

**UNITED STATES DEPARTMENT OF LABOR
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION**

Docket No. OSHA-2021-0009

*Heat Injury and Illness Prevention in
Outdoor and Indoor Settings*

**COMMENT OF THE NATIONAL ASSOCIATION
OF LETTER CARRIERS, AFL-CIO**

The National Association of Letter Carriers, AFL-CIO (“NALC”) submits this comment to express its strong support for OSHA’s proposed heat standard. We believe the proposed heat standard will be a critical protection for those millions of Americans whose work regularly exposes them to hot weather, and that includes the more than two hundred thousand city letter carriers who deliver the nation’s mail. It was half a century ago, in 1974, that an OSHA-appointed panel first endorsed a heat standard.¹ This essential workplace safety measure is long overdue, and we applaud OSHA’s efforts to finally make it a reality.

NALC and Its Members

NALC, founded in 1889, serves as the collective bargaining representative of all city letter carriers employed by the United States Postal Service (“USPS”). Its members work in every city and town in every state and territory of the United States, including in those areas that experience long seasons of stifling heat and humidity.

City letter carriers deliver mail and packages on designated routes. They perform these deliveries all year long, including in the hottest weeks of summer. Typically, they work at least eight hours a day, including through the peak afternoon heat.

Some carriers, especially in urban areas, walk their entire routes, pushing a cart full of letters and parcels along city streets. On hot days, they are fully exposed to the heat. In less densely populated areas, carriers typically deliver mail using a postal vehicle. USPS has promised for years to provide a fully air-conditioned fleet of vehicles, but most of its delivery trucks remain without air-conditioning, and are poorly ventilated. When these vehicles sit in the sun on hot days, their interiors begin to bake, subjecting the carrier inside to excessive temperatures.

In some areas, carriers deliver mail directly from their vehicle, reaching out to place it in customers’ mailboxes. More often, however, especially in suburban areas, carriers park their vehicle at designated points along their route and deliver the mail by foot, walking up and down the street, carrying heavy mail satchels on their shoulders. On hot days, those carriers suffer both the heat inside the truck and the heat outside on the pavement.

¹ See Decision, *Sec’y of Labor v. Indus. Glass*, OSHRC Docket No. 88-348, at 12 n.10 (April 21, 1992).

The Grave Risk of Heat Injury Faced by City Letter Carriers

Heat poses a grave risk to city letter carriers. According to USPS data disclosed at a 2019 OSHA hearing, from 2015 to 2019, letter carriers reported approximately 500 to 600 heat-related injuries per year.² USPS records provided to NALC show that since then letter carriers have continued to report hundreds of heat injuries annually. Those are just *reported* incidents. The actual number of heat-related illnesses and injuries suffered by letter carriers is undoubtedly greater. As explained below, USPS's productivity-focused culture often discourages letter carriers from reporting heat illness.

OSHA data on severe work injuries confirm that letter carriers suffer from heat disorders at an excessive rate. According to data covering the last decade, USPS tops the chart of companies with the highest number of severe heat-related injuries, a category that includes at least one night of hospitalization due to conditions such as heat stroke, sunstroke or hyperthermia.³ USPS surpassed, by a wide margin, United Parcel Service, which was second on the list.⁴ City letter carriers, who work outdoors most of the day, suffer a disproportionate number of those USPS severe heat injuries.

According to heat safety expert Thomas Bernard, of the College of Public Health of the University of South Florida, letter carriers suffer from heat-related disorders more often than workers in other hazardous occupations.⁵ In an unpublished 2020 analysis prepared for NALC, Dr. Bernard used studies of the incidence of heat illness in other occupations,⁶ and found that the letter carrier heat illness rate exceeded that of workers in, for example, fire protection, roofing and highway construction. Dr. Bernard calculated, using USPS data, that from 2015 to 2018, the average annual rate of reported heat illness among letter carriers was approximately 82 per 100,000 full-time equivalents ("FTEs"). During the warmest months of the year, May

² See Secretary's Post-Hearing Brief, *Sec'y of Labor v. USPS*, OSHRC Docket Nos. 16-1713, 16-1813, 16-1872, 17-0023, 17-02791 (Sept. 17, 2019), at 21 (citing testimony of USPS's Manager of Safety and OSHA Compliance, at hearing transcript pages 1257, 1259).

³ See OSHA Severe Injury Reports <https://www.osha.gov/severe-injury-reports/>, from Jan. 1, 2015 to Jan 31, 2024. This data was pulled using the OSHA *Occupational Injury and Illness Classification Manual* (https://www.bls.gov/iif/oiics_manual_2010.pdf), nature group 172* (effects of heat and light). This nature group includes heat stroke (1721); heat apoplexy (1721); heat exhaustion (1725); heat pyrexia (1721); ictus solaris (1721); fainting and loss of consciousness associated with heat (1722); siriasis (1721) sunstroke (1721); thermoplegia (1721); heat fatigue including transient (1723); fatal hyperthermia (1721); and dehydration resulting from heat exposure (1729).

⁴ See *id.*

⁵ The Occupational Safety and Health Review Commission has recognized Bernard's expertise and relied on his testimony. See Decision, *Sec'y of Labor v. United States Parcel Serv.*, OSHRC Docket Nos. 16-1713, 16-1872, 17-0023, 17-0279, at 9-10 & n.17 (Feb. 17, 2023).

⁶ Bonauto D., Anderson R., Rauser E., Burke B., "Occupational Heat Illness in Washington State, 1995-2005," 50 *Am. J. Ind. Med.* 940 (2007); Donoghue, AM, "Heat Illness in the U.S. Mining Industry," 45 *Am. J. Ind. Med.* 351 (2004).

through September, that average rate reached 177. By comparison, roofers experienced an average annual rate of heat illness of 59 per 100,000 FTEs, reaching 161 during the warm weather months. For highway construction workers, the figure was 45 annually, and 106 during the warm weather months.

Heat illness does not just sicken letter carriers. On occasion, it kills them. The list of carriers who have died from the heat includes John Watzlawick of Independence, Missouri, who died of heat illness after collapsing on his route on a hot July afternoon⁷; Daniel Rosenbach of Lexington, Kentucky, who died of a heart attack triggered by extreme heat; James Baldassare of Medford, Massachusetts, who collapsed on his route while delivering mail in 94-degree weather, and died the following day from heat stroke⁸; Peggy Frank of Woodhills, California, who died of hyperthermia (abnormally high body temperature) in her un-air-conditioned mail truck on a day when the temperature outside hit 115 degrees⁹; and Eugene Gates of Dallas, Texas, who died on his route while delivering mail on a sweltering afternoon when the heat index reached 110 degrees.¹⁰ Additional letter carrier deaths from heat include those of Roslyn Westfall of St. Louis, Missouri and Dalvir Bassic of San Jose, California.¹¹

The danger that heat poses to letter carriers has been growing, and will likely continue to grow in the years to come. First, the world is simply getting hotter. According to the National Oceanic and Atmospheric Administration (“NOAA”), the year 2023 was “the world’s warmest year on record, by far.”¹² The ten warmest years ever recorded have all occurred in the last decade.¹³ This unrelenting rise in temperatures makes outdoor work far more dangerous.

⁷ See Judy Le, “USPS found to be at fault in metro mailman’s heat death from 2012,” FOX4, [USPS found to be at fault in metro mailman's heat death from 2012 \(fox4kc.com\)](https://www.fox4kc.com/story/news/local/2014/09/18/usps-found-to-be-at-fault-in-metro-mailman-s-heat-death-from-2012/751117001/) (Sept. 18, 2014).

⁸ See Liam Martin, “Medford postal carrier dies after collapsing during delivery,” WCBV5, [Postal carrier dies after collapsing during delivery \(wcvb.com\)](https://www.wcvb.com/story/news/local/2013/07/07/medford-postal-carrier-dies-after-collapsing-during-delivery/271117001/) (July 7, 2013).

⁹ See Laura Newberry, “U.S. Postal Service fined \$150,000 after heat-related death of Woodland Hills mail carrier,” *Los Angeles Times*, [U.S. Postal Service fined \\$150,000 after heat-related death of Woodland Hills mail carrier - Los Angeles Times \(latimes.com\)](https://www.latimes.com/local/lanow/la-fi-01-10-2019-03.html) (Jan. 10, 2019).

¹⁰ See Joseph Morton, “USPS faces \$15,625 fine after heat-related death of Dallas mail carrier Eugene Gates Jr.,” *Dallas Morning News*, [USPS faces \\$15,625 fine after heat-related death of Dallas mail carrier – NBC 5 Dallas-Fort Worth \(nbcdfw.com\)](https://www.nbcdfw.com/news/local/usps-faces-15625-fine-after-heat-related-death-of-dallas-mail-carrier-eugene-gates-jr-2023-12-20) (Dec. 20, 2023).

¹¹ “These tragedies were preventable,” *Postal Record* (Aug. 2023), p.31, <https://www.nalc.org/news/the-postal-record/2023/body/August-2023-Postal-Record.pdf>.

¹² See NOAA, “2023 was the world’s warmest year on record, by far,” [2023 was the world’s warmest year on record, by far | National Oceanic and Atmospheric Administration \(noaa.gov\)](https://www.noaa.gov/news/2023-was-the-worlds-warmest-year-on-record-by-far/) (Jan. 12, 2024).

¹³ See NOAA, “Annual 2023 Global Climate Report,” www.ncei.noaa.gov/access/monitoring/monthly-report/global/202313

Moreover, the U.S. population is shifting to the Sunbelt states. According to a 2023 Census Bureau report, large southern cities led the nation in population growth.¹⁴ And where the American population goes, USPS delivery routes follow, meaning more and more letter carriers are working in the hottest parts of the country.

At the same time, letter carriers are spending a greater portion of their workdays outdoors, as technology has reduced letter carriers' indoor office time. Letter carriers traditionally spent the first portion of their workday inside the post office, sorting mail for delivery by hand, setting out on their routes only after the sorting was complete. Now, however, USPS has automated much of the mail-sorting process, sharply reducing the time needed for letter carriers to prepare their mail for delivery. According to NALC's analysis of USPS data, in 2006, letter carriers spent about 67% of their workday outdoors on their routes, but by 2023, that outdoor portion of their workday had jumped to nearly 80%. That trend will undoubtedly continue as USPS expands the scope and reach of mail-sorting automation.

USPS's Minimizes the Danger of Heat

USPS management has traditionally been resistant to implementing meaningful heat safety measures, because it does not see heat as a serious danger. In litigation in which it was charged with multiple OSHA citations, USPS presented a report by a labor economist who concluded that the hundreds of heat injuries suffered by letter carriers over a four-year period was "statistically meaningless."¹⁵ In the same proceeding, USPS's Manager for Safety and OSHA Compliance, its highest-ranking safety officer, testified that reported heat-related injuries were just "not a major concern."¹⁶ USPS's safety manager for its southern area opined that "[h]eat itself" is not a hazard. "I believe it is a climate condition."¹⁷

Even when USPS national headquarters adopts well-intentioned safety policies, front-line supervisors in local post offices have different priorities. They remain pressured, and incentivized, to hit their productivity numbers and to keep down labor costs. Judge Calhoun of the Occupational Safety and Health Review Commission ("Commission") wrote in a 2020 decision, in a case against USPS, that "carriers experience near-constant pressure to complete their routes faster and to discourage them from taking breaks, reporting injuries or illness, or calling in sick."¹⁸ The judge found, for example, that on June 9, 2016, a city letter carrier in Des

¹⁴ See U.S. Census Bureau, "Large Southern Cities Lead Nation in Population Growth," [Large Southern Cities Lead Nation in Population Growth \(census.gov\)](https://www.census.gov/newsroom/press-releases/2023/large-southern-cities-lead-nation-in-population-growth.html) (May 18, 2023).

¹⁵ *Expert Report of Joshua A. Gotkin, Ph.D., Sec'y of Labor v. USPS*, OSHRC Docket Nos. 16-1713, 16-1813, 16-1872, 17-0023, 17-0279, at 8 (Dec. 7, 2018).

¹⁶ Decision, *Sec'y of Labor v. USPS*, OSHRC Docket No. 16-1813, at 53 (July 15, 2020) (quoting testimony of Linda DeCarlo, at Tr. 1261).

¹⁷ See *id.* at 15 (quoting testimony of Daniel Penland).

¹⁸ Decision and Order, *Sec'y of Labor v. USPS*, OSHRC Docket No. 17-0023, at 30.

Moines, Iowa, who was later diagnosed with heat exhaustion, texted her supervisor that she felt unwell, and her supervisor texted back urging her to continue working, and to “do the best you can.” Unable to complete her route, the carrier returned to the post office, vomiting on the way. When she arrived, her supervisor told her she needed to go back out and finish the route.¹⁹

Judge Ball of the Commission made a similar finding a few years earlier, in a case in which a city letter carrier died from hyperthermia after collapsing on his route in 100-plus degree weather. In that decision, the judge noted the “undue emphasis” that USPS management puts “on delivery cut-off time and avoiding the penalty overtime.”²⁰ The judge found, based on the evidence presented, that the message given to letter carriers by postal management “was clear: heat is not an excuse for performance issues.”²¹ Given management’s emphasis on uninterrupted delivery, many carriers fear retaliation if they seek a respite from the heat. Indeed, after reviewing the evidence, USPS’s own medical expert testified in one of the OSHA cases that ““when workers either reported symptoms or said they wanted extra breaks, they were ... either disciplined or their supervisors became angry.””²²

The Gross Inadequacy of Current Legal Protections

To truly mitigate the dangers that heat poses, America needs a nationwide heat standard that sets clear requirements for USPS and other employers. A handful of states have enacted their own standards, but these cover only a fraction of the country, and set differing levels of protection.

The federal statute already has a general duty clause that applies nationwide and that requires employers to provide workplaces “free from recognized hazards that are causing or are likely to cause death or serious physical harm.”²³ But the general duty clause has proven to be woefully inadequate as a tool for protecting workers from heat hazards. In *A.H. Sturgill Roofing*, for example, a worker on a roofing project suffered heat stroke and died after his core body temperature reached 105.4 degrees.²⁴ The judge affirmed OSHA’s citation against the roofing company, but, on appeal, the Commission vacated it, finding that the Secretary had failed to satisfy the required elements of proof under the general duty clause.²⁵ In her concurring

¹⁹ Decision, *Sec’y of Labor v. USPS*, OSHRC Docket No. 16-1813, at 1 (July 15, 2020).

²⁰ Decision and Order, *Sec’y of Labor v. United States Postal Serv.*, OSHRC Docket No. 13-0217 (Sept. 14, 2014), at 35.

²¹ *Id.* at 34.

²² *Sec’y of Labor v. USPS*, OSHRC Docket No. 16-1813, at 67 (July 15, 2020) (quoting testimony of Dr. Aaron Tustin, at Tr. 514).

²³ 29 USC §654.

²⁴ *Sec’y of Labor v. A.H. Sturgill Roofing, Inc.*, OSHRC Docket No. 13-0224, at 1-2 (Feb. 28, 2019).

²⁵ *See id.* at 13.

opinion, the Chair of the Commission asserted that excessive heat “is a condition that is inherent in the performance of outdoor work” and is “not an employment condition that by itself necessarily carries a significant risk of harm.”²⁶ Moreover, she wrote, excessive heat is “not a cognizable hazard under the general duty clause as it provides insufficient notice to the employer of exactly what” the employer must do to protect its employees.²⁷

The heat standard that OSHA is proposing addresses those concerns, by providing clear guidance as to the hazard that heat poses and the requirements for employers to mitigate the risks.

NALC’s own experience in heat cases has shown the gross inadequacy of the general duty clause. In 2019, Judge Calhoun held a dozen days of hearing to receive expert testimony and other evidence in five cases in which OSHA had cited USPS for exposing letter carriers to excessive heat.²⁸ In one case, for example, a carrier in Houston, Texas spent two days in the hospital after working one humid afternoon when the mercury almost reached triple digits.²⁹ The Secretary prosecuted these five cases before Judge Calhoun and then on appeal yet, after about seven years of legal proceedings, failed to prevail in any of them.³⁰ The Commission found that the heat conditions that the letter carriers faced were hazardous, but determined that the Secretary failed to meet its burdens of proof under the general duty clause.³¹ Even if the Secretary had prevailed in those cases, it is doubtful that, as a remedy, USPS would have been required to adopt a nationwide heat protection program, as opposed to just having to address conditions in the particular locales where the five incidents occurred. Indeed, the Secretary’s victory in one earlier heat case, involving a letter carrier in Independence, Missouri, resulted in a USPS heat abatement program applicable only to that one small city.

NALC’s Views on the Proposed Standard

Because of the critical need to protect workers from the heat, and because of the inadequacy of the current legal regime, NALC urges implementation of OSHA’s proposed heat standard. Overall, NALC believes that OSHA did an exceptional job designing a standard that will make a meaningful difference to the health and safety of American workers. The proposed measure will also undoubtedly have beneficial economic effects, by reducing work hours lost to

²⁶ *See id.* at 15 (H. MacDougall, Chair, concurring).

²⁷ *See id.*

²⁸ *Sec’y of Labor v. USPS*, OSHRC Docket No. 16-1813, at 2-3 (July 15, 2020).

²⁹ *See id.* at 13.

³⁰ *See* Decision, *Sec’y of Labor v. USPS*, OSHRC Docket Nos. 16-1713, 16-1872, 17-0023, 17-0279 (Feb. 17, 2023) (Review Commission vacating four of the cases); Joint Notification of Full Settlement, *Sec’y of Labor v. USPS*, OSHRC Docket No. 16-1813 (June 2, 2023) (Secretary withdrawing citation with prejudice).

³¹ *See* Decision, *Sec’y of Labor v. USPS*, OSHRC Docket Nos. 16-1713, 16-1872, 17-0023, 17-0279, at 26 (Feb. 17, 2023).

heat illness, and also by reducing hospital and medical costs and workers compensation outlays. OSHA's 376-page proposal in the *Federal Register* lays out with impressive thoroughness the medical, technical, scientific, legal and financial considerations behind the proposed standard. Perhaps inevitably, critics will assail the proposal as yet another example of rigid government regulation. Those criticisms should be rejected. By allowing for heat safety programs to vary from employer to employer so long as they satisfy minimum standards, the proposed rule provides robust safety protection while preserving the flexibility that enterprises seek.

The Critical Importance of Paid Breaks and the No-Cost-to-Employees Principle

While NALC applauds the proposed rule overall, we highlight the importance of the rule's requirement, in Section (j), that "implementation of all requirements of this standard must be at no cost to employees, including paying employees their normal rate of pay when compliance requires employee time." In furtherance of this no-cost-to-employees principle, Section (e)(8) of the proposed rule mandates that the rest breaks that employers are required to allow and to encourage are to be paid breaks.

In its dealings with USPS over heat issues, NALC has always insisted that USPS pay for the additional rest breaks that carriers take in order to stay safe. A carrier performing work for USPS should not have to bear the cost of needed rest breaks any more than a worker in a factory should have to pay for an air ventilation system or a protective shield for a cutting machine.

Moreover, unless additional breaks are paid, carriers will be reluctant to take them, even if they need them. As noted, USPS management already pressures letter carriers to keep working. Requiring carriers to go off the clock and take rest breaks on their own time will just disincentivize them further from taking those needed, potentially life-saving rests. For that reason, NALC strongly supports the requirement that breaks be paid and that, in general, employers bear the full cost of the implementation of heat safety measures.

The Need for a Gradual Acclimatization Protocol Except Where Impractical

While NALC overall strongly supports the proposed heat standard, we do have a couple suggested amendments. The first involves acclimatization. As OSHA's discussion of the medical evidence makes clear,³² proper acclimatization protocols are critical. NALC knows that from bitter experience. When NALC members John Watzlawick and Peggy Frank died from heat exposure, they had each just returned to duty following weeks away from the job, and had not been properly acclimatized before resuming their duties.³³ David Bassi died the first time he delivered his route by himself, having been put in danger by a lack of acclimatization.³⁴

³² See 89 Fed. Reg. at 70758-62 (Aug. 30, 2024).

³³ "These tragedies were preventable," *Postal Record* (Aug. 2023), p.31, <https://www.nalc.org/news/the-postal-record/2023/body/August-2023-Postal-Record.pdf>.

³⁴ See *id.*

Section (e)(7) of OSHA’s proposed rule allows employers a choice when implementing acclimatization measures for new or returning employees: the employer can either (1) gradually introduce the employee to greater heat exposure over multiple days, or (2) during the employee’s first week, implement certain measures, like additional rest breaks, observations and hazard alerts, if the heat reaches a certain level. NALC believes the first option – the gradual exposure protocol – is preferable. As OSHA notes, when it comes to new employees, gradual exposure is the recommendation of the National Institute for Occupational Safety and Health.³⁵ OSHA’s commentary on the proposed rule explains, however, that gradual exposure may not always be practical.³⁶

Because gradual exposure likely poses more logistical challenges for employers, we believe that, if given the freedom to choose, most employers will opt for the other – easier but probably less efficacious – option. To prevent that, NALC suggests that OSHA amend Section (e)(7) to require acclimatization through gradual exposure, unless the employer can show that that option would not be practical for the employer. This amendment, by making gradual exposure the default protocol, would better protect workers, while preserving an opt-out option for those employers who could establish that gradual exposure would be impractical for their particular operation. Under NALC’s suggested amendment, employers opting out of the gradual exposure protocol could explain in their heat injury and illness prevention plan (“HIIPP”) why that protocol was impractical and, in the event of an OSHA enforcement proceeding, could present evidence to support that explanation.

The Need to Preserve the Right to Collectively Bargain Over Heat Safety Provisions

Section (c)(6) of the proposed heat standard requires employers to “seek the input and involvement of non-managerial employees and their representatives, if any, in the development and implementation of the HIIPP.” NALC applauds OSHA for promoting employee participation in the formulation of employer heat safety plans. It is often the employees themselves who know best how to keep the workplace safe, so their voices should be heard. Promoting the otherwise-unheard voice of workers is particularly important in nonunion firms.

However, we are concerned that unionized employers could misconstrue Section (c)(6) as authorizing them to confer directly with their employees on the formulation of a HIIPP. Doing so would violate the employer’s statutory duty to bargain with the employees’ union. The National Labor Relations Act (“NLRA”) makes workplace safety a mandatory subject of collective bargaining.³⁷ It prohibits employers from treating directly with employees on such

³⁵ See 89 Fed. Reg. at 70784 (Aug. 30, 2024).

³⁶ See *id.*

³⁷ See, e.g., *NLRB v. Gulf Power Co.*, 384 F.2d 822, 825 (5th Cir. 1967) (“safety rules and practices” are “undoubtedly conditions of employment” subject to collective bargaining)

mandatory subjects of bargaining.³⁸ Accordingly, in formulating a HIIPP, an employer would have a legal obligation to bargain with the employees' collective bargaining representative, and would not be permitted to bargain with the employees themselves. NALC certainly does not believe that OSHA intended Section (c)(6) to allow for direct employee dealing. Nonetheless, to avoid the possibility that an employer could argue that Section (c)(6) allows such direct dealing, NALC suggests that OSHA add a proviso to Section (c)(6), a proviso saying that nothing in the proposed rule is intended to, or should be construed as, relieving any employer of any obligations it has under any applicable collective bargaining law or collective bargaining agreement.

Conclusion

NALC appreciates the enormous effort that OSHA has devoted to formulating this much needed heat safety standard. We also appreciate the opportunity to provide this comment. NALC stands ready to assist OSHA in any way appropriate to help move the proposed rule forward.

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Respectfully submitted,

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³⁸ See, e.g., *El Paso Elec. Co.*, 355 N.L.R.B. 544 (2010).