JULY 2025 – FIRE & EMS LAW NEWSLETTER

[NEWSLETTER IS NOT PROVIDING LEGAL ADVICE.]

Prof. Bennett with his pet therapy dog - FRYE

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GREAT NEWS: NEW FIRE ADMIN / BA DEGREE - STARTING FALL 2025: https://online.uc.edu/certificates/fire-administration/

36 RECENT CASES

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

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Chap. 2 – Line Of Duty Death / Safety

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Chap. 3 – Homeland Security, incl. Active Shooter, Cybersecurity

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U.S. SUP. CT. – PLO CAN BE SUED USA – DEATHS IN ISRAEL

Chap. 4 – Incident Command, incl. Training, Drones, Communications

U.S. SUP. CT: FBI SWAT / WRONG HOUSE – NO IMMUNITY
TX: LASER BLINDED POLICE COPTER – 37-MO IN PRISON
CA: TRAINING CAPT MOVED - $450K / ATTY FEES CUT 30%

Chap. 5 – Emergency Vehicle Operations

Chap. 6 – Employment Litigation, incl. Work Comp., Age, Vet Rights

WA: MILITARY LEAVE - 21 DAYS PAY/ FY – STATE LAW
IL: HEARING LOSS – FF JOB WAS "CONTRIBUTING FACTOR"
WA: MILITARY LEAVE - 21 DAYS PAY/ FY – STATE LAW
MA: FF VOL. RESIGNED – NO RIGHT TO GROUP HEALTH
NV: HEART - 8-YR AFTER RETIRED - TOTAL DISAB PENSION

Chap. 7 – Sexual Harassment, Hostile Workplace, Preg. Discrimination, Gay Rights

U.S. SUP. CT: "STRAIGHT" FEMALE – MGT FAVORED GAYS
OK: 2 FEMALES NOT PROMOTED – NO OUTSIDE PANEL USED
KS: FEMALE NOT PROMOTED - HR DIDN'T REVIEW SCORES

Chap. 8 – Race / National Origin Discrimination

VA: BLACK FF - STATION OIC - LOSS "ACTING OFFICER" PAY
FL: ASIAN RECRUIT – FIRED – CAPT'S RACIAL COMMENTS
NY: RECRUIT HISPANICS / WOMEN – REV. CONSENT DECREE

Chap. 9 – Americans With Disabilities Act

FL: FF PERM. INJURIES – OFF DUTY MVA – NO LIGHT DUTY
U.S. SUP. CT: RETIRE / PARKINSON'S – NO ADA / 2-YR INSUR
NY: COVID – RELIGION EXCEPTION DENIED / FAIR PROCESS
NY: COVID – NO WK TESTING – FDNY "UNDUE HARDSHIP"

Chap. 10 – Family Medical Leave Act, incl. Military Leave

Chap. 11 – Fair Labor Standards Act

OK: SHIFT DIFFERENTIAL – OT RATE - $350K SETTLEMENT
MN: EMS "ON CALL" - 8-MIN RESP. TIME - CLASS ACTION

Chap. 12 – Drug-Free Workplace, inc. Recovery

LA: AMBULANCE DAMAGED – DRUG TEST - COCAINE / METH

Chap. 13 – EMS, incl. Comm. Param., Corona Virus

NY: FDNY / EMS PAY – CAN'T DEPOSE FDNY COMMISSIONER
MO: HIPAA – FF PATIENT - INFO SHARED / NO "CONTRACT"
WV: CO EXPOSURE – DISPATCHERS - NO WILLFUL / WANTON
OH: COMBATIVE PATIENT – PD HANCUFF/ BRAIN - IMMUNITY

Chap. 14 – Physical Fitness, incl. Heart Health

Chap. 15 – Mental Health, incl. CISM, Peer Support

Chap. 16 – Discipline, incl. Code of Ethics, Social Media, Hazing

HI: INVEST OF 2 B/C – PAID SUSP. 6-MO - NOT "DISCIPLINE"
DE: DEP. CHIEF – SEX 15-YR OLD CADET – 35-YRS IN PRISON

TX: CHIEF FIRED – DIDN'T TELL CITY / TESTIFYING FF CASE
NJ: EMS CHIEF / OFFICE ROMANCE SUBORDINATE – FIRED

Chap. 17 – Arbitration, incl. Mediation, Labor Relations

LA: IAFF OFFICER / CAPT. FIRED – CALLED BOARD MEMBERS

Chap. 18 – Legislation

OTHER FREE ONLINE 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, American Legal System / Fire Codes

GA: FIRE MARSHAL – ARRESTED 2 / FIRE EXTIGUISHER CO.

On June 26, 2025, in Karen Diane Wynn Lyle and Lyle Mobile Fire Protection, LLC v. Jerry D. Heath, Jr., individually and in his capacity as Fire Marshal of the City of Hinesville, and the City of Hinesville, the Court of Appeals of Georgia, Third Division, reversed the dismissal of this lawsuit on the basis of governmental immunity, and ordered that pre-trial discovery proceed in this civil lawsuit for malicious prosecution, false arrest, defamation, slander per se, and tortious interference with a business relationship. Karen Lyle is an elementary school teacher, and also worked as a bookkeeper for her late husband (died in 2019), who founded the fire extinguisher company. Starting in September, 2020, Fire Marshal Heath contacted Shane Taylor with the Enforcement Division of the Insurance and Fire Safety Commissioner's Office regarding LMFP and certain improperly tagged fire extinguishers; Mr. Taylor then spoke with both Karen Lyle and employee John Mann about state regulations. [TWO ARRESTS.] On May 4, 2012, the Fire Marshall arrested Ms. Lyle while teaching at her elementary school; and on May 7, 202 he arrested John Mann for "impersonating a fireman" and "failing to abide by fire extinguisher and suppression systems regulations." On Jan. 26, 2023, all charges were dropped. THE COURT HELD: "We therefore vacate the order and remand to more fully develop the factual record, not only as to Heath's status as a municipal or state actor, but also as to the full investigation, which

will bear on the remaining questions as to whether the City or Heath are protected by sovereign or official immunity (or whether the Georgia Tort Claims Act applied), and whether Heath acted with malice and its effect on the application of immunity in this case. Thus, we decline the City's request to apply the sovereign immunity analysis at this time."
https://caselaw.findlaw.com/court/ga-court-of-appeals/117421566.html

The Court wrote:

> "The record shows that Lyle's late husband, Jonathan Lee Lyle, founded LMFP, which sells fire extinguishers and other related products and performed certain maintenance of those extinguishers. Jonathan passed away in 2019. Lyle worked at LMFP as a bookkeeper from that time forward, and John Mann was an employee.
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> The trial court granted the motion to dismiss, finding that OCGA § 25-2-38.1 (a) [immunity statute] protected Heath and the City from liability, and finding that Heath was authorized to arrest Lyle and Mann under OCGA § 25-2-9 (c)[8] as a deputized state officer pursuant to OCGA § 25-2-12.1. Lyle and LMFP appeal.
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> The record also contains narratives from Shane Taylor with the Enforcement Division of the Insurance and Fire Safety Commissioner's Office from September 2020, in which Taylor described speaking with Heath about Heath's concerns regarding LMFP and certain improperly tagged fire extinguishers. Taylor spoke with Lyle, Mann, and several other individuals allegedly connected to LMFP. The report stated that Lyle was working to correct any necessary licensing problems or other errors made by LMFP while performing service on fire extinguishers. The report contained no reference to criminal charges or recommendations for the arrest of Lyle or Mann, but it did list infractions of OCGA § 25-12-1 et seq., and the related Ga. Comp. R. & Regs. r. 120-3-23-.01 et seq. The report makes no reference to Mann posing as a fireman.
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> Instead, Lyle and Mann were arrested for violations for acts regulated under Chapter 12 of Title 25, which provides rules and regulations for people and firms engaged in "the business of installing, inspecting, recharging, repairing, servicing, or testing of portable fire extinguishers or fire suppression systems[.]"
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> Reading OCGA § 25-2-38.1 in context, we do not believe that the legislature intended for any statutory immunity therein to apply to all chapters within Title 25. As stated above, the plain language of the statute supports our construction, providing immunity 'for damages sustained as a result of any fire or related hazard covered in this chapter by reason of any inspection or other action taken or not taken pursuant to this chapter [i.e.,

Chapter 2].' Accordingly, the trial court erred to the extent that it granted immunity to Heath and the City based on the provisions of OCGA § 25-2-38.1."

Legal lesson learned: Very strange set of facts; there must be "more to this story." Pre-trial discovery will now proceed.

File: Chap. 1, American Legal System / Fire Codes

FL: APT FIRE / DEATH – PUNITIVE DAMAGES FOR CODE VIOL

On June 18, 2025, in Menada, Inc., et al. v. Gabriela Arevalo. The Florida Court of Appeals, Third District, held (3 to 0) that family of the adult, blind son who did on the 15th floor of the building with numerous prior code violations by City of Miami Beach, may file a lawsuit seeking punitive damages. City of Miami Beach "Special Master" had previously determined the 15th floor to be unsafe and prohibited any tenants on that floor. The hotel / apartment building had been fined $6.5 million for fire related violations, including the imposition of a daily fine of $1,000.00 for each day of noncompliance starting from April 1, 2018. THE COURT HELD: "The trial court concluded that Arevalo satisfied the punitive damages pleading standard set forth in section 768.72(1), Florida Statutes (2024), which requires 'a reasonable showing by evidence in the record or proffered by the claimant which would provide a reasonable basis for recovery of such damages.' We agree and therefore affirm." https://cases.justia.com/florida/third-district-court-of-appeal/2025-3d23-1625.pdf?ts=1750259354

The Court wrote:

> "The underlying wrongful death action stems from a fire at Seacoast Suites, a multi-story Miami Beach hotel, that resulted in the death of Arevalo's legally blind adult son. Menada owns and operates Seacoast, and Meruelo was Menada's sole shareholder when the fire occurred. At all relevant times, Arevalo and her son were long-term tenants at Seacoast.
>
> ***
>
> "The trial court concluded that Arevalo satisfied the punitive damages pleading standard set forth in section 768.72(1), Florida Statutes (2024), which requires 'a reasonable showing by evidence in the record or proffered by the claimant which would provide a reasonable basis for recovery of such damages.' We agree and therefore affirm.
>
> ***
> According to the operative Complaint, the Defendants engaged in intentional misconduct and gross negligence due to 'flagrant and persistent violations of applicable fire safety codes and orders of governing authorities.' The Complaint traces the history of these violations from 1998, when Seacoast was cited for operating without fire sprinklers, to

the present. The Complaint alleges that Seacoast ignored numerous administrative orders requiring it to install fire sprinklers, implement a fire watch, and warning that the 15th floor, where the fire occurred, was not fire safe. This disregard for the administrative orders resulted in millions of dollars in fines."

Legal lesson learned: Tenant's death, with fire code violations, will now proceed to a jury trial that could impose punitive damages. Insurance does not cover punitive damages in Florida, which is similar to many states.

Note: See the Concurring Opinion by Judge Monic Gordo – "SHOCK THE CONCIOUS."

"In my view, this case presents a perfect example of the kind of allegations that, if proven to be true, not only shock the conscience but are likely to merit punitive damages. The proffer by the plaintiff in this case included evidence that the appellants:

• Engaged in fire safety violations that date back decades and which continued through the date of the subject fire resulting in repeated fines and reprimands from authorities;

• Have been fined at least $6.5 million for fire related violations, including the imposition of a daily fine of $1,000.00 for each day of noncompliance starting from April 1, 2018 through the date of the subject fire;

• Failed to meet their own submitted compliance deadlines and the City of Miami Beach's compliance deadlines to install legally required sprinklers in all units on multiple floors, including the unit where the appellants moved the plaintiff and the decedent;

• Implemented a life-threatening policy whereby security guards and employees were instructed and required to acknowledge and then silence fire alarms immediately upon them sounding;

• Specifically and consciously placed the decedent, who was legally blind, in a unit on the fifteenth floor—a floor the City of Miami Beach Special Master had previously determined to be unsafe and on which the appellants were prohibited from placing tenants;

• Specifically and consciously placed the decedent in a unit on the fifteenth floor which lacked, among other things: (1) fire sprinklers, (2) the minimum number of code-compliant smoke alarms and/or detectors, (3) code-compliant smoke alarms and/or detectors (the subject smoke detection device expired in 2005) and (4) adequately maintained standpipes which provide a water supply; and

• Continued to conduct hotel operations in violation of applicable codes, laws and administrative orders."

File: Chap. 2, LODD / Safety

KY: TRAIN DERAIL. - CSX "LIED" / SULFOR DIOXIDE – FF SUE

On June 16, 2025, in Shannon Franklin, et al. v. CSX Transportation, Inc. et al., U.S. District Court Judge Gregory F. Van Tatenhove, United States District Court for Eastern District of Kentucky, Southern Division / London, held that the "Fireman's Rule" does not prohibit firefighters suffering from respiratory issues from suing CSX for November 22, 2023 train derailment in Rockcastle County, Kentucky, but they must prove "willful and wanton misconduct" by CSX (lied about contents being "food grade" non-hazardous). Other claims, such as negligence, and "medical monitoring" were dismissed. THE COURT HELD: Plaintiffs suggest that the Firefighter's Rule is inapplicable in this case because they allege that CSX intentionally mislead responders by telling them the railroad cars 'were carrying substances that were food grade.' … They suggest that the Firefighter's Rule applies only to negligent conduct and not harms 'resulting from gross negligence, or reckless or intentional conduct.'… The Court agrees." https://cases.justia.com/federal/district-courts/kentucky/kyedce/6:2024cv00173/106630/18/0.pdf?ts=1750154108

The Court wrote:

> "On November 22, 2023, a train derailed in Rockcastle County, Kentucky. [R. 1-2 at 2.] A number of train cars operated by CSX were part of that derailment—two of them contained molten sulfur, three contained magnesium hydroxide, and an empty container had previously held methanol. Id. at 3. CSX initially told first responders 'that there was nothing to worry about, as the cars were carrying substances that were food grade.' Id. at 6. Alas that was untrue, and the Plaintiffs and other emergency responders worked through the night to extinguish flames caused by the molten sulfur.
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> Sulfur dioxide is a colorless gas with a pungent odor and exposure can cause: irritation of mucous membranes, including the throat, esophagus, and eyes; reflex cough; an increase in respiratory rate associated with decrease in depth of respiration; a decrease in nasal mucus flow; variable effects on tracheal and bronchial mucus flow; a decrease in forced expiratory volume and flow; a decrease in airway conductance; and an increase in airway resistance. Id. As a result of this exposure, the Plaintiffs – uniformly first responders who worked to extinguish the blaze following the derailment – all suffer various physical ailments such as sore throats, trouble breathing, headaches, and respiratory infections.
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> ***
> While Kentucky law in this area is underdeveloped, Kentucky courts have refused to apply the Firefighter's Rule to harm resulting from negligence greater than ordinary

negligence. Pedigo v. Raley, No. 18-CI-000529, 2019 WL 13252597 at *2-3 (Ky. Cir. Ct. May 21, 2019) (Bisig, J.). As discussed in greater detail below, see infra Section II.C.3, the Plaintiffs have plausibly pleaded a claim for willful and wanton negligence due to CSX's initial misleading statement that the cars contained only food grade substances. Such a misrepresentation may have exposed the Plaintiffs to significant and avoidable danger, a departure from the facts of Fletcher (which would otherwise control here) and from the policy considerations underlying the Firefighter's Rule more generally.

***

While the Plaintiffs' negligence claim is barred by the Firefighter's Rule and will be dismissed, their willful and wanton conduct claim is not thus barred and may proceed."

Legal lesson learned: When responding to a train enrollment, confirm contents not only with train company but also by reading the hazardous material placards on the leaking train cars.

File: Chap. 2, LODD / Safety

NJ: BEARD - AIR MASK TECH – WHEN DID NO FIREFIGHTING

On May 30, 2025, in Alexander Smith v. City of Atlantic City, et al., the U.S. Court of Appeals for Third Circuit (Philadelphia), held (2 to 1) that a firefighter may proceed with his lawsuit for failure to accommodate his request to wear a beard for religious reasons, but not his claim of retaliation. He last fought a fire in 2015 and then became FD's full time Air Mask Technician – and duties included bringing the Air Truck to structure fires and changing out SCBAs. He like other "administrative" firefighters were not required to take annual fit testing. In Dec. 2018 he submitted an accommodation request to wear a beard for religious reasons; that was denied, he was ordered to no longer respond to structure fires and he filed this lawsuit. In 2020, all "administrative" firefighters were required to pass annual fit testing. On Aug. 4, 2020, Hurricane Isaias hit New Jersey and all off duty personnel. He was assigned to Engine 23, but he refused to respond (turned out there were no structure fire, but numerous other runs); the City charged Smith with insubordination and suspended him for forty days, including twenty without pay. THE COURT HELD: "The City could remove Smith from fire suppression duty as it did before 2020 or reclassify him as a civilian who is not subject to the SCBA and grooming policies. It could, as a simple fix, at least try and fit test Smith with facial hair to see if his facial hair, at any length, would interfere with the SCBA to a point that creates the risk of air leakage that the City fears. See Potter v. District of Columbia, 382 F. Supp. 2d 35, 38 (D.D.C. 2005) (Muslim employee seeking exception passed fit test with beard). There are likely more solutions than these three, but 'so long as the government can achieve its interests in a manner that does not burden religion, it must do so.' Fulton, 593 U.S. at 541. Because the policy fails strict scrutiny, we will vacate the District Court's judgment."

https://cases.justia.com/federal/appellate-courts/ca3/23-3265/23-3265-2025-05-30.pdf?ts=1748624416

The Court wrote:

> "Alexander Smith is a Christian who works for the Atlantic City Fire Department. The City prohibits Smith from growing a beard of any length, contrary to his religious beliefs.
>
> ***
> But Smith has not fought a fire since 2015. He has not been fit tested for an SCBA since then, either.
>
> ***
> Smith believes men should grow and maintain beards based on the teachings of Holy Scripture and early Christian theologians. Beards, Smith says, emulate Jesus Christ and the biblical prophets; they are symbols of masculinity, maturity, and man's natural role as "head and leader." J.A. 186–88.2 Smith began to grow a beard in December 2018 and submitted an accommodation request the next month asking that he 'continue to wear [his] beard.'
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> After the City denied his accommodation, Smith sued alleging violations of the Free Exercise Clause, the Equal Protection Clause, and Title VII's accommodation and anti-retaliation provisions…. The City moved for summary judgment. The District Court granted the City's motion and Smith timely appealed.
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> ***
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> Smith has a likelihood of success on the merits, because a plaintiff 'need only prove a prima facie case.' Highmark, Inc. v. UPMC Health Plan, Inc., 276 F.3d 160, 173 (3d Cir. 2001). Given the overlap between Smith's free-exercise and Title VII accommodation claims, the latter of which require a prima facie case, he meets the standard for relief.
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> ***
> In failing to subject administrative employees to fit testing, the City has permitted certain kinds of conduct that undermine its interest while disfavoring religious conduct undermining the same interest."

Dissent:

> "Given that the Grooming Standards are facially neutral and were applied equally to both religiously-motivated and secularly-motivated requests for accommodation, the lapses in fit-testing do not reflect a subjective intent by the City to discriminate and the policy is neutral."

Legal lesson learned: This decision has limited precedent; most fire departments require annual fit testing for all firefighters.

> Note: See this article, "Jersey Shore firefighter wins court battle over growing beard on religious grounds." https://www.nj.com/atlantic/2025/06/jersey-shore-firefighter-wins-court-battle-over-growing-beard-on-religious-grounds.html?mc_cid=2cb6755cd5&mc_eid=cbaa4ade01

File: Chap. 3, Homeland Security

U.S. SUP. CT – DEPORTATION 3rd COUNTRIES – NO INJUCT.

On June 23, 2025, in Department of Homeland Security, et al. v. D.V.D., et al, the U.S. Supreme Court (7 to 2; Court Order – no Opinion) has set aside orders by U.S. District Court Judge Brian E. Murphy, Boston, of March 28, 2025 (temporary restraining order) and April 18, 2025 (preliminary injunction) against deporting some illegal aliens to South Sedan, since their home countries refused to accept them. THE COURT HELD: "The April 18,2025, preliminary injunction of the United States District Court for the District of Massachusetts, case No. 25–cv–10676, is stayed pending the disposition of the appeal in the United States Court of Appeals for the First Circuit and disposition of a petition for a writ of certiorari, if such writ is timely sought. Should certiorari be denied, this stay shall terminate automatically. In the event certiorari is granted, the stay shall terminate upon the sending down of the judgment of the Court." https://www.supremecourt.gov/opinions/24pdf/24a1153_l5gm.pdf

Two Dissenting Justices - Justice Sonia Sotomayor opinion, joined by Justice Elena Kagan:

> "In matters of life and death, it is best to proceed with caution. In this case, the Government took the opposite approach. It wrongfully deported one plaintiff to Guatemala, even though an Immigration Judge found he was likely to face torture there. Then, in clear violation of a court order, it deported six more to South Sudan, a nation the State Department considers too unsafe for all but its most critical personnel. An attentive District Court's timely intervention only narrowly prevented a third set of unlawful removals to Libya.
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> The Government thus openly flouted two court orders, including the one from which it now seeks relief. Even if the orders in question had been mistaken, the Government had a duty to obey them until they were 'reversed by orderly and proper proceedings.' Maness, 419 U. S., at 459 (quoting United States v. Mine Workers, 330 U. S. 258, 293 (1947)). That principle is a bedrock of the rule of law. The Government's misconduct threatens it to its core.
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> By rewarding lawlessness, the Court once again undermines that foundational principle. Apparently, the Court finds the idea that thousands will suffer violence in far flung locales more palatable than the remote possibility that a District Court exceeded its

remedial powers when it ordered the Government to provide notice and process to which the plaintiffs are constitutionally and statutorily entitled. That use of discretion is as incomprehensible as it is inexcusable. Respectfully, but regretfully, I dissent."

Legal lesson learned: The majority of the Justices have now, at least temporarily, allowed deportation to third countries; at least until the 1st Circuit decides the case.

Note:

Here is the Injunction that was set aside in this case. On May 21, 2025, Judge Murphy issued an ORDER ON REMEDY FOR VIOLATION OF PRELIMINARY INJUNCTION.

> "Each of the six individuals must be given a reasonable fear interview in private, with the opportunity for the individual to have counsel of their choosing present during the interview, either in-person or remotely, at the individual's choosing. Each individual must be afforded access to counsel that is commensurate with the access that they would have received had these procedures occurred within the United States prior to their deportation, including remote access where in-person access would otherwise be available. Each individual must also be afforded the name and telephone number of class counsel, as well as access to a phone, interpreter, and technology for the confidential transfer of documents that is commensurate with the access they would receive were they in DHS custody within United States borders."
> https://storage.courtlistener.com/recap/gov.uscourts.mad.282404/gov.uscourts.mad.282404.119.0_1.pdf

See also the June 23, 2025 Press Release: The U.S. Department of Homeland Security announcement it will immediately resume deportation flights – "*Fire up the deportation planes."* https://www.supremecourt.gov/opinions/24pdf/24a1153_l5gm.pdf

BREAKING NEWS: "Universal injunctions" by Federal District Court judges have now been struck down by U.S. Supreme Court. The U.S. Supreme Court on June 26, 2025 stayed national-wide so-called "universal injunctions by three Federal District Court judges in MA, WA, MA in a case challenging President Trump's executive order on citizenship by birth in United States. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL. v. CASA, INC., ET AL. The Court (6 to 3) held that "These injunctions—known as 'universal injunctions'—likely exceed the equitable authority that Congress has granted to federal courts. We therefore grant the Government's applications to partially stay the injunctions entered below."
https://www.supremecourt.gov/opinions/24pdf/24a884_8n59.pdf

File: Chap. 3, Homeland Security

U.S. SUP. CT. – PLO CAN BE SUED USA – DEATHS IN ISRAEL

On June 20, 2025, in Miriam Fuld, et al. v. Palestine Liberation Organization, et al., the U.S. Supreme Court held (9 to 0) that Congress did not violate 5th or 14th Amendments when enacting statutes giving American citizens injured or killed in Israel the right to sue PLO in U.S. District Courts, with triple damages. The Court reinstated two lawsuits, both of which were dismissed by lower federal courts for "lack of personal jurisdiction" because the killings occurred in Israel, not in the United States. THE COURT HELD: "Of particular salience here, we have also recognized the National Government's interest in holding accountable those who perpetrate an 'act of violence against' U. S. nationals—who, even when physically outside our borders, remain 'under the particular protection' of American law." https://www.supremecourt.gov/opinions/24pdf/24-20_f2bh.pdf

The Court wrote (opinion by Chief Justice John Roberts):

> "The first was brought by a group of American citizens (and their estates and survivors) injured in terror attacks in Israel. It was filed in 2004 in the United States District Court for the Southern District of New York….The case went to trial, and in 2015 a jury found respondents liable under the ATA. The jury awarded the plaintiffs $218.5 million in damages, which was trebled to $655.5 million. *** [The PLO and the Palestine Authority, operating as governments in West Bank and Gaza Strip] are 'sophisticated international organizations' that operate 'billion-dollar budgets' and 'govern a territory recognized as a sovereign state by many other countries.' …. They maintain embassies, missions, and delegations around the world and a longstanding 'presence in the United States which continues to this day.
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> As part of its comprehensive legal response to international terrorism, Congress also enacted the Antiterrorism Act of 1990 (ATA), §132, 104 Stat. 2250–2252, 18 U. S. C. §2331 et seq.; see H. R. Rep. No. 102–1040, p. 5 (1992). The ATA creates a civil treble damages cause of action for any U. S. national injured or killed "by reason of an act of international terrorism." §2333(a); see also §2333(d)(2) (permitting aiding and abetting liability). The ATA provides for nationwide service of process and venue and exclusive jurisdiction in federal courts. §§2334(a), 2338.
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> ***
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> Congress's enactment in December 2019 of the law at issue here: the Promoting Security and Justice for Victims of Terrorism Act (PSJVTA), §903, 133 Stat. 3082–3085, 18 U. S. C. §§2333, 2334.
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> ***
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> Under the PSJVTA's now operative provision, which refers to the PA and PLO by name, respondents 'shall be deemed to have consented to personal jurisdiction' in ATA cases in two specified circumstances. §§2334(e)(1), (5). The first jurisdictional predicate relates to

respondents' practice 'of paying salaries to terrorists serving in Israeli prisons, as well as to the families of deceased terrorists'— conduct which Congress has condemned as 'an incentive to commit acts of terror.' … The PSJVTA's second predicate ties jurisdiction to respondents' activities on U. S. soil.

***

So too the National Government's corresponding authority to make 'the killing of an American abroad' punishable as a federal offense 'that can be prosecuted in [U. S.] courts.' Ibid. (citing 18 U. S. C. §2332(a)(1)); see also Art. I, §8, cl. 10 (giving Congress power to 'define and punish' certain extraterritorial offenses). Indeed, that background context informed the enactment of the ATA, which legislators hoped would 'ope[n] the courthouse door to victims of international terrorism' by 'extend[ing] the same jurisdictional structure that undergirds the reach of American criminal law to the civil remedies that it defines.' S. Rep. No. 102–342, p. 45 (1992)."

Legal lesson learned: Collecting the damages against PLO will still be a challenge unless PLO assets can be found in USA.

File: Chap. 4, Incident Command

U.S. SUP. CT: FBI SWAT / WRONG HOUSE – NO IMMUNITY

On June 12, 2025, in Curtina Martin, individually and next friend of G.W., a minor, et al. v. United States, et al., the United States Supreme Court held (9 to 0) that lawsuit should be reinstated to allow plaintiffs to sue the Federal government if there is proof of "intentional tort" by the FBI in the October 18, 2017 FBI / SWAT Team raid on wrong house. The U.S. District Court judge and the 11th Circuit (Atlanta) dismissed the lawsuit on basis of the immunity doctrine of "discretionary function." The U.S. Supreme Court reviewed legislative history of the Federal Tort Claims Act where Congress in 1974 amended the FTCA because of another "wrong address" raid – April 1973, Herbert and Evelyn Giglotto awoke in their Collinsville, Illinois, townhouse 15 state and federal officers. The Federal Tort Claims Act was amended by Congress by adding the "law enforcement proviso" allowing lawsuits for Federal investigative or law enforcement agents who commit any of six intentional torts, including: assault, battery, false imprisonment, and false arrest, abuse of process, malicious prosecution. So long as the officer is acting within the scope of his or her employment at the time the tort arises, the waiver of sovereign immunity applies. THE COURT HELD: "Where does all that leave the case before us? We can say this much: The plaintiffs' intentional-tort claims survive their encounter with subsection (h) thanks to the law enforcement proviso, as the Eleventh Circuit recognized. But it remains for that court on remand to consider whether subsection (a)'s discretionary-function exception bars either the plaintiffs' negligent- or intentional-tort claims."
https://www.supremecourt.gov/opinions/24pdf/24-362_mjn0.pdf

The Court wrote (opinion by Justice Neil Gorsuch):

> "In the predawn hours of October 18, 2017, the Federal Bureau of Investigation raided the wrong house in suburban Atlanta. Officers meant to execute search and arrest warrants at a suspected gang hideout, 3741 Landau Lane. Instead, they stormed a quiet family home, 3756 Denville Trace, occupied by Hilliard Toi Cliatt, his partner Curtrina Martin, and her 7-year-old son G. W. … A six-member SWAT team, led by FBI Special Agent Lawrence Guerra, breached the front door and detonated a flash-bang grenade…. . Fearing a home invasion, Mr. Cliatt and Ms. Martin hid in a bedroom closet…. But the SWAT team soon found the couple's hiding spot, dragged Mr. Cliatt from the closet, 'threw [him] down on the floor,' handcuffed him, and began 'bombarding [him] with questions.' … Meanwhile, another officer trained his weapon on Ms. Martin, who was lying on the floor half-naked, having fallen inside the closet…. Only then did another officer stumble across some mail with the home's address on it and realize the team had the wrong house.
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> The cause of the officers' mistake? In preparation for the raid, Agent Guerra visited the correct house to document its features and identify a staging area for the SWAT team…. But, he says, when he used his personal GPS to navigate to 3741 Landau Lane on the day of the raid, it led him to 3756 Denville Trace…. No one could confirm as much later because Agent Guerra 'threw . . . away' his GPS device 'not long after' the raid…. And it seems the agents neither noticed the street sign for 'Denville Trace,' nor the house number, which was visible on the mailbox at the end of the driveway…. Apparently, too, Agent Guerra failed to appreciate that a different car was parked in the driveway, one 'not present . . . during [his] previous visit.
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> ***
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> [11th Circuit] dismissed the plaintiffs' negligence claims under the discretionary-function exception because, in its view, Agent Guerra 'enjoyed discretion in how he prepared for the warrant execution.' … And on the merits of the plaintiffs' (remaining) intentional-tort claims, the court held that the government had a winning Supremacy Clause defense. As a result, the Eleventh Circuit concluded, the United States was entitled to summary judgment."

Concurring opinion by Justice Sonia Maria Sotomayor:

> "Agent Guerra's preparation to execute search and arrest warrants at 3741 Landau Lane, and his subsequent decision to raid Martin and Cliatt's home at 3756 Denville Trace, bear some resemblance to *Gaubert's* negligent driving hypothetical. Like driving, executing a warrant always involves some measure of discretion. Yet it is hard to see how Guerra's conduct in this case, including his allegedly negligent choice to use his personal GPS and his failure to check the street sign or house number on the mailbox before breaking down Martin's door and terrorizing the home's occupants, involved the kind of policy judgments that the discretionary-function exception was designed to protect.
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> ***

> The FTCA's history, too, confirms Congress's intention to subject the United States to liability for intentional torts committed by law enforcement officers like Agent Guerra."

Legal lesson learned: Similar to FTCA, many states have statutes waiving their sovereign immunity for "intentional torts" by law enforcement and other public employees.

> Note: See more on the "law enforcement proviso" – "The Federal Tort Claims Act (FTCA): A Legal Overview." https://www.congress.gov/crs-product/R45732

File: Chap. 4, Incident Command / Drones

TX: LASER BLINDED POLICE COPTER – 37-MO IN PRISON

On June 5, 2025, in United States of America v. Sandra Roberson, the United States Court of Appeals for the Fifth Circuit (New Orleans) held (3 to 0) that sentence was appropriate; the defendant had plead guilty to Federal offense. On November 3, 2023, at approximately 10:20 p.m., two San Antonio Police Department officers were travelling via police helicopter to support other officers responding to a shooting call. In the police helicopter, when an intense green laser began persistently striking the helicopter causing temporary flash blindness. THE COURT HELD: "In sum, because her arguments are entirely contradicted by the record evidence, we are unconvinced that Roberson was not subjectively aware of the risk posed to the police helicopter when she continuously struck it with a laser for at least five minutes, forcing it to abruptly divert its path." https://cases.justia.com/federal/appellate-courts/ca5/24-50970/24-50970-2025-06-05.pdf?ts=1749144644

The Court wrote:

> "Sandra Roberson pleaded guilty to a single count of aiming a laser pointer at an aircraft in violation of 18 U.S.C. § 39A. After assigning an elevated base offense level on grounds that Roberson's offense involved the reckless endangerment of the safety of an aircraft under U.S.S.G. § 2A5.2(a)(2), the district court sentenced Roberson to 37 months' imprisonment. Roberson now appeals her sentence. For the following reasons, we AFFIRM.
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> On November 3, 2023, at approximately 10:20 p.m., two San Antonio Police Department ('SAPD') officers were travelling via police helicopter to support other SAPD patrol officers that were responding to a shooting call. In the police helicopter, one SAPD officer served as the pilot and the other served as a tactical flight officer ("TFO"). As the officers in the police helicopter were flying within the airspace of Kelly Field, an intense green laser began persistently striking the helicopter. According to the TFO, the laser continuously struck the helicopter for a period of between five and ten minutes and was so intense that it illuminated the entire cockpit. As a result, the laser caused the pilot to

experience temporary flash blindness and the officers were forced to take evasive action by abruptly steering the helicopter away to escape the laser, losing their ability to safely respond to the shooting call.

The laser continued to follow and strike the helicopter as it diverted course, so the TFO used an infrared camera, along with an onboard daylight camera, to locate the source of the laser. The TFO determined that the laser was coming from a location where a group of three individuals were sitting along a wall outside of a gas station on Bandera Road. Because the laser continuously struck the helicopter from the same location, the TFO was able to guide SAPD officers on the ground to that location and Roberson was identified as the individual striking the helicopter with the laser pointer.

Roberson was handcuffed and detained for questioning. After she was given her Miranda rights,1 Roberson agreed to speak with the officers. She admitted to shining the laser but claimed she believed the object that she was striking with the laser was a drone. When officers informed Roberson that she had been striking an SAPD helicopter with the laser, she acknowledged that her actions were wrong and apologized.

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On appeal, Roberson argues that the district court reversibly erred by applying the elevated base offense level of 18 for recklessly endangering the safety of an aircraft. She contends that reckless endangerment requires subjective awareness of a risk that is then disregarded but the government failed to present evidence on her state of mind as to whether she knew that pointing a laser at an aircraft could endanger it. She reiterates that she thought the aircraft was a drone but even if she knew it was a helicopter, 'that does not support the inferential leap that she was subjectively aware that she was endangering the aircraft.'"

Legal lesson learned: Pointing a laser at a helicopter or other aircraft is incredibly dangerous.

Note: The Court noted that the defendant, age 60 at the time of the offense, had quite a criminal record.
"As her PSR [Pre Sentence Report] plainly indicates, she has an extensive record of nearly three dozen prior arrests and/or convictions (33 total) spanning four decades (1983–2024), resulting in a staggering criminal history category of V—the second highest available under the Guidelines."

See also the U.S. Department of Justice Press Release; "San Antonio Woman Sentenced to Prison for Endangering SAPD Helicopter with Laser. https://www.justice.gov/usao-wdtx/pr/san-antonio-woman-sentenced-prison-endangering-sapd-helicopter-laser

File: Chap. 4, Incident Command / Training

CA: TRAINING CAPT MOVED - $450K / ATTY FEES CUT 30%

On May 30, 2025, in Michael Cash v. County of Los Angeles, the Court of Appeal, Second District, California, held (3 to 0) that after a jury awarded Captain $450,000 when he was removed from the LA County training academy after complaining about female recruit not being terminated, the trial court judge also properly awarded the Captain attorney fees, reduced by 30% when County asserted that the attorneys' hours were padded. It took 5 years of litigation, and 20-day jury trial to get to a jury verdict ($705,730 fee request; $455,546 awarded). THE COURT HELD: "Before a hearing to consider the amount of attorney fees to award, the trial court issued a tentative ruling adopting wholesale the County's across-the-board 30 percent reduction. The trial court did not abuse its discretion in doing so. Under the traditional California standard, across-the-board, percentage-based reductions to a lodestar figure are appropriate so long as the trial court articulates a justifiable reason for the reduction. (Morris, supra, 41 Cal.App.5th at p. 35, fn. 6, 253 Cal.Rptr.3d 592.) Here, the trial court imposed the 30-percent reduction due to padding as a result of the attorneys' excessive and duplicative billing."
https://caselaw.findlaw.com/court/crt-app-sec-dis-cal-div-fiv/117326152.html

The Court wrote:

> "In 2017, Michael Cash (plaintiff) worked as a captain in the Los Angeles County Fire Department (the Department) and also served as a training captain for the Department's training academies. When plaintiff complained to the Department's battalion chief of training that the chief should have terminated a female recruit for failing a test that ordinarily results in automatic termination from a training academy, plaintiff was removed as a training captain in future academies.
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> The matter proceeded to a 20-day jury trial in the spring of 2023. The jury found for plaintiff on all three claims and awarded him $450,000.
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> The County filed a motion for judgment notwithstanding the verdict (JNOV) or, alternatively, for a new trial. After a round of briefing, which included an opposition from plaintiff that included 28 exhibits encompassing 385 pages, the trial court denied the motion.
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> Cash ultimately requested $735,310 in attorney fees for prevailing in the litigation against the County. Submitted with his requests for attorney fees were declarations and 102 pages of accompanying billing statements identifying the hours of work done in the litigation and the hourly rates for the attorneys and paralegals involved.
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> ***

> The County argued that '[b]ecause [Cash]'s attorneys' inefficient tactics are a clear effort to pad the bills, in addition to reducing specific time entries as discussed herein, a negative multiplier should be applied to the fee award overall, and a 30% reduction in the award is justified on this basis alone.'"

Legal lesson learned: Many states have enacted civil rights statutes allowing courts to award reasonable attorney fees to the winning plaintiff; it is an "incentive" for employment attorneys to pursue often difficult, lengthy cases.

File: Chap. 6, Employment Litigation / Worker's Comp

IL: HEARING LOSS – FF JOB WAS "CONTRIBUTING FACTOR"

On June 27, 2025, in The Village of Schaumburg v. The Village of Schaumburg Firefighters' Pension Fund, and Phillip Reid, et al., the Court of Appeals of Illinois, First District, Sixth Division held (3 to 0) that the Pension Board, upon order of Circuit Court judge, properly reconsidered their previous denial of the duty caused injury pension, and awarded the improved pension. Phillip Reid served 32 years as a firefighter, and part-time at another fire department. He developed hearing loss in 2009 and began wearing hearing aids. In January 2017, he applied for a line-of-duty disability pension and retired, claiming that the noise from his job as a Village firefighter caused his hearing loss. THE COURT HELD: "The record supports the Board's conclusion that Ried suffered from a hearing loss disability and his duty-related activities were a contributing or exacerbating factor. We do not reweigh the evidence or independently assess the facts…. Thus, the Board's decision to grant Ried a line of duty disability pension was not against the manifest weight of the evidence." **https://ilcourtsaudio.blob.core.windows.net/antilles-resources/resources/b97cd9d5-bd7a-4b80-8ae7-ba3200915f21/Village%20of%20Schaumburg%20v.%20VoS%20Firefighters%E2%80%99%20Pension%20Fund%202025%20IL%20App%20(1st)%20241764.pdf**

The Court wrote:

> "Phillip Ried began his career as a firefighter and paramedic with the Village of Schaumburg Fire Department in 1985. He also worked part-time as a firefighter for the McHenry Township Fire Protection District, starting in 1996. He continued both roles until 2016. In 2009, Ried was diagnosed with hearing loss and began wearing hearing aids. In January 2017, he applied for a line-of-duty disability pension, claiming that the noise from his job as a Village firefighter caused his hearing loss. Ried retired in 2017 while his disability application was pending.
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> Ried testified about the tools and equipment he used throughout his career, including power saws, chain saws, and air compressors. He said he averaged 500 runs a year and that, in 1999, the protocol in the fire department was to respond to calls with lights and sirens activated.

***

The [Circuit Court judge] noted that three of the four experts found that even if noise exposure was not the primary cause, it constituted a causative factor; the Board had improperly disregarded Dr. Lieberman's testimony and given undue weight to Dr. Horwitz's testimony, given that he did not have the 1995 audiogram that caused Dr. Lieberman to change his opinion."

Legal lesson learned: It was a classic "battle of the experts." Many states have enacted a "statutory presumption" that certain illnesses, such as cancer and heart disease, are caused by the job to avoid these types of extended legal battles.

Note: See Illinois House Bill 3392 (filed 2023) seeking to include hearing loss to the list of diseases for which certain firefighters may be eligible for an occupational disease disability pension.
https://www.ilga.gov/legislation/BillStatus.asp?DocNum=3392&GAID=17&DocTypeID=HB&LegId=148558&SessionID=112&GA=103

File: Chap. 6, Employment Litigation

WA: MILITARY LEAVE - 21 DAYS PAY/ FY – STATE LAW

On June 26, 2025, in Travis Bearden v. City of Ocean Shores, et al., the Supreme Court of Washington held (en banc; all 9 Justices) held that under State law firefighters and other public employees are entitled to 21 days of paid leave when on Reserve or Active duty during each military fiscal year. Firefighter Travis Bearden has filed a lawsuit in federal court under USERRA when he was not paid the 21 days while on Active duty in Army Reserve for 273 days (August 2020-May 2021) and was therefore not scheduled to work at the fire department. The State Supreme Court responded to a question for the U.S. Court of Appeals for the 9th Circuit (San Francisco) confirming he is entitled to the 21 days paid leave under state law. THE COURT HELD: "According to the city's reading of the statute, employers would not have to pay paid military leave at all because once they know an employee will be absent, they would not place them on the schedule. That cannot be what the legislature intended when it provided that service members are entitled to and granted military leave that must be charged to days they are scheduled to work. No rational employer would schedule an employee to work when they know that employee would not be present and, therefore, no employee could ever claim the paid military leave to which they are entitled under RCW 38.40.060."
https://cases.justia.com/washington/supreme-court/2025-103-121-1.pdf?ts=1750950890

The Court wrote:

"Travis Bearden began working as a firefighter and paramedic for the city of Ocean Shores in 2007. He joined the U.S. Army Reserves in 2013.

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[PAID – 2013 FY] Bearden similarly received paid military leave for training between summer 2013 and spring 2014. During that time, the city paid Bearden for 21 days of paid military leave for workdays in July through September 2013, which were attributed to the October 2012-September 2013 military fiscal year.

***

[PAID – 2014 FY] Then, between October 1 and December 5, 2013, Bearden took an additional 21 days of paid military leave, presumably attributed to the October 2013-September 2014 military fiscal year. After that, Bearden exhausted his available accrued leave, and the city placed him on unpaid military leave of absence status until he returned in March 2014.

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[PAID – 2019 FY LEAVE.] In October 2019, Bearden submitted to the city military orders requiring him to report for annual training from October 16 to October 30, 2019 (the first leave).

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[PAID – 2020 FY] Next, he submitted additional orders to report for 'active duty for training' for the next nine months, from November 5, 2019, to August 27, 2020 (the second leave).

***

During Bearden's first and second leave, 'he was kept on the schedule and provided paid military leave for his scheduled work days. He then used his own accrued leave . . . to remain on the schedule in a paid status until February 13, 2020 when all paid leave was exhausted.' … In February 2020, the city informed Bearden it had placed him on 'leave without pay status.'

***

[NOT PAID – ON ACTIVE DUTY] (August 2020-May 2021): While away during the second leave, Bearden submitted additional orders to report for active duty at the end of August 2020 for a period of 273 days, ending in May 2021 (the third leave). When the next military fiscal year began in October 2020 and Bearden was still away serving under the third leave orders, he expected to receive another 21 days of paid military leave. He e-mailed the fire chief to inquire why he had not yet received military leave pay beginning on October 1, 2020.

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A human resources specialist responded to Bearden, explaining that as of November 5, 2019, he was 'on a Military Leave of Absence' and he had 'no scheduled work days with the City of Ocean Shores Fire Department.' … The city believed Bearden had 'no paid military leave' at that point because he had no scheduled shifts with the fire department.

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[T]he statute must be interpreted consistent with its overall purpose, which is to provide a benefit to military service members in public employment…. This paid leave is 'in addition to any vacation or sick leave to which the officer or employee might otherwise be entitled, and shall not involve any loss of efficiency rating, privileges, or pay.' RCW 38.40.060(2). The purpose of the statute is to provide a benefit for public employees for their military service.

***

RCW 38.40.060 entitles all public employees who serve in the military to 21 days of paid military leave during each military fiscal year, without distinguishing between reserve or active duty service and without any limitation on the duration to the military service."

Legal lesson learned: Hopefully the City will not settle his USERRA lawsuit in Federal Court, pay his lost reimbursement and his attorney fees.

Note: See U.S. Department of Labor – "A Guide to the Uniformed Services Employment and Reemployment Rights Act."
https://www.dol.gov/agencies/vets/programs/userra/USERRA-Pocket-Guide#ch21

"Awards of attorney fees, expert witness fees, and other litigation expenses to successful plaintiffs who retain private counsel may be made at the court's discretion."

File: Chap. 6, Employment Litigation

MA: FF VOL. RESIGNED – NO RIGHT TO GROUP HEALTH

On June 18, 2025, in Michael Cannata v. Town of Mashpee, the Supreme Judicial Court of Massachusetts, Barnstable held (7 to 0) that the trial court properly granted the Town's motion to dismiss; the firefighter voluntarily resigned in 2004 after 10 years on the fire department and did not elect to continue paying for group health insurance. When he reached age 55 in 2021, the Town had no legal obligation to allow him to enroll in the group plan, but could have done so. THE COURT HELD: "We conclude that G. L. c. 32B, § 9, neither requires nor prohibits a municipality from enrolling individuals like Cannata. Accordingly, the third paragraph of the statute does not govern this case, and the judge erred in holding otherwise. Municipalities may --

but are not obligated to -- allow such individuals to enroll in group health insurance upon retirement." https://www.socialaw.com/services/slip-opinions/slip-opinion-details/michael-cannata-vs.-town-of-mashpee

The Court wrote:

> "The third paragraph of § 9 applies to an 'insured employee' who, before retirement, 'terminates his services with the governmental unit and who has a right to retire but whose retirement is deferred.' G. L. c. 32B, § 9, third par. In other words, this paragraph applies to a deferred retiree. This provision describes Cannata's situation in 2004: he was insured under the town's group health insurance plan, voluntarily left municipal service, and became a deferred retiree.
>
> At that time, he had the ability to continue coverage, provided he applied for continued coverage and paid the full premium. See G. L. c. 32B, § 9, third par. (deferred retiree 'may continue all insurance coverages to which he would have been entitled if he had not terminated his services'). The relevant inquiry, however, is Cannata's status in 2021 when he ultimately retired -- not in 2004, when he deferred retirement."

Legal lesson learned: Prior to resigning or retiring, confirm with HR your rights to continued group health insurance.

File: Chap. 6, Employment Litigation, Worker's Compensation

NV: HEART - 8-YR AFTER RETIRED - TOTAL DISAB PENSION

On June 12, 2025, in City of Las Vegas and CCMSI v. Peggy Munson, the Court at Ms. Munson's request published it prior unpublished order, granting her worker's comp - permanent total disability – for disabling heart disease in 2021, eight years after retirement. In 2015, the Nevada Legislature restricted heart benefits to cover only medical expenses, not wages, unless the firefighter had 20 years of service. She met that requirement , having worked from November 1992 until February 2013, and is therefore entitled to 66 2/3 percent of the average monthly wage for wages earned in 2013. THE COURT HELD: "Because section 6 of S.B. 153, as enacted, constitutes binding law, NRS 617.457(14) does not apply to Munson, and thus the statute did not preclude her from seeking permanent total disability benefits if she had 'completed at least 20 years of creditable service' as a firefighter at the time section 6 became effective in 2015, regardless of when she became disabled."
file:///C:/Users/lawre/Downloads/25-26180-1.pdf

The Court wrote:

> "CCMSI [Cannon Cochran Management Services, Inc.]. the City's workers' compensation insurer, denied Munson's request for permanent total disability benefits pursuant to NRS 617.457(14) because she was retired at the time she filed her claim.
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> ***

Munson challenged this denial, but a hearing officer affirmed CCMSI's determination. Munson thereafter appealed the hearing officer's decision. Munson argued to the appeals officer that while NRS 617.457(14) generally precluded retirees from receiving permanent total disability benefits, Senate Bill 153—which enacted NRS 617.457(14)—provided a carveout such that NRS 617.457(14) did not apply to anyone who had completed at least 20 years of creditable service as a firefighter on the law's effective date. S.B. 153, 78th Leg. (Nev. 2015). Munson argued that because she served as a firefighter for over 20 years, the carveout to NRS 617.457(14) applied and she was entitled to permanent total disability benefits. The appeals officer reversed the denial of Munson's claim and awarded Munson permanent total disability benefits based on the wages she earned on her last day of working for the City.

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Therefore, appellants fail to demonstrate that section 6 of S.B. 153 does not constitute binding law.

***

[Footnote 3.] Appellants argue in their reply brief that Munson cannot be entitled to permanent total disability benefits as she cannot show that she was 'in the employ' of the City under NRS 616C.440(1). However, we need not consider this argument because appellants did not raise it before the appeals officer or in their opening brief on appeal.

***

In light of the foregoing, the appeals officer properly relied on the supreme court's reasoning in *Bean* and *DeMaranuille* and considered the wages Munson was earning in 2013 when she retired as a firefighter to calculate her permanent total disability benefits."

Legal lesson learned: Very nice of the court to now publish their earlier unpublished decision in favor of this retiree.

Note: Section 6 of S.B. 153 provides:
https://www.leg.state.nv.us/App/NELIS/REL/82nd2023/Bill/9844/Overview

> The amendatory provisions of this act:
> 1. Apply only to disablement which occurs on
> or after the effective date of this section; and
> 2. Do not apply to any person who, on the effective date
> of this section, has completed at least 20 years of creditable
> service . . . as a . . firefighter . . . in this State.

File: Chap. 7, Sexual Harassment

U.S. SUP. CT: "STRAIGHT" FEMALE – MGT FAVORED GAYS

On June 5, 2025, in Marlean Ames v. Ohio Department of Youth Services, the United States Supreme Court held (9 to 0) that heterosexual and other majority group employees may sue employers who they allege made promotion or other job assignments in favor of gay employees. The Court rejected the requirement of the 6th Circuit (Cincinnati) and some other Circuits that for lawsuit by majority employee making claim of discrimination to survive summary judgment, the majority plaintiff must include detailed facts showing the "background circumstances" of the workplace "rare" discriminatory practices. THE COURT HELD: "Congress left no room for courts to impose special requirements on majority-group plaintiffs alone." https://www.supremecourt.gov/opinions/24pdf/23-1039_c0n2.pdf

The Court wrote (opinion by Justice Ketanji Jackson):

> "The Ohio Department of Youth Services operates the State's juvenile correctional system. In 2004, the agency hired petitioner Marlean Ames, a heterosexual woman, to serve as an executive secretary. Ames was eventually promoted to program administrator and, in 2019, applied for a newly created management position in the agency's Office of Quality and Improvement. Although the agency interviewed her for the position, it ultimately hired a different candidate—a lesbian woman—to fill the role.
>
> A few days after Ames interviewed for the management position, her supervisors removed her from her role as program administrator. She accepted a demotion to the secretarial role she had held when she first joined the agency— a move that resulted in a significant pay cut. The agency then hired a gay man to fill the vacant program-administrator position. Ames subsequently filed this lawsuit against the agency under Title VII, alleging that she was denied the management promotion and demoted because of her sexual orientation.
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> ***
> The District Court granted summary judgment to the agency.… Relying on [6th] Circuit precedent, the District Court concluded that Ames had failed to make that showing because she had not presented evidence of 'background circumstances' suggesting that the agency was the rare employer who discriminates against members of a majority group.
>
> ***
> [The 6th Circuit] explained that plaintiffs can typically satisfy this burden, where applicable, by presenting 'evidence that a member of the relevant minority group (here, gay people) made the employment decision at issue, or with statistical evidence showing a pattern of discrimination . . . against members of the majority group.' … The panel concluded that the agency was entitled to summary judgment because Ames had failed to present either type of evidence.
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> ***

> The Sixth Circuit has implemented a rule that requires certain Title VII plaintiffs—those who are members of majority groups—to satisfy a heightened evidentiary standard in order to carry their burden under the first step of the McDonnell Douglas framework. We conclude that Title VII does not impose such a heightened standard on majority-group plaintiffs. Therefore, the judgment below is vacated, and the case is remanded for application of the proper prima facie standard."

Legal lesson learned: Unanimous Court opinion – Title VII of the Civil Rights Act of 1964 does not impose a high standard of proof for majority-group plaintiffs.

File: Chap. 7, Sexual Harassment

OK: 2 FEMALES NOT PROMOTED – NO OUTSIDE PANEL USED

On June 2, 2025, in Greta J. Hurt; Julie D, Lynn v. City of Tulsa, Oklahoma, U.S. District Court Judge John D. Russell, United States District Court for the Northern District of Oklahoma, denied the City's motion for summary judgment on the "failure-to-promote" claim, after two male District Chiefs were selected by 3-person Panel (including Fire Chief and Deputy Chief, and a retired Fire Chief from Georgia), because "the evidence of record could permit a jury to find that the Department's stated reasons for promoting the [two males] are pretextual." Plaintiffs' claims of retaliation after filing EEOC charge and hostile work atmosphere were dismissed. In 2021, the Department announced two openings for Assistant Fire Chief – four applicants were all qualified. In July, 2021 the Fire Chief changed process, with union permission – instead of an outside assessment panel, with rank order of best candidates, he established the internal panel. THE COURT HELD: "Could a jury find that the Department's decision to forgo the established procedure was the product of a desire to save the city and the candidates the cost and burden of an assessment? The answer to that question is yes. Could a jury also find, based on Mr. Lay's testimony, that Chief Baker and Deputy Chief Goins departed from the AOP process because they wanted to pick their preferred candidates, regardless of how well they performed on an impartial assessment? The answer to that question is also yes." https://ktul.com/resources/pdf/dc103f10-071a-4876-bf70-774bb3ddb220-HurtLynnv.COTSummaryJudgmentDecision.pdf

The Court held:

> "Plaintiff Greta Hurt began her employment with the Fire Department for the City of Tulsa in March 1998. Over the years, she has served the Department in multiple capacities, including as a Driver, Captain, Fire Investigator, District Chief, Director of the Tulsa Fire Safety Training Center, and Administrative Chief.
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> ***
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> Plaintiff Julie Lynn began her career with the Department at the same time as Ms. Hurt and, in the twenty years that followed, served as a Driver, Captain, District Chief, and Chief of Training…. After this lawsuit was filed, Ms. Lynn was promoted to Deputy Chief.

***

The Department's Administrative Operating Procedures set forth a specific procedure for filling the two vacant Assistant Chief positions…. The four applicants with the highest scores would be placed on an eligibility list and ranked from highest to lowest score…. The Fire Chief would then select the new Assistant Chiefs from the ranked list.

***

The Department did not always follow the AOP: The union and the Fire Chief could deviate from the prescribed procedures by written agreement…. Fire Chief Michael Baker spoke to the mayor's office, the union president, and the four candidates about deviating from the AOP when filling the two vacant positions. Matt Lay, the union president, informed Chief Baker that the proposed plan would not be fair to Ms. Hurt or Ms. Lynn 'based on the fact that they were likely to benefit from an outside assessment given their superior qualifications,' including their 'executive fire officer training and other educational and professional qualifications … [and their] administrative experience' in the Department…. Mr. Lay reiterated his concerns at a July 22, 2021 meeting of the Department's personnel committee, but the Department elected to move forward with a modified procedure notwithstanding Mr. Lay's concerns.

***

The following day, [Union President] Mr. Lay met with Chief Baker and Deputy Chief Goins, both of whom indicated that 'they wanted [Mr. Lay] to sign [an] MOU [deviating from the AOP] because they needed the ability to pick who they wanted to pick.' … Chief Baker had previously expressed to Mr. Lay that he might not feel free to choose his preferred candidate if presented with a ranked list. Mr. Lay declined to sign the MOU because he "knew what they were trying to do, and it was not fair." *Id.* Ultimately, the union's executive board met and required Mr. Lay to sign the MOU, which he did on August 18, 2021.

***.

Chief Baker assembled an interview panel composed of himself, Deputy Chief Goins, and a retired fire chief from Georgia, Donnell Campbell, who taught fire courses at a local community college and was familiar with the Department…. The panel interviewed the four candidates and met to discuss their impressions. Each member of the panel recommended Mr. Hickerson and Mr. Wilson for promotion and provided objective reasons to support his recommendation. Chief Baker ultimately selected Mr. Hickerson and Mr. Wilson for the vacant Assistant Chief positions…. He maintains that his decision had nothing to do with the fact that Ms. Hurt and Ms. Lynn are females."

Legal lesson learned: Follow the normal promotion process, including use of an outside Assessment Panel doing ranking order. unless all applicants voluntarily agree in writing to the change.

File: Chap. 7, Sexual Harassment

KS: FEMALE NOT PROMOTED - HR DIDN'T REVIEW SCORES

On May 30, 2025, in Barbara Hack v. City of Topeka, Kansas, U.S. District Court Judge Julie A. Robinson, United States District Court for the District of Kansas, denied the City's motion for summary judgment; retired Captain Hack can now proceed to jury trial. "In sum, the Court finds that the City's failure to utilize H.R. during the promotion process is the type of procedural irregularity that calls into question whether the City's stated reason for failing to promote Plaintiff is a pretext for discrimination." In 2022, the Fire Department had several senior management positions open, including four District Chief positions. So Fire Chief decided to "streamline" the process, where one Panel would consider all seven applicants for the four positions, instead holding four separate promotion Panel interviews. The Panel included one internal member (Deputy Fire Chief Antony Standifer) and three external member (an attorney / former counsel for union; retired Kansas City Fire Chief; Deputy Fire Chief of Olathe Fire Department) and they rated Plaintiff 6th of the 7 candidates (score of 131; top four were 171, 168, 164, 161). The Director of HR testified that scores by Deputy Fire Chief Standifer would be "outliers" had H.R. reviewed them before the offers were made; he scored plaintiff only 23, compared to her ratings by others of 41, 34. 34]. THE COURT HELD: "However, when the totality of the evidence is reviewed, including the minimal role played by the City's H.R. department, a reasonable jury could determine that the City's stated reason for not promoting Plaintiff is pretext for gender discrimination…. H.R. was not used to review the interview questions or interview packets. H.R. was not used to review or provide Phillips with the applicants' disciplinary histories. H.R. was not used to review the selections before job offers were made." https://cases.justia.com/federal/district-courts/kansas/ksdce/2:2023cv02410/149154/93/0.pdf?ts=1748685326

The Court wrote:

> "[Shawn] Maisberger attended and observed the interviews in … role as Deputy Director of Human Resources. She did not interact with the applicants. [Fire Chief Craig] Phillips was not present for the interviews.
>
> ***
>
> Jacque Russell, an African American female, was the Director of Human Resources for the City of Topeka from 2008 until 2023. Russell testified that [Deputy Fire Chief Antony Standifer] scores would be considered outliers had H.R. reviewed them before the offers were made [he scored plaintiff only 23, compared to her ratings by others of 41, 34. 34].
>
> ***
>
> First, Standifer was the only internal member on the interview panel, and he spoke to the other members of the panel in between interviews generally about his experience working with each applicant. While there is no evidence that he discussed scores with the other panelists, he admitted during his deposition that they asked him about the candidates he

worked with and that they spoke in generalities about the candidates. He could not recall specifically what they discussed beyond that.

Second, Standifer's scores contributed to the overall scores of the panel; Russell testified that his scores would be considered outliers had H.R. reviewed them before the offers were made. Given those outliers, H.R. would have further investigated the interview scores to determine why Standifer's were so low for Plaintiff compared to the others. While Russell testified that she was satisfied during her deposition review with the scores, a reasonable jury could conclude that had a contemporaneous review occurred, rather than this hindsight, on-the-spot review during Russell's deposition, H.R. may have recalibrated the scores or advised Phillips differently."

Legal Lesson learned: Follow normal promotion process, including HR reviewing Panel scores and providing Fire Chief with disciplinary history of candidates prior to promotion decisions.

File: Chap. 8, Race Discrimination

VA: BLACK FF - STATION OIC - LOSS "ACTING OFFICER" PAY

On June 13, 2025, in Michael T. Blagmon v. Hanover County, U.S. District Court Judge Roderick C. Young, United States District Court, E.D. Virginia, Richmond Division, held that the plaintiff's lawsuit for race discrimination in violation of Title VII will proceed to a jury trial. Plaintiff worked in Station 4 (one engine, one ambulance) and when the Lieutenant position was vacant or absent due to injury, the plaintiff was frequently not allowed to ride as OIC on the engine to avoid paying him "Acting Officer" pay. The Court held that a jury should decide whether the County has offered a legitimate defense; in its November 22, 2022 response to the plaintiff's EEOC charge, the County explained that prior to April 2022, it rotated OIC assignments to avoid pay Acting Officer pay and to rotate as many firefighters as feasible to serve as OIC to provide widespread opportunities for growth and development." THE COURT HELD [case proceed to trial] "In his deposition in connection with this case, Assistant Chief Buchanan testified that Blagman was pulled from the OIC role before he could qualify for acting pay as a result of a 'business practice that started back around 2008, . . . when the economy was really really bad, . . . and the County Administrator . . . would tell us to . . . move [people otherwise serving as acting officers] because we literally didn't have the money.... and that became the practice for a while . . . .' Buchanan Dep. 35:3-25."
https://cases.justia.com/federal/district-courts/virginia/vaedce/3:2024cv00108/549376/71/0.pdf?ts=1749905770

The Court wrote:

"A jury could alternatively find that Defendant's purported legitimate, nondiscriminatory reason for rotating Plaintiff out of the OIC role-that it was the Department's policy to rotate firefighters to allow firefighters to gain experience and to avoid incurring additional costs-was pretext because Plaintiff has offered evidence to show that, even if that policy did exist, Defendant inconsistently applied it to him-a Black man-relative to Caucasian firefighters. Plaintiff has specifically pointed to four other Firefighter/Medic employees-Larsen, Whitaker, Fessler, and Mills-who *did* receive acting pay at various times.

***

Michael T. Blagmon ('Plaintiff' or 'Blagmon') is an African American man who has worked for Hanover County since 2009 as a Firefighter/Medic; he has been assigned to C shift at Station 4 since 2012…. Relevant to the timeframe of Plaintiff's claims, Plaintiff served on Station 4's Shift C (commonly referred to as '4C') under Lieutenant ('Lt.') Stacy Reeves until July 31, 2020, and under Lt. John Clements from September 1, 2020, to August 2023… Station 4 required a minimum of five personnel on-duty per shift: three employees to staff the fire engine and two to staff the ambulance…. The fire engine has three specific assignments: the Officer in Charge, the Driver, and the Backwards Firefighter.

***

Defendant argues that Plaintiff and these purported comparators were not similarly situated because they did not have the same supervisor, the comparators were either qualified to apply for or had qualified for promotion to Lieutenant, and the comparators each filled a higher-level capacity (i.e., that of a Lieutenant) than did Plaintiff when he merely stepped in to work OIC shifts."

Legal lesson learned: FD should have a clear "Acting Officer" pay policy and strictly follow it.

File: Chap. 8, Race Discrimination

FL: ASIAN RECRUIT – FIRED – CAPT'S RACIAL COMMENTS

On May 16, 2025, in Saeed Azam v. Palm Beach County, U.S Magistrate Judge Ryon M. McCabe, United States District Court for the Southern District of Florida, issued a Report & Recommendation to United States District Judge Aileen M. Cannon, that plaintiff be allowed to proceed with pre-trial discovery in his civil rights case, but claims of "hostile workplace" should be dismissed. The plaintiff started recruit training on Jan. 2, 2023, but after failing a "search-and-rescue" task he was terminated on Feb. 13, 2023. The Court referenced alleged racial and anti-Muslim comments by his Training Captain. THE COURT HELD: "When combined with Plaintiff's allegations of unfavorable workplace treatment, the Court finds these comments sufficient to give rise to a plausible inference of discriminatory animus. The Court acknowledges

that these comments could also be interpreted as non-discriminatory expressions of curiosity regarding a new trainee and the trainee's background. At this stage of the case, however, the Court must construe these allegations in the light most favorable to Plaintiff's claims. The Court therefore finds that Counts 1, 2, and 3 state plausible claims of discrimination. As such, the motion should be denied as to these counts."
https://public.fastcase.com/jaEE2PXzRXmZ99jOLMt1Ijy4owdgN11%2FWJRcUJbHoDpxB70E2t6SZ0qkojT0B8Qp?utm_medium=email&_hsenc=p2ANqtz-9VaXpB4njMDCq0a3A4ziHdpnkkhT3_X-uHzr6ZxpzUXb9np6U8cLB4p1ctiAJNyopvqJJhsHP0CMdXEdLkgd2zGecgDw&_hsmi=226712652&utm_content=226712652&utm_source=hs_email

The Court wrote:

> "Plaintiff is a 'brown-skinned, Asian, Muslim male of Bangladeshi national origin.' … On or about January 2, 2023, Defendant hired Plaintiff as a firefighter trainee…. According to Plaintiff, the discrimination against him culminated on February 13, 2023, when Defendant terminated his employment, allegedly for failing a search-and-rescue task.
>
> ***
>
> According to Plaintiff, other non-dark-skinned, non-Muslim trainees performed similarly or worse on the same search-and-rescue task but were not terminated…. Plaintiff alleges that a white trainee 'dropped a ladder' and still passed the search-and-rescue task, while Plaintiff was discharged.
>
> ***
>
> Plaintiff alleges he suffered various forms of discrimination during his training, including the following:
>
> • An unnamed supervisor told Plaintiff, during a medical exam, that "we usually don't get names like yours….'
>
> • Another one of Plaintiff's supervisors, Captain Mark Davis, who was white, asked Plaintiff where he was from, what religion he practiced, and whether he ate bacon…. Amended Complaint explains that Muslims do not eat pork products such as bacon…. Captain Davis then told Plaintiff that 'you're missing out on bacon…."
>
> • Captain Davis also told Plaintiff that 'it looks like you do not want to be here.' Plaintiff took this to be a comment on his physical appearance….
>
> • Captain Davis also 'yelled' at Plaintiff and 'belittled' him in front of other recruits…. Other non-dark-skinned, non-Muslim recruits did not receive similar treatment….
>
> • Captain Davis 'scolded' Plaintiff for mistakes but did not scold other non-dark-skinned, non-Muslim recruits for similar or worse mistakes….

> • Captain Davis also subjected Plaintiff to 'unfair criticism' in drills and other exercises. Other non-dark-skinned, non-Muslim recruits did not receive similar treatment….
>
> • An unnamed supervisor also accused Plaintiff of falsifying his vital statistics after performing an exercise, while other non-dark-skinned, non-Muslim recruits did not receive similar treatment.
>
> ***
>
> "The Court has reviewed the allegations of Count 4 [hostile workplace] and finds them insufficient to state a plausible claim for hostile work environment. Plaintiff complains, *inter alia*, that his supervisors yelled at him, scolded him, unfairly criticized him, and made remarks concerning his religion…. This behavior, while unprofessional, does not rise to the level of a hostile work environment under the law."

Legal lesson learned: Thoroughly document a recruit's training issues and avoid racially hostile comments.

File: Chap. 8, Race Discrimination

NY: RECRUIT HISPANICS / WOMEN – REV. CONSENT DECREE

On June 3, 2025, in United States of America v. New York State Department of Civil Service; City of Mount Vernon; Fire Department of the City of Mount Vernon, U.S. District Court Judge Jessica G. L. Clarke, United States District Court for Southern District of New York, published the proposed "2024 Revised Consent Judgment," which modified the 40-year old Consent Decree of Jan. 19, 1981. The fire department has made great progress hiring black firefighters (62% of current firefighters), but not Hispanics (only 2%), or women (currently only one; only been one at any time). THE CONSENT DECREE: Requires the department to "develop and implement an active and continuing recruitment program to attract and increase Hispanic and women applicants for the position of firefighter."
https://public.fastcase.com/jaEE2PXzRXmZ99jOLMt1Ih1bY1MIzDyw1U7nvkn0d%2B%2FaFhZR3Gd%2F7kjzaTYbL26VJTUSjJADCaSru%2Bl5NmbtQ7Cz5zh1NuQxuUkDcSWUI8U%3D?utm_medium=email&_hsenc=p2ANqtz-_CCOzgPs_whfplvulLfr2w4HcJ6-0Ih3t3c1pVqqN-_dVSpVNg1X0G63L7_Ww7LMQiA0kuqw-PCcDfPecmXjX4Ld1uNw&_hsmi=226712652&utm_content=226712652&utm_source=hs_email

The new Consent Decree includes the following:

> V. Recruitment and Training
> A. The Mount Vernon Defendants agree to develop and implement an active and continuing recruitment program to attract and increase Hispanic and women applicants for the position of firefighter. The Mount Vernon Defendants shall engage Hispanics, and

Women on a continual year-round basis, even at times when a firefighter's entrance exam is not being given, with the intent to stimulate their interest in joining the Fire Department.

***

B. The Mount Vernon Defendants shall undertake to stimulate interest of Hispanics and women in the application process through the use of media campaigns in the press and radio, grass roots appeal, retention measures, training and recruitment.

1. Media Campaign. The Mount Vernon Defendants shall publicize no less than five times in one local newspaper of general circulation, and five times jointly in one newspaper serving the Hispanic community, employment opportunities in the fire department. These advertisements shall be scheduled to appear regularly during the period for the submission of applications and shall contain, in substance, all of the information included in the job announcement pamphlet, including information about training sessions to be given for these examinations. Counsel for the plaintiff shall be advised of the content and scheduling of these advertisements, as well as the newspapers which are to carry them, at least two weeks prior to the commencement of such advertisements. The Mount Vernon Defendants shall request the local radio station directed at the Hispanic community to make regular public service announcements of the Firefighter written examination and employment opportunities. Similar requests shall be made of television stations servicing the communities. Counsel for the plaintiff should be advised of these requests.

2. Grass Roots Appeal:

a. The Mount Vernon Defendants shall send informational pamphlets about opportunities in the fire department to associations whose purpose it is to promote employment opportunities for Hispanics and women and to appropriate educational institutions, including public and private high schools in Mount Vernon, and to colleges, civic, religious and other organizations with significant Hispanic or female membership which shall be designated by the plaintiffs counsel, advising them of the opportunities in the fire department and the availability of training sessions to be given, and advising them that all jobs are open to Hispanics and women. Such informational pamphlets shall acknowledge the recruitment efforts of the Mount Vernon Defendants and describe the requirements for employment as firefighters.

b. Job announcement pamphlets publicizing job opportunities within the Mount Vernon Fire Department and the availability of training sessions to be given shall be posted in city, county and State government buildings, including schools, office buildings and libraries in Mount Vernon. Such job announcement pamphlets with respect to an examination for firefighters shall contain information as to the places and times when applications may be made, the date, time and place for administration of the written test(s), all the minimum qualifications needed to take the written test(s), a brief

description of the physical agility/strength test(s) to be given, and a brief description of the types and topics of questions that are likely to appear in the written test(s)."

Legal Lesson Learned: This revised Consent Decree has some innovative recruiting requirements.

Note: The Consent Decree reflect 40 years progress with hiring Black male firefighters, but Consent Decree recognizes lack of females. "THAT, despite the efforts of the parties, there are currently one female firefighter of any rank in the Fire Department of Mount Vernon, and there has only been one female firefighter at any time."

See these statistics in the 2024 Consent Decree.

According to the 2020 Census, the African-American and/or Hispanic population of Mount Vernon between the ages of 18 and 44 was approximately 66% and 7%, respectively. According to Mount Vernon counsel, the demographics of the fire department were:

	White	African-American	Hispanic
Commissioners	50%	50%	0%
Deputy Chiefs	50%	50%	0%
Fire Captains	33%	50%	17%
Fire Lieutenants	48%	52%	0%
Firefighters	36%	62%	2%
Inspectors	50%	50%	0%
Dispatchers	30%	50%	20%

File: Chap. 9, ADA

FL: FF PERM. INJURIES – OFF DUTY MVA – NO LIGHT DUTY

On June 23, 2025, in Jonathan Marshall v. Secretary of the Navy, the United State Court of Appeals, Eleventh Circuit (Atlanta) held (3 to 0; unpublished decision) that trial court properly granted summary judgment to the Navy. Because of a serious off duty automobile accident in May 2021, he suffered permanent brain and back injuries, and after a period of paid and unpaid leave was terminated in April 2022. He claimed "gender discrimination" when the Navy allowed a female Captain, who suffered an on-duty accident, to do light duty clerical work for several months before she was able to return to "full duties" as a firefighter / EMT. THE COURT HELD: "None of Marshall's proffered evidence creates a triable issue of fact that the Navy discriminated against him based on his gender. Marshall's supervisor's isolated comments expressing disapproval of men receiving parental leave is divorced from the Navy's decision to deny his light-duty request after he suffered traumatic injuries. That Marshall's schedule was readjusted following the birth of his child—the very reason for which the schedule change was adopted in the first place—also does not show impermissible discrimination."

https://cases.justia.com/federal/appellate-courts/ca11/24-12910/24-12910-2025-06-23.pdf?ts=1750690858

The Court wrote:

> "The Navy employed Marshall as a firefighter in Panama City, Florida from April 2019 to April 2022. His job duties were 'physically demanding' and thus 'require[d] a physically able employee.' Tasks included lifting heavy objects, climbing ladders, and 'above average agility and dexterity.' In May 2021, Marshall took three months' paternity leave. Before beginning his leave, Marshall's supervisor made several comments that men either do not deserve or do not qualify for paternity leave. While on leave, Marshall was in a serious car accident and suffered a traumatic brain injury, a permanent back injury, and injuries to his shoulder and neck. After his parental leave ended in August 2021, Marshall submitted a request for a reasonable accommodation. He acknowledged that his injuries limited his ability 'to work as a firefighter' and asked to be placed in a 'career field in IT' or other light-duty position.
>
> ***
> Around that time, a … female firefighter and EMT named Emily Gray got injured. Employed by the Navy since 2008, Gray also served as a fire captain, a role that included additional administrative and clerical duties. After filing a successful workers' compensation claim, Gray was permitted to work in a temporary light-duty position, continuing to perform 'the paperwork portion" of Gray's existing job as a captain. Gray did not file for reasonable accommodations under the Rehabilitation Act. With a doctor's clearance, Gray returned to full duty as a firefighter, EMT, and fire captain several months after the accident.
>
> ***
> Instead, Marshall's own medical questionnaire recognized that following his accident, 'no accommodations' would allow him to carry out the essential functions of firefighting. The Navy denied his request because Marshall could no longer meet the demands of his job, and there were no vacant positions for which Marshall was qualified. No reasonable jury could conclude that the Secretary's decision amounted to gender discrimination.
>
> ***
>
> Marshall asserts that his supervisor's comments about it being 'unfair' for men to take parental leave, his removal from a work shift 'implemented in preparation for his child's birth,' and his placement on unpaid parental leave show circumstantial evidence of discrimination. That is incorrect.
>
> ***
> Finally, any discrepancy related to Marshall's removal from paid paternity leave occurred after his accident—that is, when he could no longer perform the essential functions of his job. And Marshall acknowledges that the Navy paid him back for the time he was on unpaid leave."

Legal lesson learned: Reasonable accommodation is required only if the employee can then perform the essential functions of the job.

File: Chap. 9, ADA

U.S. SUP. CT: RETIRE / PARKINSON'S – NO ADA / 2-YR INSUR

On June 20, 2025, in Karyn Stanley v. City of Sanford, Florida, the United States Supreme Court held (7 to 2) that the lawsuit by retired firefighter was properly dismissed. She was diagnosed in 2016 with Parkinson's disease and after 19 years of service took disability retirement in 2018. Her city insurance ran out in 2020. When she retired, Stanley expected to continue receiving the City's health insurance full subsidy until she turned 65 but learned that the City had changed the policy way back in 2003 for those retiring with less than 25 years. Court agreed with U.S. District Court judge that ADA does not cover her since she does not meet the definition of a "qualified individual" under the ADA – ADA protection is limited to active employees or applicants. THE COURT HELD: "To sum up, we hold that, to prevail under §12112(a), a plaintiff must plead and prove that she held or desired a job, and could perform its essential functions with or without reasonable accommodation, at the time of an employer's alleged act of disability-based discrimination."
https://www.supremecourt.gov/opinions/24pdf/23-997_6579.pdf

The Court wrote (in opinion by Justice Neil Gorsuch):

> "Ms. Stanley started working as a firefighter for the city of Sanford, Florida (City), in 1999. At first, she planned to serve for 25 years…. Part of the reason for that had to do with health insurance. At the time the City hired her, it offered health insurance until age 65 for two categories of retirees: those who retired with 25 years of service, and those who retired earlier because of a disability…. In 2003, though, the City changed its policy. Going forward, it said, it would continue to pay for health insurance up to age 65 for retirees with 25 years of service…. But for those who retired earlier due to disability, the City announced, it would now provide health insurance for just 24 months, unless the retiree started receiving Medicare benefits sooner.
>
> ***
>
> We took this case to resolve a circuit split over whether a retired employee who does not hold or seek a job is a 'qualified individual under Title I.
>
> ***

> And here, Congress has made it unlawful to 'discriminate against' someone who 'can perform the essential functions of ' the job she 'holds or desires.' Those present-tense verbs signal that §12112(a) protects individuals who, with or without reason able accommodation, are able to do the job they hold or seek at the time they suffer discrimination. Conversely, those verbs tend to suggest that the statute does not reach retirees who neither hold nor desire a job at the time of an alleged act of discrimination."

Dissent: Opinion by Justice Ketanji Jackson; concurred in by Justice Sonia Sotomayor:

> "It is illogical to conclude that, while Congress wanted to protect against discrimination with respect to retirement benefits, it crafted a statute that implicitly cuts off those protections the moment a worker last clocks out. Holding as much allows employers to evade Title I's retirement-benefit protections by bait and switch. They need not refrain from discrimination; all they have to do is wait."

Legal lesson learned: Perhaps this decision will lead Congress to clarify the ADA claims filed by retirees.

File: Chap. 9, ADA

NY: COVID – RELIGION EXCEPTION DENIED / FAIR PROCESS

On June 18, 2025, In the Matter of Brian Smith v. New York City Fire Department, et al., the Supreme Court of New York, Second Department, held (4 to 0) that trial court improperly reinstated the firefighter, awarded him back pay and attorney fees. The firefighter was placed on unpaid leave on Nov. 1, 2021 for refusing to get vaccinated, and retired July 13, 2022 when his appeal was denied by the City of New York Reasonable Accommodation Appeals Panel. THE COURT HELD: **"**Here, the petitioner failed to demonstrate that the appellants' process for resolving requests for a reasonable accommodation from the vaccine mandate did not meet the requirements of the NYCHRL regarding cooperative dialogue…. The appellants provided information on the process for reviewing accommodation requests related to the vaccine mandate and informed employees on how to appeal request denials. The record demonstrates that the petitioner availed himself of this process. The record also shows that there were multiple communications between the petitioner, the FDNY, and the Panel regarding the petitioner's accommodation request. The petitioner failed to establish that, under the unique circumstances present at the time of the vaccine mandate, the NYCHRL required a more robust or individualized dialogue."
https://public.fastcase.com/jaEE2PXzRXmZ99jOLMt1Ipey3nn80Qzm5FjlczUETsDTuQT39ugB8joG6QHEs86OG3nGrKzxwZV4%2Fla6pLxdspdlDpATTrpmmFlVcXapI1M%3D?utm_medium=email&_hsenc=p2ANqtz-8lwnqzIFsmVJzuahWcWVuNvva5eg1m46jktTnS1rNp1Tgpui8ycBPAblsV379ZnZFl8lWnb4zQm5QdddO-2g4KXoMSJQ&_hsmi=226712652&utm_content=226712652&utm_source=hs_email

The Court wrote:

> "The petitioner was a firefighter employed by the New York City Fire Department (hereinafter the FDNY). By order dated October 20, 2021, the New York City Commissioner of Health and Mental Hygiene issued a mandate requiring all City employees, among others, to provide proof of COVID-19 vaccination by October 29, 2021 (hereinafter the vaccine mandate). On November 1, 2021, the petitioner was placed on leave without pay status for noncompliance with the vaccine mandate. On November 5, 2021, the petitioner requested a reasonable accommodation from the vaccine mandate based on his religion. The FDNY denied the request on December 21, 2021. The petitioner appealed to the City of New York Reasonable Accommodation Appeals Panel (hereinafter the Panel), which, in a determination dated July 11, 2022, upheld the FDNY's denial of the petitioner's request for a reasonable accommodation. On July 13, 2022, the petitioner applied for retirement.
>
> ***
>
> The petitioner commenced this proceeding pursuant to CPLR article 78 against the FDNY and the City (hereinafter together the appellants) to annul the Panel's July 11, 2022 determination, to be reinstated to his position, for back pay, and for an award of attorneys' fees. In a judgment dated July 11, 2023, the Supreme Court granted the petition, annulled the determination, and directed the appellants to reinstate the petitioner to his position as a firefighter with a reasonable accommodation from the vaccine mandate and back pay. The court determined that the appellants failed to engage in a good-faith cooperative dialogue, as required by the New York City Human Rights Law (hereinafter the NYCHRL) (Administrative Code of City of NY § 8-107). In a separate money judgment dated July 11, 2023, the court awarded the petitioner attorneys' fees in the principal sum of $22,000. These appeals ensued.
>
> ***
>
> Because the challenged determination was not arbitrary and capricious or affected by an error of law, there is no basis to award back pay or court costs as incidental damages (*see* CPLR 7806; *Matter of Rysiejko v City of New York*, 232 A.D.3d 432, 433)."

Legal lesson learned: FDNY provided the firefighter with fair COVID vaccination appeal process.

File: Chap. 9, ADA

NY: COVID – NO WK TESTING – FDNY "UNDUE HARDSHIP"

On June 17, 2025, in Javier Vasquez v. City of New York, U.S. District Court Judge Hector Gonzalez reconfirmed his June 2, 2025 decision which denied summary judgment for both the

firefighter and also the City. He again held that a jury should decide whether it was an "undue hardship" for FDNY to weekly test firefighters who refused to be vaccinated. THE COURT HELD: "As the Court previously explained, the 'evidence shows that the FDNY undertook some individualized consideration of Plaintiff's request,' referring to testimony in which the FDNY's Assistant Commissioner of Equal Employment Opportunity Don Nguyen testified that Plaintiff, in his light-duty role, worked in an environment 'staffed with dozens of folks sitting in a room . . . working with each other and working with other agencies.' … Notably, Plaintiff fails to grapple with this. And there is more, such as a declaration from Mr. Nguyen submitted in Plaintiff's state court case in which he explained that the FDNY considered that Plaintiff was 'a certified first responder who would respond not only to fires but [also] medical emergencies with vulnerable populations of people."https://www.govinfo.gov/content/pkg/USCOURTS-nyed-1_22-cv-05068/pdf/USCOURTS-nyed-1_22-cv-05068-3.pdf

The Court wrote:

> "This is a Title VII case concerning Plaintiff's firing from the FDNY after he refused to receive the COVID-19 vaccine…. Now, Plaintiff has filed a motion for reconsideration concerning the denial of his summary judgment motion with respect to Defendant's undue hardship defense. See ECF No. 84. For the reasons explained below, his motion is DENIED."
>
> ***
> Plaintiff retorts that the City accommodated similarly situated firefighters…. That, like many other pieces of evidence, is a solid point for Plaintiff. But it does not prove as a matter of law that accommodating him would not have resulted in an undue burden for Defendant. Rather, it shines light on a disputed factual question for jury resolution."

Legal lesson learned: The City has a strong "undue hardship" defense if this case goes to trial.

> Note: See Aug. 28, 2022 article, "Unvaccinated FDNY Firefighters Poised to be Fired Unless they roll up their sleeves, 70 FDNY firefighters have been notified they won't be responding."
>
> See Feb. 15, 2022 article, "Nearly 1,500 NYC municipal workers fired for not being vaccinated against COVID." **https://abcnews.go.com/Health/1500-nyc-municipal-workers-fired-vaccinated-covid/story?id=82900617**
>
> See EEOC guidance, "Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the ADA." https://www.eeoc.gov/laws/guidance/enforcement-guidance-reasonable-accommodation-and-undue-hardship-under-ada
>
> > "'Undue hardship' means significant difficulty or expense and focuses on the resources and circumstances of the particular employer in relationship to the cost or difficulty of providing a specific accommodation. Undue hardship refers not only to financial difficulty, but to reasonable accommodations that are unduly

extensive, substantial, or disruptive, or those that would fundamentally alter the nature or operation of the business."

File: Chap. 11, FLSA

OK: SHIFT DIFFERENTIAL – OT RATE - $350K SETTLEMENT

On June 23, 2025, in Jerry Sherley v. Muskogee County EMS, U.S. District Court Judge John F. Heil, III, United States District Court for Eastern District of Oklahoma, approved a settlement agreement for EMTs employed by the County who received an hourly wage plus shift differential pay and who worked more than 40 hours in a workweek between July 18, 2020 to October 31, 2023. The gross settlement amount of $350,000 (including attorney's fees and costs, as well as administration expenses) for up to 130 putative class members. Based on the amount of the settlement and the number of class members [78 EMS] opting into the settlement, members of the class will receive more than 200% of their unpaid wages. THE COURT HELD: "Here, the standard for final certification is met. As to the first factor, there are no 'disparate and factual employment settings' that would preclude collective treatment because all the members of the Settlement Class were subject to MCEMS's policy of failing to include shift 'differential' pay when calculating overtime rates." https://cases.justia.com/federal/district-courts/oklahoma/okedce/6:2023cv00241/34830/33/0.pdf?ts=1732294058

The Court wrote:

> "Plaintiff filed this Fair Labor Standards Act ('FLSA') collective action, seeking to recover unpaid overtime he alleges Defendant Muskogee County EMS ('MCEMS') owes its paramedics, drivers, and dispatchers (collectively 'EMTs')…. Plaintiff alleges that between July 18, 2020 and October 31, 2023, MCEMS failed to include EMTs' shift differential pay in the rate for overtime pay, which resulted in less overtime pay than required by the FLSA. *Id.* at 3. The parties have reached a negotiated resolution.
>
> ***
>
> Based on the amount of the settlement and the number of class members opting into the settlement, members of the class will receive more that 200% of their unpaid wages. *Id.* at 3. This outcome is of particular weight.
>
> ***
>
> Further, MCEMS does not oppose final certification…. Rather, collective treatment is preferable because requiring members of the Settlement Class 'to present their claims individually would be inefficient and likely expensive, and the facts and circumstances underlying their claims are largely the same.' *Valencia*, 2023 WL 1993869, at *5. Accordingly, the Court grants final certification of the Settlement Class.
>
> ***

> Here, under the Settlement Agreement, MCEMS agrees to pay the gross settlement amount of $350,000 (including attorney's fees and costs, as well as administration expenses) for up to 130 putative class members….This amount includes: (1) $192,800 in individual settlement awards to the putative class members (which represents 73% of each member's unpaid wages); (2) $140,000 in attorneys' fees (counsel has agreed to reduce to the fees to $135,793, which represents approximately 38.8% of the Gross Settlement Amount); (3) up to $7,200 in attorney's costs; and (4) $10,000 in administration expenses…. At the expiration of the notice period, 78 EMTs opted in to the settlement (collectively the 'Opt-in Plaintiffs').
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> Based on the Court's careful consideration of the Motion … , Counsel's supplement …, and the Settlement Agreement…, the Court finds that the attorney's fees and costs requested are reasonable. totaling $135,793, plus $7,200 in litigation costs, to Counsel is reasonable."

Legal lesson learned: Fire & EMS employers should carefully review FLSA regulations on how shift differential pay and other incentive pay (such as paramedic pay) can impact an employee's "regular rate of pay."

> Note: See this article, "Wage and Hour Watch: Regular Rate of Pay Primer for Employers." March 4, 2024. https://natlawreview.com/article/wage-and-hour-watch-regular-rate-pay-primer-employers
>
> > "If an employee's base hourly rate is $16 per hour, but the employee receives a 50 cent per hour shift differential for working certain shifts, such shift differential should be included in the employee's regular rate of pay, and thus, the overtime calculation. So, in this example, if an employee worked 46 hours in a work week, and was paid the shift differential for six of those hours, the employee's overtime rate is not $24 per hour, it is $24.10."
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> See also: Fact Sheet #56A: Overview of the Regular Rate of Pay Under the Fair Labor Standards Act (FLSA). https://www.dol.gov/agencies/whd/fact-sheets/56a-regular-rate

File: Chap. 11, FLSA

MN: EMS "ON CALL" - 8-MIN RESP. TIME - CLASS ACTION

On June 20, 2025, in Jason Johnson, individually and on behalf of all others similarly situated v, North Memorial Health Care, U.S. District Court Chief Judge Patrick J. Schiltz, United States District Court for the District of Minnesota, granted the motion to certify a class action on behalf of 120 paramedics and EMTs who have agreed to join in the lawsuit. The EMS plaintiffs claim that the 8-minute response time requirement, in uniform, when they were scheduled to be "on call" from home so impacts their personal time they are entitled to their regular hourly pay rate (not just $4 per hour). THE COURT HELD: "Here, the EMTs were all subject to the same

policies that, they contend, significantly restricted their ability to spend on-call time on personal pursuits. In particular, the EMTs were required, while on call, to be en route to calls within eight minutes of receiving a notification; to be in uniform or similar appropriate dress when responding to calls; and to refrain from using alcohol or other mind-altering substances while on call. Likewise, the EMTs were all subject to the same allegedly illegal policies in that they were all paid less than minimum wage for on-call hours (except when responding to calls) and those hours were not included in determining their entitlement to overtime pay. All of these commonalities suggest that collective adjudication is appropriate in this case." https://cases.justia.com/federal/district-courts/minnesota/mndce/0:2023cv01780/208467/146/0.pdf?ts=1750499803

The Court wrote:

> "The FLSA does not set forth any standard for determining whether time spent on call should be counted as work time.*** Roughly speaking, the question turns on the extent to which the employer's on-call policies interfere with the employees' ability to engage in personal pursuits. *See Cross v. Ark. Forestry Comm'n*, 938 F.2d 912, 916 (8th Cir. 1991) ('Time spent away from an employer's premises may constitute compensable hours of work if conditions imposed by an employer restrict the employee from using the time for personal pursuits.').
>
> [The class will be as follows.] All persons who have worked as a Paramedic or Emergency Medical Technician for North Memorial Health Care in Minnesota at any time between June 13, 2020, and April 24, 2022, and were subject to North Memorial's policy of paying on-call (or off-premise) hours at a subminimum wage rate and omitting hours worked for purposes of calculating overtime compensation.
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> ***
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> Magistrate Judge Leo I. Brisbois conditionally certified an FLSA collective action in this case, after which approximately 120 employees opted to join. North Memorial now moves to decertify, arguing that the opt-in plaintiffs are not "similarly situated" under § 216(b) because the issue of whether North Memorial should have treated the EMTs' on-call time as working time depends on facts and circumstances that are unique to each EMT**."**

Leegal lesson learned: Plaintiffs may now proceed with class action trial; "on call" policies requiring rapid response from home have been the subject of several cases around the nation.

> Note: See U.S. Department of Labor - Fact Sheet #22: Hours Worked Under the Fair Labor Standards Act (FLSA) – July 2008. https://www.dol.gov/agencies/whd/fact-sheets/22-flsa-hours-worked
>
> > "On-Call Time: An employee who is required to remain on call on the employer's premises is working while 'on call.' An employee who is required to remain on

> call at home, or who is allowed to leave a message where he/she can be reached, is not working (in most cases) while on call. Additional constraints on the employee's freedom could require this time to be compensated."

See also May 23, 2008 U.S. Department of Labor – Opinion Letter FLSA2008-8NA, https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/2008_05_23_08NA_FLSA.pdf

File: Chap. 12, Drug-Free Workplace

LA: AMBULANCE DAMAGED – DRUG TEST - COCAINE / METH

On June 13, 2025, in Benjamin Woods v. City of Baton Rouge, through the Department of Emergency Medical Services, the Court of Appeals of Louisiana, First Circuit held (3 to 0) that the Paramedic was properly fired by the Department and the City Personnel Board – tested positive for meth and cocaine after telling supervisor had no knowledge of how the ambulance he was driving was damaged. The Court reversed the trial court, which found that the administration of the drug test to Mr. Woods was unreasonable ($2,060 in damage in ambulance; "serious incident" was $2,500 or more damage). The Court of Appeals found that management had "reasonable suspicion" to drug test, not because of the amount of damage, but because the Paramedic transporting a patient non-emergency to hospital on July 5, 2018 did not immediately stop when he reportedly felt a bump and heard a "pop." He didn't immediately inspect the ambulance for damage, initially denied any knowledge of damages, and had no explanation for how "one and a half to two feet of rub rail broke off." THE COURT HELD: "We find these circumstances sufficient to support a reasonable suspicion that the Mr. Wood' s behavior indicated that he may have been under the influence of drugs or alcohol while working for the City/Parish such that the administration of a drug test was reasonable and warranted." https://cases.justia.com/louisiana/first-circuit-court-of-appeal/2025-2023ca0459.pdf?ts=1749828408

The Court wrote:

> "Benjamin Woods was employed in the classified service of the City of Baton Rouge/ Parish of East Baton Rouge ('City/Parish'), Emergency Services Department ('EMS'), as an Emergency Medical Technician Paramedic…
>
> ***
>
> The testimony set forth by the City/Parish established that on July 5, 2018, Mr. Woods was driving an ambulance, whose passengers included his partner, Stephanie Quibedeaux, and a low priority patient, to Our Lady of the Lake Hospital. Mr. Woods testified that they were stopped at a red light on Essen Lane near the hospital, and when

Mr. Woods accelerated after the light turned green, he heard a 'pop.' He did not exit the ambulance and inspect it or immediately contact his supervisor, but instead, continued on to the hospital while checking his mirrors to see if he had hit anything. Mr. Woods stated that there was nothing near his vehicle, and the closest thing he saw was brush taken off of trees several feet away from his vehicle. Mr. Woods denied any impact with another vehicle. When they arrived at the hospital, Mr. Woods exited the vehicle and inspected its exterior. He observed that a piece of the " rub railing," a foot and a half to two feet long, was missing.

He identified photographs he had taken with his phone that showed where the rail was missing and scratches on the vehicle. Mr. Woods testified that he notified the deputy shift supervisor, Kendall Washington, and sent him the photographs he had taken of the ambulance. After consulting with his supervisor, Minette Wicker, Mr. Washington directed Mr. Woods to report for drug and alcohol testing.

***

She stated that Mr. Woods initially denied any damage to the ambulance and the only thing Mr. Woods could recall was feeling a 'bump' while he was driving. Mr. Woods thus 'hypothesized' to her that that's how the damage occurred. Ms. Wicker noted that the fact that there was new damage to the ambulance and that Mr. Woods could offer no explanation or definitive evidence as to how the damage occurred factored into Ms. Wicker' s decision to send Mr. Woods for a drug test."

Legal lesson learned: "Reasonable suspicion" includes questionable responses by ambulance driver concerning how ambulance was seriously damaged.

File: Chap. 13, EMS

NY: FDNY / EMS PAY – CAN'T DEPOSE FDNY COMMISSIONER

On June 20, 2025, in Local 2507, Uniformed EMTs, Paramedics & Fire Inspectors, et al. v. City of New York, U. S. Magistrate Judge Gabriel W. Gorenstein, United States District Court for Southern District of New York, denied the Union motion to compel the deposition of FDNY Commissioner Robert Tucker. He is a "high-level" government official and courts protect such individuals from depositions unless "exceptional circumstances." He was appointed less than a year ago, well after the lawsuit was filed, and has not been involved in collective bargaining on this issue. THE COURT HELD: "A deposition of a high-level governmental or corporate officer is commonly referred to as an 'apex deposition' and may not be ordered absent a special showing by the party seeking the deposition. With respect to governmental officials, the Second Circuit noted in *Lederman v. N.Y. City Dept. of Parks and Recreation*, 731 F.3d 199 (2d Cir. 2013), that courts have commonly held that 'a high-ranking government official should not - absent exceptional circumstances - be deposed or called to testify regarding the reasons for taking official action, including the manner and extent of his study of the record and his consultation with subordinates.'"https://caselaw.findlaw.com/court/us-dis-crt-sd-new-yor/117411673.html

The Court wrote:

> "This case involves claims that the differences in pay for Emergency Medical Service ('EMS') employees and firefighters (both of whom work in the FDNY) are a result of sex and race discrimination. In this application, plaintiffs point to certain statements by Commissioner Tucker and argue that his testimony is needed to show how he 'he came to the conclusion that EMS employees are underpaid and why he decided to appoint Fire Cadets awaiting appointment to Firefighter to the EMT position.'
>
> ***
>
> Indeed, it would be quite surprising if the Commissioner did *not* have views about the factual or policy issues raised by this case, regardless of whether he has expressed them publicly. But the mere fact that an agency official has expressed his knowledge or views on a topic relevant to litigation --- or even merely harbors knowledge or views --- does not show 'extraordinary circumstances' subjecting the Commissioner to deposition. If having views or information relevant to a litigation were enough to show 'extraordinary circumstances,' the protection afforded by *Lederman* would be a nullity as its strictures would be met for any high-level official who was properly doing his or her job.
>
> ***
> [Footnote 1.] Additionally, we note that Commissioner Tucker took office less than a year ago and long after this lawsuit was filed. Declaration of FDNY Commissioner Robert Tucker (Docket # 219-4) …. He further confirms that he has no first-hand knowledge of any of the underlying facts - such as details surrounding any collective-bargaining negotiations - at the time of his appointment … ; has not been involved in any collective bargaining negotiations between the City and the unions, …; has no information on the City's decision to engage in pattern bargaining, …;and does not have the authority to unilaterally make pay and benefits changes for FDNY employees ….This provides yet an additional reason to deny plaintiffs' application."

Legal lesson learned: High level government officials are generally protected from depositions so they can do their jobs without disruption.

File: Chap. 13, EMS

MO: HIPAA – FF PATIENT - INFO SHARED / NO "CONTRACT"

On June 17, 2025, in Joseph Weixeldorfer v. City of Kansas City, Missouri, et al., the Court of Appeals of Missouri, Western District, Second Division, held (3 to 0) that trial court properly granted City's motion for summary judgment; as a patient when he signed a HIPAA acknowledgement, this did not constitute a "contract" for which he could sue the city. On

November 22, 2017, the plaintiff, a firefighter with the City, was home and called 911 and was transported to the hospital. Four years later, on November 12, 2021, he filed a lawsuit claiming he suffered humiliation and damage to his reputation when FD personnel and the dispatcher disclosed his "personal medical and mental health" information to both fellow personnel on the fire department, and to his father and others. The trial court judge also refused the plaintiff's motion to file a Fifth Amended Complaint naming the lead paramedic on the run and the dispatcher – this was well after discovery was closed and also the 5-year statute of limitations. THE COURT HELD: "[T]he HIPAA Privacy Rule requires only that providers give patients a notice when it is practical to do so after the emergency situation has ended….The acknowledgment creates no duties other than those already required by HIPAA." https://cases.justia.com/missouri/court-of-appeals/2025-wd87298.pdf?ts=1750174248

The Court wrote:

> "Weixeldorfer was an employee of the Fire Department of City ('KCFD'). On November 22, 2017, Weixeldorfer was transported to the hospital by KCFD EMS for treatment. Weixeldorfer alleges that after his transport to the hospital, City employees disclosed his personal medical and mental health information without his authorization to people within KCFD and outside of KCFD, including to Weixeldorfer's father. As a result, Weixeldorfer suffered humiliation and damage to his reputation, among other damages.
>
> ***
> The 'contract' Weixeldorfer alleges City to have breached is based upon the HIPAA acknowledgment he signed when City paramedics treated him. But Weixeldorfer fails to explain how the HIPAA acknowledgment constitutes a contract binding City. The HIPAA acknowledgment is merely a notice to patients of a healthcare provider's obligations under federal law as is required by 45 C.F.R. § 164.520. In fact, emergency providers are not required to provide the notices to patients prior to providing care….
>
> ***
>
> In his motion for leave to file his Fifth Amended Petition, Weixeldorfer alleges that the depositions of himself, his father, and the Appellant's corporate representative were taken in November of 2023, and it was not until that time that he learned of the identity of J.R. He fails to explain why he suddenly learned of this individual's identity in part from his own deposition and that of his own father or how the identity of J.R. could not have been reasonably determined through the two years of discovery prior to these depositions in November of 2023."

Legal lesson learned. When transporting a patient who is also a member of the Fire Department special care must be exercised to not discuss the run with those who do not have an official need to know - particularly involving mental health.

> Note: See this 2025 article, "Can A Patient Sue for A HIPAA Violation?" https://www.hipaajournal.com/sue-for-hipaa-violation/

File: Chap. 13, EMS

WV: CO EXPOSURE – DISPATCHERS - NO WILLFUL / WANTON

On June 6, 2015 in Rhoda M. Marchant, Timothy E. Marchart and Timothy S. Marchart v. Preston County Office of Emergency Management / E911 and Preston County Commission, the West Virginia Intermediate Court of Appeals held (3 to 0) that the trial court properly granted the County's motion to dismiss; there was no proof of willful or wanton misconduct by the dispatchers who sent a fire department on Feb. 7, 2018 to their home in response to their 911 call about carbon monoxide from an electrical generator. After the Fire Department arrived, Timothy E. Marchant drove himself and his family from Independence to Morgantown's Ruby Memorial Hospital; they allege that all members of the family suffered physical and mental injuries as a result of the delay in treatment, but that Rhoda suffered most severely, as she was rendered permanently legally blind and disabled and is unable to work. THE COURT HELD: "The Marchants requested a status conference, which was held on July 29, 2024. Thereafter, by order entered on August 14, 2024, the circuit court granted the motion to dismiss, asserting that respondents were entitled to immunity under West Virginia Code § 24-6-8.... Notably, the Marchants have not expressed what amendments [to their complaint] could be made or facts could be alleged to demonstrate a valid claim for willful or wanton misconduct in light of the facts asserted in the operative complaint."
https://cases.justia.com/west-virginia/intermediate-court-of-appeals/2025-24-ica-364.pdf?ts=1749239242

The Court wrote:

> "This case arises from a telephone call to Preston County's 911 emergency line on or about February 7, 2018. The Marchants resided in Independence, West Virginia, in Preston County. Bad weather that day led to a power outage at their home. Timothy S. Marchant, the minor child of Rhoda and Timothy E. Marchant, who was home alone at the time, started a generator outside the door to the home's mudroom and ran a power cord from the generator inside the house to an outlet near the electrical box to provide temporary power to the home. The proximity of the generator to the mudroom allowed carbon monoxide produced by the generator's combustion engine to enter the house. While this was happening, Rhoda and Timothy E. Marchant came home. Perceiving fumes in the house, Timothy E. Marchant opened the windows and doors in hopes that circulating fresh air would remove them. However, by that time, the Marchants were all allegedly and unknowingly suffering the effects of carbon monoxide poisoning. Eventually, the power was restored, and the generator was turned off. At some point, the family began to question whether they were exposed to carbon monoxide, so Timothy E. Marchant called 911 for assistance. He claims that when he made the call, he was confused because of the carbon monoxide in his system.

***

Sometime later, before the fire department arrived, Timothy E. Marchant made another call to 911 and informed them that Rhoda and Timothy S. Marchant wanted to go to the hospital. During that call, he claims the 911 operator told him that the decision to seek medical treatment was at the Marchants' discretion, the fire department was on the way to their house, and that if they wanted an ambulance to be dispatched, he could call back and request one.

***

The complaint alleged that the respondents knew or should have known of the Marchants' confusion, the high likelihood that they were suffering from carbon monoxide intoxication, and/or the Marchants' lack of knowledge and/or understanding of the nature of carbon monoxide and its toxicity

***:

On appeal, the Marchants raise two assignments of error. First, they assert that the circuit court erred by granting the motion to dismiss on the basis of immunity because their complaint stated a valid claim for willful or wanton misconduct as required under West Virginia Code § 24-6-8. The Marchants claim that their complaint alleged multiple instances during which the respondents' interactions with them rose to the level of willful or wanton conduct and contend that those allegations are more than sufficient to survive a Rule 12(b)(6) challenge. They further declare that the court failed to properly construe the factual allegations in the complaint in their favor, as required during a Rule 12(b)(6) inquiry, instead selecting the facts "it liked best" in order to defeat their claims. Relatedly, the Marchants contend that the court should not have applied the immunity provisions of West Virginia Code § 24-6-8 to the facts of this case without further inquiry into the respondents' compliance with other E911 call center operational requirements contained in the related subparts of the organizing statute, which involves the creation, oversight, and maintenance of emergency dispatch centers across the state."

Legal lesson learned: Dispatchers and their employer are not liable in West Virginia unless there is proof of "willful or wanton misconduct." It is a best practice that dispatchers have a protocol on carbon monoxide calls, including when to dispatch an ambulance.

Note: See West Virginia Code §24-6-8. https://code.wvlegislature.gov/email/24-6/

"Limitation of liability. A public agency or a telephone company participating in an emergency telephone system or a county which has established an enhanced emergency telephone system, and any officer, agent or employee of the public agency, telephone company or county is not liable for damages in a civil action for injuries, death or loss to persons or property arising from any act or omission, except willful or wanton misconduct, in connection with developing, adopting or approving any final plan or any agreement made pursuant to this article, or otherwise bringing into operation or participating in the operation of an emergency telephone system or an enhanced emergency telephone system pursuant to this article."

File: Chap. 13, EMS

OH: COMBATIVE PATIENT – PD HANCUFF/ BRAIN - IMMUNITY

On May 30, 2925, in Robert McGuire, et al. v. City of Mansfield, et al., the Court of Appeals of Ohio, Fifth District, Richland held (3 to 0) that trial court erred in not dismissing the lawsuit; there was no evidence of willful or wanton misconduct by the EMS during transport on March 21, 2022, or of the Mansfield police officer at the hospital who handcuffed the combative patient as he was taken into the hospital. The entire encounter from arrival to McGuire's residence to taking McGuire into the emergency room was less than ten minutes. McGuire suffered injuries including cardiopulmonary arrest with consistent brain injury due to hypoxia and hypotension. To use a medical malpractice standard for a first responder would basically eviscerate the immunity statutes; that is why the wanton standard is the "failure to exercise any care." THE COURT HELD: "The evidence presented also does not show the firefighters' conduct was wanton. They did not fail 'to exercise any care toward' McGuire 'whom a duty of care is owed in circumstances in which there is great probability that harm will result.' … While experts can argue over the more correct care, that is a negligence issue that does not rise to the standard of wanton care… To use a medical malpractice standard for a first responder would basically eviscerate the immunity statutes; that is why the wanton standard is the 'failure to exercise any care.'"https://www.supremecourt.ohio.gov/rod/docs/pdf/5/2025/2025-Ohio-1961.pdf

The Court wrote:

> "On March 21, 2022, Robert McGuire experienced an asthma attack and shortness of breath and his inhaler did not give him any relief. McGuire admitted to inhaling a marijuana 'dab' which is a concentrated form of cannabis earlier in the day, but claimed the asthma attack was triggered by a pine-scented candle. Emergency services were called and Williams, Price, Kendle, and Drum from the Mansfield Fire Department responded to McGuire's residence. Williams was the only certified paramedic and in charge. McGuire received a Duo nebulizer and was loaded into an ambulance for transport to OhioHealth Mansfield Hospital, a Level 1 Trauma Center. Kendle drove the ambulance and Williams and Drum were in the back with McGuire. Price drove separately to the hospital. During the transport, McGuire showed signs of distress and became agitated and uncooperative. He kicked his feet, swung his arms, pulled the nebulizer mask off his face, and struggled with the firefighters in the back of the moving ambulance. Instead of continuing treatment, Williams and Drum had to subdue McGuire to ensure his safety. They could not administer an IV or place an oxygen mask on his face.
>
> Upon arriving at the hospital, Kendle exited the ambulance and observed Mansfield Police Officer Kaufman nearby; Kendle asked him for assistance. Kaufman observed McGuire struggling with Williams and Drum in the back of the ambulance. Kaufman decided to place McGuire in handcuffs so Williams and Drum could render care.

> McGuire was flipped over in a prone position so Kaufman could handcuff his arms behind his back; he was then placed back into a supine position. McGuire appeared not to be breathing. The decision was made to immediately take McGuire into the emergency department for emergency care.
>
> The time from when McGuire was unresponsive and not breathing to when emergency personnel administered a breathing treatment was one minute and forty-two seconds. The entire encounter from arrival to McGuire's residence to taking McGuire into the emergency room was less than ten minutes. McGuire suffered injuries including cardiopulmonary arrest with consistent brain injury due to hypoxia and hypotension."
>
> ***
>
> The evidence presented does not show [Police Officer] Kaufman's conduct was wanton…. Kaufman was informed the patient in the ambulance was 'combative' and/or uncooperative; McGuire needed subdued to receive treatment. Kaufman handcuffed McGuire according to police department policy in order to stop the altercation and help McGuire receive the medical care he needed. There is no evidence Kaufman was aware of the risk of handcuffing McGuire, but was not trying to avoid it and was indifferent to whether harm would result."

Legal lesson learned: Excellent decision; no evidence of EMS or PD "failure to exercise any care."

File: Chap. 16, Discipline

HI: INVEST OF 2 B/C – PAID SUSP. 6-MO - NOT "DISCIPLINE"

On June 27, 2025, in Steve F. Loyola and Ty Aaron Madeiros v. County of Hawaii, the Intermediate Court of Appeals of Hawaii held (3 to 0; unpublished decision) that the trial court judge and the Merit Appeals Board of the County (MAP) properly found that the two Battalion Chiefs were never "disciplined" when they were suspended with pay from November 21, 2014 until June 2015 while retired Police Chief conducted an investigation of their allegations of unsatisfactory management by Fire Chief Darren J. Rosario. The investigation was conducted by a retired Police Chief after the Battalion Chief made written allegations against the Fire Chief: (1) Medeiros on September 15, 2014 sent a memorandum to the Fire Chief, copying the Mayor and the Fire Commission, requesting the Fire Chief's resignation to protect HFD from 'further damage' and to protect the safety of HFD personnel. (2) Loyola on September 23, 2014 sent a 'Letter of No Confidence' in the Fire Chief to the Fire Commission requesting Fire Chief's removal for 'unsatisfactory management.' The retired Police Chief interviewed 23 people, and submitted a 106-page final report on June 9, 2015, concluding most of allegations against the Fire Chief were 'speculative,' 'unsubstantiated' and 'uncorroborated' and the two Battalion

Chiefs had violated six FD regulations. THE COURT HELD: "The record supports that the approximately six-months-long duration of Appellants' paid administrative leave, from November 21, 2014 to June 2015, while the investigation was being completed, was reasonable due to the volume of interviews conducted (23 witnesses), the large number of allegations (27 total) raised by Appellants, and the Fire Chief's accusations against the Appellants…. Appellants' 'indefinite leave with pay"'challenge lacks merit…. We conclude the Circuit Court correctly affirmed the MAB's conclusion resolving the claim of entitlement to overtime while on paid administrative leave…. Appellants' 'denial of overtime' challenge lacks merit." https://www.courts.state.hi.us/wp-content/uploads/2025/06/CAAP-22-0000641sdo.pdf

The Court wrote:

> "The underlying alleged insubordinate conduct involved Appellant Loyola's September 23,2014 'Letter of No Confidence' in the Fire Chief, addressed to the Fire Commission requesting Fire Chief's removal for 'unsatisfactory management,' and raising numerous other allegations. For Appellant Medeiros, the alleged underlying insubordinate conduct involved Appellant Medeiros's September 15, 2014 memorandum to the Fire Chief, and copying the Mayor and the Fire Commission, requesting the Fire Chief's resignation to protect HFD from "further damage" and to protect the safety of HFD personnel.
>
> ***
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> The MAB conducted a five-day contested case hearing on Appellants' appeal from November 19, 2015 to March 10, 2016. The October 28, 2016 MAB Order found that Appellants suffered no demotion in rank, no loss of benefits, or any derogatory information in their personnel file, during their paid administrative leave. Appellants had no corrective action imposed on them after the investigation concluded. The MAB Order concluded, inter alia, that there was 'no discipline' imposed against the Appellants (COL 24); 'the fact that the Appellants were not assigned overtime while they were out on administrative leave with pay was not discipline' (COL 26); and that '[b]ased on the breadth of the accusations against [the Fire Chief] and the accusations concerning the conduct of the Appellants, the amount of time it took to complete the investigation was reasonable' (COL 23)."

Legal lesson learned: Suspension without loss of pay is a reasonable management response to investigate serious allegations.

File: Chap. 16, Discipline

DE: DEP. CHIEF – SEX 15-YR OLD CADET – 35-YRS IN PRISON

On June 24, 2025, in Dwayne L. Pearson v. State of Delaware, the Supreme Court of Delaware held (5 to 0) that the former Deputy Fire Chief was properly convicted of for sexual abuse of a child "by a person in a position of trust, authority or supervision." In May 2022, fifteen-year-old M.M. was voted in as a Mill Creek junior firefighter. Dwayne Peasrson was Deputy Fire Chief

of neighboring Belvedere Fire Department; the evidence showed he groomed her into having several sexual contacts in August 2022. He was arrested in January 2023, indicted and then proceeded to trial on January 22, 2024, convicted by a jury and sentenced July 3, 2024 to 35 years in prison. THE COURT HELD: "A reasonable jury could find that Pearson stood in a 'position of trust, authority or supervision' over M.M. under subsection (e)(2) of the statute." https://courts.delaware.gov/Opinions/Download.aspx?id=381340

The Court wrote:

> "Dwayne Pearson appeals his convictions for sexual abuse of a child by a person in a position of trust, authority or supervision. He argues that the Superior Court erred by denying his motion for judgment of acquittal because Pearson was not the victim's direct supervisor, and his interactions with the child did not place him in a "position of trust, authority or supervision."
>
> ***
>
> M.M. was a junior volunteer firefighter who 'dream[ed]' of becoming a regular volunteer member. Pearson was the deputy chief of the neighboring fire company that routinely worked with Mill Creek. Pearson knew from their conversations that M.M. wanted to be a firefighter. He asked her about her volunteer work at Mill Creek and offered to train her by taking her into a basement fire. M.M. in turn saw Pearson as an experienced firefighter that she 'could learn a lot from.' Even after Pearson began making sexual comments to M.M., she 'still looked at him like somebody [she] could learn from."

Legal lesson learned: Former Deputy Chief now in prison and has exhausted all his state court appeals.

> Note: See this article, "Former Deputy Fire Chief Arrested for Rape" (Jan. 13, 2023). https://dsp.delaware.gov/2023/01/13/former-deputy-fire-chief-arrested-for-rape/
>
> This is his second appeal (and our second review of this case); on June 10, 2024, his appeal to the Superior Court of Delaware was denied. https://cases.justia.com/delaware/superior-court/2024-2301003924.pdf?ts=1718040749

File: Chap. 16, Discipline

TX: CHIEF FIRED – DIDN'T TELL CITY / TESTIFYING FF CASE

On June 16, 2025, in Mark Hamilton v. The City of Wilmer, Texas, et al., the U.S. Court of Appeals for the Fifth Circuit (New Orleans) held (3 to 0) that the trial court properly granted the City's motion for summary judgment. Fire Chief did not have First Amendment right to testify in a firefighter's criminal probation revocation hearing. Failure to get prior permission by City Administrator, or City Attorney, was serious breach of "maintaining proper discipline in public service." The Chief's testimony "could have been seen as an endorsement on behalf of the Fire Department rather than merely his personal opinion." In 2019 the firefighter was arrested for putting recording equipment in the bathroom of the fire station (he claimed it was to find out

who stole items from his locker). He was eventually returned to duty, and on probation in criminal case. The Fire Chief received a subpoena on June 22, 2022, for a hearing the next day – but he didn't tell City Administrator or City Attorney. The firefighter told him it was simply about getting new legal counsel. The June 23, 2022 hearing was actually about County Prosecutor seeking to revoke probation because the firefighter had "visited adult sexually oriented websites on his phone." At the conclusion of the hearing the Chief was "shocked" when judge revoked the firefighter's probation and ordered him into custody to serve three months (270 days) in prison. The firefighter resigned that day. The Fire Chief didn't inform City Administrator didn't immediately inform the City Administrator about the hearing results or the resignation; he waited until the following afternoon. THE COURT HELD: "The issue here is whether Hamilton has stated a claim that he was fired in retaliation for protected First Amendment activity. We find that he has not, so we AFFIRM the decision of the district court." https://www.ca5.uscourts.gov/opinions/pub/23/23-10881-CV0.pdf

The Court wrote:

> "Mark Hamilton, former Chief of the Fire Department of Wilmer, Texas, was dismissed from his job after he testified, pursuant to a subpoena, at a probation revocation hearing for a former employee who had hidden recording devices in fire station bathrooms. Hamilton drove a city car to the hearing, wore his uniform as he testified, and did not take leave from work.
>
> ***
>
> Hamilton alleges that the factual background of his termination 'begins' with misconduct allegations against another Wilmer Fire Department employee, Craig Lawrence, in 2019. Hamilton alleges that the charge that Lawrence put recording equipment in the bathroom of the fire station at which Lawrence worked had been 'generally known' by the City since that time, and that Lawrence had been put on paid leave pending trial on a criminal charge based on those allegations. However, Hamilton alleges, because of the long delay in trial caused by the Covid-19 pandemic, the City Administrator (prior to Rona Stringfellow) put Lawrence back on duty, 'based on the idea that if the city was going to pay Lawrence's salary, it should at least receive his services.' Hamilton alleges that, when Stringfellow became the City Administrator, both her predecessor and Hamilton informed her of Lawrence's ongoing criminal matter.
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> Even if we understood his failure to inform his supervisor or seek advice from the City Attorney before testifying as wrapped up in the First Amendment right of a public employee to testify under a sworn subpoena, the City of Wilmer had 'adequate justification' to treat Hamilton differently. Garcetti, 547 U.S. at 413. Hamilton used the instrumentalities and uniform of the City's Fire Department to testify during the workday—and thus his positive testimony about Lawrence could have been seen as an endorsement on behalf of the Fire Department rather than merely his personal opinion."

The Court held:

"On June 16, 2022, Hamilton alleges, the Dallas County District Attorney's Office ('the Dallas DA's office') issued him a subpoena in the matter of State of Texas v. Craig Lawrence, in the 363rd Judicial District Court of Dallas County Texas.

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On June 20, 2022, Hamilton alleges, Lawrence informed him that he had an upcoming court date at which he would be assigned a new counselor. But he did not inform Hamilton of the subpoena.

***

The next day, June 22, 2022, Hamilton was served via email. He was ordered to appear on the following day, June 23, 2022, at 9:00 A.M. Hamilton alleges that, because Lawrence had told him that the purpose of the hearing was 'to assign a new counselor for Lawrence,' he did not feel the need to contact Human Resources, Stringfellow, or the City Attorney before he testified.

***

On the day of the hearing, Hamilton alleges, he appeared to testify in uniform because the subpoena had been addressed to 'Chief Mark Hamilton' and wearing a uniform was 'the custom of fire chiefs in Texas.' Before the hearing, Hamilton alleges, Lawrence told him that he intended to resign from the fire department, and Hamilton informed him that he preferred to receive a written resignation letter. Hamilton alleges that after he was sworn in, he testified for about five minutes of direct examination by the State and a cross-examination by Lawrence's attorney. The State asked if it was true that Hamilton had hired Lawrence after he was charged with the crime at issue, and Hamilton said that Lawrence had worked for the City since 2013. Then, Hamilton alleges, the State asked if he was aware of the 2019 allegations, and he 'truthfully testified that his knowledge of the case was limited to what Lawrence had told him because the District Attorney's Office and the Dallas Police Detectives refused to talk to Hamilton based on the policy or procedure to not discuss an ongoing investigation.' The State asked if Hamilton 'would be surprised to find out Mr. Lawrence has visited adult sexually oriented websites on his phone,' and Hamilton responded that he would be surprised. Then the State asked if Hamilton was concerned with Lawrence going into people's homes, and Hamilton answered in the negative.

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At the end of the hearing, Hamilton alleges, Lawrence was placed into custody and sentenced to three months of confinement. Hamilton alleges that he was 'stunned' because he still thought the hearing was about reassigning a counselor to Lawrence."

Legal lesson learned: If subpoenaed to testify about a firefighter in a criminal or other court proceeding, inform Manager and Legal Counsel and follow their advice.

File: Chap. 16, Discipline

NJ: EMS CHIEF / OFFICE ROMANCE SUBORDINATE – FIRED

On May 20, 2025, In The Matter Of Michelle Sampson. Upper Township, Department of Recreation and Public Health, the Superior Court of New Jersey, Appellate Division, held (2 to 0; unpublished decision) that the New Jersey Civil Service Commission on December 20, 2023 properly upheld Township's firing M. Sampson for repeatedly violating the Dating Policy. Petitioner and [her boyfriend] J.H. were engaged in a romantic relationship that began and ended in 2007 while both were co-employees. In 2016, petitioner and J.H., both married to others, rekindled their romantic relationship and began an extra-marital affair and never reported this to the Township. THE COURT HELD: "Petitioner should have disclosed the conflict or abstained from taking part in the hiring process once M.H. [wife of J.H.] was a candidate. As such, the Agency's final decision was not arbitrary and capricious."
https://www.njcourts.gov/system/files/court-opinions/2025/a1587-23.pdf

The Court wrote:

> "J.H. has been employed as a part-time EMT with the Township since 2007. Petitioner and J.H. were engaged in a romantic relationship that began and ended in 2007 while both were co-employees. In 2016, petitioner and J.H., both married to others, rekindled their romantic relationship and began an extra-marital affair.
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> ***
> In 2016, the Township enacted a Township Employee Dating Policy ('Dating Policy' or 'the policy'), which set forth an employee's obligation to report a romantic or intimate relationship to their supervisor or the Township Administrator. The Dating Policy recognized that intimate relationships 'can be a problem in the workplace. They may result in favoritism, discrimination, unfair treatment, friction among co-workers, or the perception that they generate such problems.' The Dating Policy further required that '[i]f such a relationship exists or develops, both parties involved shall report the fact . . . .'
>
> Neither party disclosed the relationship to the Township.
>
> ***
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> As a result of the complaints [by J.H.'s wife, M.H., after not being hired] , the Township conducted an investigation. The investigation began with two interviews of J.H. J.H. disclosed that in 2016 he and petitioner began having a 'sexual/physical' relationship while she was a Senior EMT and involved in creating the work schedule for all of the EMTs. During his first interview J.H. admitted that the 'sexual/physical' relationship occurred at the EMS building and other places on Township property."

Legal lesson learned: A "Dating Policy" requiring supervisors to report dating of subordinates is an excellent management tool.

File: Chap. 17, Arbitration / Labor Relations

LA: IAFF OFFICER / CAPT. FIRED – CALLED BOARD MEMBERS

On June 12, 2025, in Jonathan Gramm v. Fire District 9, Desoto Parish, et al., U.S. District Court Judge S. Maurice Hicks, Jr., United States District Court for Western District of Louisiana, Shreveport Division, denied the Desoto Parish motion to dismiss the case; Jonathan Gramm has a First Amendment claim that will proceed to pre-trial discovery. He was hired in 2014, is a Captain, and in July 2017 helped organize IAFF Local 5138, and elected its Secretary-Treasurer. On September 18, 2023 learned that an upcoming meeting of the Fire Board was going to vote on new vehicle for the Fire Chief. At the union's request, Gramm while off duty called two Commissioners on their cell phones to express opposition to new vehicle purchase. The following morning the Fire Chief King put him on administrative leave; he was fired on Nov. 27, 2023. THE COURT HELD: "[T]he Court finds that Gramm has sufficiently pled a plausible claim for relief as to Counts I and III. He alleges that he engaged in an external communication when he complained to the Commissioners over the phone regarding the distribution of public funds. This communication can support a claim for free speech retaliation, as it was made outside of Gramm's duty as a firefighter captain and addressed an issue that could qualify as a matter for public concern. Therefore, Defendants' Motion with respect to Counts I and III is DENIED. Gramm's claims under § 1983 for a violation of his rights to free speech and to petition pursuant to the First and Fourteenth Amendments remain."
https://public.fastcase.com/jaEE2PXzRXmZ99jOLMt1Ir%2Bgd4DeQSRcdUE7IJV4ZHQFjK4R6%2FaVKxoGJags6yJ8?utm_medium=email&_hsenc=p2ANqtz-9_dtoT8MCHWol7MkpFQEKniJ3EcCAHTOONesHADifFFZppYBhmnp0t7X96SaR0z0JseLLFRZzCLhs4WSwU0MvvvFbR6g&_hsmi=226712652&utm_content=226712652&utm_source=hs_email

The Court wrote:

> "On September 18, 2023, Gramm, while off duty, telephoned Commissioners Ross Tilbury and Bobby Ettredge (collectively, 'the Commissioners') to petition them to redress the firefighters' concerns about the District and the expenditure of public funds…. Upon arriving at work the next day, [Fire Chief] King called Gramm into his office and handed him a notice of formal investigation for an "incident involving him on or around September 18, 2023."… Gramm asserts this 'incident"\' involved a protected constitutional activity he engaged in as a union officer and private citizen…. After this meeting, he was sent home and placed on administrative leave…. While on administrative leave, Gramm was subjected to an investigation allegedly spearheaded by King that lacked due process.

***

Defendants assert that his free speech retaliation claims should be dismissed because it is well established that the First Amendment does not protect speech made in furtherance of a public employee's official duties, regardless of whether that speech addresses a matter of public concern. They contend his Complaint is replete with allegations that affirmatively establish his alleged speech was made in the ordinary scope of acting as the union representative of Local 518 and therefore cannot serve as the foundation of a free speech claim…. Defendants aver that Gramm's Fourteenth Amendment claims fail because he was an at-will employee of DFD 9, and no contract, statute, or other state law entitlement exists to alter his at-will relationship with DFD 9…. Additionally, they advance that he cannot articulate a colorable due process claim because, as an at-will employee, he has not alleged any vested liberty or property interest under state law.

Defendants state that Gramm did not contact the Commissioners at their offices; did not voice his complaints at a public meeting; did not voice his complaints to his supervisor; did not voice his complaints to the public; and did not voice his complaints to anyone outside of the fire department…. They contend that Gramm's argument stating he was performing a public service, 'completely out of the eyes of the public, and while requesting alternative uses of the [DFD] 9's funds that directly benefit him personally is laughable.' … Defendants submit that he ignored DFD 9's process for making complaints, obtained the Commissioners personal cell phone numbers, and acted in his own best interests.

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Gramm has failed to sufficiently and plausibly allege that Defendants retaliated against him for his association and involvement with Local 5138. The disciplinary action at issue here mainly involved Gramm's speech, not his association with the union."

Legal lesson learned: When union is going to present to Board, union President should first inform Fire Chief prior to presentation.