

## **Air Travel and the Canadian Visitor to the United States of America**

As frequent extended visitors to the United States of America, (affectionately referred to as “Snowbirds”) it is not uncommon for my wife and I to drive to our destination (in our case, Palm Springs) and fly back to Canada from time to time for various reasons. For example, we routinely return to Canada for the Christmas season and return down south in early January. This is typical for a lot of our Snowbird friends. Occasionally, it becomes necessary to voluntarily cancel or change a flight, which depending on the circumstances can have some severe financial consequences. More often, flight cancellations or extended delays are encountered, which unfortunately occurred on our most recent return visit back to Canada. It is therefore prudent for the frequent flying “Snowbird” to be aware of the “rules” relating to air travel to and from the U.S. and the implications that these exigent circumstances might create. Hopefully this article will provide some valuable information and provide some guidance for future air travel for the Canadian Visitor to the United States of America.

The U.S. Department of Transportation (DOT) has established its own consumer protection agency relating to air travel entitled the Aviation Protection Division (ACPD) and has created its own website to assist in addressing the myriad of consumer complaints relating to the airline industry. The ACPD reviews and responds to consumer complaints and has identified as one of its mandates “to promote awareness and understanding of consumer rights”. It is important to know that all air carriers including international carriers like Air Canada and WestJet that provide service to and out of any major U.S. Airport are bound by the U.S Department of Transport regulations. For valuable information on various topics related to consumer protection and the airline industry go to:

<https://www.transportation.gov/individuals/aviation-consumer-protection/refunds>

### **Refundable vs non-refundable tickets**

Firstly, most airlines offer essentially two types of fares: Refundable and non-refundable tickets. As one might expect, the refundable airline ticket is significantly more expensive than the non-refundable ticket and as a consequence most travelers purchase the latter. Passengers who purchase fully refundable tickets are generally entitled to a refund when they do not use the purchased ticket to complete their travel or any leg of their trip, irrespective of the circumstances.

Purchasers of non-refundable tickets (as the name implies) are not typically entitled to a refund for the cost of their airline ticket and associated baggage or seat fees, if their travel plans change and as a result they are unable to use the ticket. Many promotional

fares or seat sale promotions have specific provisions relating to the ability to cancel or change the flight. For those who wish to cancel a flight or change their flight voluntarily for whatever reason, they will be subject to forfeiture in the case of a cancellation or substantial “change” fees in order to change and re-book a different flight.

As a general rule, relief from forfeiture is rare and largely depends on whether or not there are extenuating circumstances or whether the reason for the cancellation or change was predicated by the airline being at fault in some respect. Understandably, passengers are entitled to a refund of the ticket price and associated fees when the airline is at fault. Mechanical failure or pilot shortages are examples of this type of situation.

### **When the airline is at fault:**

Cancelled Flight – A passenger is entitled to a refund if the airline cancelled a flight, regardless of the reason, and the passenger chooses not to be rebooked on a new flight on that airline.

Schedule Change/Significant Delay - A passenger is entitled to a refund if the airline made a significant schedule change and/or [significantly delays](#) a flight and the passenger chooses not to travel. In some situations, you may be entitled to a refund, including a refund for all optional fees associated with the purchase of your ticket (such as baggage fees, seat upgrades, etc.). DOT has not specifically defined “significant delay.” Whether you are entitled to a refund depends on many factors – including the length of the delay, the length of the flight and your particular circumstances. DOT determines whether you are entitled to a refund following a significant delay on a case-by-case basis.

Class of Service Change - A passenger is entitled to a refund if the passenger was involuntarily moved to a lower class of service. For example, if the passenger purchased a first-class ticket and was downgraded to economy class due to an aircraft swap, the passenger is owed the difference in fares.

Optional Service Fees - A passenger is entitled to a refund if the passenger paid a fee for an optional service (for example, in-flight Wi-Fi or a seat assignment), but was unable to use the optional service due to a flight cancellation, delay, schedule change or a situation where the passenger was involuntarily denied boarding. In situations where you have purchased an optional service (for example, Wi-Fi or in-flight entertainment) and that amenity either does not work or is not available on the flight, you may need to notify the airline of the problem in order to receive a refund.

Baggage Fees - A passenger is entitled to a refund if the passenger paid a baggage fee and his or her baggage has been declared lost by the airline.

Airlines may have different policies to determine when a bag is officially lost. Most airlines will declare a bag lost between five and fourteen days after the flight, but this can vary from one airline to another. If an airline unreasonably refuses to consider a bag

lost after it has been missing for an unreasonable period of time, the airline could be subject to enforcement action by the DOT.

Overnight Accommodation and Food Vouchers and other Benefits- There is no obligation on the part of the airline to provide overnight accommodation, food vouchers or other benefits to a passenger who is inconvenienced as a result of a delay or cancellation occurring even as a result of matters over which the airline has some measure of control. Many airlines will provide such benefits strictly as a good will gesture but typically only if requested.

### **When the airline is not at fault:**

Passengers are entitled to refunds only in very limited circumstances if the airline is not at fault.

Fully refundable tickets – As noted earlier, passengers who purchase fully refundable tickets are generally entitled to a full refund when they do not use the purchased ticket to complete their travel. In some cases, the airline will provide a credit or travel voucher to be used within a specified period of time for a future flight. Make sure to allow plenty of time before your flight date to apply for a refund. Tickets typically are only valid for a refund up to 12 months from date of original issue

Non-refundable tickets - Passengers who purchase non-refundable tickets are generally not entitled to a refund unless the airline makes a gratuitous promise to provide a refund. While airlines are not required to issue a refund for non-refundable tickets, they are free to do so or they may issue a credit or travel voucher good for future use on the airline. Airlines must also comply with the promises they make, and in some instances, they may be willing to offer passengers accommodations or other benefits that they are not otherwise required to provide.

Weather related delays or cancellations-As one might expect, weather related delays or cancellations are by far the most often travel related problem the airline industry must face. As a general rule, the airlines will do their best to accommodate the inconvenienced traveler by rebooking the next available flight or providing a travel voucher or credit for a future flight. The airline is not under any obligation to provide overnight accommodation or food vouchers in the event a flight is cancelled or delayed as a result of inclement weather or other events beyond their control.

Personal Issue - Passengers who purchase non-refundable tickets, but are unable to travel for a personal reason, such as being sick or late to the airport, are not entitled to a refund. Travelers can often have change fees waived in the event of a sudden illness, a death in the family. Be prepared however, to offer documentation to support the

extraordinary circumstance, as it has been a long time since airlines simply took passengers at their word.

Unsatisfactory Service - A passenger who willingly takes a flight but has a bad experience with the airline or the flight is not entitled to a refund.

Incidental Expenses – A passenger who incurs incidental expenses such as a rental car, hotel room, or meal due to a significantly delayed or cancelled flight is not entitled to a refund for the incidental expenses.

### **The 24/7 Rule**

Many frequent flyers are unaware of a DOT regulation which requires all airlines including both domestic and international carriers that fly out of or into the United States to provide certain guarantee to consumers purchasing airline tickets. For airline tickets that are purchased at least 7 days in advance of the scheduled departure date and time, the airlines are required to allow either:

- a) Passengers to cancel their reservation and receive a full refund without a penalty for **24 hours**, (the refund option) or
- b) Passengers to reserve a ticket by placing it on hold at the quoted price without paying for the ticket for **24 hours** (the hold option).

**HOWEVER**, airlines are not required to offer BOTH a hold and a refund option. It would be prudent to check your airline's policy before purchasing a "hold" ticket. If an airline accepts a reservation without payment, it must allow the consumer to cancel the reservation within 24 hours without penalty. If an airline requires payment with a reservation, it must allow the consumer to cancel the payment and reservation within 24 hours and receive a full refund.

Although airlines must hold a reservation for 24 hours or provide a refund to passengers at their request within 24 hours of making a reservation, airlines are not required to make changes to a ticket free of charge (for example - change your ticket to a different date or even correct a misspelled name on the reservation).

In some cases, instead of paying for a change fee and a potential difference between the original ticket price and the current ticket price, it may be cheaper to request a refund for the ticket and rebook. However, keep in mind that ticket prices can change quickly.

More importantly, the refund/hold reservation requirement for airlines does not apply to tickets booked through online travel agencies, travel agents, or other third-party agents. However, these agents are free to apply the same or similar procedures to provide equivalent or similar customer service. If you purchase your ticket through an

online travel agency (or other agent), you should contact the travel agent directly to obtain a refund before contacting the airline.

If a passenger is owed a refund, an airline, travel agent, or online travel agency must process it within seven business days if the passenger paid by credit card, and 20 business days if the passenger paid by cash or check.

### **Rewards Programs**

There are no cancellations or refunds permitted on tickets once booked on a reward program. Changes to flights may be permitted but restrictions may apply and may be subject to applicable fees. The terms and conditions of the AIR MILES® Reward Program may be more restrictive and may supersede the airline fare rules.

### **Credit Card Trip Cancellation Coverage**

Most credit card companies offer trip cancellation/interruption coverage as an imbedded feature of their credit card, if the credit card is used to purchase the airline ticket. Most only offer the coverage for specific events usually of an emergent nature, but it is something to keep in mind that these form of protections do exist. Establishing an elite status on the travel reward program/credit card may also make you eligible for enhanced coverage.

### **Primary U.S./Canadian Carriers-WestJet and Air Canada**

#### **WestJet**

The primary Canadian air carriers serving the United States are Air Canada and WestJet. Most major American carriers (such as United Airlines, American Airlines, Alaska) operate or provide service to and from major Canadian cities. All carriers including international carriers like Air Canada and WestJet that provide service to and out of any major U.S. Airport are bound by the U.S Department of Transport regulations. Among these regulations is the “*Enhanced Protections for Airline Passengers U.S. Department of Transportation (DOT) regulations (14 CFR Part 259)*”. <https://www.gpo.gov/fdsys/pkg/CFR-2018-title14-vol4/xml/CFR-2018-title14-vol4-part259.xml>

Under this regulation airlines both domestic and international are mandated to develop and publish a “guest services plan” to provide among other things reimbursement for out-of-pocket expenses for a flight delay or cancellation within the control of the airline.

In the case of WestJet, should you incur out-of-pocket expenses for a flight delay or cancellation for which they are at fault or for circumstances which was within their control, you may submit a request to WestJet for reimbursement. Go to:

<https://www.westjet.com/en-ca/travel-info/flight-interruptions/us-service-plan>

## **Air Canada**

Recognizing the stress and frustration in dealing with the unexpected and unpredictable weather conditions, airport and air traffic delays, Air Canada introduced a new program to endeavor to address these concerns. It is entitled “On My Way” and is a fee-based program, which is touted as a unique service in North America and which is designed to go above and beyond the “normal” airline industry response to these types of unexpected challenges. Firstly, while conventional response to a cancellation is for the airline to re-book the flight on the next available flight offered by the airline or one of its partners, based on its own criteria, “On My Way” offers the guest passenger the opportunity to re-book on the very next available flight of your choice EITHER with Air Canada and any of its partners or **any other North American airline** servicing the intended destination.

Under the program, although the conventional response to a cancellation or delay not within the control of the airline is not to cover any additional expenses for the disruption, “On my Way” offers to accommodate the guest passenger by providing irrespective of the cause for the delay or cancellation, complimentary meal allowance and hotel accommodation for any overnight or extended stay and if you wish to take ground transportation as an alternative, the program will cover the cost of a car rental to the intended destination along as it is within 200 km.

The “On My Way” program states that it has a team of designated specialists at a designated call center who are available 24/7 to address and accommodate the needs of their customers enrolled in the program. For those Snowbirds traveling in the dead of winter, which is often the case, the benefits of the “On My Way” program offered by Air Canada may be something to seriously consider on the next trip back to Canada. The cost relatively speaking is reasonable and well worth the expense if you happen to encounter an unfortunate travel experience or circumstance whether within or out of the control of Air Canada.

## **The Airline Industry Practice of Overbooking**

It is common practice within the airline industry for the airline to “overbook” flights in order to maximize revenue for an anticipated percentage of booked passengers who fail to board the flight (“no-shows”). The conundrum is to effectively manage and balance the need of the airline to market their services in an effective and efficient manner and at the same time protect the right of the individual consumer who should be entitled to obtain the services they have bargained for in purchasing their airline ticket. DOT permits airline to carry on the practice of selling more tickets than there are seats

available on an aircraft in order to fill seats that would otherwise remain empty due to “no-shows”. (“Overbooking”). This practice is viewed as being necessary in order to improve operational efficiencies including revenue enhancement resulting in overall benefits to consumers as a whole by enabling air carriers to continue to offer them lower fares.

In exchange for the ability to overbook flights (a practice that would otherwise be an unfair and deceptive practice or an unfair method of competition within the meaning of the U.S. Department of Transport Regulations (49 U.S.C. § 41712), the DOT has established specific rules in order properly balance the rights of the consumer and the requirements of the industry for market efficiency. 14 CFR Part 250 of the DOT regulations mandates compensation and other protections for passengers who hold “confirmed reserved space” on a flight, have complied with the carrier’s contract of carriage, have met the carrier’s requirements with respect to check-in time and appearance at the gate, and have been involuntarily denied boarding because their flight was oversold (“eligible passengers”). Specifically, under most circumstances, Part 250 mandates that a carrier pay Denied Boarding Compensation (DBC) to eligible passengers “on the day and [at the] place the denied boarding occurs,” with “cash or an immediately negotiable check for the appropriate amount of compensation.” (14 CFR 250.8. ) The appropriate amount of DBC varies for each passenger depending on the planned arrival time of any substitute transportation arranged (or offered to be arranged) by the carrier, the value of the unused portion of the passenger’s fare to his or her destination, and whether the flight segment on which the bumping occurred was between U.S. points, or from the U.S. to a foreign point. The point here is that the airlines are entitled “bump” a confirmed passenger as a result of overbooking a flight but must offer stipulated reasonable compensation for the inconvenience.

### **Knowledge is power. Information is liberating.**

If you are a Snowbird or just an occasional traveler by air to or from the United States (or elsewhere), it is important for you to know some of the ins-and-outs of the airline industry when it comes to circumstances, which may require the cancellation or change of an existing airline reservation. Furthermore, if upon arriving at the airport to commence your trip or while on route to your final destination, you encounter unexpected flight delays or cancellations, it is important to understand the implications and the limitations, options or opportunities that might be otherwise be available to you should this occur. Hopefully with some advance knowledge governing the airline industry’s requirements (or lack thereof) in dealing with these situations, you will be able to make some prudent decisions and avoid some of the angst associated with these unfortunate and unexpected circumstances. Although it may not completely address the disappointment and frustration you may feel in encountering these unanticipated

events, with some knowledge you may feel somewhat liberated and be better able to take things in stride and enjoy the rest of your journey home or back to your southern clime.

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