



michigan municipal league

Liability & Property Pool Workers' Compensation Fund

RISK CONTROL SOLUTIONS

A Service of the Michigan Municipal League Liability and Property Pool and
the Michigan Municipal League Workers' Compensation Fund

LIABILITY ISSUES FOR FIRE & EMS SERVICES

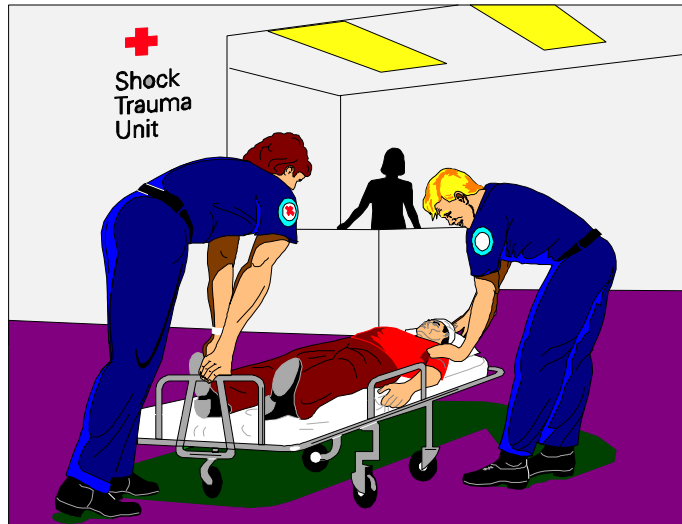
THE PROBLEM

At one time, governmental immunity protected Fire and Emergency Medical Service (EMS) units from liability for their actions. Over the last three decades, however, the outcomes in various court cases have slowly eroded the concept. Today, under Michigan state law, officials, employees as well as volunteers of fire services are still immune from tort liability for actions occurring during their employment, if they meet all the following conditions:

- ◆ They are acting or believe they are acting within the scope of their authority;
- ◆ The agency for which they work is involved in a governmental function, and
- ◆ The cause of the loss does not result from gross negligence.

The following are a few examples of what the Government Immunity Statute does not cover:

- ◆ Operation of a Motor Vehicle;
- ◆ Hazardous Materials Incident;
- ◆ Libel and slander;
- ◆ Causing intentional damage to another person;
- ◆ Failure to comply with state and federal mandates; and
- ◆ Violations of Civil Rights or discrimination



Until recently, Fire and EMS services -- unlike police departments -- experienced few claims. However, as other operations such as Police Departments moved to reduce liability exposures, the public's focus shifted to Fire and EMS operations. Many members of the public no longer consider firefighters to be heroes. They find the "good old days" attitude that prevails in many Fire and EMS units to be unacceptable. In today's litigious society, firefighters must conduct themselves with extreme professionalism and caution on and off the job. In addition, public agencies providing fire and EMS services have legal obligations to both employees and the public that they must fulfill.

Fire and EMS departments must take reasonable precautions to make certain that employees follow all relevant standards, policies and procedures during service. In reviewing fire and EMS operations, entities should consider the following major issues:

- Employment practices;
- Civil liabilities for departments and employees;
- Criminal liability;
- Liability as it refers to the safety of employees; and
- Training.

The solutions outlined in the discussion that follows can aid fire departments and EMS units in reducing the potential for liability losses to themselves and to the Michigan Municipal Liability & Property Pool. This document addresses only the major issues. As with all liability issues, we encourage you to seek legal counsel.

Many of the exposures that result in liability losses can also result in workers' compensation losses. Therefore, addressing liability issues may have a beneficial effect on workers' compensation losses. Fire, EMS and other public officials should review the identified exposure areas in their organization and address them as necessary.

SOLUTIONS

✓ **Train all employees adequately on all relevant state and federal standards. Document the training appropriately.** Review National Fire Protection Association (NFPA) Standard 1041. Training, at a minimum, should include:

- Fire Fighter I and, if full-time, Fire Fighter II (NFPA 1001);
- Incident Command System (ICS);
- Emergency Response Planning (HAZMAT) and emergency operations;
- SARA Title III;
- EMT, Dispatcher, Personal Protective Equipment (Michigan Occupational Safety and Health Administration, MIOSHA Part 33);
- Michigan and Fire Fighter Right to Know and Bloodborne & Airborne Pathogens;
- Elevated & Aerial Platforms;
- Confined Space Rescue (Part 90);
- Lockout/Tagout;
- Fire Fighting (MIOSHA Part 74);
- Live Fire Training (NFPA, 1403);
- Life Safety Code (MIOSHA Part 6);
- Employment practices such as hiring, firing and sexual harassment;
- Individual department policies and procedures and any other relevant issues.

Designate a Training Officer to develop a written training plan and to implement and monitor it. A qualified individual should conduct training and document it in the employees' training files.

Employee training should be ongoing and, depending on the importance of each issue, should take place regularly. Use some type of pre and post test to verify that firefighters or EMS technicians have learned the important points.

Public agencies should take training seriously. MIOSHA requires that a fire department have a written training plan. In addition, the landmark 1989 Supreme Court ruling in *Canton vs. Harris* makes it clear that public agencies are responsible for civil rights violations as a result of inadequate or inappropriately conducted training.

For more information about appropriate training, contact the Department of Labor, The Fire Fighters Training Council or other relevant regulatory body.

✓ **Develop and follow motor vehicle operation procedures.**

- **Establish a Motor Vehicle Risk Control Committee** to solicit ideas, recommend actions, investigate losses, and review policies. The Committee should **conduct a loss analysis**. The purpose is to identify the nature of losses, coordinate your policies and procedures, and analyze how the purchase or use of different equipment can reduce future losses.
- **Develop and implement motor vehicle policies and procedures.** The policies and procedures should address recruitment and selection of new firefighters, vehicle use guidelines, rider or passenger eligibility, fleet maintenance, training and other related issues.
- **Recruit, screen, and hire qualified candidates.** Establish an acceptable driving record standard. Screen applicants based on the standard. Verify all relevant employment background, and develop a process to check the driving status of current employees.
- **Establish and conduct a sound training program on the department's motor vehicle policy.** Training should take place at least annually for current employees and before you assign a new employee to a motor vehicle. Provide supervisors with specialized training to monitor the performance of their unit. Conduct in-service training, using hands on instruction, every three years at a minimum. The Michigan Fire Fighters Training Council Requires that training be conducted by a state approved program. (See NFPA 1002)



Refer to the Michigan Municipal Liability and Property Pool's Motor Vehicle Risk Reduction Recommendations for more information on reducing your risks in motor vehicle operations.

✓ **Test and inspect equipment and personal protective equipment regularly.**

This is especially important for:

- Self-Contained Breathing Apparatus (See NFPA 1981);
- Protective clothing (head, face, eye, foot, leg and hand protection -- NFPA & MIOSHA);
- Elevated platforms; and
- Tools, ropes, and other rescue equipment (See MIOSHA Part 74).

Follow applicable state and federal requirements and manufacturers' recommendations regarding equipment. Document the inspection schedule and results and keep them in the department files. Correct any deficiencies immediately or pull the equipment from service until repaired. Test aerial or platform trucks regularly, following the manufacturer's recommendations. Equipment that fails or does not work properly poses a risk to employees and the public. Make certain that each employee who may use or operate the equipment knows how to operate it and knows the maintenance requirements that apply.

✓ **Supervise employee conduct and discipline when necessary.** All department employees should conduct themselves professionally on and off the job.

- Prohibit the storage and/or consumption of drugs, alcohol, or other controlled substances on department property. Prohibit the use of any controlled substances during work hours. Prohibit employees from being "under the influence" when they report to or are on duty.

- Require compliance with all state, federal and local standards, Standard Operating Procedures (SOPs), as well as other established policies and procedures. Failing to follow standards can result in civil or criminal actions against a department or individual when a major loss occurs.
- Require all employees to properly wear all protective equipment and to maintain the equipment as prescribed by law or manufacturers' recommendations.
- Prohibit unlawful activities such as discrimination and sexual and other types of harassment. Openly uphold civil rights.
- Enforce off duty professional standards and require that all secondary employment have the chief's approval.
- Monitor employee performance and provide progressive discipline when necessary.

✓ **Maintain and repair all Fire and EMS buildings to avoid injuries to employees and the public.** Fire departments should set a good example for the entire community, particularly since they enforce many of the requirements.

- Conduct and document building inspections regularly. The inspection should identify and correct hazards. Contact the League's Loss Control Services to obtain a sample inspection checklist.
- Follow MIOSHA Part 6 (Fire Exits) concerning emergency plans, fire prevention planning, exits and emergency lighting.
- Follow all local or other standards when renovating or updating public buildings. Contact the building official to confirm the department's compliance with requirements for permits and inspections.
- Label and store all hazardous materials properly

✓ **Adhere to all state and federal standards.** Practice what you preach and show others by setting a good example.

Generally, NFPA standards are more stringent than Michigan or MIOSHA standards. Each department should have access to a copy of the relevant NFPA, MIOSHA, Occupational Safety and Health Administration (OSHA), Building Officials and Code Administrators (B.O.C.A.) and National Electrical Code (N.E.C) standards. Designate an individual to be responsible for reviewing the standards and then communicating those standards to other employees. This is typically the Training Officer's, the Fire Inspector's or some other officer's responsibility. The purpose is to make certain that the department is enforcing as well as complying with the correct standard.

✓ **Develop, and regularly review department policies and procedures. Insist that all employees follow policies and procedures.**

Develop a Standard Operating Procedure (SOP) and communicate it to all employees. The SOP should discuss all state and federal requirements as well as departmental policies and procedures that employees must follow. Provide training so that every employee is aware of the department's policies. Officers should enforce the SOP and discipline when necessary. See NFPA 1561.

✓ **Establish employment practices that meet all state and federal guidelines whether the department is career staffed or volunteer.**

Treat all candidates for employment, whether volunteer or career fire fighter, as well as all current employees without regard to race, religion, national origin, color, sex, religion, marital status or disability. Include standard policies about the following in your SOP: recruitment, selection, discrimination, harassment, records and documentation discipline, and discharge. Communicate the policies openly to all employees and enforce them uniformly. At a minimum, train all officers in these areas. Review employment issues with a Human Resources specialist and major decisions with an attorney.

CONCLUSION

Reducing the liability that can arise from Fire and EMS operations requires extensive training, development of policies and procedures, and adherence to state, federal and local standards. The task is not easy, inexpensive or short in duration. However, the saying “an ounce of prevention equals a pound of cure” certainly applies here.

The following were invaluable sources of information:

Lawrence Merril, *On Call Fire Departments: The Township Board's Responsibilities*, 1993. The publication is available by contacting MTA at 517/321-6467.

Thomas D. Schneid, *Fire Law: The Liabilities and Rights of the Fire Service*, 1995. Available by contacting ITP Distribution Center at 800/842-3636.

Various local fire officials who willingly provided information.

MORE INFORMATION

Publications on special topics such as Hiring and Discrimination, Discrimination in the Workplace, Sexual and other types of Harassment and Motor Vehicle Operations are available from the League's Loss Control Services.

We encourage you to seek additional help when developing or formulating your policies and procedures.



IMPORTANT PHONE NUMBERS

MML Risk Management Services	734/662-3246 or 800/653-2483
Loss Control Services	800/482-0626
MIOSHA	517/322-1845
Fire Fighter's Training Council	517/322-5445

NOTE

This document is not intended as legal advice. It does not identify all the issues surrounding a particular topic. Public agencies are encouraged to review their procedures with an expert or attorney who is familiar with the area of operations.



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Fire & EMS Liability Self-Assessment

Fire and EMS operations create a unique exposure for public agencies. Because Fire and EMS units provide a wide variety of services, often in emergency situations, they frequently make decisions or act under stress. When decisions or actions are inappropriate or miscalculated, claims against the public entity may arise. The best defense against claims is to adequately train employees, routinely inspect equipment, re-plan and consistently enforce procedures. One way to determine if your department is prepared to meet this challenge is to review major exposure areas. You should seriously ask yourself the following questions:

Does your organization:

1. Have an adequate training program?

Yes No →



An adequate training program:

- Has a detailed written training plan in compliance with MIOSHA part 74 as well as NFPA standards.
- Incorporates state Fire Fighters Training Council requirements.
- Designates a Training Officer who coordinates training activities.
- Documents training and uses tests to measure skills.

2. Have an effective motor vehicle operations procedure?

Yes No →



Your motor vehicle operation procedure should include:

- A motor vehicle risk control committee to identify and reduce exposures.
- The development and enforcement of driving policies and procedures.
- The screening of qualified candidates with good driving records.
- A sound driver's training program approved by the State of Michigan.
- A documented and effective maintenance and repair program.

3. Test and inspect equipment?

Yes No →



Equipment considerations include:

- Inspecting and repairing equipment regularly, following manufacturers' recommendations.
- Having an established maintenance schedule and program.
- Assuring employees know how to use the equipment.
- Removing equipment from service when it is not operating properly.
- Providing personal protective equipment and requiring employees to use it at all times.

4. Assure professional employee conduct?

Yes No →



Assure professionalism by:

- Enforcing department policies and procedures uniformly.
- Monitoring employee performance and disciplining employees when necessary
- Reviewing secondary employment opportunities to make certain no conflict exists.
- Prohibiting the storage and consumption of drugs and alcohol on the premises.
- Providing adequate training of supervisory employees.

5. Adhere to federal, and state laws and local ordinances and requirements?

Yes No →



In general you should:

- Be familiar with and follow all state and federal guidelines such as MIOSHA & NFPA.
- Follow the same procedures that are enforced by your department such as BOCA and local building codes.
- Maintain your building in accordance with the same standards required by local ordinances.

6. Follow positive employment practices?

Yes No →



Positive employment practices include:

- Openly communicating and enforcing anti-discrimination and harassment policies;
- Following recruitment and selection procedures that do not discriminate towards protected groups;
- Reviewing all significant employment decisions with an attorney;
- Training your employees, especially supervisors, on positive employment practices.

Conclusions



If you were able to honestly answer “yes” to all six questions and your organization follows most or all of the suggested practices, then your organization has reduced its exposure to future claims. You should congratulate yourself.



If you were unable to answer “yes” to one or more of the six critical questions, your organization may have a greater exposure to liability claims. Missing components of one or more of the recommended practices may also indicate a deficiency in your current program. You should take one or more of the following actions:

- **Correct any deficiency that may exist;**
- **Contact your attorney for advice;**
- **Contact the Fire Fighter’s Training Council at 517/322-5445.**
- **Contact MML Risk Management Services at 800/653-2483; or**
- **Contact the League’s Loss Control Services at 800/482-0626.**

NOTE: This document is not intended to be legal advice or implied to identify all Fire and EMS related exposures. Public agencies are encouraged to contact their attorney for assistance in implementing these or other changes.