

Administrative leave for acts of God

When acts of God, such as extreme weather or natural disasters, occur that prevent letter carriers from reporting to work or completing their shifts, postmasters and other installation heads have the authority to approve administrative leave. This article will cover some of the relevant provisions and provides guidance on how to document the criteria necessary to determine if a letter carrier is entitled to administrative leave.

The rules and regulations, which are incorporated into the National Agreement via Article 19 pertaining to acts of God, are found in Section 519 of the *Employee and Labor Relations Manual (ELM)*.

Section 519.211 of the *ELM* defines acts of God:

Acts of God involve community disasters such as fire, flood, or storms. The disaster situation must be general rather than personal in scope and impact. It must prevent groups of employees from working or reporting to work.

Section 519.215 explains that career letter carriers may receive administrative leave when they are either unable to report to work, or prevented from working, due to an act of God:

Employees scheduled to report who are prevented from reporting or, who after reporting, are prevented from working by an act of God may be excused as follows:

- a. Full-time and part-time regular employees receive administrative leave to cover their scheduled tour of duty not to exceed 8 hours.
- b. Part-time flexible employees receive administrative leave, subject to the 8-hour limitation, for their scheduled workhours, as provided in 519.214c.

Section 519.211 of the ELM sets three criteria for determining the appropriateness in granting administrative leave for acts of God. First, it must create a community disaster. Second, the event must be general rather than personal in scope and impact. Third, the event must prevent groups of employees from working or reporting to work. Most arbitrators agree that all three criteria must be met before a request for administrative leave will be considered appropriate.

The first criterion identified in Section 519.211 of the *ELM* requires that an act of God must involve community disasters such as a fire, flood or storm. In most cases, the act of God in question must have been of unusual severity. In considering whether these events fit the definition of an act of God, arbitrators typically consider factors such as the amount of snow or rain; the length of the storm; the wind strength; the temperature; and the amount of destruction caused by the

event. However, more important than these elements are whether the event created disastrous conditions. News articles, information from local authorities, and weather data should be used to document the severity of the situation. It may be useful to include information from websites that provide historical weather data, such as Weather Underground (wunderground.com/history). Pictures and videos of the event and its aftermath can also document the severity. Proof that there was a shutdown of community services and any warnings or directives issued by local officials will go a long way in showing there was a community disaster.

“Section 519.215 explains that career letter carriers may receive administrative leave when they are either unable to report to work, or prevented from working, due to an act of God.”

The second criterion set forth in Section 519.211 of the *ELM* requires that an act of God be general in scope and impact. This can be established by looking at the direct impact on the community, and the reaction of the general population. Evidence to establish that the impact of the catastrophic event overwhelmed the community and was not limited to the Postal Service should be included in any grievance file. Reports of property damage estimates, vehicle accidents, casualties, utility outages, road closures, school and business closures, disruption of community services, and “state of emergency” declarations can be used to prove the widespread impact of the event. Keep in mind, Section 519.211 imposes no requirement that the office be closed or operations curtailed before employees may receive administrative leave.

The third criterion cited in Section 519.211 of the *ELM* requires the disaster to affect groups of employees. Some arbitrators have required that 50 percent or more of the employees being unable to report to work is necessary to prove this element, while other arbitrators have rightly pointed out that the *ELM* sets no such arbitrary figures, and that the circumstances of each case must be considered. Time records can be used to

(continued on next page)

Administrative leave for acts of God (continued)

(continued from previous page)

document the number of letter carriers who were able and unable to report that day. These records will also show what kind of leave was charged for the absences.

Although some arbitrators consider the employee reporting percentages of the office as a whole when determining the impact on the group, other arbitrators give consideration, when documented, to groups of employees within the office who are from a certain area more adversely affected and, as such, were unable to report to work. Maps are useful in demonstrating areas where employees live and whether the event prevented employees from specific areas from reporting to work. Union representatives should document the reasons why letter carriers were unable to report and identify the similarities and differences between those who did and those who did not report to work. Employee statements are crucial pieces of evidence in establishing impact. Arbitrators may consider one employee's particular difficulties in getting to work, but if other employees from the same area were able to report, the arbitrator may consider the disaster personal rather than general and not grant administrative leave.

Section 519.213 of the *ELM* addresses how management determines the cause of the absences:

Postmasters and other appropriate postal officials determine whether absences from duty allegedly due to 'acts of God' were, in fact, due to such cause or whether the employee or employees in question could, with reasonable diligence, have reported for duty.

Because management must weigh the amount of reasonable diligence the affected employees showed in attempting to report to work in accordance with Section 519.213 of the *ELM*, arbitrators may likewise evaluate the efforts of the employee. Some arbitrators will look at general conditions and not require specific proof of individual attempts to come to work; however, in other cases, arbitrators have required that employees present evidence of their diligence. Arbitrators may require an employee to show that alternative means were unavailable, or the effort would have been futile.

Information that demonstrates carriers' diligence is best documented by interviewing the carriers and obtaining statements. If carriers made multiple attempts to report, that should be included in their statement in detail. The following are examples of some of the questions that can be asked and answered: How long did they work trying to dig out? How far away is the closest

bus station? Was there any alternative transportation? Were buses or other public transportation even running? Were the roads closed? Did the police turn them away? Was there a mandatory evacuation? In addition to employee statements, newspaper articles and website posts from local media outlets from the time frame in question also may help provide some of the documentation and substantiate the carriers' claims.

“Administrative leave for an act of God may still be appropriate for carriers who reported to work but were then sent home early because of the weather or event.”

Administrative leave for an act of God may still be appropriate for carriers who reported to work but were then sent home early because of the weather or event. Maybe the mail did not make it to the office, or conditions worsened so delivery was suspended, and there was no other productive work available.

Section 519.214 of the *ELM* addresses early dismissal due to an act of God:

When employees are dismissed from duty before the normal completion of their duty due to an act of God, the following applies:

- a. Full-time employees are entitled to credit for hours worked plus enough administrative leave to complete their tour of duty. This combination of work and leave is not to exceed 8 hours in any one day.
- b. Part-time regular employees are entitled to credit for hours worked plus enough administrative leave to complete their scheduled hours of duty. This combination of work and leave is not to exceed 8 hours in any one day.
- c. Part-time flexible employees are entitled to credit for hours worked plus enough administrative leave to complete their scheduled tour. The combination of straight time worked and administrative leave may not exceed 8 hours in a service day. If there is a question as to the scheduled workhours, the part-time flexible employee is entitled to the greater of the following:
 1. The number of hours the part-time flexible worked on the same service day in the previous service week.

(continued on page 44)

Policies recinded (continued)

(continued from page 42)

the schedule award process. The new CA-9, when read with the attached instructions, constituted almost a one-stop shop for claimants and their attending physicians that explained and walked them through the entire process.

The new CA-9 also recognized that some claimants live in “provider deserts”—areas where it is hard to find a physician who will do impairment ratings. Section 3 of the form contained a checkbox for the claimant to

request that OWCP arrange for them to be examined by an appropriate specialist.

At this point, a number of our members have already either undergone impairment exams or have scheduled exams under the fifth edition based on the now-revoked policy. Again, the NALC expresses its disappointment that OWCP under the new administration has revoked such positive policy revisions that greatly benefited injured workers just one month after issuing them.

Contract Talk

by the Contract Administration Unit

Administrative leave for acts of God (continued)

(continued from page 42)

2. The number of hours the part-time flexible was scheduled to work.
3. The guaranteed hours as provided in the applicable national agreement.

Once a full-time employee reports, they are entitled to eight hours’ work or pay. Part-time flexible employees are entitled to enough hours to complete their scheduled tour. Carriers are not required to take annual leave if sent home and should use PS Form 3971, Request for or Notification of Absence to request administrative leave in such a situation. If administrative leave is denied, this will document that the request was made and show that management sent them home. As always, city carrier assistants should receive their guaranteed hours (either two or four, depending on the size of the installation) if they were scheduled and reported to work in accordance with Article 8, Section 8 of the National Agreement.

As provided for in Section 519.216 of the ELM, employees who were already using annual leave, sick leave or leave without pay are not entitled to administrative leave:

Employees on annual leave, sick leave, or LWOP remain in such status. They are not entitled to administrative leave.

If city carriers believe they have been unfairly denied

administrative leave in community disaster situations, they should contact their shop steward to investigate and, if necessary, file a grievance. Shop stewards should attempt to show that all the criteria listed in Section 519.211 of the *ELM* existed and that carriers exercised reasonable diligence in trying to report to work. To assist shop stewards when filing a grievance over the denial of administrative leave due to an act of God, the NALC has created grievance starters that can be used as a starting point for the grievance.

These grievance starters include a sample issue statement, examples of facts and contentions, recommended documentation needed for the file, and potential remedies. These grievance starters are available in the Members Only section of the NALC website. After logging in to the Members Only page, click on the “Member Documents” button, then select the “Shop Steward’s Guide/Forms” category, which will show all the grievance starters created by NALC. Each grievance starter can be downloaded and edited to fit the specific circumstances caused by the act of God.

Shop stewards and members who need additional information or assistance regarding acts of God can contact the national business agent (NBA) who represents their region. Contact information for each NBA is available on the NALC website at nalc.org/union-administration/nalc-regions.