

Is the FAA's mandatory separation law for air traffic controllers rationally related to a legitimate government purpose?

by

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Why must a FAA air traffic controller be forced to retire at age 56? Is this truly a safety issue, or is this simply sanctioned discrimination?

That is a very good question, and one that [Dean Dungan unsuccessfully argued in a civil action back in 2000](#), when he found that colleagues (rehired PATCO controllers) were allowed to work beyond the age of 56, yet he was not afforded such an opportunity. He felt that he was not receiving fair treatment.

At the present time, I, and many other colleagues in my workplace, are disturbed about a similar form of sanctioned discrimination of which we have just begun to become aware. We didn't see this coming. All of us "old" controllers were fully expecting to be forced out as we reached age 56, unless we could obtain a [waiver](#) that extended our career for up to one year at a time, for up to a total of 4 years. However, all of us have not been able to take advantage of this program, and we are having retirement/goodbye parties for many experienced colleagues.

Recently, we learned that there was one controller amongst us, who, as he was preparing to retire, quite unexpectedly learned that he could work beyond age 56. He would not be forced out! He could remain working traffic for as long as he wished (assuming of course, that he passed the [yearly FAA physical](#)).

Even more recently we learned that there are now four other colleagues at our facility, who will also not face mandatory separation! That means that of the controllers that are eligible to retire at CMH, over 25% are not subject to mandatory separation! Why is that? What's going on?

How can it be that two controllers, both having been hired on exactly the same date, both having attended the same initial training in Oklahoma City, both having successfully graduated from the academy together, can end up being treated so inexplicably different as they reach age 56?

Believe it or not, the difference is that one of the controllers "washed out" at their initial facility. Yet, this controller eventually managed to re-apply to an air traffic control tower, worked their way back up the ladder to become a very capable and competent air traffic controller, yet is treated inexplicably differently upon reaching age 56. Is that fair? Should not this controller be treated the same as the colleague that managed to make it to full performance level status sooner in their career? What's the difference between these two classes of controllers anyway?

The difference is that the controllers who overcame adversity, the ones that picked their selves back up and recycled through ATC training, had been placed at a Flight Service Station *at some point prior to 1987*. Because they worked as pilot weather briefers, they are treated differently, in that they are *not* forced to retire. Yes, you heard me correctly...they are not subject to the mandatory separation. Is this not baffling?

I have learned that it is this way because of a unique provision in the law which exempts these particular air traffic controllers, solely because they had worked at a Flight Service Station prior to Jan 1, 1987 (see NOTE 2 at [this link](#)).

Is this discrimination rationally related to a legitimate government purpose?

Thus far this year we have lost 3 of 5 very experienced air traffic controllers at my workplace. These five have all reached (are reaching) the mandatory separation age of 56 during this calendar year. While CMH has been a facility that has been well staffed throughout its existence, I began to see the affect of this drain of experienced controllers just before leaving work yesterday. This came in the form of a supervisor who was looking for a controller to voluntarily work this Thursday evening/Friday morning midnight shift which didn't meet the minimum staffing (3 controllers total, to staff the radar room and the tower cab). I declined this offer of earning overtime pay, and apparently so did all of my other colleagues. This puts management into the position of having to involuntarily assign an overtime midnight shift to a controller that may not really wish to adversely affect their biorhythms.

My personal reason for declining the offer of overtime pay centers around just that...preparing my body for adequate rest before a "graveyard" shift in a safety critical profession. Over the past decade I have used my seniority to select schedules that avoided, to the greatest degree possible, the dreaded 2-2-1 shift (two evening shifts, followed by two day shifts, followed by a midnight shift). Controller fatigue is a very real concern, especially considering our "quick turn-around" schedules that have us manning the facility 24/7/365 (imagine yourself arriving for work at 8:00 a.m., getting off work at 3:00 p.m. then having to return a mere 8-hours later at 11:00 p.m. for a job that requires sharp focus and steady concentration). The FAA, at the behest of the NTSB, is finally beginning to address controller fatigue, as can be seen [in this 2009 study](#).

One way to mitigate controller fatigue is by creating shifts that allow at least 10 hours between shifts. Of course, that would likely require more controllers to adequately staff facilities based upon such a schedule.

The General Accounting Office cautioned about the ensuing rapid drain of experienced controllers (see [GAO 02-591](#)), as well as the adverse affect of staffing numbers dropping. I term that "[getting behind the power curve](#)."

I recommend that the law regarding mandatory separation for air traffic controllers be promptly addressed, and changed so as to allow FAA air traffic controllers to work till age 65, [such has been recently changed for commercial pilots](#). Such action would end the peculiar form of sanctioned discrimination that I, and many of my colleagues, are just now learning about. Such action would help to stem the rapid drain of experienced controllers that the FAA is dealing with. Changing the law would help the FAA to mitigate the affects of this difficult transition period while we train our young and eager replacements.

What about me? I am one of those controllers that is subject to mandatory separation. I applied for a waiver in 2009 (see [TomLuschWaiverRequest.pdf](#)), and I am currently enjoying being able to work traffic (see [LuschWaiverApproval20090807.pdf](#)). I have recently applied for another waiver (see [Lusch2ndWaiverRequest.pdf](#)).