



5 POLICY “HOT SPOTS” FOR FIRE DEPARTMENTS

Essential Policies For Limiting Your Risk

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INTRODUCTION



From the first day at the firehouse, firefighters are barraged with a host of standard operating guidelines, standard operating procedures, acronyms that correspond to specific actions at fire and emergency scenes, paperwork that must be completed at medical calls—and of course, the fire department traditions that so often govern how things are done.

Curiously, many departments that do well in documenting and training on procedures lack comprehensive policies that govern department operations from a strategic level. While policy is important across all operations, there are specific areas where a lack of sound policy leaves the department—and its leadership—especially vulnerable. Think of them as policy “hot spots”—if you don’t extinguish them, they can develop into burning issues.

Risk management expert Gordon Graham refers to the “problems lying in wait” in public safety that lead to lawsuits and personnel grievances, and can even cause fire chiefs to lose their jobs. Fortunately, fire service leaders can take steps to reduce the risk these problems pose. One critical step, which lays the foundation for all others, is putting effective, legally defensible policies into place.

Following are five policies that directly address the root causes of many fire department lawsuits, forced resignations and negative publicity. As you read through the list, ask yourself, “How confident am I that our department’s policies and practices adequately address these issues? Are our policies current, and are we training on them?”

SOCIAL MEDIA POLICY



Why you need it: A quick glance at the headlines underscores why every fire department needs a social media policy. And it's not just about firefighters posting inappropriate messages or images on Facebook. Social media's intersection with First Amendment rights is an area of much confusion, and a lack of clear guidance can mean trouble even for well-intentioned, exemplary members.

Actual cases highlight the complexity of this issue. Here's just a few:

- A firefighter sued for wrongful termination, asking \$3 million, after he failed to report for an internal affairs interview concerning a derogatory comment he posted about a viral video.¹
- A department faced two federal lawsuits after it fired two members for posting comments in opposition to gun control legislation.²
- An arbitrator had to get involved after a mayor directed the fire chief to demote a captain who posted comments as part of a larger discussion on racial profiling by police. The

arbitrator reversed the decision, but left open whether the firefighter's First Amendment rights were violated.³

- A fire chief accepted a settlement in a wrongful termination suit that charged he was fired after his wife posted negative comments on social media about the district's board of directors.⁴
- The Fourth Circuit struck down a police department's social media policy, ruling that it was a form of prior restraint on public employees' First Amendment rights.⁵

Although having social media guidelines in place is a good thing for any employer, it's especially critical for government employers such as fire departments. Courts have ruled public employees can speak as private citizens on matters of public concern if their interest in commenting outweighs the interests of the employer in efficiently delivering its services. This leaves a lot of room for interpretation, which is why it's essential that fire chiefs use policies vetted by legal and public safety professionals. This is not an area where you want to pen the policy yourself.

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Social media's intersection with First Amendment rights is an area of much confusion.

HOT SPOT #2

LACTATION BREAKS POLICY



Why you need it: Are you aware that federal law requires employers to provide nursing mothers with a suitable location to express breast milk and reasonable break time to do so? Can you define “suitable location”? Despite this law being in place since 2010, many fire service leaders are surprised to hear about it. Even in progressive departments, men far outnumber women, and policies have been slow to catch up as a result.

A 2014 case brought some attention to this issue. A female firefighter (Clark) sued the Tucson Fire Department, alleging the department had failed to provide her with a private area in her fire station in which she could express breast milk.⁶ Tucson had a station with an area designated for expressing breast milk and a refrigerator for storing it. But the department refused Clark’s request for a transfer to this station. Instead, Clark was told she could use the private officers’ rooms in her station—which, she claimed, would require her to interrupt officers every few hours, including while they were sleeping.

As with many fire department lawsuits, this situation spiraled

into something bigger. Clark claimed that she was harassed and retaliated against when she tried to bring attention to the federal requirements.

The fact that the fire service remains a male-dominated field only underscores the need for a lactation policy. Your company officers need to know what to do if they have a nursing mother on their crew. This is not an area where you can rely on common sense. And even if you don't currently have female members, establishing a policy on lactation breaks can demonstrate your department's commitment to diversity, which can in turn help with recruiting.

Integrating women into the traditionally male-dominated fire service produces many challenges and questions. But knowing what to do if one of your female firefighters is breast feeding doesn't have to be one of them.

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DISCRIMINATORY HARASSMENT POLICY



Why you need it: Although every employer should take steps to prevent harassment and discrimination, fire departments face specific challenges. When do good-natured initiation rites cross the line into hazing? If a member of a protected class complains that a long-standing department practice is offensive, how do you respond?

Harassment claims run the gamut. Consider:

- A fire department agreed to settle a lawsuit brought by a firefighter for \$1.25 million when she alleged that firefighters and managers created a hostile work environment and retaliated against her when she complained.⁷
- A deputy chief was awarded \$1 million by a jury for disability discrimination; he was fired after the department learned he needed neck surgery.⁸
- A firefighter sued the department claiming he was sexually assaulted during a hazing ritual and harassed and abused following the incident, in part because of his ethnicity.⁹

These cases are expensive, but the consequences of allowing harassment to continue unabated extend far beyond cost. In 2016, Fairfax County (Va.) firefighter Nicole Mittendorff committed suicide. Following her death, it was revealed that she had been the subject of lewd and harassing online comments from her male colleagues.

If you think that harassment is an issue that happens in other departments, not yours, you might want to think again. In a survey conducted by Firefighter Close Calls on fire service bullying, 67% of respondents said they had been bullied in their fire service career. Perhaps most damning: Nearly 60% of respondents said their employer has done “nothing” to address bullying.¹⁰

Not all bullying or harassing behavior falls into the category of discrimination, but a zero-tolerance policy against discriminatory harassment, backed by a Code of Conduct that prohibits harassing and bullying behavior, gives you the guidance to take swift action when such behavior is revealed. Such policies also provide legal protection by demonstrating your department’s commitment to an environment free of discrimination and harassment.

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ANTI-RETALIATION POLICY



Why you need it: Discriminatory harassment and retaliation often go hand in hand; good lawyers can make a retaliation case even out of an unsuccessful harassment case. But retaliation claims can also be based on other protected activity, such as identifying abuse of authority, inappropriate conduct or safety violations.

Payouts in these cases can be considerable. Consider the following:

- A California city paid \$3.7 million to settle a lawsuit that alleged ongoing retaliation, harassment and discrimination.¹¹
- A fire inspector was awarded \$2.1 million by a jury after he claimed retaliation because he cited businesses that had close ties to the mayor for fire code violations.¹²
- A former firefighter was awarded \$750,000 following a civil trial in which he alleged he was forced into retirement after complaining about a racial slur.¹³

- A jury awarded a former firefighter more than \$2.3 million following a nine-week trial stemming from the firefighter's dismissal after reporting potential safety violations involving his captain.¹⁴

The key here is that if your department is accused of harassment or discrimination, any action you took involving the members in question—such as denying a promotion, extending probation, reassigning them, or changing their work schedule—will be viewed through the lens of possible retaliation.

Policies preventing retaliation go a long way in protecting a department. A policy that clearly spells out what retaliation is and defines the responsibilities of firefighters and supervisors to prevent retaliation can go a long way in protecting your department against such claims.

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HOT SPOT #5

DRUG- AND ALCOHOL-FREE WORKPLACE POLICY



Why you need it: It may seem obvious, but unfortunately it still needs to be said: Illegal drugs and alcohol have no place in the fire station. Although our control over off-duty behavior is limited, we can take steps to provide a safe work environment. Yet consider these news stories:

- Connecticut firefighter charged with selling cocaine while on duty¹⁵
- Pittsburgh firefighter suffers drug overdose at station¹⁶
- Six cadets dismissed by fire chief for drinking on duty¹⁷
- Firefighter under investigation for allegedly getting drunk on the job and missing an emergency call¹⁸
- Investigation reveals California fire chief was drunk on duty multiple times¹⁹

Drugs and alcohol remain a significant problem in many fire departments. In some cases, it's the remnants of a tradition in which the firehouse was a community social space, complete

with a full bar. In others, it's a result of the stress and mental anguish firefighters often experience during a career filled with devastating emergency and medical calls.

A policy that calls for a drug- and alcohol-free workplace doesn't have to disregard tradition or lack empathy for those looking to escape the stress of their jobs. But it does need to make clear that such behavior is unacceptable. A firefighter under the influence represents significant risk to your department and the community. Imagine if that firefighter is involved in an apparatus crash, injuring a civilian. Or what if a firefighter is hurt or killed while carrying out orders from a captain later determined to be under the influence?

Need one more reason for a drug- and alcohol-free workplace policy? Being under the influence of drugs or alcohol may prevent a firefighter's family members from receiving federal line-of-duty-death benefits.²⁰

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A firefighter under the influence represents significant risk to your department and the community.

BEYOND POLICY

Establishing comprehensive, legally defensible policies is only the first step in protecting your department—and your career—from legal and reputational challenges. Firefighters must know and understand your department's policies. And a handwritten signature showing your firefighter acknowledged receipt of the policy manual 15 years ago isn't going to pass muster. Effective policy must be kept up to date and backed by continuous training and documentation.

Developing a policy management and training system for all areas of your department's operations can be overwhelming. While having a comprehensive policy manual should be your ultimate goal, it's important not to let the magnitude of the project reduce you to inaction. Starting with the five policy "hot spots" outlined here is a good way to significantly reduce your risk.

Remember: Predictable is preventable. If you can identify vulnerabilities in your current policies, you hold the power to correct them—and prevent the embers from turning into a conflagration.

ABOUT LEXIPOL

Lexipol provides comprehensive, continuously updated policies and related training for more than 3,200 law enforcement agencies, fire departments and corrections facilities in 35 states. With more than 2,075 years of combined public safety experience, our staff creates policy solutions that help public safety leaders reduce risk and keep their personnel safe by improving policy access, understanding and compliance.

Contact us today for a free demo.

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