



# 7 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, forms 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 sound policies into place.

Following are seven policy areas 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?”

# MENTAL AND PHYSICAL WELLNESS



**Why you need to address it in policy:** Wellness is an emerging trend that has made itself evident in suicide statistics and high rates of mental health issues among firefighters. Many states have begun passing legislation requiring departments to have some level of wellness provision within their agencies, sometimes going as far as to provide resources and funding for wellness programs. Ultimately, however, it's up to fire departments to address mental and physical health challenges –and it starts in policy.

Research, legislation and personnel complaints reveal the importance of addressing mental and physical wellness in the fire department:

- Research has shown that firefighters are more likely to die by suicide than in the line of duty.<sup>1</sup>
- One study showed that 75% of firefighters have unresolved emotional issues from stress on the job, with 70% concerned about the cultural stigma around asking for help.<sup>2</sup>

- An ex-Detroit firefighter filed a complaint with the union, alleging a lack of mental health and wellness support from the department.<sup>3</sup>
- A Kentucky law looks to support first responder mental health by allowing a 48-hour leave following critical incidents.<sup>4</sup>
- Recent Minnesota legislation looks to expand emotional trauma resources and peer support, along with ongoing health and wellness training for first responders.<sup>5</sup>
- A New Jersey bill proposes giving first responders workplace protection for PTSD.
- California has passed into law a bill that extends PTSD presumption to firefighters and other first responders.<sup>6</sup>
- The Ohio Department of Public Safety created a division specifically to support first responder wellness.<sup>7</sup>

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# CANCER EXPOSURE



**Why you need to address it in policy:** The risk of cancer to firefighters has long been known and addressed through PPE and decontamination procedures. Traditionally, departments have focused on individual decontamination of firefighters and the gear, later expanding to include equipment and personnel decontamination facilities at fire stations.

But new evidence of cancer risk continues to surface. Conversations regarding PFAS (“forever chemicals”) and the dangers they pose to firefighters are now front and center. Two primary areas of concern include the use of firefighting foams containing PFAS chemicals and the use firefighter PPE manufactured with materials containing PFAS chemicals. Should the fire service continue to use gear containing PFAS? In what capacity? And what preventive measures should fire departments take? All these questions can and should be addressed in policy.

Recent developments reveal this emerging trend:

- Firefighting was reclassified by the World Health Organization (WHO) as a Group 1 carcinogenic profession, placing it in the highest risk class.<sup>8</sup>

- Research has shown that firefighters are exposed to PFAS chemicals that can leak out of turnout gear and are present in firefighting foams.<sup>9</sup>
- A group of 19 firefighters sued companies that produced products containing PFAS, alleging elevated levels of chemicals in their blood and resulting health issues.<sup>10</sup>
- Firefighters filed a lawsuit following diagnoses of cancer and other illnesses resulting from chemicals in their turnout gear.<sup>11</sup>
- Federal firefighters are on track to receive cancer protection under federal law.<sup>12</sup>
- The Department of Defense and some states are now working to ban or have laws preventing the use of PFAS-containing firefighting foams.<sup>13</sup>
- Pollution of water systems and other concerns about using PFAS foams in training or at incidents need to be addressed in policy.<sup>14</sup>

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New evidence of cancer risk continues to surface.

## SOCIAL MEDIA



**Why you need to address it in policy:** 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 fire captain sues his department for \$2 million after being demoted following remarks posted on his personal Facebook page.<sup>15</sup>
- Two firefighters were disciplined following comments relating to union officials posted in a private Facebook group. The 11th Circuit ruled the comments were protected speech under the First Amendment.<sup>16</sup>



- A fire department faces a lawsuit from a firefighter following his suspension for comments posted on Twitter criticizing city council members.<sup>17</sup>
- A local IAFF president was fired following a social media post criticizing understaffing over a holiday weekend. The local IAFF chapter faces claims they infringed upon his free speech rights, as well as for retaliation following his termination.<sup>18</sup>

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.



HOT SPOT #4

## LACTATION BREAKS



**Why you need to address it in policy:** 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.<sup>19</sup> 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.

A case from a different department in 2021 highlighted similar circumstances: Lactating mothers had to breastfeed “in the back of ambulances, in filthy bathrooms and in an unlocked room frequented by male employees who harassed them for engaging in lactation.”<sup>20</sup> As with many fire department lawsuits, both situations spiraled into something bigger. The claims later escalated to that of harassment and retaliation after the women 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.

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## DISCRIMINATORY HARASSMENT



**Why you need to address it in policy:** 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:

- Two female firefighters sued their department, claiming they were passed over for promotions in favor of lesser-qualified male applicants and seeking lost wages and retirement benefits, compensatory damages for pain and suffering, and future promotions.<sup>21</sup>
- Four Black female firefighters allege race and gender discrimination in the form of disparate discipline, pay and promotional practices, seeking no less than \$10 million in compensatory relief.<sup>22</sup>

- A female firefighter filed a lawsuit claiming 10 years of inappropriate comments, unwanted sexual contact and embarrassing situations, to which her repeated complaints did not result in a change.<sup>23</sup>
- A firefighter claimed disability discrimination after a false positive drug test due to lawfully prescribed ADHD medication. The firefighter was terminated as a result of the positive test and alleges failure to accommodate a disability under state law.<sup>24</sup>

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 died by suicide. Following her death, it was revealed she had been the subject of lewd and harassing online comments from her male colleagues.

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.



## RETALIATION



**Why you need to address it in policy:** 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 agreed to pay up to \$3 million to settle a lawsuit that alleged retaliation against a group of firefighters following their reports of misconduct within the Fire Prevention Bureau.<sup>25</sup>
- The city of Cleveland settled for almost \$1 million in a suit alleging retaliation for leaking information about an incoming chief's lack of qualifications.<sup>26</sup>

- A firefighter filed a \$5 million lawsuit against the city, claiming wrongful termination for his whistleblower complaints.<sup>27</sup>
- A former fire chief claiming wrongful termination and retaliation filed a \$10 million suit against a California city.<sup>28</sup>

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.

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 preventing retaliatory behavior.

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Discriminatory harassment and retaliation often go hand in hand.

## DRUG AND ALCOHOL USE



**Why you need to address it in policy:** It may seem obvious, but unfortunately it still needs to be said: Illegal drugs and alcohol have no place in the fire station. Clearly, a firefighter under the influence presents a safety hazard that must be mitigated. Increasingly, however, this issue is even more complicated by state laws legalizing medical and recreational marijuana use. Consider these news stories:

- A Detroit battalion chief was arrested for driving drunk on-duty.<sup>29</sup>
- A New York firefighter-EMT claimed he was terminated for medical marijuana use.<sup>30</sup>
- A Massachusetts firefighter pleaded guilty after accusations he was selling drugs to fellow firefighters.<sup>31</sup>
- A Detroit firefighter responding drunk to an emergency crashed the rescue vehicle.<sup>32</sup>
- An FDNY EMT sued the city over their policy on medical marijuana.<sup>33</sup>



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.

Addressing drug and alcohol use in policy is complex and not something most departments are equipped to do on their own. But ignoring this hot spot comes at a huge risk. 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? Departments must also confront the challenge of determining when a firefighter is under the influence of medical marijuana, while also taking care not to trigger violations of state disability discrimination laws.

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

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

## BEYOND POLICY

Establishing comprehensive, legally sound policies is only the first step in protecting your personnel, your department and your community from preventable harm. 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 seven 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 empowers first responders and public servants to best meet the needs of their residents safely and responsibly. We are the experts in policy, training and wellness support, committed to improving the quality of life for all community members. Our solutions include state-specific policies, online learning, behavioral health resources, grant assistance, and news and information offered through the websites [Police1](#), [FireRescue1](#), [EMS1](#), [Corrections1](#) and [Gov1](#). Lexipol serves more than 2 million public safety professionals in over 10,000 agencies and municipalities. For additional information, visit [www.lexipol.com](http://www.lexipol.com).

Contact us today for a free demo.

[info@lexipol.com](mailto:info@lexipol.com)

[www.lexipol.com](http://www.lexipol.com)

844-312-9500

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