

USPS contests heat-safety violations



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In the fall of 2018, the Occupational Safety and Health Review Commission (OSHRC) conducted hearings involving city and rural letter carriers in Benton, AR; Des Moines, IA; Martinsburg, WV; and San Antonio and Houston, TX. These hearings came about because USPS contested citations issued by the Occupational Safety and Health Administration (OSHA) on heat safety. In each of these facilities, something brought OSHA in to investigate.

Once it begins such a hearing, it is up to OSHA to determine what course of action to take, regardless of NALC's views on the facts collected. OSHA's investigation may result

in no action, a hazard alert, or the issuance of a citation identifying what rule was violated and recommendations to USPS to prevent a similar event and corresponding penalty.

In these five cities, OSHA issued citations finding that USPS did not have in place an adequate Heat Illness Prevention Program (HIPP) to protect workers from the dangers of heat while delivering mail. In each of these citations, OSHA concluded that Section 5(a)(1) of the Occupational Safety and Health Act of 1970, known as the "General Duty Clause," was violated, indicating that:

The employer did not furnish employment and a place of employment which was free from recognized hazards that were causing or likely to cause death or serious physical harm to employees from exposure to excessive heat.

In a document titled "Occupational Exposure to Heat and Hot Environments—Revised Criteria" (DHHS NIOSH Publication 2016-106), John Howard, director of NIOSH, wrote:

...When the U.S. Congress passed the Occupational Safety and Health Act of 1970 (Public Law 91-596), it established the National Institute for Occupational Safety and Health (NIOSH). Through the Act, Congress charged NIOSH with recommending occupational safety and health standards and describing exposure levels that are safe for various periods of employment, including but not limited to the exposures at which no worker will suffer diminished health, functional capacity, or life expectancy because of his or her work experience...

When Congress wrote the law in 1970, it intentionally included the General Duty Clause to allow OSHA to take necessary action when "knowledge and experience" warn us

that we may be putting an employee in harm's way. The occupational safety and health community has learned much since 1970, but USPS behaves as if it has not. I say this because USPS has not, as of this date, developed a thorough HIPP, which should include acclimatization (building up a tolerance to heat before exposing an employee to extreme heat).

In the December 2018 issue of *The Postal Record*, we reported the death of Peggy Frank, a Woodland Hills, CA, letter carrier who died on her first day back to work following an extended medical absence. I am advised that through the investigative process, it was discovered that her supervisors certified that she had attended heat safety training at work. This was known to be impossible because she did not return to work until the day she died in 117-degree heat. How could she have gone through heat safety training before she actually returned to work? Management claims that it misunderstood the instructions that it received from headquarters, which required that every single letter carrier in the country was to have been provided a Learning Management System (LMS) training course on heat safety. A letter carrier would have been disciplined or fired for such a claim, but management simply chalks this up to an error. This was an error that cost a life.

USPS seeks to overturn citations

In my August/September 2018 column, I wrote that USPS has joined forces with the National Association of Home Builders and the National Roofing Contractors Association to overturn a citation issued by OSHA involving the death of a roofer. Since then, USPS hired the same law firm that it had used in the above-referenced OSHRC trials involving city and rural letter carriers. USPS seeks to overturn all the citations. NALC and our sister union, the National Rural Letter Carriers' Association, are seeking a decision that upholds the citations as issued and, further, that required USPS to care about all of you throughout this country, and not just where OSHA has issued a citation.

As I stated at the beginning of this column, we have no control over OSHA and its decision-making process; however, we do have control over our actions in the grievance procedure. If you believe that management is failing in its obligations to provide a safe work environment, investigate the issue and process a grievance. We can control that grievance. Reach out to your branch officers, your national business agent or NALC Headquarters if you need help.

Keep an eye on each other.