

FEDERAL TORT CLAIM ACT

DEFINITIONS:

TORT CLAIMS: Tort claims are claims for damage to or loss of property, personal injury or death caused by the negligent or wrongful act or omission of an employee while acting within the scope of their employment.

FEDERAL TORT CLAIMS ACT: A federal statute that provides for a government administered protection plan for all government employees, and the government itself, should any liability be incurred by any of its employees or agents in the course of their official duties. The Federal Tort Claims Act authorizes the head of federal agencies or their designees, to consider, ascertain, adjust, determine, compromise and settle any claim for money damages against the USPS for injury, loss of property, personal injury or death caused by the negligent, wrongful act or omission of any employee of the agency while acting within the scope of employment.

NEGLIGENCE: The Federal Tort Claims Act deals basically with negligence or fault. Negligence or fault is the performance of an act, which a reasonable prudent person would not do under the same or similar circumstances, or failing to act in the manner that a reasonably prudent person would do under the same or similar circumstances. Negligence consists of four basis elements:

1. A duty recognized by law requiring an action to conform to a certain standard of conduct.
2. A failure to conform to the required standard of conduct
3. A reasonably close casual connection between the conduct and the resulting injury; and
4. Actual loss or damage suffered by another.

LIABILITY: Under the Federal Tort Claims Act, the basis for settlement is liability. There can be no liability without fault, and there can be no fault without a finding of negligence. The authority to pay damages is based on a finding of a negligent or wrongful act or omission of an employee while acting in the scope of employment.

SCOPE OF EMPLOYMENT: Conduct of an employee, which that employee is authorized to perform.

PROTECTION: Federal employees are protected against liability resulting from their operation of a motor vehicle while with-in the scope of their official employment. This protection is **on-route protection only**. Any deviation from your assigned route could jeopardize your Tort Claims coverage. An accident while on the way to work would not be covered under the Tort Claims Act. The government protects you from liability only. Any damage to your vehicle is not covered.

TYPES OF TORT CLAIMS COVERED: Tort claims may arise from any USPS activity. The most common sources of tort claims are:

1. Motor vehicle accidents involving government-owned or privately-owned or leased vehicles operated by postal employees in the scope of their employment.

2. Falls in and around buildings owned, leased, or otherwise occupied by the USPS.
3. Accidents resulting from tripping over an exposed USPS collection box anchor or USPS neighborhood delivery and collection box unit (NDCBU or CBU) anchor bolts.
4. Accidents resulting in injuries caused by unanchored or incorrectly anchored collection boxes, NDCBU's or CBU.
5. Damage to customer's property during the delivery operation.

CLAIMS NOT COVERED:

1. Claims arising out of the loss, miscarriage or negligent transmission of letters or postal matter.
2. Claims arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights.
3. Claims for personal injury incurred by postal employees or other government employees, which occur while they are acting in the scope of their employment. (The Federal Employees' Compensation Act covers this.)
4. Claims by another government agency against the Postal Service for property damage caused by postal employees acting in the scope of their employment.
5. Claims for damage to contract or leased vehicles when driven by postal employees.
6. Claims for damage caused in an accident where an independent contractor, such as a highway contract route carrier, owns the vehicle involved.

DETERMINING SETTLEMENT LOCALLY: Individuals with the responsibility for accident investigation and tort claim processing activities are reminded that they must determine whether the USPS should pay a claim, either in whole or in part, or totally deny the claim. The investigator's duties are to gather and document all pertinent facts. Accident investigators must pay claims within authorized limits and make recommendations for settlement of all other claims. They have to consider the following:

- a. A valid claim has been presented within two years of the date of the alleged accident. A properly completed SF Form 95, *Claim for Damage, Injury or Death* is preferred.
- b. The property damaged is that of a private person.
- c. The USPS cannot pay claims for:
 1. other Federal agencies.
 2. damage to a personal vehicle being driven by a postal employee in the course of postal work unless the damage was caused by the negligence of another postal employee acting within the scope of employment.
- d. The claimant is the "real party in interest." This is normally either the owner of the vehicle (regardless of who was driving the vehicle) or an insurance company, which insured against the loss and has paid for the damage.
- e. The claimant is willing to settle for \$1,000 or less.

- f. Evidence is in the file to document the damages upon which settlement is based.
- g. The settlement is reasonable, taking into account the USPS's potential legal exposure. If the claimant's negligence alone caused the accident, the claim is not paid in any amount. If both the claimant and postal employee appear to have been equally negligent, a settlement for half of the claimant's damages must also take into account the damage to the postal vehicle.
- h. If a claim cannot be settled for \$1,000 or less on the basis stated above, the claim is not denied; it is forwarded to a higher adjudicatory authority.

PRIVATE INSURANCE POLICY OF POSTAL EMPLOYEES: some employees have insurance policies on their POV that include the federal government as an additional insured. In all motor vehicle accidents involving a postal employee operating a POV The USPS will request that the employee furnish a copy of the liability policy covering the vehicle. They will include a copy with the investigative report.

Management must investigate and determine that the employee was acting in the scope of employment at the time of the accident and that the employee was properly authorized to use the vehicle in carrying out duties. They will also review the employee's insurance policy, riders and endorsements to see if the employee had liability insurance on the vehicle. They will be looking to see if the policy has contains clauses that limits or excludes the insurance company from liability or if it includes the United States as an additional insured. Not all companies have written exclusionary provisions in their policies. Some companies have this exclusionary provision in some, but not all of their policies.

PROTECTION OF POSTAL EMPLOYEES FROM PERSONAL LIABILITY: The Federal Employees Liability Reform and Tort Compensation Act provides that when government employees are sued as a result of actions performed while acting in the scope of their employment the Attorney General will represent the employees and remove the suit to a federal district court, where the suit will be deemed to be one against the United States. The only exceptions to this are when the employee's action was a constitutional tort, or violation of a federal statute.

The most important thing to remember is that not all insurance companies protect rural carriers if they have an on-route liability claim. Many companies don't insure our route vehicles or they charge you a higher business use or commercial use rate. Many companies will pay your liability claim and then cancel your policy. So please choose your insurance company carefully, make sure that your policy includes a clause that excludes them from liability claims or names the United States as an additional insured.