



LEGAL EASE

Aviation Law Made Simple

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Pay Attention to Those Rosters

Every repair station is required to maintain rosters of:

1. Management and supervisory personnel.
2. Inspection personnel.
3. Personnel authorized to sign a maintenance release.

This seems like a fairly straightforward requirement, but I am increasingly hearing of repair station problems related to these rosters.

In many cases, the problems appear to be the result of overly-complicated rosters and roster procedures.

Here is a very simple roster that meets the requirements of 14 C.F.R. § 145.161:

<i>Name</i>	<i>Management/ supervisory?</i>	<i>Inspection personnel?</i>	<i>Authorized to sign maintenance release?</i>	<i>Notes</i>
Bill Alpha	NO	NO	NO	
Matt Beta	NO	YES	YES	
Cate Gamma	YES	YES	YES	

Summaries of the employment of each individual are attached (meeting the requirements of 14 C.F.R. § 145.161(a)(4)). See summaries for specific inspection authorizations.

Watch Out for Drug-Test Timing

One of the problems I have seen crop up relates to the efforts to comply with both the requirements of the roster change rule, which requires that the roster must be updated within five days of any changes, and the drug testing rules, which prohibit the use of maintenance personnel unless they've first been drug-tested.

Under the drug testing rules, 135 operators and 121 operators are required to drug-test their maintenance employees, and they may not use a maintenance contractor unless the contractor's employees are drug-tested. As a consequence, many repair stations impose drug-testing requirements on their employees so that they will remain eligible to work on aircraft from 135 and 121 air carriers.

Contract this rule with the drug-testing regulation that restricts the hiring of maintenance personnel until they have obtained verified pre-employment drug tests. The rule specifies that no employer may hire someone for a safety-sensitive function listed in the drug-testing appendix unless the employer first conducts a pre-employment drug test and receives a verified negative result from the drug test. The best way to comply with this rule is to take it at face value and refuse to hire anyone for maintenance work until their pre-employment drug test comes



back with a negative result.

As a lawyer, I advise that this is the best course of action. But as a realist, I know darn well that there are companies choosing to offer employment to mechanics before their verified negative test comes back.

Why would a repair station hire someone before their verified negative test comes back? In some cases, this is done because the repair station wants to get the individual into training immediately. In other cases, there is non-maintenance work that needs to be accomplished immediately by the new employee, with the expectation that the new employee will transition into a maintenance position. Immediate maintenance needs for general aviation aircraft may also create a demand for immediate hiring of a mechanic.

In some cases, there are other laws that conflict with the hiring limits. A good example of this sort of conflict arises in the context of immigration laws, when you are hiring an employee from outside of the country. In the U.S., for example, immigration laws provide special immigration categories and visas for skilled

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It is possible to do business in ways that permit you to comply with other regulatory schemes. But it is very important that you construct your compliance regime in such a way that remain in compliance with all of the regulations that apply to your operations.

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technicians; but the technician generally must receive a bona fide job offer from the sponsoring organization in order to take advantage of the special immigration visa.

This creates a potential legal problem. You cannot get the employee to the U.S. in order to participate in pre-employment testing without the immigration visa, but you cannot get the immigration visa unless you first offer employment to the individual. One potential way out of this trap is to offer the individual a position as a mechanic trainee. The repair station manual should make it clear that:

1. The qualifications for such a mechanic trainee are the same as the qualifications to be a mechanic, with the exception of a verified negative drug test and of certain in-house training (per the FAA-approved 145.163 training program).
2. The trainee position is a temporary position that converts to a mechanic (or other) position upon receipt of a verified negative drug test.
3. The trainee may be terminated in the event of a positive drug test.
4. Such mechanic trainees are not permitted to work on aircraft operated under Part 121 or Part 135.

If you find your repair station in the position where you must offer a maintenance job to an individual before obtaining a verified negative drug test, then be sure that you hire that individual into a job that is prohibited from performing maintenance work on aircraft operated under Part 121 or Part 135. The job title should be specifically limited in its functions to preclude inadvertent use of the employee on any project that could affect the safety or maintenance of an aircraft flown under Part 121 or Part 135.

Rostering the New Employee

So, let's say you need to hire someone into a maintenance trainee role immediately, but you are also going to engage in pre-employment testing with the expectation of transferring him or her to a role that will support 135 operators. What does the roster look like? Here is an example for the recently-hired mechanic, Doug Delta:

<i>Name</i>	<i>Management/supervisory?</i>	<i>Inspection personnel?</i>	<i>Authorized to sign maintenance release?</i>	<i>Notes</i>
Bill Alpha	NO	NO	NO	
Matt Beta	NO	YES	YES	
Cate Gamma	YES	YES	YES	
Doug Delta	NO	YES	YES	May not work on nor sign for aircraft flown under Part 121 or Part 135

Summaries of the employment of each individual are attached (meeting the requirements of 14 C.F.R. § 145.161(a)(4)). See summaries for specific inspection authorizations.

Notice that Doug Delta is being hired to work immediately on general aviation aircraft, and that Delta has the appropriate capabilities to perform inspection and to sign maintenance release documents. The hiring documents should indicate that he is hired into a job title that is excluded from performing maintenance or other safety-sensitive work for aircraft flown under Part 121 or Part 135. Upon receiving a verified negative drug test on Delta, he can be given a new job title that permits him to work on aircraft flown under Part 121 or Part 135. Be certain that all changes to the roster are made within five days. In this case, Delta's summary of employment will need to be updated to reflect the change in his title and the scope of his employment after the job-change that occurs after getting a verified negative drug test. The update must be made within five business days of the change.

Lessons Learned

The lesson to be learned here is that it is possible to do business in a wide variety of different ways. It is possible to do business in ways that permit you to comply with other regulatory schemes. But, it is very important that you construct your compliance regime in such a way that remain in compliance with all of the regulations that apply to your operations. A carefully constructed repair station manual must support compliance with all of the other laws that apply to the business, not just the FAA's regulations. The best way to facilitate compliance with other regulatory schemes is to keep the repair station manual and the quality control manual as simple as possible. Avoid overly complicated compliance schemes, because often they may be more likely to generate compliance mistakes, especially as systems age and new personnel adopt compliance obligations and become responsible for interpreting the manual's requirements. □



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