

LEGAL CONSIDERATIONS FOR FIRE AND EMERGENCY SERVICES

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J. Curtis Varone



Legal Considerations for Fire and Emergency Services
J. Curtis Varone

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P R E F A C E

INTENT OF THIS BOOK

Legal Considerations for Fire and Emergency Services is intended as a textbook for college-level classes in fire service law, and meets the Fire and Emergency Services Higher Education (FESHE) requirements issued by the United States Fire Administration. Yet this book can travel much farther. Firefighters of all ranks, and from all types of fire departments—large and small, urban and rural, union and nonunion, career and volunteer—can use it as a guide to the legal issues associated with the fire service. Some may also use it as a legal reference book. It addresses issues of great concern to all firefighters.

Written for firefighters who want to understand the legal issues that are intertwined with fire service, the book covers many of the pivotal questions confronting today's fire service, including legal liability, sovereign immunity, overtime laws, collective bargaining, OSHA compliance, workers' compensation, physical abilities testing, medical examinations, drug testing, discrimination, and sexual harassment.

WHY I WROTE THIS BOOK

While I have represented firefighters in my law practice for more than 21 years, I have also spent my entire adult life in the company of firefighters. *Legal Considerations for Fire and Emergency Services* is a product of having lived, worked, socialized, celebrated, and mourned with firefighters.

When I first began teaching fire law in the fire science program at Providence College, I struggled to find the right textbook. Some very fine attorneys have written a number of books on legal issues in the fire service, but I felt that those books lacked a perspective that connected with firefighters. When I finished reading those books, I was left with more questions than I had when I started. Firefighters are curious by nature. *Legal Considerations for Fire and Emergency Services* caters to the curiosity of firefighters. It answers the legal questions that are asked in firehouses from coast to coast, with down-to-earth explanations. It also explains where grey areas exist, and why. *Legal Considerations for Fire and Emergency Services* makes the connection between law as an intellectual study, and law as a reality that impacts firefighters each and every day on so many different levels.

HOW TO USE THIS BOOK

The book is organized in a logical sequence, starting with an overview of laws, our court systems, fire service organizations, and administrative agencies—with a particular focus on the Occupational Safety and Health Administration (OSHA)—followed by an overview of criminal law and criminal procedure. The book next addresses civil liability, with separate chapters on intentional torts, negligence, and immunity. A chapter on contract law addresses mutual aid agreements, fire insurance law, municipal purchasing, employment agreements, employment at will, and due process. The final chapters address labor law, workers' compensation, employment discrimination, sexual harassment, the Fair Labor Standards Act, and public accountability laws.

While the book is well laid out for use in a one-semester course in fire law, it can also be used as an adjunct for modular courses on specific fire service issues, such as arson, search and seizure, fire service negligence, risk management, the Fair Labor Standards Act, collective bargaining, discrimination, or sexual harassment. It includes an extensive glossary, as well as an appendix containing legal documents, laws, and reference information. Many firefighters may find *Legal Considerations for Fire and Emergency Services* useful as a desk reference.

FEATURES OF THIS BOOK

- **Actual case examples** are used throughout the book. The history of the fire service in the United States can be told through the lawsuits and cases that begin almost as soon as the last section of hose is packed on the first-in engine company. The book features actual cases presented in a concise, reader-friendly manner from some of the most significant fires and disasters that this country has ever seen: the Cocoanut Grove fire in Boston, in which 492 people died; the Beverly Hills Supper Club fire; the Catlett, Virginia train derailment, and the Worcester Cold Storage fire. These cases have been included in *Legal Considerations for Fire and Emergency Services* not only to help students learn important legal concepts, but to also to help them appreciate how law impacts the fire service.
- **Supporting photos** depicting law situations and drawn from the actual case incidents serve to engage the student in the readings and further emphasize the legal consequences of decisions made during incident response, and the daily operation of the fire department and other emergency service institutions.
- **Case highlights** at the end of each case provide a quick summary of the main points—the case title, the court in which the case was held, and the final decision of the court—to provide review for the student, and a quick reference for the active firefighter.

- **Key terms** are boldfaced throughout the text as well as noted in the margins, complete with definitions, to ensure that students learn the legal terminology essential to effective communication.
- **Sidebars** highlight the critical points that an informed emergency responder should know in order to address legal matters effectively while on the job.
- **Examples** integrated throughout the text provide students with insight into various legal concepts as they apply to response situations.
- **Review questions** allow students to evaluate their knowledge of the concepts learned in the chapter.

SUPPLEMENT TO THIS BOOK

For those interested in teaching fire service law, there is a comprehensive **e-resource** on CD-ROM available to instructors. The CD-ROM includes:

- **Instructor's Guide** containing lesson plans, points of discussion, and answers to the chapter review questions contained in the book.
- **PowerPoint presentations** for each chapter, including graphics, to highlight important legal concepts.
- **Test bank** organized by chapter and containing approximately 300 questions in multiple-choice, true/false, and scenario-based formats. The test bank is in ExamView format, allowing instructors to edit, randomize, and add questions with ease to meet their specific training needs.
- **FESHE correlation grid** that aligns the chapters in this book with the course objectives for Legal Aspects of the Fire Services.

The instructor materials provide additional insight into many of the incidents depicted in the book and offer numerous tips and exercises to engage students in the study of fire service law.

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ABOUT THE AUTHOR

I am a third-generation firefighter and a second-generation attorney. Like many firefighters, I became a volunteer as soon as I turned 16. At the time, my grandfather was the fire chief, and I was just another young gun hanging on the back step of a 1941 Ward LaFrance pumper. Over the next few years, the town in which I lived consolidated the five volunteer fire companies into one fire department and established a part-time call department. By the



Author Curt Varone on the scene of an incident. (Photo by Ray Taylor.)

time I started law school, I had already been a firefighter for 10 years, and had become a career firefighter in Providence, Rhode Island. I went to law school armed with the questions that many firefighters have about the legal system, and made it my mission to find the answers. With each class I took, I became more aware of the interrelationship between the law and the fire service.

When I began my law practice in 1985, most of my clients were firefighters. I also began representing fire departments, volunteer fire companies, firefighter labor unions, and fire chiefs. This experience has given me great insight into the legal issues confronting the fire service, and has sharpened my ability to make these issues understandable to firefighters.

I am a Deputy Assistant Chief in the Providence (RI) Fire Department, and currently serve as A-group shift commander. Besides teaching in the Executive Fire Officer Program at the National Fire Academy, I have been teaching fire law at Providence College for more than 10 years, and continue to lecture on a variety of legal issues. However, I also teach fire tactics, incident command, and firefighter safety. I like to think that teaching these other fire courses—together with continuing to work a shift in a busy urban fire department—has helped to keep me balanced, and that balance is reflected in this text.

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NOTE TO READERS

If there are topics or questions that you feel should have been addressed in *Legal Considerations for Fire and Emergency Services*, please let me know. In addition, if you are aware of cases that would be well suited for inclusion in the second edition, by all means please contact me. My e-mail address is jcatlaw@aol.com.

INTRODUCTION

Legal Considerations for Fire and Emergency Services is the culmination of two careers: fire and law. The two topics have always had an inescapable connection to me, and I believe that after studying this book the connection will be apparent to you as well.

UNDERSTANDING THE CASES IN THIS BOOK

Reading published court cases can seem intimidating to non-attorneys. I remember well the trials and tribulations of reading cases for the first time in college-level fire science courses. I have taught a college-level course in fire law for the past 10 years, so I know firsthand the capabilities of firefighters to grasp legal concepts when they relate to important fire service issues. Cases are nothing more than stories, and the human mind craves learning through storytelling. It is unfortunate that all learning cannot take place through such storytelling, because our minds soak up the facts of a story the way a dry sponge soaks up water.

Most of the cases chosen for this book are fire cases, and tell stories of interest to firefighters. Some arose out of the most significant—and tragic—fires in our nation’s history: the Coconut Grove fire, the Beverly Hills Supper Club fire, and the Worcester Cold Storage fire, to name a few. Other cases involve issues that are of major concern to firefighters, such as residency, grooming, physical abilities testing, overtime, discrimination, and fire service liability. Throughout these cases, the connection between the law and the fire service is evident.

To the greatest extent possible, I have removed extraneous material from the cases, including citations, references, and footnotes, to make the cases more reader-friendly. Three periods in a row (. . .), also called ellipsis points, indicate that material has been omitted from a sentence. Four periods in a row (. . . .) indicate that more than a single sentence has been omitted. Any words or letters encased within brackets [like this] are mine, and not part of the actual published court decision.

My advice to those concerned about reading cases is to read them the way you would read a novel, and not the way you would read a textbook. When you come across a word you do not recognize in a novel, you simply read past it. Do not focus on the minutiae of the cases, as you might normally do when reading a textbook for a class. Focus on the storyline. Never lose sight of where the story is going!

HOW TO READ AND BRIEF CASES

When reading cases, read past footnotes, citations, and references. Allow your eyes to skim right over them. They are merely there for documentation purposes, in the event you wish to follow up on a certain case or law. Do not let them distract you from the storyline. Focus

on the big picture, and follow the story. Search for four important pieces of information, namely: the *facts*, the *issues*, the *holding*, and the *rationale*. Identifying these four factors is commonly referred to as *briefing* a case. You may choose to write down the four pieces of information for future reference as you read each case.

The *facts* are the court's explanation about what happened and the history of the case. The facts give us a sense of what occurred, and what caused the case to get to court. Try to figure out who are the parties involved and what took place.

The second important piece of information to look for is the court's identification of the *issue* or *issues* in the case. The issue is the legal question, which the judge or judges have concluded must be addressed in order to decide the case. Some cases have one issue; others have multiple issues. Do not be surprised if the parties disagree about the "real" issues in a case. It is the court's job to clarify the issues. Spotting the issues may be a challenge initially, but your ability to issue-spot will improve rapidly with practice.

The third item to look for in a case is the *holding*, or ruling of the court. The holding is essentially the court's answer to the issue or issues that have been identified. Each issue in a case will have a holding. Since many cases in this book have multiple issues, they will have multiple holdings.

The final component of a case is the *rationale*, or the reasoning stated by the court in reaching its conclusion. The rationale provides an explanation for why the court ruled the way it did, and adds a very important perspective to the decision.

MAKING THE MOST OF THE LESSONS IN THIS BOOK

Legal Considerations for Fire and Emergency Services is organized to be read and taught by starting with Chapters 1 through 4. These chapters review the basics of the study of law as it relates to the fire service, and provide a foundation for the remaining 11 chapters. The remaining chapters build upon the basic concepts explained in Chapters 1 through 4, but may be addressed in whatever order your instructor considers prudent.

Most chapters include one or more cases. The cases are intended to reinforce and complement the text material, helping to anchor a legal concept in one's mind in the way that a picture or diagram can provide perspective about how to operate a piece of equipment. It is possible to use this textbook successfully without reading the cases. However, the richness of the experience will be lost, as will the opportunity to connect a legal concept to a real-life story. It is not uncommon for lawyers and judges in their sixties and seventies to recall cases they studied in their early twenties, having read them but once in law school. Such is the power of storytelling through studying cases.

Following each case is a Case Highlight, which is included to help provide perspective about the case. The Case Highlight will explain the relevance of the case in order to help you understand how it relates to the material in the chapter. The Case Highlight is different from the holding. My advice is to refer to the Case Highlight only if you are having

difficulty understanding the point of the case relative to the chapter, or to confirm that you have correctly understood the relevance of the case.

Remember that no book on the law can substitute for competent legal advice. Seemingly insignificant facts can make a tremendous difference in your legal rights and responsibilities. If you or your organization have legal questions, seek the advice of an attorney.

Good luck! Be safe!

Curt



FIRE AND EMERGENCY SERVICES HIGHER EDUCATION (FESHE)

In June 2001, the U.S. Fire Administration hosted the third annual *Fire and Emergency Services Higher Education Conference* at the National Fire Academy campus in Emmitsburg, Maryland. Attendees from state and local fire service training agencies, as well as colleges and universities with fire-related degree programs, attended the conference and participated in work groups. Among the significant outcomes of the working groups was the development of standard titles, outcomes, and descriptions for six core associate-level courses for the *model fire science* curriculum that had been developed by the group the previous year. The six core courses are: *Fundamentals of Fire Protection*, *Fire Protection Systems*, *Fire Behavior and Combustion*, *Fire Protection Hydraulics and Water Supply*, *Building Construction for Fire Protection*, and *Fire Prevention*.¹ The committee also developed similar outlines for other recommended courses offered in fire science programs. These courses included: *Fire Administration I*, *Occupational Health and Safety*, *Legal Aspects of the Emergency Services*, *Hazardous Materials Chemistry*, *Strategy and Tactics*, *Fire Investigation I*, and *Fire Investigation II*.

FESHE Content Area Comparison The following table provides a comparison of the Legal Aspects FESHE course with this text, *Legal Considerations for Fire and Emergency Services*.

¹2001 *Fire & Emergency Services Higher Education Conference Final Report* (Emmitsburg, Maryland: U.S. Fire Administration, 2001), page 12.

FIRE AND EMERGENCY SERVICES HIGHER EDUCATION (FESHE) COURSE CORRELATION GRID

Name:	Legal Aspects of the Fire Service	Legal Considerations for Fire and Emergency Services Chapter Reference
Course Description:	This course introduces the Federal, State, and local laws that regulate emergency services, national standards influencing emergency services, standard of care, tort, liability, and a review of relevant court cases.	
Prerequisite:	None.	
Outcomes:	<ol style="list-style-type: none"> 1. Define the different types of laws, explain their basic differences, and how the law functions in society. 2. Become familiar with federal, state, and local laws, which regulate or influence emergency services. 3. Explain the role and purpose of national codes and standards concerning their legal influence. 4. Become familiar with legal decisions that have or will affect the fire service. 5. Discuss the organization and legal structure of the fire department. 6. Define the liabilities of firefighters. 7. Recognize legal duties of emergency service members. 8. Discuss negligence in an emergency setting. 9. Define discrimination and identify areas of potential discrimination in the emergency service. 10. Identify, explain, and discuss the legalities of entrance requirements, residency, grooming, and drug testing. 11. Discuss the scope of the Civil Rights Act. 12. Discuss the parameters and explain the basic intent of the American Disabilities Act, Fair Labor Standards Act, and Family Medical Leave Act. 13. Explain the at-will doctrine. 14. Explain the purpose of labor and employment laws. 15. Identify and analyze the major causes involved in the line-of-duty firefighter deaths related to health, wellness, fitness, and vehicle operations. 	<p style="text-align: center;">1</p> <p style="text-align: center;">1, 3, 4, 11, 12, 13, 14, 15</p> <p style="text-align: center;">1</p> <p style="text-align: center;">1–15</p> <p style="text-align: center;">3</p> <p style="text-align: center;">7, 8, 9</p> <p style="text-align: center;">5, 7, 8</p> <p style="text-align: center;">7, 8, 9</p> <p style="text-align: center;">12, 13</p> <p style="text-align: center;">12, 13, 14</p> <p style="text-align: center;">12, 13</p> <p style="text-align: center;">12, 13, 14</p> <p style="text-align: center;">10</p> <p style="text-align: center;">11</p> <p style="text-align: center;">Firefighter Safety Section</p>

FIREFIGHTER SAFETY SECTION

FESHE OBJECTIVE 15: Identify and analyze the major causes involved in line-of-duty firefighter deaths related to health, wellness, fitness, and vehicle operations.

Each year, approximately 100 firefighters are killed and 100,000 are injured. The United State Fire Administration (USFA), the National Fire Protection Association (NFPA), and the International Association of Firefighters (IAFF) maintain statistics on these deaths and injuries. Collectively, these studies indicate the following:

Sudden heart attack is the most common cause of death of firefighters killed on the job. Heart attacks claim anywhere from 40 to 50 percent of the firefighters who die in the line of duty each year. A 10-year study by the NFPA, covering 1995 to 2004, found that 440 of the 1,006 line-of-duty deaths (43.7 percent) were related to sudden cardiac events, while many other deaths were the result of stress-related conditions such as strokes and aneurysms. Most of these victims had known heart diseases, or had conditions that could have been diagnosed had the members undergone mandatory fitness-for-duty medical examinations, as recommended by the NFPA.

Not surprisingly, the most likely place for a firefighter to be killed or injured is at an emergency scene. Fireground deaths account for between 28 and 40 percent of firefighter deaths each year, with nonfire emergencies accounting for an additional 8 to 10 percent.

Approximately 25 to 35 percent of the firefighters who die each year succumb while responding to an alarm, or returning from an alarm. Vehicle accidents cause many of these deaths. Research has identified tanker rollover accidents as accounting for a statistically significant number of firefighter fatalities over the years. Training deaths commonly account for between 10 and 20 percent of firefighter fatalities annually.

Age has been shown to be a risk factor for firefighters. NFPA studies have concluded that a firefighter over the age of 60 is three times more likely to die than a firefighter who is between 40 and 49. Older firefighters are more likely to die from heart-related causes, while younger firefighters are more likely to die from trauma.

While firefighter line-of-duty deaths and injuries can never be eliminated completely, fire departments can achieve positive results by adopting comprehensive occupational safety and health programs. These programs address a wide range of firefighter activities, including:

- periodic medical examinations
- physical fitness programs
- health and wellness programs
- accident prevention programs
- effective training programs
- acquisition of proper equipment

- proper equipment maintenance programs
- enforcement of operational procedures
- risk management programs
- proper staffing of apparatus

The single most important measure that fire departments and firefighters can take to reduce the death and injury rate is to implement the NFPA 1500 Standard on Occupational Safety and Health Programs.

SOURCES

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United States Fire Administration. *Firefighter Fatalities: A Retrospective Study 1990–2000*, FA-220, Item # 9-0437