City of Charleston
Joseph P. Riley, Jr.
Mayor

September 4, 2007

Ms. Dottie Ison, Administrator
South Carolina Department of Labor, Licensing & Regulation
Office of Occupational Safety and Health
110 Centerview Drive
Columbia, SC 29210

Dear Ms. Ison:

In December of 2003, South Carolina OSHA investigated the work uniforms used by City of Charleston firefighters. At the end of the investigation, a representative of your office conducted a closing conference here in Charleston at which the City was presented a Closing Conference Memorandum dated December 23, 2003. In it, South Carolina OSHA stated that the City was in compliance with OSHA standards. In separate telephone conversations I had with you on August 30 and 31, 2007, you confirmed that our uniforms were OSHA compliant. I was therefore greatly concerned when I read comments that the *Post and Courier* attributed to you on Saturday morning, September 1, which appeared to say the opposite.

Specifically, you are quoted as saying, "We look to NFPA and that will determine compliance with OSHA." That directly contradicts your agency's written finding of December 23, 2003 that the City's uniforms were in compliance and your assurances to me and my staff this past Friday afternoon when you stated that OSHA has no standards for work uniforms. In this same conversation, you concluded by saying that OSHA has only adopted regulations dealing with personal protective equipment – 29 CFR 1910.156 Fire Brigade standard with special emphasis on 1910.156(e)(3)(ii) – not regulations dealing with work uniforms.

The City relied in good faith upon the above-referenced finding of compliance by your office. In fact, we agreed with it because it reflected then, and reflects now, what we understand to be the current state of the law. Binding OSHA standards are officially promulgated under the Occupational Safety and Health Act ("the Act"). 29 U.S.C.S.

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§654(a)(2). Practices and guidelines developed by groups such as the National Fire Protection Association ("NFPA") can become binding standards but only if they are officially adopted as binding by the State or Federal regulators. Both State and Federal OSHA laws outline clear procedures for adopting association standards. These procedures, among other things, put the world on notice of which standards are binding and which standards are not.

We have been told on several occasions by your office, both orally and in writing, that South Carolina OSHA has never adopted the NFPA standard for uniforms, NFPA1975, as a binding legal requirement. Related standards (NFPA 1971 –Personal Safety Equipment; NFPA 1972- Helmets and Breathing Apparatus) have been adopted, but uniform standards have not by either South Carolina OSHA or the U. S. Department of Labor. We have relied on the published standards and your advice in continuing to use the uniforms you found to be in compliance in December of 2003. The comments attributed to you in the recent press reports now contradict your earlier position.

It is imperative that an atmosphere of trust and credibility permeate OSHA's relationship with employers. The inconsistent actions of your agency are deeply troubling as they are irreconcilable. You simply cannot advise that work uniforms are in compliance in 2003, and then confirm that advice to me in a conversation this past Friday afternoon while simultaneously being quoted to the contrary by the Charleston newspaper the very next morning. Not only were you so quoted, but so was your public information officer who said that "the state would consider the uniforms in violation of workplace safety regulations."

The City is compelled to determine what has changed in your agency. For years we have relied upon your written approval of our work uniforms. For you and your public information officer to abandon the 2003 findings of South Carolina OSHA in the wake of the June 18, 2007 tragedy is revisionism at its worst. The City must more clearly understand what has transpired in your agency to bring about this inconsistency. Therefore, enclosed please find a Freedom of Information Act request and a preservation of evidence letter related to these matters.

Most sincerely yours,

Joseph P. Riley, Mayor
City of Charleston

JPR,jr/rd
Attachments
cc: Ron Menchaca
Post and Courier