

## Who is an Employee for Purposes of Aircraft Self-Service and Self-Fueling

Many airport tenants prefer to service their own aircraft, including self-fueling. Pursuant to FAA policy, however, “Self-service activities generally cannot be contracted out to a third party. Self-service activities must be performed by the owner or employees of the entity involved.”<sup>1</sup> The proposed Minimum Standards and Rules and Regulations for Destin Executive Airport and Bob Sikes Airport will incorporate that standard and provide that aircraft owners, lessees, and operators “shall be strictly limited to self-fueling of their own aircraft with their own employees and equipment.”<sup>2</sup>

### Who Is an “Employee” for Self-Service Purposes?

The County is guided by the FAA’s policy on the “own employee” requirement for self-servicing, which states that: “Airport sponsors may not allow third-party contracting of self-service activities where the owner/operator of the aircraft does not **retain ultimate control over contracted personnel, including interviewing, hiring, assigning duties, and termination of the employee assigned to the aircraft**” (bolding added).<sup>3</sup>

In assessing whether a particular individual is an employee of an aircraft owner or operator, the County may consider a number of factors, including the terms of any contract between the aircraft owner/operator and the individual, whether the aircraft owner/operator provides an IRS Form W-2 to the individual, and the type of work performed by the individual. No particular factor is necessarily determinative, however, because the critical factor is whether the aircraft owner or operator can demonstrate the degree of “control” over the work that one would typically expect an employer to exercise over their own employee, rather than over a third-party contractor. If a question is raised regarding whether a given individual is an employee for purposes of self-servicing and self-fueling, the County will assess the particular facts of that situation. The aircraft owner or operator will bear the burden of demonstrating to the County that it exercises sufficient control over the individual to meet this requirement.

### Consult a Lawyer for Legal Advice

The County understands that there are many different business relationships between aircraft owners and those who service those aircraft, and treating an individual as an employee may have tax or other legal consequences for individual aircraft owners or operators. We cannot advise you regarding those consequences or how best to structure your agreements with service providers. Each aircraft owner or operator should consult an attorney and/or tax professional for specific advice. This document is not legal or tax advice.

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<sup>1</sup> FAA, Order 5190.6B Change 1, Airport Compliance Manual, paragraph 11.4 (2021).  
<https://www.faa.gov/documentLibrary/media/Order/Order-5190-6B-Change1.pdf>.

<sup>2</sup> Draft Minimum Standards, paragraph VII.A.4; Draft Rules and Regulations, paragraph VI.e.

<sup>3</sup> Airport Compliance Manual, paragraph 11.4.