Off-Duty Firefighter/EMS Injuries or Death Related to Actions at Emergency Scenes

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Introduction
At the annual meeting of the International Association of Fire Chiefs’ Safety, Health and Survival Section (SHSS), a chief asked the question about what coverage would be available to an off-duty firefighter who comes upon a fire, a medical emergency or an accident and that firefighter takes action which then causes the death of that firefighter or causes a critical injury so that the firefighter may no longer be able to work. No one had a good answer.

The Chair of the SHSS created a working group to review this question and to develop recommendations which a fire department could implement. The members of the working group are:

Chair
Commissioner David H. Fischler, Esq.

SHSS
Chief David Daniels
Chief Danny Kistner
Chief Randy Talifarro

Fire & Emergency Service and Government Organizations
Hope D. Janke, US Department of Justice, Office of Justice Programs, PSOB Director
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The working group participated in numerous conference calls for more than a year. Based on the group’s research and discussions, this paper was developed to review these questions and to provide recommendations to fire departments for the development of policy, procedures and firefighter education.

With 50 states each having its own laws, the group realized that no one solution would be applicable. The one common solution is that each fire department should
develop a policy about acting off-duty and assure through an education program that all its firefighters would become aware of the policy and know what the potential consequences are for taking action in an emergency situation while the firefighter was off-duty.

Firefighters find it difficult not to act. We are sure that at one time or the other most firefighters have stopped at accident scenes or fires to help those people who are involved. As a working group, we in no way propose that responders not stop when they see an emergency incident. We do recognize that responders need to know where their coverage and benefits start and stop so that each firefighter can make a personal decision on what action to take in an emergency while off-duty.

**Scenarios and Central Issues**

The working group developed a series of scenarios around a variety of emergency scenes to provide a framework for their discussions.

- An off-duty firefighter is home within his work jurisdiction. He hears glass breaking and shortly thereafter, discovers that his neighbor’s house is on fire. A car is in the driveway. No one is by the house. The firefighter makes entry, discovers a well-involved kitchen fire and proceeds to start a search for victims. The house is built using lightweight wood truss construction. A sudden collapse occurs trapping the off-duty firefighter and causing his death.

- An off-duty firefighter is driving in an adjacent jurisdiction from the jurisdiction in which he is a volunteer. He witnesses a serious motor vehicle accident trapping the vehicle’s occupants. The firefighter immediately jumps out of his car and runs to the severely damaged vehicles. While he is trying to access the patients, a fiery explosion occurs which causes critical burns to the firefighter. He is later declared disabled due to the burns and can no longer work in the construction field or be a firefighter.

- An off-duty firefighter is traveling within the state where she works and is four hundred miles from her fire department’s jurisdiction. She sees an apartment building fire. The fire department is not on scene. The firefighter using her turnout gear from her fire department enters the building to alert residents of the fire. The firefighter is overcome from smoke inhalation and dies.

- Finally, an off-duty firefighter from a western state is visiting and playing golf across the country in an eastern state. As he passes a building on the golf course, he smells a strange odor which may be gas. The odor is stronger around the building. He notifies the fire department using his cell phone. He then proceeds to the main door of the building which he opens and flicks on the light switch. A massive explosion occurs causing critical trauma to the firefighter. The firefighter was rendered unconscious and has been in a coma for six months without any hope of ever regaining consciousness.

The working group identified the five central issues surrounding these types of scenarios.

1. What would be the federal benefits under the Public Safety Officers Benefit Program?
2. How would each individual state’s worker compensation laws or volunteer firefighter benefit laws address these scenarios and what coverage, if any, would be available?

3. How would local fire departments, in which the firefighter worked or volunteered, treat these scenarios and what local benefits would be available?

4. What, if any, types of insurance coverage are available to firefighters involved in such a scenario?

5. What state laws exist that may provide coverage and benefits to the firefighter?

Federal Benefits

At the Federal level, most in the fire service are familiar with the Public Safety Officers’ Benefit (PSOB) Act. This law provides a financial award to survivors of those firefighters who die in the line-of-duty or are critically injured and disabled. This report will not elaborate on the intricacies of the law, but will discuss portions of the process. If you are interested in learning more details about the program visit Public Safety Officers’ Benefit Program webpage at www.psob.gov.

The PSOB Office, located in the United States Department of Justice, reviews each claim on a case-by-case basis. The key components of this review are as follows:

1. Is the individual a Public Safety Officer as defined by the PSOB law? The PSOB law defines the public safety officer as, “an individual serving in a public agency in an official capacity, with or without compensation, as a law enforcement officer, as a firefighter, as a chaplain, or as a member of a rescue squad or ambulance crew.”

2. Is the individual operating in an official capacity? The PSOB law states that “An individual serves a public agency in an official capacity only if (1) He is officially authorized, recognized, or designated (by such agency) as functionally within or part of it; and (2) His acts and omissions, while so serving, are legally those of such agency, which legally recognizes them as such (or, at a minimum, does not deny (or has not denied) them to be such).”

3. What is a line-of-duty injury? PSOB law defines a line-of-duty injury as “An injury sustained in the line of duty only if (1) it is sustained in the course of (i) Performance of line of duty activity or a line of duty action; or (ii) Authorized commuting; or (2) Convincing evidence demonstrates that such injury resulted from the injured party’s status as a public safety officer.”

4. What is a line-of-duty activity or action? PSOB defines as an “Activity or an action is performed in the line of duty, in the case of a public safety officer who is (1) A law enforcement officer, a firefighter, or a member of a rescue squad or ambulance crew (i) Whose primary function (as applicable) is public safety activity, only if, not being described in the Act, at 42 U.S.C. 3796a(1), and not being a frolic or detour, it is activity or an action that he
obligated or authorized by statute, rule, regulation, condition of employment or service, official mutual-aid agreement, or other law, to perform (including any social, ceremonial, or athletic functions (or any official training programs of his public agency) to which he is assigned, or for which he is compensated), under the auspices of the public agency he serves, and such agency (or the relevant government) legally recognizes that activity or action to have been so obligated or authorized at the time performed (or, at a minimum, does not deny (or has not denied) it to have been such); Authorized commuting means travel (not being described in the Act at 42 U.S.C. 3796a(1), and not being a frolic or detour) by a public safety officer - (1) In the course of actually responding (as authorized) to a fire, rescue, or police emergency, or to a particular and extraordinary request (by the public agency he serves) for that specific officer to perform public safety activity (including emergency response activity the agency is authorized to perform), within his line of duty; or (2) Between home and work (at a situs (for the performance of line of duty activity or action) authorized or required by the public agency he serves) or between any such authorized or required situs and another - (i) Using a vehicle provided by such agency, pursuant to a requirement or authorization by such agency that he use the same for commuting; or (ii) Using a vehicle not provided by such agency, pursuant to a requirement by such agency that he use the same for work.”

In reviewing this information, no blanket statement can be made that a firefighter would be entitled to the benefits from the Public Safety Officers Benefit program. As the guidelines indicate, any claim would have to meet specific criteria. Failure to meet these criteria would more than likely cause the US Department of Justice to deny benefits. While federal benefits may be denied, the firefighter/EMS individual may be eligible for benefits from their respective states and/or agencies.

Most states have robust intrastate mutual aid plans which define coverage for members that are actually dispatched to respond under specific protocols. Questions have arisen about being covered under the PSOB while working natural disasters when a fire department or EMS agency is activated to respond outside the state. The Nebraska State Advocate for the National Fallen Firefighters Foundation has provided information about this process:

“To insure that members are covered by the PSOB if killed or permanently disabled, there needs to be a call generated which gives members the ‘Legal Authority to Serve the Public Agency in an Official Capacity.’ The Department of Justice (DOJ) will ask for documentation that the member was dispatched to the incident. If no call is generated and members are out filling sandbags, assisting citizens, etc. and are injured or killed, they can be considered as ‘freelancing’ which does not give them the ‘Legal Authority to Serve the Public Agency in an Official Capacity’......

“Members and departments should document any injuries, sudden illnesses, infections, etc. that member’s encounter while working these disasters. If any of these lead to serious illness or death, documentation of exactly where and when the member encountered the illness (injury) will need to be documented to be covered. To be covered under the Hometown Hero’s Act the onset of illness (injury) must occur within 24 hours of the ‘emergency
call.' So documentation of when the member was dispatched to the incident and when the 'injury' was sustained is essential for coverage.

"If your department is assisting neighboring communities, make sure they have requested 'Mutual Aid' from your department for assistance. Self dispatching to other communities could cause a claim to be denied as there would be no documentation of being 'dispatched' to the scene."

**State Benefits**

Fifty different states exist creating fifty different answers to whether a firefighter or EMS member would be entitled to any benefits if he/she is injured or killed while off-duty and taking action at a fire/EMS incident. Therefore, no one definitive answer exists.

All states maintain some form of workers' compensation. These benefits can vary by state and limitations exist. Additionally, volunteer firefighters' benefit laws may exist in some states which closely parallel the workers' compensation laws. Black's Law Dictionary defines workers' compensation as, "A system of providing benefits to an employee for injuries occurring in the scope of employment."

With the exception of three states, every state pays basic medical benefits essentially at the same level. However, each state takes a different path toward satisfaction of additional medical benefits, disability benefits and death benefits. Injuries, illnesses and death established as compensable under the applicable workers' compensation law require that prescribed benefits be paid to the injured employee. Benefit limits and duration vary by jurisdiction.

The question arises about what is the scope of employment for each member. Blacks’ Law Dictionary states that scope of employment is, "The range of reasonable and foreseeable activities that an employee engages in while carrying out the employer's business." Therefore, each government jurisdiction can define its own scope of employment for the firefighters who are employed by that jurisdiction or who volunteer for that jurisdiction.

An employee's actions fall within the course or scope of employment when:

1. the conduct is of the kind the employee was employed to perform;
2. the conduct occurred substantially within the time and space limits authorized or required by the work to be performed; and
3. the conduct is motivated at least in part by a purpose to serve the employer.

Sometimes, scope of employment is confused with course of employment. Course of employment is defined as, "Events that occur or circumstances that exist as part of one’s employment; esp., the time during which an employee furthers an employer's goals through employer-mandated directives." (Black’s Law Dictionary)

The courts have varied about which standard to apply. A plethora of cases exist in each state which defines how that state’s courts interpret scope of employment and course of employment. The question still remains about who establishes the scope of employment.
Each governing jurisdiction creates job descriptions about what the duties of the job, the location of employment, the required skills, the work hours, limitations and other criteria for that particular job. These job descriptions form the foundation of the scope of employment. The jurisdiction can adjust these job descriptions administratively, legislatively or through the resolution process. Part of the job description can include the definition of boundaries in which a firefighter is authorized to work.

States maintain various benefits for firefighters and EMS personnel who die in the line-of-duty. These benefits vary by state with different criteria for each state. For career personnel, the unions have the information about what death benefits or benefits for a critically injured member are available to that member. For volunteer fire/EMS personnel, the National Volunteer Fire Council State Benefits Guide as well as a state’s firefighters’ association maintains information about available benefits. Some of these additional benefits may include a one-time death benefit, a worker’s compensation death benefit, a funeral benefit, a pension/length-of-service benefit, a child’s educational benefit, or a spouse’s educational benefit.

**Duty to Act and Good Samaritan Laws**

Some states have adopted Duty to Act legislation, which mandates that firefighters/EMS personnel must take action within the state when they come upon an emergency even though they are off-duty and may be far outside their jurisdiction. The assumption is that state benefits would be available to the firefighter/EMT if they are injured or die.

According to Black’s Law Dictionary, a Duty to Act means, “a duty to take some action to prevent harm to another, and for the failure of which one may be liable depending on the relationship of the parties and the circumstances.”

In that Duty to Act are state laws, the difficulty is to determine which states have such laws and how those laws have been interpreted by that state’s courts. A comprehensive review needs to be performed by the fire service of each state to determine whether a duty-to-act law exists, and if so, who does it apply to and how have the courts defined that law related to firefighters and EMS personnel.

States may also have Good Samaritan laws. These laws are usually directed at limiting liability to that individual when that individual takes action in an emergency situation. These laws are directed to reducing legal liability based on negligence. The laws do not pertain to the awarding of benefits if that member is killed or injured while operating in an off-duty emergency incident.

**Local Benefits**

The local governing body which is responsible for fire/EMS personnel may provide various additional benefits besides that which a member may be eligible for from the federal and/or the state levels if a member is killed or critically injured in the line of duty. Pension benefits or length-of-service awards may also be available either locally or at the state level.

The local governing jurisdiction should have job descriptions for each position. Part of that job description should include language identifying the scope of employment which should include boundary limitations. For example, the limitation may be within...
the home jurisdiction and adjacent jurisdictions, where the member lives, within the county, within the state, or anywhere within the United States. Obviously, a set of regulations and procedures needs to be established to assure that claims are legitimate and that abuses do not occur if a member takes action at a fire/EMS incident outside the member’s jurisdiction.

The local jurisdiction must be familiar with all written mutual aid plans to include local plans, county/regional plans and state plans. In particular, the jurisdiction must have knowledge of who the responsible party would be for injuries to or death of a member. Mutual aid plans should require an acknowledgment that a jurisdiction has agreed to participate within the prescribed plan. Jurisdictions should take the required actions to assure participation in mutual aid plan. These actions may be what are actually required in the mutual aid plan, adoption of a resolution authorizing the jurisdiction to participate in a specific mutual aid plan, or a formal legislative process authorizing participation.

Every fire department and EMS agency must be familiar with the federal Emergency Management Assistance Compact (EMAC) which provides a mechanism and protocol to request or to receive assistance from departments outside of the state where the incident has occurred. Each state must determine if it will participate in EMAC. When responding to an EMAC activation, personnel would usually have coverage.

Each fire department governing body, chief officers and members need to have a complete understanding of the specific federal, state and local laws, rules and regulations that pertain to a fire/EMS member being killed or injured in the line of duty both on-duty and off-duty. Particularly, all members need to know exactly where and when they would be eligible for any benefit for taking off-duty action at fire/EMS incident outside that member’s jurisdiction. Having this knowledge, the member can make an informed decision about whether or not that member will take any action or limited action. Therefore, whether to take action or not to take action becomes a personal decision for the member.

**Insurance Benefits**

From the information above, the best way for fire/EMS personnel to be covered for medical expenses is the workers’ compensation benefits for those members injured or killed in the line of duty. The insurance industry has developed additional insurance products to provide coverage for members that they would not otherwise receive. Some fire departments have purchased these additional insurance products for its members while other departments have no additional coverage.

These additional insurances are purchased by the governing body for the benefit of its fire/EMS personnel. Many insurance products are available from various insurance companies. The most popular insurance for fire/EMS personnel are group accident policies, group life insurance, twenty four hour accidental death or disability, long term disability, and critical illnesses policy. Individuals also have the ability to purchase other insurances that provide benefits for various situations.

The committee suggests the local jurisdiction advises its volunteers/career personnel as to whether "Good Samaritan" and "Deputized Bystander" type of coverage is provided under their Accident and Sickness Policy.
The International Association of Fire Chiefs Volunteer & Combination Officers Section has produced a document entitled “An Insurance Planning Guide for Emergency Service Organizations”. (See www.vcos.org/resources/publications.) This document provides an extensive review of the insurance issues that are facing fire departments today. A section is included on workers’ compensation and health and life insurance.

**Recommendations**

The following recommendations are proposed so that fire departments and their governing bodies can have a full understanding of the issues related to off-duty deaths or injuries related to actions which fire/EMS personnel have taken at a fire or EMS incident:

1. The IAFC, represented by the Safety, Health and Survival Section, should forward this report to each state’s chief organization requesting that they take the appropriate actions to address the issues raised in this report.

2. Each state chief organization along with representatives from the various governing bodies, state firefighters’ associations and unions should form a task group to review the laws of that respective state related to:
   a. Duty to Act legislation
   b. workers’ compensation laws
   c. specific laws related to career and volunteer firefighters
   d. civil service rules related to job descriptions and scope of employment
   e. state court decisions which have defined scope of employment and course of employment
   f. determine the state’s involvement with EMAC
   g. determine if the state has a mutual aid plan and if so, what that plan provides for responding agencies or personnel.

3. The task group should develop model language in accordance with state laws which governing bodies could use to develop job descriptions and scope of employment clauses for both career and volunteer fire/EMS personnel. A few different versions of the model language can be developed so that the fire chief and his governing body can decide what limitations should be applied to its members. Language can provide coverage nationally, regionally, statewide, county or locally. A model resolution should be created defining the boundaries where fire/EMS personnel can take action while off-duty.

4. Each state should issue a report distributed to each fire/EMS chief and their respective governing bodies as listed above so that the chief and governing body can understand their state’s laws and coverage for an off-duty death or injury related to actions taken at an emergency scene.

5. Each fire/EMS chief or governing body should formalize job descriptions for all its positions whether career or volunteer to include scope of employment language defining boundary limitations. Additionally, consideration should be given by the governing body to pass a resolution defining the boundaries in which a firefighter is authorized to take action while off-duty.

6. The most important aspect is that the individual member completely understands the limitations of taking any action at a fire/EMS incident while the member is off-duty. Each chief and governing body needs to have a clearly defined policy and a clear set of procedures for taking action off-duty.
Therefore, the responsibility of the chief and governing body is to have a written policy, to publish the policy, and to assure that each member receives a copy of that policy and is properly trained on the policy and procedures.

**Conclusion**

Some recent national incidents have involved off-duty firefighters operating outside their home jurisdiction. These firefighters either died or were critically injured. As firefighters, EMS personnel and chief officers, we know that our personal values dictate that when we see a person in distress or that a person may be in harm’s way that we take action to become involved to help that person. Firefighters and EMS personnel do these things regardless of being on-duty or off-duty.

While the recommendations are made with the intent to provide proof that a member’s off-duty actions are within the member’s employment or volunteer status, **NO guarantee exists that a member or member’s family will be awarded any benefits.** By taking all of these recommendations, a member may be in a better position to receive appropriate benefits for himself/herself or his/her family as determined by the respective agencies which administer such benefits.

If you ask a firefighter if they would be covered if killed or injured while off-duty and acting in an emergency situation, most answers would be “yes” or “I don’t know”. As Chiefs, we are obligated to assure that the firefighter or EMS member has all the information about whether they or their family would receive benefits and/or coverage for actions taken by that member in an off-duty status. With this knowledge, the firefighter or EMS member can make an intelligent, informed decision on what they would do when presented with an emergency situation while off-duty and will know and understand the potential consequences of their decision.