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Legal Issues

3 personal injury claim pitfalls all first responders should understand

You've got the requisite emergency response training, but do you have the knowledge to survive a lawsuit?

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By Drew LaFramboise

From day one on the job, first responders like you are trained to assess dangers and utilize all available tactics and tools to minimize the risk. But danger is always present and, unfortunately, injuries to first responders are all too common.

When an injury occurs on the job and is caused by the wrongful actions of someone else, what is the recourse for a first responder? Do you have the right to pursue and recover damages through a personal injury lawsuit? Like many questions involving the ever-complex world of civil litigation, the answer is a solid "maybe."

It's important for all first responders to understand the three primary obstacles to pursuing and recovering personal injury damages in a civil lawsuit.

1. The "Firefighter's Rule"

In most states, first responders who bring a personal injury suit will face a legal defense known as the “firefighter’s rule.” (Contrary to the name, the rule applies to all first responders.) While the application of the rule varies by jurisdiction, the basic premise is the same: First responders who are injured in the line of duty may be barred from recovering damages caused by the negligence of another.

The policy behind the firefighter’s rule arises from a legal concept called “assumption of the risk.” Under that concept, one who understands the risks and potential harm associated with their conduct – and voluntarily encounters those risks – is prohibited from recovering damages when he or she is harmed. In other words, under the firefighter’s rule, the argument is that the first responder knows (or should know) the risks associated with their job activities but nevertheless voluntarily encounters them. Therefore, the first responder has assumed the risk and is barred from recovering damages.

Some states have scaled back the firefighter’s rule or even eliminated it altogether, recognizing the defense as outdated and inequitable, but most states still recognize it in one form or another. However, in those states where the defense is viable, there are a few exceptions to the rule that first responders should know.

- **Exception 1:** If the injuries were the result of gross negligence, willfulness, recklessness or intentional conduct (i.e., conduct beyond mere negligence), the injured first responder’s personal injury case may proceed. In such cases, the firefighter does not voluntarily encounter or assume that people will act with a level of culpability beyond negligence, and therefore the firefighter’s rule has no application. Proving this level of culpability will often require factual development through the discovery process.
- **Exception 2:** If the injuries were caused by a hidden danger or subsequent unexpected act of negligence about which the first responder had no reason to know, the first responder cannot assume the risk, and the firefighter’s rule may be inapplicable. For example, if a firefighter is in a building to investigate a gas leak, and the firefighter is injured due to a structural defect in the building itself and falls through the floor, it is unlikely that the firefighter’s rule can be raised as a viable defense by the homeowner or builder.
- **Exception 3:** In some tragic cases, first responders are injured by a defective product, for example an explosion or fire caused by a defective furnace or gas tank. In such cases, the firefighter’s rule may not apply to bar the claim against the product manufacturer because such a defect would not be reasonably apparent to or anticipated by the first responder.

These are just some exceptions to the firefighter’s rule that can be potent defenses when a first responder is injured due to the acts of another. These obstacles need to be understood and navigated in any civil lawsuit.

2. Workers’ compensation exclusivity

The concept of workers’ compensation exclusivity, also known as the “workers’ compensation bar,” is that workers’ compensation benefits are the sole and exclusive remedy for persons injured on the job. Generally, first responders are eligible for workers’ compensation benefits through their employer, and in most jurisdictions that coverage applies to volunteer civil servants. These benefits are “no fault,” meaning they are available regardless of who is responsible for the harm. Because of the availability of those benefits, injured first responders may be barred from bringing claims against their employer and coworkers when they are injured in the line of duty, on the theory that recovering tort damages from their employer would constitute a “double recovery” for the injured worker.

However, the workers’ compensation bar does not extend to claims against third parties (i.e., people and entities other than employers and coworkers). So, in the case of a first responder, the workers’ compensation bar will not preclude a negligence claim against (for example) the owner of the premises where the injury occurs or a person responsible for a fire or explosion. While those claims may be precluded by another defense, such as the firefighter’s rule, the workers’ compensation bar is not a barrier to recovery of personal injury damages.

3. Contributory negligence and comparative fault

A first responder’s personal injury claim, under certain circumstances, may be limited or altogether barred by the doctrines of contributory negligence and comparative fault.

Certain states recognize *contributory negligence*, which means that an injured person is unable to recover damages from a wrongdoer if the injured party is at fault – even 1% at fault – for their own injuries. This strict and harsh doctrine is recognized in just a few states, including Maryland and Virginia, and the District of Columbia. Under *comparative fault*, on the other hand, an injured party may still recover damages even if they were negligent themselves, but their damages may be decreased by the percentage of fault attributable to their own actions.

These doctrines may apply in certain circumstances in the case of first responders. For example, if a firefighter is injured in a blast, but their injuries are caused or heightened by the failure to wear proper equipment or follow certain protocol, a contributory negligence or comparative fault argument may be applicable. Any lack of due care in the line of duty may be exploited by a defendant in a personal injury case and used to reduce or eliminate the first responder's claim for damages. It is critical that those injured in the line of duty understand which doctrine applies in their state.

Understanding your defense options

First responders who are injured in the line of duty will likely have many questions about their legal rights. As explained in this article, these questions may not have clear answers and may be dependent on the application of defenses such as the firefighter's rule, workers' compensation exclusivity, and contributory negligence/comparative fault.

Understanding and navigating these defense options will be critical to a successful recovery.



Fire Department Management

5 financial concerns to address when leaving the fire department

From unused vacation time to long-term investments, there's lots to settle before saying farewell

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