

## Blowing the whistle on injury-related separations



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Card**

**B**eing a probationary letter carrier as either a CCA or a newly converted career letter carrier is a stressful time. Trying to meet management's expectations and avoid injuries and accidents can be challenging. Not everyone succeeds. In some offices, there is an unfortunate but pervasive sentiment that probationary employees should never report on-the-job injuries because it will lead to immediate separation without recourse.

While it is true that employees in a probationary period of 90 or 120 days have no standing to file grievances protesting separations, employees who are separated after reporting an on-the-job injury have the right to file an Occupational Safety and Health Act (OSHA) Whistleblower complaint within 30 days.

**The OSHA Whistleblower program is intended to protect** workers who face retaliation for reporting on-the-job injuries or accidents. Chapter 7 of OSHA, which is dedicated to the investigation of retaliation against activity protected by the Act, begins with the following quote:

Section 11(c) of the OSH Act mandates: 'No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself or others of any right afforded by this Act.'

Reporting a work-related injury or illness is a core employee right, and retaliating against a worker for reporting an injury or illness is illegal discrimination under Section 11(c). OSHA views this regulation as essential in both maintaining safe workplaces and protecting workers injured on the job.

While career letter carriers have recourse to the grievance procedure when disciplined or separated for reporting on-the-job injuries, probationary employees cannot grieve separation. For letter carriers on probation, the OSHA Whistleblower program provides an avenue for you to challenge the retaliation if you get separated after reporting an on-the-job injury.

The OSHA Whistleblower protections are available to any employees, probationary or career, who feel they have been unjustly disciplined, separated or retaliated against for reporting an on-the-job injury.

Filing an OSHA Whistleblower complaint is a critical opening for probationary employees to prove discrimination for engaging in a protected activity. Any letter carrier who believes he or she may have been discriminated for reporting an on-the-job injury must be mindful that the reg-

ulation has a 30-day time limit for filing a complaint.

The easiest way to file a complaint is by calling the OSHA hotline at 202-693-2199. An OSHA representative will document your contact information and a trained investigator will contact you to file your complaint. You also may file a complaint online by going to <https://www.osha.gov/whistleblower/WBComplaint.html>.

The OSHA Whistleblower complaint instructions and forms also are available on the new NALC website on the "CCAs and on-the-job injuries" section of the Member Benefits page.

**Just like the OSHA regulations, from the first minute a** letter carrier is on the clock in orientation or training, he or she is protected by the Federal Employees Compensation Act (FECA). When it comes to filing claims for on-the-job injuries, FECA too makes no distinction between career and probationary employees; both are entitled to the same protections.

While filing a claim for an on-the-job injury requires use of the proper form, the FECA requirement for reporting an injury is simple: The worker must notify his or her agency that the injury occurred. This is critical for injured workers, especially those on probation.

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As letter carriers, we often suffer minor aches and pains. We often show up to work the next day, expecting these minor injuries to resolve themselves. When an injury does not resolve over a period of time, OSHA has said that agency rules cannot penalize a worker who did not realize immediately that the injury was serious enough to report, or even that he or she was injured at all.

OSHA does recognize that employers have a legitimate interest in establishing procedures for receiving and responding to reports of injuries. However, such procedures must be reasonable and may not unduly burden the employee's right and ability to report. Workers never should feel that their job is at risk when reporting an on-the-job injury.

OSHA is especially concerned where employers have policies of taking disciplinary action against employees who are injured on the job. There may be misguided postal officials who may believe such a policy is appropriate. Reporting an injury is protected activity under both OSHA and FECA. An OSHA Whistleblower complaint and a grievance filed for a FECA violation should be initiated when such protected activities are violated by a policy.

**NALC members need to look out for each other in our** workplaces and take action when it's necessary. Blowing the whistle on unjust separations is a necessary action.