

## SECTION 5

### LABOR PROTECTIVE PROVISIONS

(Pilot Layoffs Due to Reductions In Manpower, Cessation of Operations, or Permanent Strike Replacement.)

#### A. DEFINITIONS.

1. **Qualified Certificate Holder**. A qualified certificate holder under this section is any Part 121 certificate holder meeting the following criteria:
  - a. Employed more than 200 active pilots in the previous calendar year.
  - b. Operated more than 20 aircraft having a Maximum Certified Takeoff Weight greater than 95,000 pounds (43,064 kg), or greater, at any point in the previous calendar year.
  
2. **Qualified Offer**. A qualified offer is an offer of employment as a pilot under the terms and conditions of the collective bargaining agreement or, company policy in the event no such collective bargaining agreement exists, meeting the following qualifiers:
  - a. Any certificate holder that reduces its manpower to the point where pilots are involuntarily furloughed in reverse seniority order shall not count any pilot so furloughed as receiving a qualified offer unless that pilot has completed 15 contract months (or portion thereof) in service as a pilot to the certificate holder.
  - b. Certificate holders recalling furloughed pilots who had not previously completed 15 months of service toward a qualified employment offer may count the previous service toward the total needed to satisfy the requirements of a qualified employment offer.
  - c. Any pilot who voluntarily terminates his/her employment with a certificate holder after the first day of employment with the certificate holder may be counted as receiving a qualified employment offer.
  - d. Any pilot who voluntarily withdraws from the interview process, as specified in Section 5.C.4, with a qualified certificate holder may be counted as receiving a qualified employment offer.
  - e. Only pilots requesting employment as a pilot via the normal, reasonable, and customary method for applying for such employment shall be considered to have received a qualified employment offer in the event the pilot withdraws or refuses to respond to an interview invitation.
  - f. Only those employment offers resulting in employment within 150 days from the initial interview shall be considered a qualified employment offer.
  - g. Employment offers for the purpose of replacing pilots conducting a legal job action under the Railway Labor Act shall in no way be considered a qualified employment offer.

3. **Involuntary Furlough**. Involuntary furlough is defined as loss of employment as a pilot due to reductions in manpower and no person junior to the pilot remaining employed, as a pilot, by the certificate holder. Pilots volunteering for furlough in-lieu of a junior pilot are considered to be voluntarily furloughed until all pilots junior to them are furloughed, at which point they are involuntarily furloughed.
4. **Active pilot**. An active pilot is any pilot employed by the certificate holder in the previous calendar year meeting any of the following criteria:
  - a. Flightcrew member (PIC or SIC) with 20 or more flight duty periods within the last six contract months of the previous calendar year.
  - b. Flightcrew member (PIC or SIC) with 30 or more flight duty periods within the previous calendar year.
  - c. Flightcrew member (PIC or SIC) with 120 or more credited hours for pay within the last six contract months of the previous calendar year.
  - d. Flightcrew member (PIC or SIC) with 240 or more credited hours for pay within the previous calendar year.
  - e. Check airmen employed by the certificate holder who are qualified to exercise the privileges of their airmen certificates performing any payable duties for the certificate holder in three of the last six contract months of the previous calendar year.
  - f. Check airmen employed by the certificate holder who are qualified to exercise the privileges of their airmen certificates performing any payable duties for the certificate holder in five contract months of the previous calendar year.
5. **Total Hiring**. The amount of pilots hired for purposes of calculating compliance with hiring requirements of this section per 5.D.2. A qualified certificate holder is defined as hiring the sum of the following:
  - a. the amount of qualified offers of employment to pilots in the applicable preferential hiring pool per this section plus,
  - b. the amount of pilots placed upon the applicable seniority list under the terms and conditions specified in the governing collective bargaining agreement or company policy, should such collective bargaining agreement not exist, who were not drawn from the applicable preferential hiring pool. These totals shall be per calendar year with the effective date defined per Section 5.A.6.
6. **Effective Date of Hiring**. For purposes of compliance with this section, the effective date of hiring of a pilot by a qualified certificate holder is the date the pilot is placed on the applicable seniority list per the terms and conditions of the governing collective bargaining agreement or company policy, should such collective bargaining agreement not exist.

- a. For pilots in the preferential hiring pool refusing a qualified offer of employment per this section, the effective date of hiring shall be at the discretion of the certificate holder within 150 days following an invitation to interview per section 5.C or 150 days from the pilot's voluntary withdrawal from the recruitment process.

## B. PLACEMENT OF PILOTS IN THE PREFERENTIAL HIRING POOL

1. Any pilot suffering involuntary loss of employment as a pilot from a qualified Part 121 certificate holder under this section due to reductions in manpower (commonly known as "furlough" or "layoff"), cessation of operations of the certificate holder, or by permanent strike replacements shall be placed in a single hiring pool of pilots suffering involuntary loss of employment, for the reasons stated in paragraph 5.B.2 of this section, entitling them to preferential hiring by other qualified Part 121 certificate holders under the terms and conditions of this section.
2. Only pilots who suffer loss of employment from involuntary furlough, layoff, cessation of operations, or permanent strike replacement are eligible for placement in the respective preferential hiring pool.
  - a. Pilots must suffer loss of employment from a qualified certificate holder to be placed in the preferential hiring pool.
3. No pilot currently employed by a qualified certificate holder under this section, as a pilot, may be simultaneously listed in the preferential hiring pool.
4. Pilots employed less than one consecutive year for any qualified certificate holder since September 1, 2000 are not eligible for placement in the preferential hiring pool. Absences caused due to military service to the United States shall not be used in any way to disqualify a pilot from membership in the preferential hiring pool.
  - a. This provision shall be liberally construed to benefit pilots serving in the United States military.
5. Any pilot hired from the preferential hiring pool by a qualified certificate holder, who suffers subsequent loss of employment under this section, shall be placed in the preferential hiring pool provided the pilot was not hired as a strike replacement during a lawful job action under the Railway Labor Act.
6. No pilot shall be in the preferential hiring pool longer than ten consecutive years. Time spent in active duty military service to the United States shall not count against longevity limits within the preferential hiring pool.

### C. INTERVIEWS

1. Qualified certificate holders may require specific qualifications or ratings for employment and may select interviewees based upon those qualifications provided the selection criteria are objective in nature, published in advance of selecting interviewees, and are no way adversely discriminatory against pilots in the preferential hiring pool.
2. Interview procedures cannot have unreasonable differences between those conducted with preferential hiring pool pilots and those pilots not in the preferential hiring pool.
3. The interview process may not be adversely discriminatory against pilots in the preferential hiring pool.
  - a. Pilots from the preferential hiring pool subjected to adversely discriminatory standards during the interview process for the purpose of justification of not extending a qualified employment offer shall be able to seek remedy under this section.
4. If a company extends an invitation to interview to a pilot in the preferential hiring pool and that pilot refuses to accept or voluntarily withdraws from the interview process, the company shall be considered to have conducted a qualified interview and employment offer, provided:
  - a. The invitation to interview was timely enough to allow reasonable travel and preparation of required interview materials.
  - b. The accommodation of pilots in the preferential hiring pool is not adversely discriminatory.
  - c. The invitation to interview was made known to the pilot by the reasonable and customary means normally employed to deliver invitations to interview by either letter delivered via courier or USPS, email, or telephonic contact.
5. Any pilot in the preferential hiring pool who receives an invitation for interview with a qualified certificate holder shall respond to such invitation within 30 calendar days of receipt. Failure to respond within 30 calendar days may be construed by all interested parties as a refusal to interview and may also be counted as a qualified employment offer by the certificate holder, unless the pilot had previously withdrawn his/her application for employment as a pilot from that certificate holder or said pilot is employed as a pilot by another qualified certificate holder.

### D. OFFERS OF EMPLOYMENT

1. Any qualified certificate holder under this section, who within one calendar year, hires more than 2.5% of the number of the active pilots on its seniority list in the

previous calendar year or 50 pilots (whichever is less), shall be required to hire pilots from the appropriate preferential hiring pool under the terms and conditions and as defined in this section.

2. Two-thirds of all qualified offers of employment defined in this section shall be made to pilots within the preferential hiring pool subject to the limitations of this section.
  - a. No certificate holder shall be required to hire any pilot from the preferential hiring pool who has not applied for employment with the certificate holder per the certificate holder's normal procedures for pilot recruitment.
  - b. No single certificate holder shall be required to interview more than half of the applicants from the respective pool in any calendar year.
  - c. No certificate holder shall be required to hire a pilot from the preferential hiring pool unless that pilot can be reasonably expected to be employed for a period of five years.
  - d. No certificate holder shall be required to hire a pilot from the preferential hiring pool if the certificate holder's written policies would disqualify such pilot to serve as a pilot with that certificate holder provided:
    - i. the criteria are published in advance and,
    - ii. the criteria are not adversely discriminatory to pilots in the preferential hiring pool and,
    - iii. the criteria do not adversely discriminate against pilots engaged or formerly engaged in labor organization activities and,
    - iv. the criteria are otherwise lawful.
3. No certificate holder shall be required to interview or hire any pilot from the preferential hiring pool who has not applied for employment as a pilot under the normal procedures established for such employment. Such pilots in the preferential hiring pool not applying for employment as a pilot under the normal procedures for such employment shall not be counted as receiving a qualified offer of employment under this section.
4. No certificate holder shall be able to count any pilot in the preferential hiring pool as having receiving a qualified offer of employment more than once per calendar year or more than twice in five consecutive calendar years, unless that pilot completes 15 contract months (or portion thereof) of employment with the certificate holder. No pilot shall be counted as having received more than 4 qualified offers of employment with any single certificate holder.
5. Recalling of furloughed pilots is not defined as hiring under this section. Only hiring of pilots not subject to recall from furlough ("off the street") require hiring under this section.
6. Pilots in the preferential hiring pool selected for interview may be granted a

conditional employment offer pursuant to the obtaining of a specific qualification or rating provided:

- a. The qualification and/or rating was specified prior to the interview and applied to all applicants, regardless of membership in the preferential hiring pool.
  - b. The pilot is given a reasonable amount of time subsequent to the conditional employment offer to obtain the qualification and/or rating.
  - c. The qualification and/or rating is either part of the past practice of the certificate holder, reasonably necessary for the operations of the certificate holder, or required by government regulation.
7. Each qualified certificate holder required to hire from the labor pool defined in this section shall be required to “look back” at all hiring within the previous two calendar years and be able to satisfy all provisions of this section.
- a. Any certificate holder hiring from the pool in excess of the amount of pilots required by this section shall be credited the difference to the next calendar year for which the certificate holder would be required to hire from the preferential hiring pool.
  - b. Any certificate holder failing to meet the hiring requirements of this section shall be required to hire from the preferential hiring pool in the first calendar year the deficiency for any previous calendar year is made known in sufficient quantities as to satisfy the “look back” requirements. Under no circumstances shall hiring of pilots to rectify such deficiencies be counted toward satisfaction of current requirements to hire from the preferential hiring pool.
8. A pattern of significantly lower hiring rates among preferential hiring pool pilots selected for interview versus non-preferential hiring pool pilots selected for interview, without substantiated justification, shall be evidence of perfunctory interviewing practice and remedied under this section.
9. United States military veteran status and military flying experience may be justification for preferential hiring by qualified certificate holders.
10. Pilots in the preferential hiring pool shall not be required to pay more than a \$50 processing fee for submitting an application for employment, regardless of the certificate holder’s policies and procedures. No certificate holder may adversely discriminate against a pilot in the preferential hiring pool for not paying more than a \$50 processing fee.
11. Rebating of pilot earnings for the purposes of defraying costs to train pilots to company procedures and/or operating qualifications or, any scheme which serves as the functional equivalent, shall be prohibited.

## E. REMEDIES AND ENFORCEMENT

1. The judiciary shall liberally interpret the provisions of this section to ensure the labor protective provisions therein are enforced and applied as to achieve the goals of ameliorating involuntary unemployment of experienced pilots in the United States passenger air transportation industry. The courts shall have wide latitude to examine the practices of the various airlines, regarding the hiring of pilots in the preferential hiring pool, to ensure that the spirit of the law is met with both reasonable and full compliance.
2. Any qualified certificate holder required to hire from the preferential hiring pool, without the ability to demonstrate substantiated justification for significantly lower hiring rates for pilots selected from the preferential hiring pool as compared to other pilots hired by the certificate holder during a calendar year, shall be subject to a civil fine of no less than \$27,500 and no more than \$50,000 per preferential hiring pool pilot applicant rejected without substantiated justification. Such justification must be documented and timely with the discontinuance of the pilot recruitment process.
3. Any qualified certificate holder required to hire from the applicable preferential hiring pool who conducts the pilot recruitment process in an adversely discriminatory manner toward pilots in the applicable preferential hiring pool shall be subject to a civil fine of no less than \$50,000 and no more than \$250,000.
4. Any pilot within the preferential hiring pool, subjected to adversely discriminatory pilot recruitment practices, and denied employment with a qualified certificate holder found to be engaged in adversely discriminatory pilot recruitment practices by the Department of Labor during the pilot's involvement in the recruitment process, shall be able to recover damages of no more than \$50,000, plus recovery costs and customary legal fees.
5. Any qualified certificate holder required to hire from the applicable preferential hiring pool failing to meet the hiring requirements of this section and also failing to rectify the deficiency per this section within one calendar year of discovery of such deficiency shall be subject to a civil fine of no less than \$100,000 and no more than \$150,000 times the amount of pilots from the preferential hiring pool needed to rectify such deficiency per year the deficiency exists.
6. Any qualified certificate holder requiring, as a condition of employment, the rebating of pilot earnings to defray training costs per section 5.D.11, or engaging any scheme to disguise the functional equivalent of such, shall be subject to a civil fine of no less than \$500,000.
  - a. Any pilot required to rebate such earnings to defray training costs shall be able to recover three times actual damages plus customary recovery costs.

- b. The requirement for a pilot to possess certain qualifications, that are reasonable to the operation of a certificate holder, prior to employment shall not be construed as requiring the rebating of pilot earnings, provided such qualifications can be reasonably obtained from sources other than those controlled, owned, or financially beholden to the certificate holder or corporate parent.

**F. MONITORING AND ENFORCEMENT BY UNITED STATES DEPARTMENT OF LABOR**

1. The United States Department of Labor or its authorized agent shall monitor the hiring practices of Part 121 passenger air certificate holders to ensure compliance with the provisions of this section.
2. The United States Department of Labor or its authorized agent shall have the authority to inspect and audit any Part 121 passenger air certificate holder's policies, procedures, applications, and pilot recruitment activities and have the authority to declare certificate holders in violation of the provisions of this section and issue compliance metrics, citations, and collect fines accordingly.
3. Personnel records used in legal proceedings shall, to the maximum extent practical, have personally identifiable information redacted from documents released into the public record, unless appropriate waivers are obtained authorizing such release.

