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Federal panel vacates Postal Service heat citations

The Occupational Safety and Health Review Commission recently **vacated** four Occupational Safety and Health Administration (OSHA) citations of the U.S. Postal Service (USPS) for letter carriers in Benton, Arkansas; Houston and San Antonio, Texas; and Martinsburg, West Virginia, exposed to excessive heat. The commissioners concluded that OSHA failed to identify economically and technically feasible prevention measures the Postal Service could have taken.

In a fifth USPS case, the panel concluded that a Des Moines, Iowa, station failed to provide heat safety training for City Carrier Assistants (CCAs) and sent the **case** back to a review commission administrative law judge (ALJ).

The review commission relied on Postal Service officials' predictions that the organization will “run out of cash” in 2024 and cannot afford time-based interventions that include acclimatization, reducing time outdoors, and work/rest cycles.

Between September 2016 and January 2017, OSHA issued five citations to the Postal Service, each alleging that it committed repeat violations of the Occupational Safety and Health Act's General Duty Clause (§5(a)(1)) by exposing employees to “excessive heat” hazards. In each case, a letter carrier began feeling ill while delivering mail and was treated at a hospital or an urgent care clinic.

The Postal Service contested the citations, and all five cases were referred to a single ALJ. The ALJ held five separate hearings and an additional national hearing to consider evidence common to all five cases.

There is a four-pronged test for General Duty Clause violations in which the Labor Department must show that:

- “A condition or activity in the workplace presented a hazard.”
- “The employer or its industry recognized this hazard.”
- “The hazard was likely to cause death or serious physical harm.”
- “A feasible and effective means existed to eliminate or materially reduce the hazard.”

In the Benton, Houston, Martinsburg, and San Antonio Postal Service cases, the review commission affirmed the existence of the heat hazards but challenged OSHA's recommendations for effective and feasible means of abatement. OSHA and the Labor

Department said the Postal Service should have established a comprehensive heat stress prevention program of acclimatization, an adequate emergency response program, work/rest cycles, analyzing existing data on employees' heat-related illnesses, employee monitoring, training, and reducing outdoor exposure times.

During the review commission's proceedings, the Labor Department acknowledged the costs of time-based interventions like acclimatization, reducing outdoor exposure times, and work/rest cycles but maintained that such costs would not threaten the Postal Service's economic viability because:

- The Postal Service is unlikely to go out of business because it is a “quasi-governmental agency,” and Congress will prevent that.
- The Postal Service’s losses are only “paper losses” because they are the result of a statutory requirement to prefund retirement health benefits—a requirement the Postal Service has not complied with and that has not been enforced.
- It can raise prices or borrow funds to pay for the measures.
- The Postal Service plans to spend money on other projects in coming years, including measures to increase productivity, and could reallocate that money to pay for the proposed abatement measures instead.

The review commission relied on statements from Postal Service officials, government task force, and Government Accountability Office (GAO) report findings that the Postal Service is at “high risk” and financially unsustainable.

Concluding that OSHA failed to identify measures the Postal Service could *feasibly* have taken, the board vacated the citations.

In 2019, the review commission vacated another heat-related violation, calling OSHA’s reliance on the General Duty Clause a “gotcha” or “catchall” for hazards with no established standards.

OSHA uses its General Duty Clause authority to address hazards without formal standards, including ergonomic hazards (that can result in musculoskeletal disorders), heat hazards, and workplace violence. The agency has rulemakings to establish standards for indoor and outdoor heat hazards and workplace violence in health care and social services.

In 2001, Congress struck down a Clinton administration ergonomics standard before it could take effect.

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