry, other company personnel on business flights and whether the employee can be reimbursed by the company for such flights.

For flights by the employee with an aircraft or fractional interest with a flight operated under FAR Part 91 the company will want to prohibit that employee from carrying passengers on these flights. The FARs prohibit the employee from receiving consideration for providing transportation to such personnel so this prohibition will help protect against violations of the FARs and should help limit the potential liability of the company for these passengers.

For flights by the employee with an aircraft or fractional interest with a flight operated under FAR Part 135, the employee may carry passengers. The company could pay a portion of the amount due to the operator of the FAR Part 135 flight, but whether it would allow such payment should be determined by corporate policy in advance.

Insurance

The company will want its insurance agent or risk manager to review the insurance policies carried on the aircraft to confirm that the company's interests are sufficiently protected by these policies. The company may want to require that the employee carry a minimum amount of liability coverage, and that the planned operations and reimbursement procedure do not violate the policies. The risk manager may advise that the company be listed as an additional insured on the aircraft insurance policy and may want to require a waiver of the insurer's subrogation rights against the company.

The company should review its employee health insurance, workers compensation, disability insurance and any travel accident insurance to verify that the policies cover claims which might arise on or due to these flights. The employee will be traveling on company business and any unforeseen gap in insurance coverages could become significant if an accident or incident were to occur. A non-owned aircraft insurance policy may also be a worthwhile investment.

Other Risk Issues

Additional risk minimization may require that the company aircraft use policy establish pilot qualification requirements for employees who wish to use their own aircraft on company business. Depending on the type of operation, the company may want to require a certain standard of pilot certificate, instrument ratings and a certain class of

medical certificate. The company may also want to require minimum pilot experience requirements such as a minimum number of hours of total flight time and a minimum number of hours in the type of aircraft to be flown. These requirements should be reviewed and updated periodically. The company will want any aircraft use policy to require that the employee periodically prove that he/she meets the policy requirements at that time, which may involve an affidavit or proof that the aircraft has a standard airworthiness certificate and is current on its inspections and maintenance at that time. For safety reasons, besides requirements for the pilot and aircraft, the company may want the use policy to place practical limits on the aircraft operations. Depending on the aircraft, pilot and type of operations, these restrictions might include a requirement that all flights be during daylight, under visual flight rules (VFR), only to locations within a certain number of nautical miles of the departure airport, or only to airports with an automated weather reporting system.

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