

PA FIRE POLICE FIRE POLICE OFFICER'S IMMUNITY

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The question of fire police officer's immunity, when performing their duties, is often a subject of discussion with different opinions offered, depending on to whom you are speaking.

Fire Police Officers, Fire Fighters, EMS, HazMat Personnel, and all Emergency Responders are covered under the immunity clause found in the PA Judiciary and Judicial Procedures, Title 42, and the Good Samaritan Act, Section 8331.1.

However, everyone is expected to perform their duties in a proper manner so there is no immunity if it is done in a negligent manner, and certainly no coverage if performed in a Gross Negligent manner.

Civil wrongs are referred to as a Tort. There are also Intentional Torts where the allegation is the alleged act was performed with intent to harm. In Pennsylvania, Intentional Tort Insurance is not permitted to be sold nor can anyone purchase it. If an Intentional Tort does occur, the plaintiff can seek Punitive Damages against the alleged perpetrator. The Legal Concepts class covers this very thoroughly and cannot be covered in sufficient depth in this short article.

In a courtroom, following the presentation of a civil suit by both attorneys and after their summations to the jury (if a trial is before a jury), the judge then "charges" the jury and will include the following statement in the charge:

"Negligence is a legal cause of loss, injury, or damage if it directly and in natural and continuous sequence produces or contributes substantially to producing such loss or damage, so that it can reasonably be said that but for the negligence, the injury would not have occurred."

Negligence can be found against a volunteer if the duty being performed does not conform to the manner in which a reasonably careful, prudent person would have performed the same activity.

For example, a fire police officer is directing traffic and, as a result, a motorist who follows the officer's directions then has an accident. The question will be raised as to the manner in which

the officer gave the signal. The test would be, is that the way a reasonably careful, prudent person would have given the same signal. If the answer is yes, there is no negligence. If the answer is no, then negligence would be the claim. This usually can be determined by an expert witness who would be brought into court to answer the question.

In reality, there are four types of negligence that could affect the fire police officer, the fire chief, the fire company, and the municipality:

Negligent Training: The fire company and/or the municipality failed to provide training for the Fire Police Officers.

Negligent Supervision: Fire Police Officer permitted to continuously perform duties without ever having been supervised (when on duty) by a member of the command staff (usually the Captain or Lieutenant)

Personal Negligence: The Fire Police Officer failed to take advantage of training that was provided.

Negligent Hiring and Retention: When a municipality confirms a Fire Police Officer, the Municipality has "hired" the Fire Police Officer. Workers' Compensation will now be provided when the officer responds to an emergency. Negligent Retention occurs when the municipality permits the fire police officer to continuously respond to duty without verifying if the individual has had current training. Most municipalities do not seem to understand their responsibility toward Fire Police and feel it is the fire company's responsibility. In reality, it is the responsibility of both.

In civil court, this is known as Governmental Custom. If the municipality does not have a policy requiring the fire police to be trained, then the court views this as a policy not requiring training.

Another problem which may result in liability is when it can be alleged that an individual operated "outside their scope of employment."

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For example, Fire Police Officers, who are trained to perform traffic control, crowd control, and security duties, are requested by a chief officer to assist firefighters in some fire fighting activity and a problem occurs, the Fire Police Officer could be deemed to be operating outside their scope of employment, or the doing of something for which the individual has not been trained.

Title 42, Chapter 85, Section 8547 indicates that, when an action is brought against an employee of a local agency for damages on account of an injury to a person or property – and it is alleged that the act of the employee which gave rise to the claim was within the scope of the office or duties of the employee –

The local government shall, upon **written request** of the employee, defend the action – unless or until there is a judicial determination that such act was not within the scope of the office or duties of the employee.

One of the most frequently asked question posed by Fire Police Officers concerns their responsibility should they come upon an accident or other type of emergency.

Their concern stems from their belief that they are required to stop and assist, especially if their vehicle is equipped with a blue light, a placard on their vehicle identifying them as a Fire Police Officer, and perhaps also have decals on the side of their vehicle.

There is no law requiring anyone to stop and assist at an accident. As a matter of fact, it is recognized common law in the Commonwealth of PA that an individual has no legal duty to come to the aid of the person (s) in harm's way, providing the individual did not place said person (s) in harm's way.

However, once a person does come to the aid of a person (s) placed in harm's way, he/she cannot then abandon said victim – end operations – and leave the scene. He/She must perform their services to the best of their knowledge and ability.

If an individual is trained to perform CPR and/or First Aid, a moral duty exists but not a legal duty. An individual cannot be held liable simply because they did not stop and render assistance.

If assistance is rendered, then there is a legal responsibility that the person providing such aid, not go beyond their level of training. You are protected by the Good Samaritan Act only as long as you do not go beyond your level of training.

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