



LEGAL EASE

Aviation Law Made Simple

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What are the Legal Concerns of Using Mechanics to Perform Work Outside Your Ratings?

The FAA regulations applying to contracting-out maintenance were discussed in last month's "Legal Ease" column. This month, let's continue the discussion with a focus on a few of the legal issues affecting a transaction in which you "contract-out" work outside the repair station's ratings to one of your employees or to an independent A&P mechanic.

A U.S. repair station may subcontract work falling under its certificate and ratings — this sort of subcontracting is considered to fall within the repair station's privileges and, therefore, is subject to FAA oversight. However, it also is possible for a repair station to enter into a relationship with an A&P mechanic under which the mechanic performs and/or supervises (and subsequently approves for return to service) work falling outside of the repair station's ratings. This is useful, for example, when a radio-rated repair station is faced with work that must be signed-off under an airframe rating.

While the repair station might not have the ratings to perform the work, an A&P mechanic might be able to perform the work and approve it for return to service under his or her own certificate. This sort of relationship often is described colloquially as "contracting-out." While this phrase might be appropriate from a contract-law perspective, it is important not to

get it confused with the sort of "contracting-out" that is a privilege of the repair station's certificate. It is a privilege of the repair station's certificate that it may contract-out work within its ratings, then approve the work as part of its final approval for return to service; however, a repair station cannot approve for return to service work for which it is not rated.

If a repair station "subcontracts" work outside its ratings to an otherwise-qualified party, the FAA regulations do not recognize this as a "regulatory" subcontract. Instead, this is a relationship by which the subcontractor is performing work under the subcontractor's own certificate, and the work is being approved by the subcontractor under the subcontractor's own certificate. The repair station's certificate and privileges are not involved because the work actually is being performed and approved for return to service by a different certificated person. The repair station's involvement in this type of situation usually is as a business agent, not as an FAA-certificated participant in the transaction.

While this may not be "arranging for the performance of maintenance" under Section 145.201 of the FAA regulations, this same relationship can be structured as a legal subcontract, in the sense there is a contractual

relationship between the repair station and the A&P mechanic (or any other party performing the work) to perform work on behalf of a joint customer. The repair station provides valuable marketing, accounting, billing or other services to the mechanic.

In this type of relationship, it is important to characterize the relationship correctly so all parties understand their roles and responsibilities.

Repair Station: Mechanic Relationship

A number of legal concerns exist when examining the relationship between the repair station and the mechanic. These legal concerns relate to issues such as contractual relationships and tax status. This article addresses just a few of these concerns.

First, you should determine whether or not the A&P mechanic you are using is an independent contractor or an employee. The answer to this question can have an impact on how much tax you pay and what sort of taxes you pay. If the mechanic is an employee, you must withhold taxes and pay employee-related taxes, whereas the independent contractor will be paid on the basis specified in your agreement and may need to be issued a Form 1099 at the end of the year.

Employers who misclassify workers as independent contractors can end

up with a substantial tax bill for back taxes, as well as penalties for failure to pay employment taxes and penalties for failure to file required information.

Generally, whether a worker is an employee or an independent contractor depends on how much control the business has over the worker. If you have the right not only to direct or control what is to be done, but also how it is to be done, the mechanic most likely is an employee. If you can direct or control only the result of the work done but not the means and methods of accomplishing the result, the mechanic probably is an independent contractor.

The IRS relies on three broad characteristics to characterize the relationship between a business and a worker: behavioral control (whether the business has a right to direct or control how the work is done through instructions, training or other means); financial control (whether the business has a right to direct or control the financial and business aspects of the worker's job); and the type of relationship (how the worker and the business owner perceive their relationship — for example, when the mechanic has multiple competing clients, this tends to suggest the clients recognize he is an independent contractor and not an employee).

If you truly are uncertain about whether the mechanic is an employee or an independent contractor, the mechanic can file an SS-8 form with the IRS, which is used to help determine a worker's status for purposes of federal employment taxes and income tax withholding.

If you intend to refer work outside your certificate to an A&P mechanic who is one of your employees, you do not need to establish a separate independent contractor relationship with your employee. Nothing in the regulations precludes the employee from performing work under his or her own

certificate and assigning all rights to collect for that service to the repair station — which is one way of looking at the employee-employer relationship.

You can have your own employees perform work under their own certificates and still send one bill from the repair station. However, it is wise to have a written understanding with the mechanic as to how the work will be handled so you can be certain both parties agree on how the mechanic is to be compensated. For example, does such work generate a bonus or additional compensation for the A&P mechanic in addition to the A&P's regular wages?

If the mechanic is to be paid from the proceeds of the transaction and is not just paid on a basis unrelated to the transaction, you also should have an agreement as to how payment is divided and how payment risk is divided. If the customer's check bounces, is the repair station still liable to pay the mechanic? It is better to address these risk-of-loss questions upfront than to fight about them after they occur.

If the A&P mechanic is signing for work himself, you should have an agreement about who is responsible for insurance on the work. If the mechanic is responsible for the insurance on his own work, you should make certain the mechanic's liability insurance remains up-to-date and names your company as an also-insured party. You should have a written agreement specifying the insurance requirements for the mechanic and specifying the mechanic will indemnify your repair station for claims against the repair station caused by the mechanic's acts or omissions.

If you are responsible for the insurance on the A&P mechanic's work, you should not assume such work is covered under your insurance. Speak with an insurance professional about whether or not your current coverage

addresses work performed under an individual's certificate. If it does not, you should seek to extend coverage to address such concerns.

Remember a key point about these relationships: The repair station is not signing for the work because the repair station is not rated for the work. Therefore, the repair station's own maintenance release tags, stamps or other repair station documents should not be used for releasing or approving work performed by the mechanic. The mechanic's approval for return to service — whether entered in the logbook or entered on a form such as the 8130-3 tag — should be separate from any approval for return to service completed by the repair station.

Repair Station: Customer Relationship

It is important to make these contracting-out relationships as transparent as possible to the customer. There are a number of reasons for this transparency.

First, as a matter of fairness to the customer, the customer should be made aware of how the work on his or her aircraft is being accomplished. In addition, transparency helps to protect the repair station against both legal problems and perception problems.

The customer should be clear about who is responsible for what work. This allows the customer to address problems to the correct source. While the repair station can have a relationship in which the repair station fields complaints on behalf of the mechanic's work — which is perfectly acceptable — it nonetheless is wise to make the relationship clear to the client so the repair station is not left with a warranty obligation to fix a problem falling outside the repair station's ratings.

Customers can get a little confused

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if they see a signature in their logbook they do not recognize. It is better to explain how you are accomplishing a task using an A&P mechanic than to have the customer come back to you at a later date accusing you of accomplishing work outside your rating or accusing you of misrepresentation — which is especially distressing if the customer uses the allegation as an excuse for non-payment.

The A&P mechanic will have to sign off for the work he performs if the work falls outside the scope of the repair station's own ratings. This logbook entry will become obvious to the customer at some point. If the customer understands the regulatory and legal elements of the relationship, the customer is less likely to complain

about two signatures for one "set" of work assigned by the customer.

If the mechanic is an independent contractor but is billing his services through the repair station, it might be advisable to specify those charges separately on the customer's invoice so the customer clearly understands the mechanic's services are separate from those of the repair station.

The warranty you offer to your customer also should specify how the mechanic's work is to be treated for warranty purposes. Is the mechanic personally responsible for the work he approves for return to service and for warranty returns on such work? Who is responsible for choosing the parts to be installed and who is responsible for failure of those parts? Whatever you decide, the warranty provision should be supported by and consistent

with your written agreement with the mechanic.

Finally, if there is a problem, one of the first sets of documents the FAA might see is your customer's documents. Therefore, these documents should make the situation clear so FAA inspectors who review the customer's documents can see the repair station is only performing and approving work within its ratings, while the other work is being performed and approved under the A&P mechanic's own certificate.

Ultimately, if the independent contractor and the customer fully understand the relationship, in the event of problems, the customer is more likely to refrain from suing or otherwise blaming the repair station and wasting the repair station's time and resources. □