

## **THE DILEMMA OF BEING A WOMAN FIREFIGHTER**

The fire service is not an exclusive men's only club. We represent the cross section of our culture and in a perfect world, would treat everyone equally. There are hundreds of laws generated and passed to protect, women, minorities, religious beliefs and freedoms, age, certain disabilities, gender beliefs and lifestyles and our veterans. Every day our industry violates those very laws designed to protect those covered under the law. Claims based on the violations are costing fire departments millions of dollars every year and ruins careers and dreams of those chosen to become firefighters.

One of those protected classes are women firefighters and based on the case law experiences, the fire service place women firefighters at a disadvantage when they enter the fire houses generally based on gender and not on the ability to do the job. This observation is based on the innumerable lawsuits brought by women against their fire departments, firefighters and officers based on the boorish, egregious, discriminatory and continuous illegal conduct against our women firefighters during the hiring process, the probationary period, promotions and throughout their careers as firefighters.

When will we stop treating women firefighters differently than men firefighters?

I know that most of you will be outraged by this broad brush characterization of the fire service as it relates to women firefighters. If you are, you should continue to read this article as you play an important role in stopping this behavior. If not, you should continue to read this entire article to see how changing your behavior towards women firefighters may prevent this litigation.

Yes, there are men and people of color who suffer discrimination and yes they file lawsuits, but the comparable number (men v. minorities v. women) is heavily weighted toward women firefighters filing a lawsuit based on the reasons we will discuss below.

**The most recent outrageous and egregious** behavior by fire officers and firefighters is found in the Los Alamos (NM) fire department. According to a federal lawsuit, a woman firefighter grew up dreaming of becoming a firefighter. When she got her wish in 2006, members of the Los Alamos County Fire Department sexually harassed her verbally and physically as one of only five females in the department. The breaking point for her was when a captain allegedly attempted to videotape her in the bathroom. Her attorney states, "She had to endure a workplace that was better suited to the male-dominated firefighting houses of the 1940s than of the 21st century." "What happened to her is inexcusable and unacceptable." In her complaint, male firefighters would comment about her body and claims that one said her place was at home "naked, making food and babies," and that Capt. Jeff Wetteland, named as a defendant, propositioned her for oral sex and told her he would give her pinkeye by "farting on her pillow." At another point, Wetteland allegedly slapped her buttocks in view of the other firefighters.

In October 2010, according to the suit, she found a camera hidden in a paper towel dispenser in her bathroom at the station. Former Capt. Aaron Adair, another defendant in the suit, was charged with placing the camera there in an attempt to get a video of her. He pleaded no contest to charges of voyeurism and tampering with evidence, resigned from the department and received probation on the charges. The suit alleges that she found the camera behind a transparent oval covering and police were called to investigate. Before she could meet with them,

Adair told her to give him the memory card from the camera, saying it was his. He allegedly told her not to do anything to hurt his career, and she reluctantly gave him the card, fearing she could face insubordination charges if she refused. When she later called Adair and asked him to return the card, he said he destroyed it and would deny knowledge of the camera if anyone asked about it, according to the lawsuit. The suit alleges that defendant Jerry Adair, brother to Aaron, and Aaron Adair both confessed to placing the camera there, which Aaron said was intended to get images of Noah. Aaron Adair said he destroyed the memory card by breaking it, putting the pieces inside of a squash and throwing it into a field and a canyon.

This lawsuit suit accuses the County of not doing enough in light of the voyeurism incident because they took no action against Jerry Adair or for any actions related to placing the camera or destroying the memory card, or for his later claim that he lied to police. The suit states Wetteland received “minor” discipline after an investigation of harassment claims, and, after his five-shift suspension was over, Wetteland would have gone back to supervising her.

In response to a question about whether county officials believe Los Alamos offers a safe work environment for women, a spokesperson said that the County provides annual training for supervisors and managers and biannual training for all employees to promote a safe work environment. “We consistently evaluate employee feedback, procedures and processes related to this topic,” the spokesperson stated. “We take pride in providing all of our employees with a safe place to work.” The suit seeks damages, including compensation for back pay and punitive damages.

In a letter written to the judge during the sentencing hearing for the former Captain, she writes, “I hoped to be respected for my skills and valued as a firefighter; instead, I found myself degraded by Mr. Adair and treated as a sex object

### **Analysis**

Let take this analysis step by step – it is believed both men and women firefighter candidates take the same entry level test. In most departments there is a written, physical ability and interview. After the successful candidates are selected and a letter of intent to hire is sent by the respective department, there is additional testing of a medical, psychological another interview the successful candidates begin recruit academy.

There have been accusation and litigation even at this part of the entry testing process as there are demonstrated biases against women both in the physical capacity test (testing exclusively upper body strength) and the written test. The CPAT has pretty much leveled the playing field for all candidates among those departments choosing to use that standard of testing. The written is a different story as some of the written testing is geared towards the mechanical (which are acquired skills) and other testing parameters that are biased towards women candidates.

The **recruit academy** is the first place where women firefighters, seeking a professional career as a firefighter, can find themselves the victim of egregious conduct towards them. Let’s look at the Fresno Fire Department and the case of Michelle Maher. Maher alleges during the recruit academy she was told that she could not be successful in the fire department as a mother and alleges a supervisor repeatedly asked her about her divorce and suggested she was slacking because she was a single mother. The claims also stated the fire department held her to a higher

standard than male recruits as the fire department gave male recruits who received scores below 80 percent the opportunity to improve their scores; but did not allow her to do the same. The Fire Department could not avoid convincing evidence that it held Maher to a higher standard than male recruits. Federal court jury found that she was a victim of gender discrimination and awarded her \$2,468,141.00. Her attorney received over \$900,000.00.

Another example is at the Washington DC Fire Department. An active duty female firefighter spoke up for young female cadets alleging sexual harassment at the DC Fire and EMS Training Academy. Fearing retaliation, the firefighter requested anonymity and states when she joined a recruit class a few years ago; it came with a warning from a female academy employee about some of the male instructors. "The warning indicated that she, 'be careful, because a lot of them don't know their boundaries.'" Almost immediately, firefighter stated the sexual harassment began. One instructor commented, "guess who wore the wrong bra today," and after a tough day of training, that same instructor got her alone. She stated his hand moved from her shoulder slowly down to the top of her backside and other parts of her anatomy. She told him to stop. Fearing for her job, the female firefighter kept quiet until she saw a local news channels recent investigation centering on two young female cadets, fresh out of high school, who accused two instructors of sexual harassment. The fire department has reassigned the two instructors to positions outside of the academy and launched an internal investigation. When the news media approached the D.C. Fire Chief Ellerbe, he insisted the alleged harassment was "not" sexual in nature. "What we believe happened was more some inappropriate language and touching, not of a sexual nature, but the matter made the young ladies uncomfortable," However one male DC firefighter says he also felt compelled to speak out, saying he's aware of cases in which superiors intimidated female firefighters into not filing complaints. This firefighter also has knowledge of two issues where issues of sexual harassment or harassment towards women have been basically brushed under the table.

In yet another recruit academy case, two women filed a federal lawsuit against the St. Paul Fire Department and city officials on claims they conspired to make them fail firefighting training. Kathleen O'Connor and Julie Tossey filed a 13-count lawsuit on allegations of sex discrimination, age discrimination and conspiracy. It also accuses the department of deliberately sabotaging its own affirmative action goals. The two women, aged 49 and 42 respectively, both fire dispatchers, were offered spots in the firefighter recruit class. They were terminated about halfway through the 12-week academy and according to the 28-page lawsuit, the woman said instructors intimidated them, forced them to take tests with broken equipment and refused to give guidance that was provided to other recruits. Their attorney contends the fire department just doesn't want women in the fire department there as it's still a good old boys club. The department has 17 women among its 370 firefighters.

This is not the fire departments first rodeo. In a previous 1988 lawsuit, the Fire Department was sued by the Minnesota Department of Human Rights on claims it discriminated against women in its physical skills exam. The lawsuit was settled by a **consent decree** that extended the minimum amount of time to complete the test and gave the fire chief more discretion in picking candidates. Again in 1999, seven women who failed the physical test filed a complaint about confusing test instructions with the Department of Human Rights. The city later offered a second opportunity to take the test. Recently, the Department of Human Rights determined there was

"probable cause" that St. Paul's physical tests for firefighter candidates discriminated against women.

**Probationary period:** You successfully completed the recruit academy and just when you thought it was safe, here comes the necessary probationary period; one that exposes women firefighters to continual harassment, sexual harassment and discrimination.

An example is a female firefighter was fired as an Orange Township firefighter after complaining of sexual harassment by a co-worker. The woman firefighter, sued the Delaware County Township and her supervising lieutenant, Keith Myers, saying she was the victim of gender discrimination. She was hired as a full-time firefighter by the township and was fired two weeks before her one-year probationary period was to expire. The jury opined she was fired because of her gender and that Lt. Myers acted "with actual malice" in recommending her termination. The jurors returned a judgment of \$1.67 million against the township and \$75,000 against Myers. In her lawsuit, she said that a male firefighter began sexually harassing her immediately after transferring into her unit and that Lt. Myers didn't act on her complaints. Testimony at the trial showed that township firefighters were shown sexual-harassment training videos on a split screen so they also could watch a NASCAR race. On July 17, 2013 Orange Township agreed to pay \$875,000 to resolve this sexual-harassment lawsuit that she won earlier this year. The settlement agreement between her and the Delaware County township also will return her to firefighting this fall. The settlement put her back on the township payroll and the settlement includes damages, back pay and attorney fees.

Another example is found in Carlsbad (CA) Fire Department where a female firefighter joined the Carlsbad fire department to complete her year-long probationary period. According to her, she completed all tasks assigned to her and passed her physical tests, some of which she believes were made even harder for her than her male counterparts. While living at the station on her work days, she was allegedly subjected to sexual harassment, such as being pulled toward a male firefighter by her belt loops and being offered assistance with showering. Online comments about female toiletries appearing in a unisex bathroom at a fire station added to the hostile work environment. According to the lawsuit, around the end of her probationary period she was told she could either resign voluntarily or be terminated by the department; the latter of which would hurt her chances of finding a position elsewhere. She felt she had no other choice than to resign and her wrongful termination lawsuit is asking for about \$2 million in damages stating she was discriminated against because she was a woman trying to get into a fire department that has always been all men and the complaint states she was forced to leave her job simply because she was a woman.

**Enjoying your career and prior to advancement in rank.** During the course of a woman firefighter's career, it becomes especially difficult due to the constant harassment, sexual harassment and discrimination. An example of a long term firefighter filing a lawsuit against a large city, we look to the City of Houston alleging that racist and sexist graffiti aimed at two female firefighters was part of a pattern or harassment and sexual harassment, and the female firefighter who filed the suit wanted the alleged pattern of behavior to change. The lawsuit says the pattern of hostility against the woman firefighter started in 2000 when she worked at Station 46. Among some of the allegations are that a fill-in firefighter sexually harassed her, "rubbed up against her... asked her to sleep with him, climbed into her bed while she was in it." The lawsuit

goes on to say that when she later filed a formal complaint, other firefighters began to treat her differently. Her attorney notes, "one of the things that we've noticed is that in the fire department is that every time you speak out about misconduct, it's deemed an act of disloyalty." The firefighter also claims the harassment followed her as she moved from station to station. At Station 92 near Bush Intercontinental Airport in 2007, "the pictures of her children, including her deceased daughter, were removed from her locker, torn up and placed in the trash." In April 2009 at Station 54, the lawsuit says, "she went to take a shower and was scalded by hot water... the cold water line to the shower had been turned off at the valve." And in July 2009 she and another female firefighter say racist and sexist graffiti was targeted at them at Station 54.

**One would think that the firefighters have matured to a point that egregious behavior against female firefighters would cease. If you believe that; you are wrong**

**Lieutenant, Captain or Chief Officer.** It appears that the harassment of women firefighters rises to the top of the organization as well. A former female Topeka deputy fire chief is seeking more than \$1.3 million in a federal discrimination lawsuit filed against the city and Local 83 of the International Association of Fire Fighters. The suit alleges the city committed gender discrimination and retaliation, while Local 83 supported actions the city took to terminate Petty and hire less qualified men for vacant fire department jobs she subsequently sought. The suit seeks damages for lost wages, lost benefits, future lost wages and benefits, mental anguish, costs and legal fees. The female firefighter was hired as one of the Topeka Fire Department's first four female firefighters in 1985, then became its first female training officer in 1995, its first female member of management in January 2004 and its first female deputy chief in September 2004. She subsequently became a target of public criticism from IAFF Local 83, which represents rank-and-file Topeka firefighters in collective bargaining. The city later eliminated her job along with several other positions in what it said was a budget-driven work force reduction. According to her lawsuit petition: she was involuntarily moved in September 2009 from her deputy chief's job to a management analyst's position within the city manager's office that carried substantially less authority, with her pre-transfer duties being reassigned to male employee and she was terminated in February 2010, with a city separation letter providing the reason as "layoff/budget." Because she had been laid off, she was entitled under the city personnel code to have her name entered on a re-employment eligibility list and to be given first consideration when a vacancy occurred in the same or similar position to the one she last held. She applied for openings for deputy fire chief in October 2010, training officer in July 2011 and deputy fire chief. Each time, the city didn't interview her and hired a less experienced man.

Her lawsuit petition contends the city's actions "were motivated by the city's and Local 83's preference for male employees in the TFD." It says, "The city only considered, and Local 83 only supported, current TFD employees because that would ensure that a male would be hired and that Petty would not be re-hired. She initially filed a claim seeking \$1.3 million dollar claim with the city which was rejected by the City Council. She then filed her lawsuit in a federal court and the first four counts of the six-count lawsuit contend the city and Local 83 violated Title VII of the Civil Rights Act of 1964 and the Kansas Act Against Discrimination. The fifth count accuses Local 83 of a separate Kansas Act Against Discrimination violation, while the sixth accuses the city of violating Section 1983 of U.S. employment discrimination law. The petition contends Local 83 officials "dominated and controlled" the city's management in decisions regarding fire department personnel, including sending the city manager and fire department

employees emails listing employees who would be allowed to apply for promotions and to fill vacancies. Only male employees were named in the emails, the petition said.

### **What are the common themes?**

The aggrieved are most often always women; they have been harassed, sexually harassed, discriminated and retaliated against in many ways and some even assaulted and raped; they file a lawsuit against the department, the harassing individuals and the fire chief; and they most always win large judgments as the law most often favors the victims. It appears the offending department officers and staff condone this behavior as the claims indicate the harassers are firefighters and fire officers and in spite of articulating their complaints to the senior management and filing written complaints, the departments do the minimum of discipline of the harassers or look the other way; leading to the charge of complicit behavior by the Chief of the Department.

### **What is the law?**

Sexual harassment can occur in one of several ways: **Quid Pro Quo Harassment** which can constitute a one-time occurrence or involve repeated behavior requiring a person to tolerate some form of sexual harassment in order to get a job, keep a job, get a raise or promotion, or to receive some other benefit. This harassment can come from a prospective employer, a current employer, a manager or supervisor, or a co-worker. The sex and sexual orientation of your harasser does not matter.

When looking at classic sexual harassment, we tend to think of a superior threatening an employee with negative repercussions if the employee doesn't provide sexual favors with variations on that theme. The repercussions and even the demands may not be directly stated. What defines the harassment ultimately is that the employee is required to endure harassing behavior in order to keep his/her job or job benefits or avoid other negative consequences at work. Examples may include:

- The offender making direct demands for sexual favors while suggesting it is in the employee's best interest to comply
- The offender asking to meet an employee outside of work, making romantic overtures during the meeting, and then discussing the job security the employee would enjoy by being in a relationship with the manager
- The offender placing a hand on an employee's knee during a one-on-one meeting and suggesting the employee's performance reviews would go better if the employee were "friendlier"
- The offender demoting an employee who rebuked the offenders sexual innuendos at a company party

**Hostile Work Environment** involves repeated behavior that is abusive or offensive, or interferes or alters the victims' ability to perform their job. Employers that foster or allow these conditions to continue can be found liable for the conduct of the offending employees.

Although not as easily recognizable as quid pro quo harassment; hostile work environment harassment casts a much larger net and encompasses many more forms of misconduct.

This type of harassment is marked by the creation of a work environment that is abusive, hostile, or intimidating. To identify a hostile work environment, the harassment must be severe, pervasive, and reasonably offensive. Examples are:

- An offending co-worker or officer making frequent sexual remarks towards an employee
- An offending co-worker or officer repeatedly touching an employee in an unwelcome manner
- An employee regularly receiving sexually explicit e-mails from a the offending co-worker or officer
- An offending co-worker or officer making catcalls every time an employee walks by
- An offending co-worker or officer constantly inquiring about an employee's sex life or sexual history
- An offending co-worker or officer pestering an employee for a date or sexual encounter

### **Rape and Assault.**

Always a crime punishable by jail time, loss of your job, a monetary fine and the possibility of having to register as a sexual offender in your state and other states of relocation.

### **Other Forms of Harassment.**

It's important to remember that sexual harassment is just one type of illegal harassment. For harassment to be considered unlawful, it must be based on a protected characteristic. These characteristics have been determined by employment law at the State and Federal level. The full list of federally protected characteristics include age (40 years or older), color, genetic information, sex, disability, national origin, race, religion (or lack thereof), pregnancy, and veteran status. State laws often add protections for marital status and sexual orientation, among others.

Comprehensive workplace harassment training should touch on all protected characteristics of your firefighters and employees.

### **Preventing Harassment.**

Preventing harassment of all types within an organization requires a focus on training, awareness, and effective processes to handle complaints.

- Policy: Have one and enforce it.
- Training: Best practice recommends regular training for all employees on preventing workplace harassment and discrimination. Conducting training every two years is a good standard, and in some states this is the law for supervisors. In years when full training is not being provided, refresher training is recommended in order to keep information fresh in employees' minds.
- Awareness: In addition to training, it is important for organizations to foster awareness of harassment through other means, such as posters, videos, and brochures. These materials should help employees identify workplace harassment as well as inform employees who they should contact to report or discuss harassment allegations. Typically, this is a

supervisor, the human resources department, or the organization's ethics and compliance hotline.

- Process for Handling Complaints: Organizations should ensure they have clear and efficient processes in place for handling harassment complaints. Every organization should establish and promote the appropriate channels for reporting allegations (supervisors, HR, whistleblower hotline), and the procedures for investigating and resolving complaints should be consistent across all channels. How such investigations are conducted, what corrective actions may take place, what kind of relief victims may receive, what degree of confidentiality complainants can expect, and how retaliation will be prevented and addressed – these are all aspects of the process that every organization should detail in its policies, embrace consistently in its actions, and share fully with its employees.
- Chief Officers must get out into the fire stations to see what is going on. You cannot lead from behind a desk and it is imperative that the chief or their assistants are out visiting on a regular basis. Ask the tough questions to your firefighters about harassment or sexual harassment. Women are not the only victims but are most often the victims of harassment.

### **Finally, the Most Novel Case of Retaliation.**

A San Jose Fire Department female firefighter's 9 year old son visited his mom's station. Apparently while there he used the men's room, where he found a hardcore pornographic magazine. Unbeknownst to his firefighting mother, the boy took the magazine home, where it was later discovered under his pillow. When his mom confronted the boy about the magazine, he confessed. Upon returning to work she discovered some 60 other pornographic magazines, prompting her to complain to the station captain. The resulting investigation led to the female firefighter-mom being "shunned and taunted" by fellow firefighters. After months of such treatment, the firefighter sued the City for sexual harassment and eventually settled for \$200,000.00. Allegations of sexual harassment based upon retaliation for filing a complaint are not rare. In fact many (if not most) sexual harassment cases include allegations of retaliation to address harassment that occurred after a victim complains about being harassed. What is unusual in this case (besides the involvement of a child), is that it appears the victim was not harassed **PRIOR TO** her complaining about the magazines. It was **ONLY AFTER** she complained that the harassing behavior began.

### **Closing.**

Harassment is harassment. It is not necessary that a person have been the victim of ongoing harassment prior to complaining, to trigger the anti-retaliation provisions of discrimination laws. There are cases where men have successfully alleged retaliation-based sexual harassment because they were harassed for supporting women firefighters who were being harassed. See *McMenemy v. Rochester*, 241 F.3d 279.

We must treat all firefighters as professionals. Women firefighters do not need to be subject to boorish, egregious, sexist and discriminatory behavior by fellow firefighters. Yes we can joke around and have fun but the line is drawn when the target of your "jokes" says to stop, you need

to stop. Remember, we all have mothers and some of us have daughters and you would not want your family treated in this fashion.

We are in the fire services for a number of reasons but one should not expect to be harassed for years before litigating their claims and most often leaving their chosen profession.

**When does this conduct end and what can you do to prevent the continual boorish, sexist, misogynistic, immature, hostile and intimidating behavior against women firefighters?**

**It starts and ends with you and it is time to treat women firefighters as professionals and not as sexual objects or as targets of your bias and intolerance.**

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