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THE “FIREFIGHTER RULE”

BY: SCOTT A. O'MARA

Under civil remedy jurisdiction, the general population has a duty to avoid causing injuries to other citizens. This obligation is established relative to driving safely to prevent vehicular accidents, providing a safe place for customers to shop and employees to work, protecting individual personal property, and endless other situations which potentially could result in injuries to the public.

Within the safety community, the general assumption is that police officers, deputy sheriffs, Highway Patrol officers and firefighters face unique risks inherent in the nature of their employment, and if they are injured while engaging in activities which pose such risks, they have very strong limitations regarding seeking civil remedies against the person or persons who caused the need for the call-out resulting in their response. This is known as the “firefighter rule”. This rule was established based on the premise that safety personnel face unique risks in the course of their usual and customary duties while responding to emergency situations. The thought has been that if a limitation was not placed upon safety personnel responding to these emergencies, the individuals aware of the fires, accidents or shootings would not seek any safety response to avoid their own civil liability.

However, there are exceptions to the “firefighter rule” — situations wherein safety members responding to an event *may* seek some civil remedies (remedies outside the Workers' Compensation and retirement systems) against the person asking for the call-out. An obvious example where the “firefighter rule” would not apply would be situations where an individual driving a vehicle strikes a safety officer and causes injury. In that type of situation, there is no restriction preventing the safety member from seeking a civil remedy against the person causing the harm. The “firefighter rule” was against safety workers injured while responding to critical situations.

The Court will look to determine whether the safety officer was injured while performing a public service duty. There can be exceptions to the “firefighter rule”, and whether it has application to

safety officers injured — whether on or off duty — while containing and controlling a suspect on the defendant’s premises if the officer was injured while performing a public service, such as auto accidents, fires or shootings.

The Court has established that safety responses remain the financial burden of the government agency which employs the safety member(s) so that people in distress will call and seek assistance when necessary. The Court has also reviewed the unique benefits which safety people have, such as benefits pursuant to Labor Code §§4800.5 and 4850, as well as industrial disability retirements. The special pay and disability retirement benefits are compensation for the hazards which safety members face in the course of performing their duties.

Exceptions to the “firefighter rule” also come into play when safety workers are present in a critical response situation and are not aware of the special risks which may exist. In one situation, for instance, a chemical plant did not inform the safety personnel responding to a fire that a toxic chemical was involved, and did not provide information regarding the possible damage which might result from such exposure, even though the company was privy to this information. The Court determined that not informing the safety members of the complexity and extent of the risks involved in fighting this fire was a negligent and intentional act by the employer.

Another situation which would constitute an exception to the “firefighter rule” involves scenarios where safety members are responding to a situation involving a suspect known to have engaged in violent acts and who has a weapon and has threatened to kill safety officers, yet this information has not been disclosed to the responding officers. This type of situation places liability on the person failing to make such disclosure.

If a safety member responding to an emergency situation happens to be on the scene at the time, the property owner has the same liability to all individuals, whether or not they are safety members.

Recently, a case of the “firefighter rule” was raised relative to a vehicular collision involving six drivers. Drivers 1, 2, 3, 4 and 5 all lost control of their vehicle. The Court ultimately found that driver 5 was subject to litigation, because this driver failed to comply and cooperate with the firefighter directive to walk with the other drivers off the highway. In this situation, the driver walked to the driver’s side of the car before letting himself be assisted toward the shoulder of the road. This delay caused injury when driver 6 struck the safety officers assisting driver 5. Driver 5’s conduct was negligent in not following the firefighter directive for all parties to remove themselves from the situation. The officer being struck by the car had civil remedies in this situation in addition to his Workers’ Compensation rights.

Another type of situation occurs when a police officer comes onto a property and is injured while walking up or down a stairway which the owner knows is damaged and unsafe to use. In this case again, civil remedies would be available to the safety officer against the owner.

In conclusion, while the “firefighter rule” applies in some situations, there are exceptions, such as those mentioned above — when fighting a fire poses toxic exposures which are not made known to the safety responders, when an officer is sent to a residence without being informed that the subject is known to be armed and violent and has a hatred towards safety people, or when an officer is not informed of safety risks for which a property owner is responsible. These are examples of civil remedies available to safety officers outside and above the Workers’ Compensation venue, and outside the “firefighter rule”.



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