April 2025 – FIRE & EMS LAW NEWSLETTER

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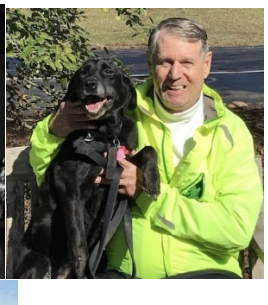
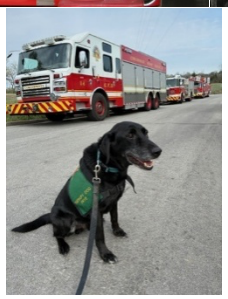

Monthly visit by FRYE to Cincinnati 911

Lawrence T. Bennett, Esq.
Professor-Educator Emeritus
Cell 513-470-2744
Lawrence.bennett@uc.edu

23 RECENT CASES

Chap. 1 – American Legal System, incl. Fire Codes, Investigations, Arson

MO: ARSON - HOUSE FIRE - INSURED $350K / WORTH $60K

Chap. 2 – Line Of Duty Death / Safety

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MD: NOT RACE DISC – FIRED DIDN'T RETURN MED. LEAVE
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AL: FLIGHT RN - TAMPERED KETAMINE – PT FLEW NEXT DAY
MA: FF PINPOINT PUPILS – DELAY DRUG TEST / CBD - FIRED

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DC: MEDIC FIRED – COVID - 6-YR OLD BOY NOT EVALUATED
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NY: NYPD RESONSE MENTAL RUNS - PROP. CLASS ACTION

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CO: CHIEF FIRED BY NEW BOARD – VIDEO / INSUR. LAPSE

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NH: POLICE & FIRE – CAN'T BE IN SAME UNION IN TOWN
NY: FDNY - COVID - LEAVE W/O PAY – NO ARBITRABLE

Chap. 18 – Legislation

ID: GOOD SAMARITAN LAW - CAN ARREST FOR WARRANT

ONLINE / FREE RESOURCES

- **2025: FIRE & EMS LAW – RECENT CASE SUMMARIES / LEGAL LESSONS LEARNED**: Case summaries since 2018 from monthly newsletters: https://doi.org/10.7945/j6c2-q930.

  Updating 18 chapters of my textbook, FIRE SERVICE LAW (Second Edition; 2017): http://www.waveland.com/browse.php?t=708

- **2025: FIRE & EMS LAW – CURRENT EVENTS**: https://doi.org/10.7945/0dwx-fc52

- **2025: AMERICAN HISTORY – FOR**

- **FIRE & EMS**: https://doi.org/10.7945/av8d-c920

File: Chap. 1 – Amer. Legal System

MO: ARSON - HOUSE FIRE - INSURED $350K / WORTH $60K

On March 24, 2025, in Amguard Insurance Company v. James Cantrell, III, U.S. District Court Judge Douglas Harpool, U.S. District Court for the Western District of Missouri, Southern Division, denied the homeowner's motion for partial summary judgment in a lawsuit by the insurance company. The insurance company refused to pay claim for March 8, 2023 house fire of $525,000 ($350,000 for house; $175,000 personal property). There was little property in the home at the time of the fire; he was observed at the home at 8:08 pm, and fire run came in at 8:32 pm; and the hydrant had been manually turned off. The homeowner's wife, Kara Cantrell, testified in her deposition that his husband "had filed previous fire insurance claims in January 2020 when her vehicle and their log cabin in Fair Play, Missouri burned within twenty-four hours of each other…. Ms. Cantrell also testified that on February 27, 2023, Defendant had looked up on her phone how to total a house."
https://public.fastcase.com/jaEE2PXzRXmZ99jOLMt1IvQQ%2FwWODLAEJBukBPNCALgft0sHziy1G1EiNPA2la2I%2Bz7mV9PFJnpwehw24IHtnmGvfRX%2FCWFczT3vlKR%2B0P0%3D?utm_medium=email&_hsenc=p2ANqtz--SWSAGzwwNdnG_VMPYwGihlDivIcGecVdTRk_nr30XIo07pFHIeVloVzlVGarTG9brlCuLB39_kFjuWt_H_cWvO7FD4A&_hsmi=226712652&utm_content=226712652&utm_source=hs_email

> "On March 6, 2023, surveillance footage captured Defendant arriving at the house in the evening…. The surveillance footage showed Defendant stayed for less than an hour before leaving at 8:08 p.m…. No other vehicles or persons are observed by the camera until it stops recording at 8:24 p.m…. The fire report than states the fire came in at 8:32 p.m. and the first dispatch was issued at 8:35 p.m…. When fire officials arrived at the House, they discovered the fire hydrant near Defendant's house was inoperable as the water had been manually shut off from the main line…. This delayed the fire being put out as the firefighters had to retrieve a water shutoff tool to reconnect the hydrant to the water main…. Chief Keller stated that the fire hydrant could not have been shut off accident and had to have been done manually…. Chief Keller further stated the water shutoff tool could be purchased from a local hardware store….The Court finds based on a preponderance of the evidence that Plaintiff has satisfied its burden of submissibility regarding Defendant's opportunity to start the fire.
>
> ***
> The record shows the neighbors never saw the Defendant move property into the House…. The record shows that the neighbors' observations are consistent with the findings from State Fire Marshal inspector Jay Hamilton and Humansville Fire Chief

> Mark Keller, who found a general lack of personal property in the House…. Kara Cantrell also testified in her deposition that sometime between March 1-3 she and her daughters went over to the House to clean…. Ms. Cantrell testified there was hardly any furniture in the house and that the girls' belongings were already removed for the House…. She also stated that Defendant was packing stuff up into trash bags and putting it in his truck."

Legal Lesson Learned: Insurance companies, when suspecting arson, can file lawsuits seeking court approval to not pay a suspicious claim.

File Chap. 2 – LODD / Safety

KY: CSX DERAIL – FF MAY SUE – FIREMAN'S RULE NOT BAR

On March 28, 2025, in Lauren Webb, et al. v. CSX Transportation, Inc., U.S. District Court Judge Robert E. Wier, United States District Court, E.D. Kentucky, Southern Division, London, held that lawsuit by three residents near the Nov. 22, 2023 derailment [hot bearing detectors didn't alert train engineer] may proceed with pre-trial discovery, including Lauren Webb, "a local firefighter who assisted in the evacuation and spent 'many hours' at the crash site. She alleges her exposure to SO2 caused 'sore throat, trouble breathing, headaches and a respiratory infection[,]' as well as 'ongoing pulmonary irritation and fear for the long-term consequences to her health' given her status as an 'immunocompromised individual.'" The Court rejected CSX argument that the KY Fireman's Rule prohibits firefighter Webb from filing her claim for damages.
https://public.fastcase.com/jaEE2PXzRXmZ99jOLMt1IgoAeG7S%2FykfBuI6YcrwSiPTGWPBCOsZ9U9hhbKPvFCclEcN8%2BwauJ9ACloifFNsJP5SY607BhdVsV5o4yY4x1s%3D?utm_medium=email&_hsenc=p2ANqtz-_cDTCyDUjf-GWGQHLWs90oLVQoI7WEBtlECxGBA_PvhPlM3MPPBeVtmuAidKContkLHE5q5E9gdRGYeBGS5gCqwJlBfg&_hsmi=226712652&utm_content=226712652&utm_source=hs_email

> "Accordingly, the Court finds that Webb's exposure to toxic SO2 gas was not an ordinary risk inherent to her job as a firefighter, and her negligence claims are therefore not precluded by the Firefighter's Rule. Further, of course, Webb suffered exposure as a resident … and community member, separate and apart from her employment response. At this stage, the Court could not extricate one exposure from the other, even if and to the extent the limiting principle might influence Webb's recovery.
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> ***
> Drawing from the allegations of the pleading: On November 22, 2023, at around 2:30 p.m., a train owned and operated by CSX derailed while traveling through the town of Livingston in Rockcastle County, Kentucky…. The derailed cars were carrying molten sulfur, magnesium hydroxide, and methanol…. The derailment caused two cars

containing molten sulfur to breach, resulting in sulfates 'scatter[ing] across the soil and . . . fall[ing] into the local waterways.' … The breached cars also caught fire and began emitting, from the burning contents, a continuous smoke plume of sulfur dioxide gas (SO2), a toxic environmental pollutant….. As the fire continued to burn, this thick SO2 smoke quickly spread and created near white-out conditions in the surrounding area.

***

In support of these claims, Plaintiffs cite to the claimed events of the day and numerous federal regulations to argue that CSX caused the derailment and subsequent release of hazardous materials by, *inter alia*, failing to:

> • Properly inspect and/or monitor wheel bearings….This includes CSX's alleged failure to install hot bearing detectors (HBDs) at sufficiently close intervals along the track … or keep proper lookout during transit for possible signs of impending derailment from that risk….
> • Properly inspect and/or test railcars carrying hazardous materials for leakage, defects, or any other condition that could make them unsafe for transportation….This includes a failure to properly load the hazardous material and/or ensure it was in proper condition for transport….
> • Properly hire, train, test, and/or supervise skilled engineers, conductors, and safety-related employees….
> • Adequately 'develop and implement risk reduction programs (RRP), risk-based hazard management programs (HMP), and safety performance evaluation processes' that would have mitigated and/or prevented the derailment (and its subsequent damages) from occurring….
> • Implement an adequate emergency plan and/or response in the aftermath of the derailment….

***

CSX first asserts that Plaintiffs' claims, which sound in state tort law in this diversity-based case, are preempted by federal law…. Thus, the Court concludes that Plaintiffs' allegations relating to the proper use of HBDs are not covered by existing federal law and are therefore not preempted under the FRSA [Federal Railroad Safety Act]."

Legal Lesson Learned: The firefighter and her two neighbors may now proceed with pre-trial discovery.

Note: See April 25, 2024 lawsuit involving massive train derailment and failure of hot bearing detectors; February 3, 2023, a 149-car Norfolk Southern train derailed in East Palestine, Ohio. https://www.ktmc.com/featured-case/norfolk-southern-corporation

"As Train 32N neared East Palestine, it passed an HBD registering a journal bearing on the 23rd car that was running 38°F above ambient temperature. Just ten miles later, the next HBD indicated that same bearing was running 65ºF hotter at 103°F above ambient temperature – an increase of nearly 200%. The train's crew was unaware of the 65°F temperature increase and was not told to stop. In fact, the single Norfolk Southern

employee operating Norfolk Southern's Wayside Detector Help Desk, which monitors HBD alerts for the Company's entire rail system from a desk in Atlanta, was attending to three other alerts at the time and missed the alert on Train 32N. Twenty miles later, the train passed a third and final HBD, which recorded that the same journal bearing had reached a temperature of 253°F above ambient. Only at this point did the train crew receive an alarm to slow the train to inspect the hot axle, but seconds later, the automatic emergency brake initiated. When the train stopped, 38 cars had derailed, and the train, including cars containing vinyl chloride, was on fire."

File Chap. 2 – LODD / Safety

VA: RECRUIT DIED – ANONYMOUS LETTER – HOSTILE WORK

On March 25, 2025, in Casey Blake v. Frederick County Fire and Rescue Dept. et al, U.S. District Court Judge Jasmine H. Yoon, U.S. District Court for the Western District of Virginia, Harrisonburg Division, held that the lawsuit filed by Casey Blake, administrative assistant to the former Fire Chief, who wrote an anonymous letter, may proceed with her hostile workplace lawsuit against the current Fire Chief, and the County Administrator. Ms. Blake alleges retaliation when the Chief learned she had written an anonymous letter to the family of a recruit, Ian Strickler, who died on July 5, 2023 during physical training. She encouraged them to hire an attorney and investigate the recruit training officer. "Strickler's heart rate measured at over 200 beats-per-minute before he collapsed, and his body temperature was recorded at 104 degrees Fahrenheit." Ms. Blake's own son, Nick Blake, had to drop out of recruit school on March 3, 2022 when he had medical emergency during recruit class run with same training officer in charge of Ian Strickler class.

> "In Count I, Blake asserts a claim for a declaratory judgment against [Fire Chief tephen] Majchrzak and [County Administrator Michael] Bollhoefer…. Here, Blake's allegations describe a real and substantial injury: a hostile workplace and damage to her reputation. In addition, Blake alleges that the controversy remains ongoing, as she claims that she continues to experience a hostile work environment, limited job responsibilities, and active monitoring by an administrator as she works from home…. Blake's requested declaration would have a concrete remedial effect, as she continues to work from home in the same position. Accepting Blake's allegations as true, the challenged retaliatory conduct by Defendants has not been rectified, thus is not past conduct, and a declaration regarding its constitutionality would not be advisory. As a result, Defendants' argument on this issue fails.
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> ***
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> [Count II - First Amendment retaliation] Blake responds by pointing to her allegations that Majchrzak limited Blake's job duties and responsibilities, prevented her from

> attending staff meetings, and turned her co-workers against her by facilitating a hostile work environment…. Blake has sufficiently alleged retaliatory acts that are more than de minimis or trivial. … Blake alleged that Majchrzak purposefully excluded her from attending meetings by moving the meeting's physical location and avoided her…. And Majchrzak took steps to reduce Blake's job responsibilities by managing his own schedule…. Over time, Blake claims that she was deprived of many of her job duties. … As a result, the court will deny Defendants' motions to dismiss Count II."
> ***
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> [Court dismissed other claims, including Intentional Infliction of Emotional Distress claim.] The court finds that the alleged conduct from Majchrzak and Bollhoefer does not rise to the level of 'outrageous and intolerable.' Although unprofessional and indecorous, Defendants' alleged efforts to ostracize her at work, limit her job responsibilities, and exclude her from meetings do not meet the high bar Virginia law requires."

Legal Lesson Learned: The case will now proceed to pre-trial discovery; carefully review your protocols on medical exams for recruits and their fitness testing.

File: Chap. 3 – Homeland Security

U.S. SUP. CT: "GHOST GUNS" – FRAMES / SERIAL NUMBERS

On March 26, 2025, in Bondi, Attorney General v. Vanderstok, et al., the U.S. Supreme Court held (7 to 2) that the ATF may regulate the sale of parts of manufactured firearms ("ghost guns"). "In 2022, the Bureau of Alcohol, Tobacco, Firearms and Explosives adopted a new rule designed to combat the proliferation of ghost guns…. The second relevant aspect of the agency's new rule concerns a key building block of almost any firearm: its frame or receiver. Under subsection (B) of §921(a)(3), 'the frame or receiver of any such weapon" covered by subsection (A) is itself treated as a 'firearm.' … The GCA [Gun Control Act of 1968] embraces, and thus permits ATF to regulate, some weapon parts kits and unfinished frames or receivers, including those we have discussed. Because the court of appeals held otherwise, its judgment is reversed, and the case is remanded for further proceedings consistent with this opinion."
https://www.supremecourt.gov/opinions/24pdf/23-852_c07d.pdf

Justice Neil Gorsuch wrote the Majority Opinion:

> "For decades, the Gun Control Act has regulated the sale of firearms. This case poses the question whether the Act's longstanding mandates also apply to those who make and sell a new product—'weapon parts kits.'
>
> ***
> Shortly after the assassinations of Senator Robert F. Kennedy and Dr. Martin Luther King, Jr. stunned the Nation, Congress adopted the Gun Control Act of 1968 (GCA)….

Existing gun control measures, Congress found, allowed criminals to acquire largely untraceable guns too easily…. Often, for example, criminals could evade state laws regulating in-person sales simply by purchasing guns through the mail. Ibid. In response, Congress adopted a number of new mandates. As a result, many of those now engaged in importing, manufacturing, or dealing in firearms must obtain federal licenses, keep records of their sales, and conduct background checks before transferring firearms to private buyers…. The Act also requires importers and manufacturers to mark their firearms with serial numbers.

***

Recent years, however, have witnessed profound changes in how guns are made and sold. When Congress adopted the GCA in 1968, 'the milling equipment, materials needed, and designs were far too expensive for individuals to make firearms practically or reliably on their own.' …With the introduction of new technologies like 3D printing and reinforced polymers, that is no longer true. Today, companies are able to make and sell weapon parts kits that individuals can assemble into functional firearms in their own homes.

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To appreciate why, it helps to work with an example. Take a weapon parts kit featured prominently in the record before us: Polymer80's "Buy Build Shoot" kit. It comes with 'all of the necessary components to build' a Glock-variant semiautomatic pistol…. And it is so easy to assemble that, in an ATF test, an individual who had never before encountered the kit was able to produce a gun from it in 21 minutes using only 'common' tools and instructions found in publicly available YouTube videos."

Legal Lesson Learned: Hopefully this decision will greatly increase the serial numbers placed on Ghost Guns.

Note: Dissenting opinion by Justice Clearance Thompson (Justice Samuel Alit also dissented): "Congress could have authorized ATF to regulate any part of a firearm or any object readily convertible into one. But, it did not."

Want to know more about gun parts? Watch the YouTube video by dissenting Judge Lawrence VanDyke [believe it is first time a federal judge made a video instead of writing an opinion]. **https://www.youtube.com/watch?v=DMC7Ntd4d4c .** The judge on the U.S. Court of Appeals for 9th Circuit (San Francisco) posted a YouTube video about firearms, dissenting in March 20, 2025 en banc (all judges on the Circuit) decision in Duncan v. Bonita, upholding the California law banning the possession of large-capacity magazines comports with the Second Amendment. https://cdn.ca9.uscourts.gov/datastore/opinions/2025/03/20/23-55805.pdf

File: Chap. 3 – Homeland Security

NY: GROUND ZERO - $90K CAP NON-ECON DAMAGES

On March 4, 2025, in Michael White v. The United States, Judge Molly R. Silfen, U.S. Court of Federal Claims, held that former Philadelphia firefighter and U.S. Navy submariner, is entitled to uncapped compensation for non-economic damages, such as intangible losses like pain, suffering, emotional distress, and loss of enjoyment of life. He volunteered at Ground Zero site for six days without respiratory protection, developed respiratory issues and now undergoes regular respiratory therapy and has been hospitalized multiple times. In Jan. 2017, the 911 Special Master ruled that Congress in 2016 amended the initial compensation schedule, and imposed the new $90,000 cap. Judge Silfen denied the government's motion to dismiss: (1) lawsuit was timely filed with six years of the denial of his claim, and (2) this is a breach of a "contract" that provided claimants could file under the original compensation schedule. https://www.govinfo.gov/content/pkg/USCOURTS-cofc-1_23-cv-00383/pdf/USCOURTS-cofc-1_23-cv-00383-0.pdf

> "Because Mr. White filed his suit less than six years after that July 2017 decision—in March 2023—his suit is not barred by the statute of limitations.
>
> ***
> In this case, although no single document contains an offer and acceptance, Mr. White has plausibly alleged that the statute, regulations, and claim form show the government's intent to contract if he accepts the government's offer…. Mr. White plausibly alleges the required elements of a contract."

Legal Lesson Learned: The government breached the contract; firefighter entitled to uncapped non-economic damages.

File: Chap. 6 - Employment Litigation, incl. Work Comp., Age, Vet Rights

PA: THROAT CANCER – COVERED – LIST OF HIS RUNS

On April 1, 2025, in Lake Ariel Volunteer Fire Company, Petitioner v. Alex Rae (Workers' Compensation Appeal Board), Respondent, the Commonwealth Court of Pennsylvania held (3 to 0; unpublished decision) that the 72-year-old firefighter, having been active volunteer for over 28 years in NY and PA, was properly awarded workers comp. In March 2021, Claimant was diagnosed with oral cancer. Claimant prepared a report of his runs from the website,

https://www.iamresponding.com/ and testimony of expert witness. The WCJ found "the opinions of Dr. Guidotti [firefighter's expert] more credible than the testimony of [Dr.] Goldsmith to the extent their testimony is inconsistent," citing Dr. Guidotti's status as a highly credentialed medical doctor with numerous certifications.
https://cases.justia.com/pennsylvania/commonwealth-court/2025-92-c-d-2024.pdf?ts=1743522170

> "Alex Rae (Claimant) was diagnosed with various cancers after decades of being a firefighter, most recently as a volunteer for the Lake Ariel Volunteer Fire Company (Employer). Certain cancers are known to have a causal connection to firefighting, and so the legislature created a presumption that those cancers are caused by being a firefighter for purposes of the occupational disease provisions of the Workers' Compensation Act (Act). A Workers' Compensation Judge (WCJ) granted Claimant's Claim Petition awarding benefits, and the Workers' Compensation Appeal Board (Board) affirmed.
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> ***
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> Employer argues Claimant did not show, by competent, substantial evidence, that Claimant was exposed to carcinogens. Instead of presenting PennFIRS reports, as provided by Section 301(f) of the Act, Claimant only presented lay testimony and data from the website, 'iamresponding.com.' Unlike the PennFIRS reports or other reports that the Court has found to be sufficient, Employer argues the data here only includes a date, station name, and reference to an unspecified 'scene,' which could be a fire or not. Furthermore, Employer posits that to the extent Claimant testified to make up any deficiencies in the data, this Court has rejected lay testimony as sufficient under the Act.
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> ***
> The incident participation report was provided by Employer, and given Claimant's credible testimony and the WCJ's findings, we agree with the Board that 'the purpose of the provision was served.' (Board Op. at 16.) Like the Board, we will not disturb the WCJ's determination.:

Legal Lesson Learned: Keep a personal record of all runs where you have been exposed to smoke and other hazardous items.

File: Chap. 6 - Employment Litigation, incl. Work Comp., Age, Vet Rights

LA: WORK COMP – TOTALLY DISAB - CITY PAY $2K PENALTY

On March 28, 2025, in Mark Shubert v. City of New Orleans, the Court of Appeal of Louisiana, Fourth Circuit, held (3 to 0) that the worker's comp judge properly held that the City was

"arbitrary and capricious" in reducing his weekly benefits. The City contends that no evidence supported the Worker's Comp Judge's finding that Mr. Shubert was totally disabled from all work after March 25, 2019. The firefighter was limited to lifting only 10 pounds and no sitting or standing more than 20 minutes. He wisely kept a detailed list of jobs to which he applied and was rejected, including CarMax customer service rep. The Court of Appeals agreed with the workers comp judge that City must reinstate his weekly benefits back to $630 [from $448.07], pay a penalty of $2,000, plus attorney fees for the work comp trial ($4,000) and attorney fees for the appeal ($2,500). **https://caselaw.findlaw.com/court/la-court-of-appeal/117104839.html**

The Court wrote:

> "Mr. Shubert was employed as a firefighter for approximately thirty-four years. Mr. Shubert injured his lower back on July 12, 2015 while lifting a large person on a medical roll. The City began paying Mr. Shubert temporary total disability benefits ('TTD') pursuant to La. R.S. 23:1223. He was provided vocational rehabilitation services by CorVel Corporation ('CorVel'). Mr. Shubert treated with Dr. Patrick Waring ('Dr. Waring') from March 17, 2016 to March 17, 2022. On October 1, 2021, Mr. Shubert, through his attorney, received a Form 1002, noting that his benefits were modified from the TTD model to a supplemental earnings benefit ("SEB") model. Additionally, he received a letter from CorVel explaining that the change in benefit classification occurred because he reached a maximum medical improvement and was given work restrictions…. On June 17, 2022, Mr. Shubert received another Form 1002 from CorVel indicating that his benefits had been reduced at a rate of $448.07 per week.
>
> A one-day trial was held on September 22, 2022…. [The Workers Comp Judge held thay] City of New Orleans, were arbitrary and capricious in its reduction of claimant, Mark Shubert's benefits from Temporary Total Disability (TTD) to Supplemental Earnings Benefits (SEB) and the reduction of the Supplemental Earnings Benefits (SEB).
>
> ***
>
> Here, Mr. Shubert worked with two vocational counselors, Elizabeth Wheeler ('Ms. Wheeler') being the most recent. The City argues that Mr. Shubert's benefits were properly modified from TTD to SEB because there was no evidence to support a finding that Mr. Shubert was totally disabled from working. To the contrary, on April 1, 2019, Dr. Waring found that Mr. Shubert reached maximum medical improvement and may be capable of sedentary duty work. Dr. Waring specified that 'Mr. Shubert has permanent impairment of function that disables him from return [sic] to work as a fireman.' Dr. Waring also noted that sedentary duty consisted of the ability to lift a maximum of ten pounds, walking and standing were only required occasionally, avoiding repetitive stooping or bending, and avoiding sitting or standing for prolonged periods of twenty minutes plus or minus fifteen minutes.
>
> ***

> On February 21, 2021, Ms. Wheeler identified four potential jobs for Mr. Shubert: 1) Waste Pro customer service representative; 2) City of Mandeville dispatcher; 3) Furniture Mart retail associate; and 4) St. Tammany Health System telecom operator. Dr. Waring approved the Waste Pro customer service representative position with accommodations only and the City of Mandeville dispatcher position. At the September 9, 2022 trial, Mr. Shubert testified that he applied for the Waste Pro position, however, he did not apply to the City of Mandeville position ($12.14 per hour) because he could not locate the listing on the websites provided.
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> ***
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> Mr. Shubert also kept a detailed log of all the jobs for which he submitted applications. As stated earlier, Mr. Shubert testified that he could not locate the City of Mandeville position on the provided websites. Mr. Shubert attested that he applied for CarMax's customer specialist, Goodbee Plumbing, Inc.'s dispatch, and Jones Physical Therapy's client care coordinator positions. Additionally, Mr. Shubert testified that he applied for the customer service representative position with the Education Specialty Publishing online and left a telephone message with the company, and no one followed up from the company. Moreover, despite Ms. Wheeler testifying that the potential jobs were available, there was no corroborating evidence of the jobs actually being available when Mr. Shubert was notified about them."

Legal Lesson Learned: They firefighter wisely kept a log of all positions to which he applied.

File: Chap. 6 - Employment Litigation, incl. Work Comp., Age, Vet Rights

AR: BRAIN CANCER – 2021 LAW NOT RETROACTIVE

On March 26, 2025, in Robert Vande Krol v. The Industrial Commission of Arizona, et al., the Supreme Court of the State of Arizona held (6 to 1) that the firefighter. with 18 years of service. was not entitled to workers compensation because he filed his claim 8 months prior to the effective date of the 2021 statute that put burden of proof on the employer to prove it was not caused by the job. The Court agreed with the Worker's Comp Administrative Law Judge that the 2017 stature applied. The ALJ explained that while there is not much research regarding the causes of the unusual brain cancer - oligodendroglioma, "[t]he only known cause is ionizing radiation, which is not present in this case." Dr. Ferrara testified that the only known cause of oligodendroglioma is ionizing radiation, and Vande Krol's record did not show exposure to that form of radiation. The state's 2021 statute, where the employer had to prove the cancer was not

job related, did not specifically state it was retroactive for pending claims.
https://cases.justia.com/arizona/supreme-court/2025-cv-23-0211-pr.pdf?ts=1743008459

> "Vande Krol filed his workers' compensation claim in January 2021—eight months before the 2021 statute became effective…. Vande Krol contends that the 2021 statute applies to his workers' compensation claim, even though the 2021 statute became effective nearly a year after his injury and eight months after he filed his claim.
>
> ***
>
> Vande Krol worked for Superstition [Fire and Medical District] as a firefighter and engineer for eighteen years. In the course of his employment, he was exposed to smoke, soot, and firefighting foam used to extinguish fires. In August 2020, Vande Krol participated in a routine, whole-body screening. The screening found a mass in Vande Krol's brain. In October 2020, Vande Krol underwent brain surgery (a right craniotomy) to remove the mass. Vande Krol was diagnosed with oligodendroglioma, a rare form of brain cancer. After the surgery, he experienced headaches, vertigo, vision deficits, and memory problems.
>
> ***
> In January 2021, Vande Krol filed a workers' compensation claim identifying his employer as Superstition, his injury as brain cancer, and the date of injury as October 28, 2020. Superstition's insurer, Benchmark Insurance Company ('Benchmark'), denied Vande Krol's claim on February 18, 2021. On May 4, 2021, Vande Krol requested a hearing before an administrative law judge ('ALJ') with the Industrial Commission of Arizona ('ICA'). The ALJ held an evidentiary hearing over three non-consecutive days beginning on October 5, 2021….
>
> Because Vande Krol identified his injury date as October 28, 2020, the ALJ determined that the 2017 statute applied to his claim…. But the ALJ determined that Vande Krol failed to establish the third element in the 2017 statute, as his experts 'did not provide a link between a specific carcinogen and the specific cancer [Vande Krol] has.' … The ALJ explained that while there is not much research regarding the causes of oligodendroglioma, '[t]he only known cause is ionizing radiation, which is not present in this case.'
>
> Put differently, the 2017 statute required *firefighters* to prove the cancer *was* job-related (that through their work they were exposed to a known carcinogen that is reasonably related to the cancer), whereas the 2021 statute eliminated that burden and required *respondents* to prove the cancer *was not* job-related (that there is a specific cause of the cancer other than an occupational exposure). Accordingly, the "true function" of the amendments was to alter the nature of a compensable claim by materially changing the elements needed to establish or defend against the presumption
>
> ***

> The court of appeals disagreed with the ALJ as to which version of the statutory presumption applied. Vande Krol v. Indus. Comm'n, 255 Ariz. 495, 505 ¶ 43 (App. 2023).
>
> ***
>
> The legislature has specifically directed that "[n]o statute is retroactive unless expressly declared therein." § 1-244. Thus, when the legislature expressly declares that a statute is retroactive, the presumption against retroactivity does not apply…. The 2021 statute fails to evince the legislature's intent that it apply retroactively. It does not contain express retroactive language or any other language indicating that the legislature intended the 2021 statute to apply to claims pending when the 2021 statute became effective."

Legal Lesson Learned: The 2021 statute is very helpful to firefighters; it is a shame that the legislature did not specifically include a provision making it retroactive to pending claims.

> Note: Dissenting Justice Montgomery wrote:
>
> "As amended in 2021, § 23-901.09(A)(1) provides: 'Any disease, infirmity or impairment of a firefighter's . . . health that is caused by brain . . . cancer . . . and that results in disability or death is presumed to be an occupational disease . . . and is deemed to arise out of employment.' § 23-901.09(A)(1) (2021) (the "Presumption")…. And § 23-901.09(C) specifies that the Presumption applies to firefighters who are: 1) currently in service, and 2) aged sixty-five or younger and diagnosed with brain cancer not more than fifteen years after their last date of employment as a firefighter…. The Amendments also made changes to sections of title 20 that permitted insurers to raise statewide insurance rates and adjust premiums related to firefighter workers' compensation claims brought under the Presumption. See 2021 Ariz. Sess. Laws ch. 229, §§ 1–3 (1st Reg. Sess.). Accordingly, I would affirm the court of appeals' conclusion, albeit with different reasoning, and set aside the ALJ's decision." https://cases.justia.com/arizona/supreme-court/2025-cv-23-0211-pr.pdf?ts=1743008459

File: Chap. 6 - Employment Litigation, incl. Work Comp., Age, Vet Rights

PA: FF DIED CANCER – WIFE GETS 51% WAGE / 9 YR FIGHT

On March 19, 2025, in City of Philadelphia v. Larry Thompson (Workers' Compensation Appeal Board), the Commonwealth Court of Pennsylvania held (3 to 0; unpublished decision) upheld the award of work related death benefits to the wife of a 25-year Philadelphia firefighter; he died on May 11, 2013 of non-Hodgkin's lymphoma, and she filed her claim in 2016. The City has fought her claim for 9 years - including appealing May 4, 2018 ruling in her favor by Workers Comp Judge, and WC Board ruling in her favor on July 21, 2021, and their petition to this Court.

https://cases.justia.com/pennsylvania/commonwealth-court/2025-923-c-d-2021.pdf?ts=1742398374

> "Decedent fought fires for 25 years…. Employer contends that the WCJ erred because Dr. Guidotti did not state how many times Decedent had to be exposed to any Group 1 carcinogen in order for that exposure to be a substantial factor in his type of cancer. The only documented carcinogen exposure was a report in Decedent's personnel file that suggested exposure to PCBs in 1988.
>
> ***
>
> The WCJ credited Claimant's testimony that Decedent worked for Employer as a firefighter from 1985 to October of 2010; worked in many firehouses; and often came home smelling like smoke. The WCJ also credited the testimony of Joseph Discher, who worked with Decedent at Task Force 30 and then as his supervisor at Ladder 25. Discher saw Decedent fight fires in which he was exposed to smoke with no self-contained breathing apparatus or other personal protective equipment. Discher testified that Decedent was also exposed to diesel exhaust emissions from the ladder trucks that were operated inside the firehouse during daily equipment checks. '[E]very couple months or so,' the firefighters would have to scrub the soot from the diesel exhaust from the walls. Discher Dep. at 11; R.R. 206. The firehouses were not equipped with diesel fuel capture systems. Discher acknowledged that he did not fight fires with Decedent after 2001 and agreed that although some fire calls involved accidents and not fires, '[l]adder companies basically just go to structure fires.' Discher Dep. at 25; R.R. 220.
>
> ***
>
> The WCJ credited the expert testimony of Tee Guidotti, M.D., who is board certified in internal, pulmonary and occupational medicine and trained in the fields of toxicology and epidemiology. Dr. Guidotti opined that Decedent probably had marginal zone B-cell lymphoma, which is an uncommon cancer, or else a diffuse large B-cell lymphoma, which is more common…. The scientific literature shows an elevated risk for diffuse large B-cell lymphoma given the exposures known to occur in firefighting. Dr. Guidotti opined that Decedent's occupation as a firefighter put him at an increased risk for the cancer from which he died.
>
> ***
>
> In sum, substantial evidence supports the WCJ's finding that Claimant established Decedent's direct exposure to an IARC Group 1 carcinogen during his tenure as a firefighter…. The findings of the WCJ are supported by substantial evidence, and they support the WCJ's conclusion that Claimant was entitled to the statutory presumption in Section 301(f) of the Act to prove that his non-Hodgkin's lymphoma was an occupational disease under Section 108(r) of the Act. We discern no error in the Board's adjudication to affirm the WCJ."

Legal Lesson Learned: Keep records of your exposure to fires and hazardous materials, to support testimony by your expert witness.

File: Chap. 7, Sexual Harassment / Hostile Workplace

OH: FD APPLICANT – ALLEGEDLY RAPED BY RECRUITING LT.

On March 19, 2025, in Rebecca Bryant v. City of Cincinnati, et al., U.S. District Court Judge Douglas R. Cole. U.S. District Court for Southern District of Ohio, Western Division, denied the city's motion to dismiss claims of hostile work atmosphere, based on her allegation that she was raped by a Lieutenant – FD recruiting officer. The Court rejected the city's argument that the alleged rape occurred before she was hired, and therefore as a non-employee she cannot claim hostile work atmosphere. "The City next argues that the Court should dismiss Bryant's hostile-work-environment claims because the principal conduct of which she complains occurred while she was an applicant, not an employee…. True, Title VII applies only to employers. And a hostile work environment refers to conditions that an employee experienced during his or her employment…. But here, Bryant *is* complaining about her experience as an employee. As noted above, in her Amended Complaint, she points to a host of alleged wrongs that happened to her while she was employed at CFD. True, she also points to the rape, and that occurred while she was an applicant, but that is, at least in part, to provide context for why working with [the Lieutenant] (while she was employed) might constitute a hostile work environment." https://public.fastcase.com/jaEE2PXzRXmZ99jOLMt1IsID3yHeWup657c7MnfFCGnetXQu%2F2QtQOpoVmwfdEc%2F?utm_medium=email&_hsenc=p2ANqtz-_zTSxdS0F5WCwBxFxJfAdL2TYRGfHTDF8aVNcZ9gK5T6kDk6rrKhGST-fn4w1vDtBgvaoCFHlAWmUNSPCbepcJBy8zVw&_hsmi=226712652&utm_content=226712652&utm_source=hs_email

> "First, the allegations concerning [former Lt.]. In the fall of 2018, Bryant applied to be a firefighter at CFD. At the time, [former Lt.] oversaw the department's recruiting. Throughout the hiring process, [former Lt.] frequently communicated with Bryant…. At one point, he allegedly told her that CFD would not move forward with her application, but that he was 'vouching for her throughout the process.' Based on these representations, Bryant 'felt indebted' to [former Lt.] and 'that she owed her employment opportunity' to him…. On December 8, 2018, [former Lt.] allegedly invited Bryant to his home, where she says he raped her…. He continued to communicate with her after the fact with 'persistent invitations to recreate the events that led to the initial assault' until at least September 14, 2019…. A few months after the alleged rape, on February 9, 2019, Bryant
> was accepted into the recruit class and began her employment with CFD."
>
> ***
>
> On June 7, 2023, Bryant dual-filed a charge of discrimination with the Ohio Civil Rights Commission (OCRC) and the Equal Employment Opportunity Commission (EEOC).

***

In its final effort to convince the Court to dismiss Counts I and II, the City says that it acted promptly to address Bryant's allegations…. So, while it is true that '[t]he most significant immediate measure an employer can take in response to a sexual harassment complaint is to launch a prompt investigation to determine whether the complaint is justified,' … Bryant is correct that, at this stage, 'the documents provided do not disprove [her] contentions that the investigations were not handled appropriately.'"

Legal Lesson Learned: The City promptly conducted an investigation; the case will now proceed with pre-trial discovery, including a review of the adequacy of the investigation.

File: Chap. 7, Sexual Harassment / Hostile Workplace

DE: D/C RAPED CADET – 35 YRS PRISON - FIRE CHIEF SUED

On March 5, 2025, in Laura Liebal, as next friend and guardian of M.M., a minor v. Belvedere Fire Company, et al., Judge Charkes Butler, Superior Court of Delaware, denied the motion to dismiss the Fire Chief and Board members from this lawsuit. "The Amended Complaint alleges that in 2022, M.M., a 15-year-old minor girl, ('Plaintiff'), volunteered with the Mill Creek Fire Company. During a joint training exercise between the Mill Creek Fire Company and Defendant Belvedere Volunteer Fire Company ('Belvedere'), the Deputy Fire Chief for Belvedere Dwayne Pearson ('Pearson'), began 'flirting' with Plaintiff. The Belvedere Fire Chief, Robert Johnson ('Johnson'), observed Pearson's behavior. Johnson contacted the Mill Creek Fire Company and learned that Plaintiff was 15 years old. Johnson warned Pearson to 'stay away' from Plaintiff. But Pearson did not. The Amended Complaint says that Pearson used one of Belvedere's vehicles to pick up Plaintiff and commit sex crimes on two separate days in August 2022." The Court held that while volunteer fire departments and Board members have immunity, the Fire Chief can be sued personally if they acted with "wanton negligence."
https://cases.justia.com/delaware/superior-court/2025-n24c-08-154-ceb.pdf?ts=1741208566

"As to Chief Johnson, the allegation is that he had direct knowledge that the Plaintiff was a minor and that Pearson was 'flirting' with her. The Amended Complaint references his admission that he did not make as thorough an inquiry as he should have. Further, it is alleged that Johnson and the remaining Board members were all aware of Pearson's prior sexual assault, at Belvedere, yet permitted him to remain as Deputy Chief. Whether this satisfies the 'wanton negligence' standard, we must await a fuller record.

***

Moving on to the allegations concerning individual Board Members of Belvedere, the Court has previously noted that 'if a municipality, who can only act through its agents, 'could be held liable for the acts of its employees under respondeat superior, the Tort Claims Act [as it applies to Section 4011] would be rendered meaningless.' Similarly, if this Court found that immunity did not apply to the Directors of the Fire Company, then

the immunity granted the Fire Company would likewise be meaningless. Plaintiff has not articulated any reason why the Board members – as Board members – should not be immune, and the Court sees none either."

Legal Lesson Learned: FDs must promptly and thoroughly investigate allegations of sexual and other forms of misconduct, particularly involving minors.

Note: See June 14, 2024 article, "'Tell the truth now': Girl addresses rapist, former deputy fire chief at sentencing."

A girl raped by a former Belvedere deputy fire chief asked him in a courtroom Friday to admit what he had done. Her request was made shortly before Dwayne L. Pearson Jr. was sentenced to 35 years in prison for raping the girl he met through his job in 2022. She was 15 at the time of the incidents. 'Tell the truth now,' she told the 41-year-old man who did not look at her, "... so I can find peace in my heart.'" https://www.yahoo.com/news/tell-truth-now-girl-addresses-164857744.html

File: Chap. 8, Race Discrimination

MS: EMS SCHOLARSHIPS FOR "OF COLOR" - CASE PROCEED

On March 31, 2025, in Do No Harm v. National Association of Emergency Medical Technicians, U.S. District Court Judge Carlton W. Reeves, U.S. District Court for the Southern District of Mississippi (Northern Division) denied NAEMT's motion to dismiss. "Since 2021, this program has awarded up to four scholarships of $1,250 each, which recipients may use towards tuition, fees, and books…. The scholarship's guidelines do not list race as a factor; however, the selection process states that NAEMT 'will' award the scholarship to students of color. *** [Plaintiff organization include white female seeking one of the scholarships.] "Member A alleges that she was denied the opportunity to compete on equal footing with applicants of color because of her race. If proven to be true-and the applicable standard requires us to presume its truth today-NAEMT's diversity scholarship would pose a race-based barrier to Member A that may violate § 1981."
https://public.fastcase.com/jaEE2PXzRXmZ99jOLMt1IpDp0JnVzptdty762p2WdacpKzYcIiQ8l1TBeuMep1jV?utm_medium=email&_hsenc=p2ANqtz-9L1bPrfxst6esq_7Z5KFo1lHVisT0fYVrJpGE-zmUOoXZMhssxRXtfaqB6NAX5aJI_oGim2Kqhabp0MlaGnIdzwB2f4A&_hsmi=226712652&utm_content=226712652&utm_source=hs_email

"In this case, Do No Harm challenges NAEMT's diversity scholarship. In its amended complaint, filed on March 4, 2024, it alleges that (1) NAEMT operates 'a race-based 'diversity' scholarship that awards money only to 'students of color,' (2) the scholarship program 'flatly' excludes white students, and (3) the program violates 42 U.S.C. § 1981.

***

Plaintiff Do No Harm 'is a nationwide membership organization consisting of healthcare professionals, students, patients, and policymakers who want to protect healthcare from radical, divisive, and discriminatory ideologies.'… It advocates against the 'woke takeover' of healthcare and disavows *all* efforts to promote diversity, equity, and inclusion within the profession. *See The Woke Establishment Reacts to Do No Harm,* DO NO HARM (May 9, 2022), *https://donoharmmedicine.org/2022/05/09/the-woke-establishment-reacts-to-do-no-harm* (emphasis added).

***

Defendant NAEMT, meanwhile, 'is a national association of emergency medical responders, such as paramedics, emergency medical technicians, and other medical professionals who provide urgent medical care." … It is open to current and former members of the profession, along with students interested in pursuing a career in emergency medical services. It has established several scholarships to help students cover the expenses associated with their respective program.

***

The burden at this stage requires the Court to accept Do No Harm's factual allegations as true and draw reasonable factual inferences in its favor. Applying that standard, Do No Harm has met its burden, and NAEMT's motion must be denied."

Legal Lesson Learned: The case will now proceed to pre-trial discovery; scholarships for minority students by universities and other organizations have also been challenged.

Note:

See March 13, 2025 article and TV Video: "Cincinnati Children's Hospital under investigation over scholarships for minorities. A Wisconsin law firm brought the complaint to the federal government, alleging the programs violate the Civil Rights Act. Cincinnati Children's Hospital is being investigated by the federal government for scholarships aimed at helping minority students. The Department of Health and Human Services Office of Civil Rights is looking into whether those programs break the law." https://www.wlwt.com/article/cincinnati-childrens-investigation-scholarships-minorities/64180173

See American Bar Association scholarships. "The American Bar Association (ABA) awards an annual Legal Opportunity Scholarship to first-year law students. The program's mission is to encourage racial and ethnic minority students to apply to law school and to provide financial assistance for them to attend and complete their legal education. The ABA Legal Opportunity Scholarship grants $15,000 of financial aid to 20 - 25 incoming diverse law students over their three years in law school. Since its inception, the ABA Legal Opportunity Scholarship has benefitted more than 400 students from across the country."

https://www.americanbar.org/groups/diversity/diversity_pipeline/projects_initiatives/legal_opportunity_scholarship/

File: Chap. 8, Race Discrimination

MD: NOT RACE DISC – FIRED DIDN'T RETURN MED. LEAVE

On March 31, 2025, in Nicole Tynes v. Mayor and City Council of Baltimore, U.S. District Court Judge Matthew J. Maddox, U.S. District Court for District of Maryland, granted the City's motion for summary judgment in this lawsuit by black, female alleging retaliation after she filed EEOC complaint. "On January 12, 2021, PSI placed Plaintiff off-duty through August 31, 2021, due to a non-line-of-duty surgery…. Plaintiff experienced post-op complications…. Because she was out for more than six months, Plaintiff was required to take an RTD [return to duty] exam. Plaintiff was unable to pass the RTD, and she was emotional and appeared distraught…. As a result of being placed back off-duty by PSI [Mercy Hospital Public Safety Infirmary]. Plaintiff was sent an updated Expiration of Medical ("EOM") Notification dated September 2, 2021…. Plaintiff's remaining retaliation claim is based on her termination from the Fire Department after she failed to return to work on September 8, 2021… Defendant has produced a legitimate, non-retaliatory reason for terminating Plaintiff: that her medical leave expired, and she did not return to work."
https://public.fastcase.com/jaEE2PXzRXmZ99jOLMt1IvrAn%2Bvx0cgAdRJLFzEVE5rZOK58n0UQBGfcsDJAKHyq3V35FHlAbNqGcC8r8dPNnejcnyefccFrDQkDZXnULhU%3D?utm_medium=email&_hsenc=p2ANqtz-8kewSXPlrcM1MOnAYiHvCPklkrBuM3zyFieXeXxpBY7QJCt7ROBRst2YRlv6uOnNoYQgLAyEZN4abHQWMttR1q6BIDag&_hsmi=226712652&utm_content=226712652&utm_source=hs_email

> "Defendant has produced a legitimate, non-retaliatory reason for terminating Plaintiff: that her medical leave expired, and she did not return to work…. To overcome summary judgment on her retaliation claim, Plaintiff must present evidence that Defendant's proffered reason was not the true reason for the employment termination….
>
> Plaintiff's first argument that Defendant's proffered reason for termination is pretextual is based upon her allegedly having been improperly disciplined for making false statements in May 2018…. This discipline occurred more than a year before Plaintiff's termination and does not relate at all to her failure to return to work after the expiration of her medical leave and cannot reasonably call it into question Defendant's proffered non-retaliatory reason for termination.
>
> Plaintiff's second argument for a finding of pretext is that, after she was medically cleared to work on August 31, 2021, she was placed back off-duty the very next day…. But there is no genuine dispute that the decisions regarding Plaintiff's placement on-duty and return to off-duty status were made by medical personnel at PSI and not by the Fire Department….

> Plaintiff's final argument for a finding of pretext is that the Fire Department declined to grant Plaintiff's request for catastrophic leave that would have extended her leave period beyond her EOM date…. But there is no genuine dispute that Plaintiff did not meet the requirements for catastrophic leave reflected in the MOU between Defendant and the Union. Specifically, Article 31 of the MOU provides that an employee requesting catastrophic leave must submit '[t]he reasonable prognosis of complete recovery within twelve weeks' as certified by a physician….
>
> Because Plaintiff fails to present evidence to suggest that Defendant's proffered reason for terminating her employment was pretextual, summary judgment must be granted in Defendant's favor."

Legal Lesson Learned: FD had a legitimate reason for terminating the firefighter, and plaintiff failed to show pretext.

PA: REVERSE DISC ALLEGED – WHITE NOT PROMOTED

On March 19, 2025, in Jared Jacobson v. City of Philadelphia, U.S. District Court Judge R. Barclay Surrick, U.S. District Court for Eastern District of Pennsylvania, denied the City's motion for summary judgment. In April, 2021, two chief officers (one black, one white) applied for promotion Assistant Deputy Commissioner of Emergency Medical Services. The position was not posted until April 28, 2021, the day after Martin McCall (black) was promoted to a chief officer and then eligible for the position. They were interviewed by a three-member panel appointed by Fire Commissioner Adam Thiel: Crystal Yates, who was retiring from the position; Deputy Commissioner Craig Murphy, and Deputy Commissioner Tara Mohr. After the interviews, the panel members submitted their lists of pros and cons to Murphy and Yates, but "the record is unclear regarding what role various members of the Executive Team played in making a final recommendation to Thiel… Yates testified that she did not know why McCall was selected and that she 'wasn't a part of the selection[.]' (Yates Dep. at 41, 44-45.) … The panel recommended did not record, score, and rank the answers…. Although Defendant's motion for summary judgment presents a close call, contradictions regarding who was involved in decision-making coupled with the timing of interviews the day after McCall became chief could permit a reasonable factfinder to doubt Defendant's proffered rationale and infer discrimination. Defendant's motion will therefore be denied."
https://public.fastcase.com/jaEE2PXzRXmZ99jOLMt1Ig73AWbHngoMRgpe4nLWTO53aGFBbi44KCyxbclUQNrRtdkO5InHzTjZEyqBZ0TTu4M3XLXcJtKtBwk6Y3SN%2BfM%3D?utm_medium=email&_hsenc=p2ANqtz--YVrLxgHNVQCg2RIMQiS4XSu1REbqHDD3q7IV_og8sZIryoVLFG1HLWpJaCKB-X4Qy5JqtbBdGIwkTCURiibvlDX5J7A&_hsmi=226712652&utm_content=226712652&utm_source=hs_email

"To establish a prima facie case of reverse discrimination –'where a plaintiff cannot demonstrate membership in a protected minority - the plaintiff must instead address the first prong by presenting sufficient evidence 'to allow a fact finder to conclude that the employer is treating some people less favorably than others based upon a trait that is protected under Title VII.' *Bond v. City of Bethlehem*, 505 Fed.Appx. 163, 166 (3d Cir. 2012) (quoting *Iadimarco v. Runyon*, 190 F.3d 151, 161 (3d Cir.1999)).

***

Jacobson argues that a lack of structure in the interview process and ambiguity as to decision-makers raises concerns about the integrity of the promotion procedure…. Jacobson contends that, since the interview panel did not record, score, and rank the answers, 'the interview was out of the ordinary[.]'

***

Yates testified that she did not know why McCall was selected and that she 'wasn't a part of the selection[.]' (Yates Dep. at 41, 44-45.) Murphy testified that the '[interview] panel recommended' a candidate and he 'forwarded the result of those recommendations to Commissioner Thiel;' however, Murphy also testified that he recommended McCall to Commissioner Thiel. (Murphy Dep. at 32-34.)

***

Since the Court is unable to reconcile the deposition testimony regarding who was involved in the decision-making process, Plaintiff has established inconsistencies that could allow a reasonable factfinder to doubt Defendant's reasoning."

Legal Lesson Learned: When conducting panel interviews, it is good practice for panel members to keep scores and notes.

File: Chap. 12 – Drug-Free Workplace

AL: FLIGHT RN - TAMPERED KETAMINE – PT FLEW NEXT DAY

On March 21, 2025, in Ex parte Air Evac EMS, Inc. (In re: Ernest Charles Jones, by and through Ovetta Jones, as spouse and next friend) v. Bryan Heath Webster, et al., the Supreme Court of Alabama held (7 to 0) that Air Evac's motion for summary judgment on plaintiff's amended complaint should have been granted; it was filed 6 years after the patient's transport on Aug. 18, 2018 (well beyond the two-year statute of limitation) and dealt with flight nurse tampering with two vials of ketamine the day prior to the transport. The flight nurse, Bryan Heath Wester, pled guilty and was sentenced on Aug. 5, 2019 in federal court to one year in prison [see details in Note below]. "Because the Joneses' amended complaint 'clearly addresses conduct distinct in kind and in time from the conduct alleged in [their] original complaint,' … and 'listed several actions by [the defendants] that [the Joneses] alleged had breached the applicable standard of care owed to [Earnest] that were entirely different than some of the actions listed in the original

complaint,' their amended complaint cannot relate back to the filing of their initial complaint." https://caselaw.findlaw.com/court/al-supreme-court/117080306.html

> "On August 27, 2018, Earnest Charles Jones ('Earnest') was attacked and severely injured by a bull. After first being taken to a local hospital, Earnest was ultimately transported by helicopter to University of South Alabama Hospital ('USA Hospital') for treatment. During transport, Earnest suffered injuries to his throat allegedly because Bryan Heath Wester, a flight nurse and paramedic, removed a nasal-gastro tube from Earnest's throat. Nearly four years after they filed their initial complaint and nearly six years after Earnest was injured, the Joneses amended their complaint. The amended complaint alleged that on August 26, 2018 -- the day before Earnest's air transport -- Wester unlawfully stole pain medication (ketamine) from the helicopter, substituting saline solution in its place. It further alleged that the other flight nurses failed to discover this fact, failed to properly treat Earnest's pain, and/or failed to properly monitor his medical condition during his transport. The Joneses also alleged that Air Evac failed to properly train, hire, and supervise its employees and failed to comply with state and federal guidelines regarding the storage of ketamine."
>
> ***
> Air Evac then petitioned this Court for a writ of mandamus directing the trial court to vacate its order denying its summary-judgment motion and to enter a summary judgment disposing of the amended complaint on the grounds that the claims asserted therein are barred by the applicable statutes of limitations and repose and, thus, do not relate back to the time the initial complaint was filed. As explained below, because it is clear from the face of both the initial complaint and the amended complaint that the claims asserted in the amended complaint are time-barred, the trial court erred in denying Air Evac's motion for a summary judgment."

Legal Lesson Learned: Tampering with controlled substance is unfortunately not a new story. Read below details of how the tampering occurred and share with your crews.

> Note: Aug. 5, 2019: U.S. Department of Justice / Press Release.
>
> Former Paramedic and Flight Nurse Receives One Year in Prison for Tampering with Ketamine Vials.
>
> United States Attorney Richard W. Moore of the Southern District of Alabama announces today that United States District Judge Jeffrey U. Beaverstock sentenced defendant Bryan Heath Wester, 43, a resident of Springville, Alabama, to imprisonment for 12 months and one day for tampering with a consumer product. As part of the sentence, the judge ordered that Wester undergo three years of supervised release after finishing his term of imprisonment, pay a $100 mandatory special assessment, receive substance abuse and mental health treatment as directed by the U.S. Probation Office, and pay restitution totaling $511.48 to a patient-victim in the case.
>
> ***

Wester admitted to the following facts at his plea hearing. He was previously a licensed nurse and a paramedic who worked for an air ambulance service in Demopolis, Alabama. On August 26, 2018, Wester, with reckless disregard for the risk that another person would be placed in danger of death and bodily injury, and under circumstances manifesting extreme indifference to such risk, tampered with ketamine hydrochloride (ketamine), a consumer product that was manufactured outside of Alabama and affected interstate commerce. Wester accessed the controlled substances box inside a locked safe located on board an emergency helicopter, removed ketamine from two vials, and replaced the removed ketamine with saline, knowing that the ketamine was intended to be administered via injection to critically ill and injured patients being transported by helicopter for emergency treatment.

On August 27, 2018, a critically injured patient required air transport to Mobile, Alabama. The patient had been run over by a cow and suffered head trauma and loss of consciousness. The on-board nurse attempted to administer ketamine. The vial appeared to have a blue glue on the cap. When the needle was inserted, the vial did not appear to be vacuum sealed. The nurse administered the dose but it did not have the anticipated effect. The nurse then obtained a second vial of ketamine and found that the cap had been glued on.

On August 30, 2018, a special agent with the Food and Drug Administration (FDA)'s Office of Criminal Investigations interviewed Wester, who admitted to removing ketamine from two vials on August 26. According to his statements, around midday on August 26 Wester asked another nurse on duty for the nurse's set of keys to the locked narcotics on the helicopter, telling the other nurse that he would do the equipment check. The nurse gave Wester the keys. Wester opened the safe and did not lock one side back. The two-key lock system allowed Wester to return later with his own keys and access the safe. Later that evening, Wester went out to the helicopter, withdrew the ketamine from two vials, and replaced it with saline. Wester re-glued the tops of the vials with dermabond. There was a zip-tie securing the plastic narcotics box inside the safe; Wester cut the zip-tie off and replaced it with a new one. Wester also changed the number in the logbook to reflect the new number. The old number ended in a "2." Wester changed it to a "1."

File: Chap. 12 – Drug-Free Workplace

MA: FF PINPOINT PUPILS – DELAY DRUG TEST / CBD - FIRED

On March 20, 2025, in Patrick F. Burns, Sr, v. The City of Worchester, et al., U.S. District Court Judge Margaret R. Guzman, U.S. District Court for the District of Massachusetts, granted the city's motion to dismiss. A Deputy Fire Chief observed the firefighter with "pinpoint" pupils during Recue 1 training on September 7, 2023 and ordered him to take drug test. The firefighter

didn't take urine test until Nov. 8. "Burns had recently begun the lawful off-duty use of prescribed oral cannabidiol (CBD), a non-intoxicating derivative of cannabis, as a sleep aid; he was unsure how this could affect drug test results or how such results might be interpreted or portrayed. He was suspended without pay since Oct. 8, 2023, and on Jan. 21, 2024 the FD offered him a substance abuse agreement [which he rejected]. The agreement "required Burns to accept its premise that he was an admitted drug abuser…. The agreement called for Burns to complete treatment with a licensed substance abuse rehabilitation program and provide negative results from hair, urine, and breathalyzer tests, or to accept a 'last chance agreement' requiring three years of highly intrusive drug testing on demand with 'physical inspection' before providing a urine sample and provision of each sample 'under direct observation.' … The agreement also included 'permanent transfer off the Rescue [unit] and outside the Franklin Street Fire Station' with Burns to be barred from assignment to that station 'even on a temporary basis.' The letter stated the City would 'move for your termination' if Burns did not return the signed agreement within 10 days." His termination was upheld by a city Hearing Officer upheld after full hearing on June 7, 2023; and by Civil Service Commission on June 27, 2024 after a hearing."
https://public.fastcase.com/jaEE2PXzRXmZ99jOLMt1IkwLjDIafZivsAf6axO%2B3QZjm6x80NhvTxxrXJiS64do?utm_medium=email&_hsenc=p2ANqtz-_ZLiMFX9yN1wO2MCWrhyQko1U4dUXhzxPQAtrBDBjCrjbe9Dh7_kNIbfrc-1zaAPZ0Y1FmrwNmXCeWeaeUVjh5p5R-nw&_hsmi=226712652&utm_content=226712652&utm_source=hs_email

> "On September 21, 2021… during this meeting, [Deputy Fire Chief John] Powers repeatedly told Burns 'you're on drugs,' and that 'your pupils are pin-point.' Powers ordered Burns to submit to drug testing of his urine and accused Burns of insubordination when he did not agree…
>
> ***
>
> To the extent Plaintiff challenges that Powers lacked reasonable suspicion to order the test, the Court is unconvinced that the Complaint raises an actionable claim. While Plaintiff alleges that Powers's claim about his 'pinpoint pupils' was false and made in bad faith … the First Circuit has recognized that 'even a drug test that violates an employer's own policy or agreement with an employee or union is not necessarily unconstitutional.' *Cabral*, 2019 WL 3781567, at *13. Plaintiff acknowledges in his Complaint that Powers observed him in person on at least two occasions on September 21, 2022-first, at Green Hill Park, and later at the Fire Department's headquarters…. While Plaintiff disputes Powers's ability to observe his pupils from 25 feet away and claims there were no physical signs of impairment, … Powers's decision to order a drug test based on his observations does not rise to the level of a constitutional violation, particularly in light of the safety-sensitive nature of Plaintiff's position on the Rescue 1 crew, which responds to emergency situations and performs life-saving functions. *See Skinner,* 489 U.S. at 628 (noting that for safety-sensitive employees such as firefighters 'even a momentary lapse of attention can have disastrous consequences.'"

Legal Lesson Learned: Firefighting is a "safety-sensitive" job and employer may order drug test if there is reasonable suspicion.

File Chap. 13 – EMS

DC: MEDIC FIRED – COVID - 6-YR OLD BOY NOT EVALUATED

On March 31, 2025, in Danaryae Lewis v. District of Columbia, U.S. District Court Judge Carl J. Nichols, U.S. District Court for District of Columbia, denied the City's motion for summary judgment. She alleges that during COVID white and Hispanic EMS likewise did not put on PPE and enter homes to evaluate patients.
https://public.fastcase.com/jaEE2PXzRXmZ99jOLMt1IuWGAIUpkkorrJl529LJ3awEx3zEi%2Byx9rGBI4x8eUTPQhULRQSbbdyTI3aaLB6SYlAXn8jJowYQjsFj%2FU%2FJFgg%3D?utm_medium=email&_hsenc=p2ANqtz-83fSGxDadFaAqcLR0jtt8PGQuvqaI_epd1KGRFswTzY3809DqN4cnTFvjtIk9nPU87syAh5PxEK-y1xpj2mK9t5ywDKQ&_hsmi=226712652&utm_content=226712652&utm_source=hs_email

> "In sum, Lewis has plausibly alleged municipal liability under the theory that Fire Chief Donnelly was a final policymaker acting with final policymaking authority when he chose to accept and enforce Lewis's termination. But Lewis has not plausibly alleged municipal liability under the other three theories just discussed. The Court will therefore strip those theories from the case and permit Lewis to proceed only under a final policymaker theory…. In sum, then, the conduct of the non-black DCFEMS personnel is at least 'comparable' to Lewis's, raising a plausible inference that she was treated differently based on her race.
>
> ***
>
> On May 22, 2020, during a phase of the COVID-19 pandemic in which D.C. residents were subject to a stay-at-home order and strict social distancing guidelines, Lewis was working an ambulance shift alongside another African American EMT, Traes Ceasar…. As the first run of their shift, Lewis and Ceasar were dispatched to transport a six-year-old boy with a fever to a local hospital…. Under DCFEMS's COVID-19 policies, ambulance crews were required to call patients on the phone before making physical contact with them, and ask that they come outside to be evaluated…. Accordingly, when Lewis and Ceasar reached the address they had been given, Lewis called the child's mother (on speaker-phone, so both she and Ceasar could hear) and inquired about his condition…. Lewis used her personal cell phone to make the call [could not locate FD phone]….

The mother reported that the child's only symptom was fever, and that his doctor had instructed her to call 911 but she did not know why…. Lewis 'asked the mother to bring the child downstairs to be evaluated and potentially [] transported to the hospital,' but the mother refused, saying that she did not want him exposed to COVID…. The mother further noted that she had not yet given him Tylenol to reduce his fever, as his doctor had directed, and stated that she preferred to monitor his fever after administering medicine…. Lewis alleges that she 'asked the mother if she was certain about not having the child transported to the hospital, and the mother adamantly refused,' again citing her COVID concerns…. Lewis then 'ended the call by telling the mother that if she felt strongly [about] first giving the child the Tylenol, she had every right to do so, and that the mother could always call 911 again if the fever did not break.' … [T]hey recorded the dispatch transaction as 'No patient contact; cancelled on scene' and then 'put themselves into service to respond to the next call.'

DCFEMS later received a citizen's complaint alleging that Lewis and Ceasar had not evaluated the child…. DCFEMS conducted an investigation, and ultimately wrote Lewis up for two violations…. The 'gravamen' of DCFEMS' claim against Lewis was that, despite the mother's objections, she 'should have gotten dressed in PPE, entered the premises, and gone upstairs to evaluate the child.' But DCFEMS also apparently 'took issue' with Lewis's use of her personal cell phone to contact the child's mother.

***

A referral document sent to the [trial] board on Chief Donnelly's behalf recommend that Lewis be suspended for Count I and terminated for Count II, and that Ceasar, who was less experienced than Lewis, be suspended for 744 hours (approximately 4.5 months)…. Chief Donnelly also appointed the four members of the trial board…. [T]he trial board ultimately recommended that Lewis be fired, and Chief Donnelly accepted that recommendation…. Chief Donnelly apparently also accepted the board's recommendation that Ceasar be suspended for 20 days-a substantial reduction from his initially proposed multi-month suspension.

***

Lewis alleges that, four days after this incident, several non-black DCFEMS firefighters engaged in similar conduct but were not similarly disciplined. *Id.* at 24. In particular, she claims that on May 26, 2020, three units of DCFEMS personnel-all of whom were white or Hispanic, and two of whom held a 'supervisor' or 'battalion chief' role-were dispatched to a residential address on a report of "respiratory distress/possible suicide attempt.' … Police were also dispatched to the scene, and upon arrival 'were able to speak to the patient and learned there was no active threat of public harm[] or death.' …They 'decided police service was no longer needed,' and so turned care over to DCFEMS, which had staged its personnel a block away…. According to the complaint, however, those DCFEMS personnel 'never attempted to enter the residence of the patient, assess the situation, take vital signs, transport the patient to a nearby hospital, or obtain a signed medical release form.'

Legal Lesson Learned: Case will now proceed to pre-trial discovery. COVID protocols must be followed, including donning PPE if needed to assess a patient.

File: Chap. 13, EMS

LA: POSS. STROKE – NO CONSENT NEEDED TO TRANSPORT

On March 6, 2025, in Isiah Cole, Jr. and his wife, Karen Cole v. New Orleans Emergency Medical Services, et al., the Court of Appeals of Louisiana, Fourth Circuit, held (3 to 0) that the trial court on May 10, 2024 after a bench trial, found defendants not liable for transporting him to hospital without his consent, and for allegedly dropping him off flexible Reeves Stretcher going down a flight of stairs. "At the time the June 23, 2017 incident occurred, Mr. Cole was a 75-year-old man with a number of health problems. EMS evaluated him thoroughly and determined that a new onset of seizure and his altered mental status necessitated his transport to the hospital. As [Paramedic Derick] Blanchard testified, 'Time is brain cells.' The trial court found that "EMS adhered to proper protocol, and their determination that Mr. Cole did not have the capacity to refuse treatment did not violate the standard of care. After a review of the record and the applicable law, we agree and find that EMS acted pursuant to La. R.S. 40:1159.5 because they reasonably believed that any delay in diagnosis or treatment could have been harmful to Mr. Cole. We do not find that the trial court failed to recognize Mr. Cole's constitutional and statutory rights; instead, we agree with the trial court that NOEMS could supersede those rights in order to prevent harm to Mr. Cole. Therefore, we find no error in the trial court's finding. For the reasons discussed herein, we affirm the judgment of the trial court."
https://cases.justia.com/louisiana/fourth-circuit-court-of-appeal/2025-2024-ca-0437.pdf?ts=1741310103

> "On June 23, 2017, Mr. and Mrs. Cole were asleep at their home when Mrs. Cole was startled awake by noises made by her husband. Mrs. Cole observed Mr. Cole convulsing in their bed. She immediately dialed 911, awakened her daughter, Shonda Jenkins, and informed her that Mr. Cole was having a medical episode. After speaking with 911, Mrs. Cole placed Mr. Cole on his side, counted his breathing and waited for NOEMS to arrive. Mr. Cole's symptoms began to wane as the paramedics arrived.
>
> Blanchard and Manning, emergency medical service paramedics (Paramedics), arrived on the scene and began evaluating Mr. Cole. They took his vital signs and asked him a series of questions to gauge his mental status. After conversing with Mr. Cole and observing him, they informed Mr. Cole that he would be transported to the hospital. Initially, Mr. Cole refused transport. He stated that he was feeling better after his medical incident and did not want to go to the hospital. NOEMS continued to assess him and decided to transport Mr. Cole over his objections. Mr. Cole reiterated that he did not want to go to the hospital, but he did not resist them. Blanchard and Manning, with the assistance of members of the New Orleans Fire Department, removed Mr. Cole from the bed and

placed him ona flexible Reeves Stretcher. NOEMS and firemen carried Mr. Cole down a flight of stairs, placed him on a standard stretcher and transported him to Ochsner Hospital for further treatment.

***

In his brief to this Court, counsel for Mr. Cole focused on the Glasgow score used by the paramedics on scene in assessing Mr. Cole prior to transporting him to the hospital to support his contention that Mr. Cole had the mental capacity to refuse transport. The Glasgow score, according to the testimony of Blanchard, is a method by which EMS assess a patient's mental status. Mr. Cole received a score of 14 on a scale of 15. A score of 15 means the patient is fully alert, aware of his circumstances and oriented as to time and place. Since Mr. Cole received a Glasgow score of 14, the Coles argue that there was no sense of urgency in bringing Mr. Cole to the hospital because he was oriented as to time and place. They also assert that EMS's decision to transport Mr. Cole over his objection violated his right to refuse treatment.

Blanchard testified that when he and his partner, Manning, arrived, Mr. Cole's family seemed concerned with his altered mental status. They assessed him and deemed that Mr. Cole had a new onset of confusion. He recalled Mr. Cole saying he did not want to go to the hospital, but they continued to ask him Blanchard testified that when he and his partner, Manning, arrived, Mr. Cole's family seemed concerned with his altered mental status. They assessed him and deemed that Mr. Cole had a new onset of confusion. He recalled Mr. Cole saying he did not want to go to the hospital, but they continued to ask him questions and assess his vital signs. In regard to the Glasgow score assessed to Mr. Cole, Blanchard testified that even though Mr. Cole received a score of 14, he was very confused after his apparent seizure. In the end, they transported Mr. Cole because he had no prior history of seizures, his mental status was altered, and they were concerned he may have suffered a stroke.

***

In the case of an emergency, however, an adult's consent may be overridden. La. R.S. 40:1159.5(A) states:

> In addition to any other instances in which a consent is excused or implied at law, a consent to surgical or medical treatment or procedures suggested, recommended, prescribed, or directed by a duly licensed physician will be implied where an emergency exists. For the purposes hereof, an emergency is defined as a situation wherein: (1) in competent medical judgment, the proposed surgical or medical treatment or procedures are reasonably necessary; and (2) a person authorized to consent under R.S. 40:1159.4 is not readily available, and any delay in treatment could reasonably be expected to jeopardize the life or health of the person affected, or could reasonably result in disfigurement or impair faculties."

Legal Lesson Learned: Stroke patient was properly transported to hospital; state statute does not require patient consent "where an emergency exists."

File: Chap. 15 - Mental Health, incl. CISM, Peer Support

NY: NYPD RESONSE MENTAL RUNS - PROP. CLASS ACTION

On March 28, 2025, in Steve Greene, et al. v. City of New York, et al., Senior U.S. District Court Judge Loretta A. Preska, U.S. District Court for Southern District of New York, in proposed class action lawsuit by several community action groups, including Community Access, Inc, National Alliance of Mental Illness of New York City, Inc., the federal judge denied the City's motion to strike the class action from the complaint at this early stage of litigation, and held that the case may proceed on the City's current practice of sending police to mental health calls (instead of a mental health crisis team, such as the City's limited "B-Heard" program). "Defendants' motion to dismiss the disability claims regarding the on-site response pursuant to Title II of the ADA, Section 504 of the Rehabilitation Act, and the NYCHRL is DENIED."
https://public.fastcase.com/jaEE2PXzRXmZ99jOLMt1IgF1yYEhvQDwrp3nUQiGNB%2BGSciFeLM%2FmBTuULLxAVc6AJd7N%2FBSzM%2BwBsHVa7Iixu%2BNwJWRs9nDd4Lbk0%2BZyEc%3D?utm_medium=email&_hsenc=p2ANqtz-_AJp8PZettrdOWllyvjduuYkYNLjKGvTo7FG_iUypW4feeCV7HNQpd9yy59szCksxig4Y61bV5hSQSKDqcsmFU4r11KQ&_hsmi=226712652&utm_content=226712652&utm_source=hs_email

> "Plaintiffs allege that the City's emergency response program discriminates against people who experience mental health emergencies…. The City operates an emergency response program, also known as the 911 program, that allows people to call 911 when faced with any emergency…. Each 911 call is answered by one of the New York Police Department's ('NYPD') police communication technicians/police call takers and routed according to the type of emergency…. Emergencies typically involve a crime, fire, physical health, or mental health….The most common mental health emergencies arise from depression, anxiety, and PTSD…. Typical mental health emergencies involve no allegations of criminal conduct, violence, use or position of a weapon, or threat of harm to others. … In contrast, for mental health emergencies, police call-takers categorize the call as an EPD, and police officers are dispatched as the first or lead responders. Police officers are not qualified to make health determinations, de-escalate a mental health crisis, stabilize the person in crisis, or determine whether transport to a hospital for psychiatric evaluation is warranted.
>
> ***
> Then, in 2021, Defendant former Mayor de Blasio launched the Behavioral Health Emergency Response Program ('B-Heard'), which was created to replace police officers with mental health professionals and EMTs to certain 911 mental health calls in Northern Manhattan…. It is grounded in the City's 'commitment to treat mental health crises as public health problems - not public safety issues.' The City's website regarding B-Heard

explains that '[i]n emergency situations involving a weapon or imminent risk of harm to self or others, a traditional emergency response is dispatched, which includes NYPD officers and an ambulance.' … B-Heard represents a 'limited' exception to the police response for mental health emergencies as it is in 'limited police precincts' and operates 'for limited hours of the day.' … '[L]ess than 5% of the overall number of mental health calls citywide in 2023 actually received a B-Heard response.' … (In 2023, B-Heard only responded to approximately 7,000 calls, whereas there was a total of 300,000 mental health calls citywide.).) Moreover, 'plans for expansion of B-Heard reportedly have been halted, with significant cuts to its budget having been proposed.'

***

In 2023, the DOJ, released a document entitled 'Guidance for Emergency Responses to People with Behavioral Health or Other Disabilities' ('DOJ Guidance'), which explains that the ADA applies to public emergency response and law enforcement systems and guarantees equal opportunity for individuals with disabilities…. The DOJ found that the ADA 'requires that people with behavioral health disabilities receive a health response in circumstances where others would receive a health response.' The DOJ Guidance further explains that emergency dispatchers are recommended to send a crisis team, rather than police officers, 'when a call involves a person with a mental disability and there is no need for a police response.'

***

Plaintiffs further rely on two reports issued by the DOJ in 2023 regarding the DOJ's investigations into the cities of Minneapolis and Louisville…. There, the DOJ concluded that the cities 'had engaged in a practice of disability-based discrimination by relying on police officers as the primary first responders to mental health emergencies.' Additionally, Plaintiffs informed the Court by letter of the DOJ's findings regarding the State of Oklahoma, Oklahoma City, and Oklahoma City Police Department's discrimination against people with mental disabilities, as well as its agreement with the City of Minneapolis and the Minneapolis Police Department to reform its unconstitutional and unlawful practices relating to people with mental disabilities. (Pl. Letter.)"

Legal Lessons Learned: Litigation will proceed on NYPD response to mental health patients.

File: Chap. 16 - Discipline

CO: CHIEF FIRED BY NEW BOARD – VIDEO / INSUR. LAPSE

On March 28, 2025, in Erik Holt v. Florissant Fire Protection District, U.S. District Court Judge Nina Y. Wang, U.S. District Court of Colorado, granted the FD's motion for summary judgment on the former Fire Chiefs sole remaining claim of First Amendment retaliation. He was the only

full-time employee of the Fire District since April 2022. On May 2, 2023, an election was held at the Fire Station and mail in ballots for the FD Board, which resulted in the election of five non-incumbent candidates (taking office June 10). The former Board President filed a civil lawsuit and also made a complaint to Teller County District Attorney's Office alleging the non-incumbents and their poll watchers violated state law against electioneering at polling places. Without telling new Board President, on May 19 or 20 the Fire Chief met with DA investigator and turned over fire station security camera video of the May 2 voting at the station. In early June the FD briefly lost insurance coverage for non-payment; the Fire Chief blamed new Board President, Paul del Toro, for freezing the district's bank account without authorization. The Board fired Holt on June 22. On Nov. 7, 2024, U.S. District Court Judge Wang dismissed most of the Chief's initial lawsuit on the basis of governmental immunity – public entities such as FD are not liable under Colorado law for misconduct by its employees, even "willful or wanton misconduct." The Court allowed only the First Amendment retaliation claim to proceed – and now Judge Wang has dismissed that claim under *Pickering v. Bd. Of Ed.* balancing test. No First Amendment protection against retaliation since Fire Chief was not speaking as a citizen addressing matters of public concern.
https://public.fastcase.com/jaEE2PXzRXmZ99jOLMt1IhQHA9AMm9CcSN%2BGfYyS2p0Y8T4gWwr35mn7gDgy%2FrLSk1%2BX3TZDVCgonvjR5kmTn9ieZn6lPYykAdycfBPhja8%3D?utm_medium=email&_hsenc=p2ANqtz-96viAoOgtBhpN3k-FXu0IciBKBTpaPEffa5PyEi7FQVITmUz8Kiu79qOEJdxGOe1egzOzFwK07j5P1hSXOAN4VGdmpNA&_hsmi=226712652&utm_content=226712652&utm_source=hs_email

> "The Court, having found that Mr. Holt's conversations with Mr. Cramer were made pursuant to his official duties, will grant the Motion for Summary Judgment in favor of Defendant Florissant Fire Protection District and against Plaintiff Erik Holt on the sole remaining First Amendment retaliation claim…. The Clerk of Court is DIRECTED to terminate this action accordingly.
>
> ***
> '{A] public employee does not relinquish First Amendment rights to comment on matters of public interest by virtue of government employment.' *Connick v. Myers*, 461 U.S. 138, 140 (1983). 'Rather, the First Amendment protects a public employee's right, in certain circumstances, to speak as a citizen addressing matters of public concern.' *Garcetti v. Ceballos*, 547 U.S. 410, 417 (2006). It is well-settled that a public employer cannot retaliate against an employee for exercising his constitutional right to free speech. *See Lander v. Summit Cnty. Sch. Dist.*, 109 Fed.Appx. 215, 218 (10th Cir. 2004). 'However, the interests of public employees in commenting on matters of public concern must be balanced with the employer's interests 'in promoting the efficiency of the public services it performs through its employees.' *Leverington v. City of Colo. Springs*, 643 F.3d 719, 723 (10th Cir. 2011) (quoting *Pickering v. Bd. of Educ.*, 391 U.S. 563, 568 (1968)).
>
> To achieve this balance, the Supreme Court has adopted a five-part test, known as the *Garcetti/Pickering* test, to evaluate a public employee's First Amendment claim. The *Garcetti/Pickering* test is comprised of five elements: (1) whether the speech was made pursuant to an employee's official duties; (2) whether the speech was on a matter of public concern; (3) whether the government's interests, as employer, in promoting the

efficiency of the public service are sufficient to outweigh the plaintiff's free speech interests; (4) whether the protected speech was a motivating factor in the adverse employment action; and (5) whether the defendant would have reached the same employment decision in the absence of the protected conduct.

***

*Pursuant to Official Duties***.**

Defendant contends that 'Plaintiff's speech consisted of providing the fire station's surveillance video footage to the DA investigator upon being asked to do so, and answering some questions about the footage.' … FFPD then argues that Mr. Holt turned over the video footage and answered the investigator's questions 'because of his position as Fire Chief,' and that he 'would be expected to comply with law enforcement requests for information.' … Mr. Holt disagrees, arguing that his speech was outside his ordinary duties as FFPD Fire Chief because he was, 'first and foremost, a firefighter' in the Florissant Fire Protection District.

***

Mr. Holt neither argues, nor adduces any evidence, that he was compelled to meet with Mr. Cramer by subpoena or other order…. Similarly, there is no argument or evidence that Mr. Holt was placed under oath or that the substance of Mr. Holt's discussion with Mr. Cramer was made part of a legal proceeding, and the Teller County District Court dismissed Ms. Thompson's Complaint of Election Violations on June 27, 2023…. Tellingly, there is also no argument or evidence in the record that Mr. Holt expressed to Mr. Cramer that he believed violations of election law had occurred; instead, Mr. Holt undisputedly and repeatedly disclaimed being part of Ms. Thompson's Complaint of Election Violations.

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Based on the totality of the facts and circumstances surrounding Mr. Holt's communications with Mr. Cramer and his duties as the Fire Chief for FFPD, even viewing the record in the light most favorable to Mr. Holt, this Court concludes that Mr. Holt's speech was part of the tasks he was employed to perform, and he spoke not as a citizen, but as a public employee."

Legal Lesson Learned: *Pickering* balancing test led to dismissal of this lawsuit – "interests of public employees in commenting on matters of public concern must be balanced with the employer's interests in promoting the efficiency of the public services."

Note: See Nov. 24, 2023 article, "Federal judge partially dismisses ex-Florissant fire chief's wrongful termination claims. Erik Holt is continuing to pursue his First Amendment retaliation claim against his former employer."
https://www.coloradopolitics.com/courts/federal-judge-partially-dismisses-ex-florissant-fire-chiefs-wrongful-termination-claims/article_7d67c6be-898a-11ee-b97e-7732fa191308.html#google_vignette

See Nov. 7, 2024 Court decision: https://www.govinfo.gov/content/pkg/USCOURTS-cod-1_23-cv-01798/pdf/USCOURTS-cod-1_23-cv-01798-0.pdf

File: Chap. 17 – Arbitration, Union Relations

NH: POLICE & FIRE – CAN'T BE IN SAME UNION IN TOWN

On March 26, 2025, in Appeal Of Town Of Barnstead, (New Hampshire Public Employee Labor Relations Board) the New Hampshire Supreme Court held (4 to 0) that the New Hampshire Public Employee Labor Relations Board (PELRB) improperly certified a bargaining unit comprised of employees from the Town's police and fire departments. "Notwithstanding the PELRB's findings, which derive primarily from the fact that police and fire department employees all work for the Town, we conclude that the record does not support the conclusion that there exists a community of interest in working conditions such that it is reasonable for the employees to negotiate jointly." https://cases.justia.com/new-hampshire/supreme-court/2025-2024-0097.pdf?ts=1742996506

> "The Town argues that the PELRB erred by concluding that the employees in the bargaining unit share a "community of interest" pursuant to RSA 273-A:8, I (2023) and contends that the PELRB's conclusion is contrary to our decision in Appeal of Town of Newport, 140 N.H. 343 (1995). We agree and reverse.
>
> In February 2023, AFSCME Council 93 (AFSCME) filed a petition to certify a bargaining unit consisting of thirteen of the Town's employees in various positions within the police and fire departments: three firefighter-EMTs, two fire rescue captains, one fire rescue lieutenant, one police sergeant, five police officers, and one police secretary. The Town objected, arguing that the duties of the employees in the proposed bargaining unit 'are so dissimilar that they lack the essential community of interest."'See RSA 273-A:8, I. In lieu of a hearing, the parties agreed to submit the case to the PELRB for a decision on the written record.
>
> In September 2023, a PELRB hearing officer issued a decision approving the proposed bargaining unit consisting of fourteen of the Town's employees…. In September 2023, a PELRB hearing officer issued a decision approving the proposed bargaining unit consisting of fourteen of the Town's employees. The PELRB's decision was based, in significant part, upon the fact that employees from both the police and fire departments are subject to the terms and conditions set forth in the Town's personnel policies and procedures manual. Indeed, the Town's personnel manual sets forth uniform fringe benefits and employment policies that apply to the Town's employees, including those from its police and fire departments. However, those policies, procedures, and benefits apply not only to employees of the Town's police and fire departments but to all employees in all departments. We agree with the Town that the "presence of a generally applicable Personnel Policies and Procedures Manual is little more than evidence of a

> common employer." Simply concluding that a community of interest exists because all of the Town's employees follow its employment policies fails to acknowledge differences in organizational structures, duties and responsibilities, and work schedules. If sharing a common employer and common personnel policies were sufficient to establish a community of interest, then there would be no reason to consider other factors."

Legal Lesson Learned: Police and fire have different duties and under NH law should not be in the same collective bargaining unit.

File: Chap. 17 – Arbitration, Union Relations

NY: FDNY - COVID - LEAVE W/O PAY – NO ARBITRABLE

On March 18, 2025, in In The Matter of Uniformed Firefighters Association of Greater New York, Local 94, IAFF, AFL-CIO v. The City of New York, the NY Supreme Court, Appellate Division, First Department, held (5 to 0) that the trial court judge properly upheld the decision of New York City Board of Collective Bargaining (BCB) that the union's grievance regarding placing firefighters on leave without pay (LWOP) was not arbitrable. "The Board rationally found … that there was no 'reasonable relationship between the subject matter of the dispute and the general subject matter of the CBA.'" https://caselaw.findlaw.com/court/ny-supreme-court-appellate-division/117059772.html

> "We reject petitioner's argument that its members who failed to comply with the citywide vaccine mandate were deprived of rights under the regulations of respondent the Fire Department of the City of New York (FDNY). The cited regulation, FDNY regulation § 17.5.1, simply requires employees who want permission to go on special leaves of absence to apply in writing and explain the reasons for their request. It does not prohibit the FDNY from imposing leave in other circumstances, such as where these members fail to satisfy a condition of employment, nor does it address the FDNY's ability to do so….
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> ***
>
> We also reject petitioner's assertion that its unvaccinated members were deprived of their rights to salary and related remuneration under the CBA because they were placed on LWOP. These members' failure to satisfy a condition of employment necessarily renders them unqualified for their position.

Legal Lesson Learned: The CBA does not restrict management from putting firefighters on leave without pay "when these members fail to satisfy a condition of employment."

File: Chap. 18 - Legislation

ID: GOOD SAMARITAN LAW - CAN ARREST FOR WARRANT

On March 19, 2025, in State of Idaho v. Ismiel Emannuel Meeds, the Court of Appeals of Idaho held (3 to 0; unpublished decision) that the states' Good Samaritan law does not protect a person helping an overdose patient from arrest for an outstanding warrant, and the statute also doesn't protect from being charged with bringing drugs into jail after their arrest. The trial court judge did drop charges of possession since this is covered by the Good Samaritan law. "During the booking process, an intake search was conducted and officers found methamphetamine and marijuana concealed in his anal cavity. Meeds was charged with possession, introduction, or removal of certain articles into or from a correctional facility…. Whether prosecution for additional crimes or arrests on outstanding warrants should be prohibited by I.C. § 37-2739C is a matter for the legislature, not this Court." https://isc.idaho.gov/opinions/51312.pdf

> "Meeds filed a motion to dismiss his case under I.C. § 37-2739C (Idaho's good Samaritan law), which provides, in pertinent part, that a person acting in good faith who seeks medical assistance for any person experiencing a drug-related emergency shall not be prosecuted for possession of a controlled substance, using or being under the influence of a controlled substance, or using or possessing with intent to use drug paraphernalia. The district court denied the motion.
>
> ***
>
> [Footnote 1.] Meeds was [also] charged with possession of methamphetamine, possession of marijuana, and possession of drug paraphernalia but those charges were dismissed by the district court pursuant to I.C. § 37-2739C [the Good Samaritan law].
>
> ***
>
> However, I.C. § 37-2739C is plain and unambiguous. It precludes prosecution for three crimes as follows:
>
> > A person acting in good faith who seeks medical assistance for any person experiencing a drug related medical emergency shall not be charged or prosecuted for possession of a controlled substance pursuant to section 37-2732(c) or (e), Idaho Code, for using or being under the influence of a controlled substance pursuant to section 37-2732(a), Idaho Code, or for using or possessing drug paraphernalia pursuant to section 37-2734A(1), Idaho Code, if the evidence for the charge of possession of, or using or being under the influence of a controlled substance or using or possessing drug paraphernalia was obtained as a result of the person seeking medical assistance.
>
> ***
>
> Meeds also argues that his arrest on a warrant was invalid because, again, the intent of protection from prosecution under I.C. § 37-2739C should prevent a good Samaritan from being arrested on an outstanding warrant when seeking medical assistance for a

drug-related medical emergency. This argument does not avail him because nothing in the plain language of I.C. § 37-2739C prohibits arrest on a preexisting outstanding warrant."

Legal Lesson Learned: Court enforced the statute which is "plain and unambiguous."